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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

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**Quarterly Report Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

**For the Quarterly Period Ended October 30, 2004**

**Commission File Number 0-15898**

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**CASUAL MALE RETAIL GROUP, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**555 Turnpike Street, Canton, MA**  
(Address of principal executive offices)

**04-2623104**  
(IRS Employer  
Identification No.)

**02021**  
(Zip Code)

**(781) 828-9300**

(Registrant's telephone number, including area code)

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Indicate by "X" 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 "X" whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares of common stock outstanding as of December 1, 2004 was 34,217,796.

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**CASUAL MALE RETAIL GROUP, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands, except share data)

	<u>October 30,</u> 2004	<u>January 31,</u> 2004
	<u>(unaudited)</u>	
<b>ASSETS</b>		
<i>Current assets:</i>		
Cash and cash equivalents	\$ 6,387	\$ 4,179
Accounts receivable	5,368	5,556
Notes receivable	5,270	—
Inventories	122,408	98,673
Prepaid expenses and other current assets	5,993	5,275
	<hr/>	<hr/>
Total current assets	145,426	113,683
Property and equipment, net of accumulated depreciation and amortization	72,584	68,345
<i>Other assets:</i>		
Goodwill	52,812	50,677
Other intangible assets	35,579	30,629
Other assets	9,127	9,408
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Total assets	<b>\$ 315,528</b>	<b>\$ 272,742</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<i>Current liabilities:</i>		
Current portion of long-term debt	\$ 5,651	\$ 3,710
Accounts payable	43,034	32,125
Accrued expenses and other current liabilities	24,470	22,884
Accrued liabilities for severance and store closings	2,024	2,945
Notes payable	51,498	3,623
	<hr/>	<hr/>
Total current liabilities	126,677	65,287
<i>Long-term liabilities:</i>		
Long-term debt, net of current portion	119,430	122,374
Other long-term liabilities	473	436
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Total long-term liabilities	119,903	122,810
Minority interest	—	3,804
<i>Stockholders' equity:</i>		
Preferred stock, \$0.01 par value, 1,000,000 shares authorized, none outstanding at October 30, 2004 and January 31, 2004	—	—
Common stock, \$0.01 par value, 75,000,000 shares authorized, 39,390,094 and 39,246,364 shares issued at October 30, 2004 and January 31, 2004, respectively	394	392
Additional paid-in capital	154,531	153,650
Accumulated deficit	(62,526)	(56,165)
Treasury stock at cost, 5,171,930 and 4,171,930 shares at October 30, 2004 and January 31, 2004, respectively	(23,362)	(17,036)
Accumulated other comprehensive loss	(89)	—
	<hr/>	<hr/>
Total stockholders' equity	68,948	80,841
	<hr/>	<hr/>
Total liabilities and stockholders' equity	<b>\$ 315,528</b>	<b>\$ 272,742</b>

*The accompanying notes are an integral part of the consolidated financial statements.*

**CASUAL MALE RETAIL GROUP, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands, except per share data)  
(Unaudited)

	Three Months Ended		Nine Months Ended	
	October 30, 2004	November 1, 2003	October 30, 2004	November 1, 2003
Sales	\$ 93,922	\$ 97,910	\$ 298,239	\$ 285,901
Cost of goods sold, including occupancy	58,663	59,597	186,696	177,299
Gross profit	35,259	38,313	111,543	108,602
Expenses:				
Selling, general and administrative	32,152	33,793	103,434	97,441
Reversal of provision for impairment of assets, store closings and severance	(591)	—	(591)	—
Depreciation and amortization	2,864	2,241	8,144	6,177
Total expenses	34,425	36,034	110,987	103,618
Operating income	834	2,279	556	4,984
Other income (expense), net	—	(425)	308	(425)
Interest expense, net	(1,878)	(3,135)	(6,035)	(8,996)
Loss from continuing operations before minority interest and income taxes	(1,044)	(1,281)	(5,171)	(4,437)
Minority interest	—	(147)	701	(55)
Income taxes	—	—	—	—
Loss from continuing operations	(1,044)	(1,428)	(4,470)	(4,492)
Income (loss) from discontinued operations	(322)	224	(1,891)	1,192
Net loss	\$ (1,366)	\$ (1,204)	\$ (6,361)	\$ (3,300)
Net loss per share - basic and diluted				
Loss from continuing operations	\$ (0.03)	\$ (0.04)	\$ (0.13)	\$ (0.12)
Income (loss) from discontinued operations	(0.01)	0.01	(0.05)	0.03
Net loss	\$ (0.04)	\$ (0.03)	\$ (0.18)	\$ (0.09)
Weighted average number of common shares outstanding				
- Basic and diluted	34,209	35,992	34,607	35,855

The accompanying notes are an integral part of the consolidated financial statements.

**CASUAL MALE RETAIL GROUP, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

(In thousands)  
(Unaudited)

	Nine Months Ended	
	October 30, 2004	November 1, 2003
<b>Cash flows from operating activities:</b>		
Net loss	\$ (6,361)	\$ (3,300)
Adjustments to reconcile net loss to net cash used for operating activities:		
(Income) loss from discontinued operations	1,891	(1,192)
Reversal of provision for impairment of assets, store closings and severance	(591)	—
Depreciation and amortization	8,144	6,177
Other expenses, principally related to debt redemption costs	2,832	—
Gain on sale of investment in joint venture	(3,140)	—
Accretion of warrants	103	1,351
Issuance of common stock to related party	151	207
Issuance of common stock to Board of Directors	70	86
Minority interest	(701)	55
Loss on disposal of fixed assets	396	—
<b>Changes in operating assets and liabilities:</b>		
Accounts receivable	145	2,869
Notes receivable	1,200	—
Inventories	(12,700)	(14,425)
Prepaid expenses	(900)	(3,583)
Other assets	(624)	(615)
Reserve for severance and store closings	(330)	(1,215)
Accounts payable	7,578	13,770
Accrued expenses and other current liabilities	(3,750)	(1,797)
<b>Net cash used for operating activities</b>	<b>(6,587)</b>	<b>(1,612)</b>
<b>Cash flows from investing activities:</b>		
Additions to property and equipment	(15,397)	(8,875)
Proceeds from disposal of property and equipment	166	—
Acquisition of Rochester Big & Tall, net of cash acquired	(17,006)	—
Proceeds from sale of investment in joint venture	1,530	—
<b>Net cash used for investing activities</b>	<b>(30,707)</b>	<b>(8,875)</b>
<b>Cash flows from financing activities:</b>		
Net borrowings (repayments) under credit facility	47,875	(6,105)
Principal payments on long-term debt	(9,897)	(11,806)
Payment of premiums associated with prepayment of long-term debt	(313)	—
Proceeds from issuance of long-term debt, net of discount	7,500	24,300
Proceeds from issuance of warrants	—	4,791
Repurchase of common stock	(6,326)	(36)
Issuance of common stock under option program and warrants	663	820
<b>Net cash provided by financing activities</b>	<b>39,502</b>	<b>11,964</b>
<b>Net change in cash and cash equivalents</b>	<b>2,208</b>	<b>1,477</b>
<b>Cash and cash equivalents:</b>		
Beginning of the period	4,179	4,692
End of the period	<b>\$ 6,387</b>	<b>\$ 6,169</b>

The accompanying notes are an integral part of the consolidated financial statements.

**CASUAL MALE RETAIL GROUP, INC.,**  
**Notes to Consolidated Financial Statements**

**1. Basis of Presentation**

In the opinion of management of Casual Male Retail Group, Inc., a Delaware corporation (the "Company"), the accompanying unaudited consolidated financial statements contain all adjustments necessary for a fair presentation of the interim financial statements. These financial statements do not include all disclosures associated with annual financial statements and, accordingly, should be read in conjunction with the notes to the Company's audited consolidated financial statements for the fiscal year ended January 31, 2004 (included in the Company's Annual Report on Form 10-K, which was filed with the Securities and Exchange Commission on April 15, 2004).

The information set forth in these statements may be subject to normal year-end adjustments. The information reflects all adjustments that, in the opinion of management, are necessary to present fairly the Company's results of operations, financial position and cash flows for the periods indicated. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The Company's business historically has been seasonal in nature, and the results of the interim periods presented are not necessarily indicative of the results to be expected for the full year.

Certain amounts for the three and nine months ended November 1, 2003 have been reclassified to conform to the presentation for the three and nine months ended October 30, 2004. These adjustments relate to the reclassification for discontinued operations in accordance with the provisions of Statement of Financial Accounting Standards ("SFAS") No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* ("SFAS 144"). For further discussion regarding discontinued operations, see Note 6 below.

The Company's fiscal year is a 52- or 53- week period ending on the Saturday closest to January 31. Fiscal 2004 is a 52-week period ending on January 29, 2005.

**Foreign Currency Translation** – During the third quarter of fiscal 2004, the Company opened 13 Casual Male stores located within Sears Canada retail stores. Assets and liabilities of these stores are translated into U.S. dollars at the exchange rates in effect at each balance sheet date. Stockholders' equity is translated at applicable historical exchange rates. Income, expense and cash flow items are translated at average exchange rates during the period. Resulting translation adjustments are reported as a separate component of stockholders' equity.

**2. Acquisition of Rochester Big & Tall Clothing**

On October 29, 2004, pursuant to an asset purchase agreement dated August 18, 2004, the Company completed the acquisition of substantially all of the assets of Rochester Big & Tall Clothing (the "Rochester Acquisition"). The purchase price was \$15 million in cash and the assumption of bank and subordinated debt of approximately \$5 million, in addition to the assumption of identified operating liabilities such as accounts payable and accrued liabilities. The \$5 million that the Company assumed in subordinated debt from Rochester was paid in full on October 29, 2004. There is a potential payment over a three-year period of an additional \$4 million, which is subject to an earn-out provision.

The Company has allocated the purchase price as follows:

	<b>Debit (credit)</b> <b>(in thousands)</b>
Cash and cash equivalents	\$ 2,920
Accounts receivable	28
Inventory	14,584
Prepaid expenses	849
Property and equipment	2,922
Other assets	240
Goodwill	2,135
Trademarks	5,000
Customer lists	25
Accounts payable	(4,698)
Accrued expenses and other current liabilities	(3,729)
Accrual for estimated transaction and severance costs	(350)
<b>Total cash paid for assets acquired and liabilities assumed</b>	<b>\$ 19,926</b>

The Company financed the transaction with a \$7.5 million term loan from Fleet Retail Group, Inc., together with borrowings on its existing credit facility, which was amended in connection with the acquisition. See Note 3 for a detailed discussion of the borrowings.

The Rochester Big & Tall business generated approximately \$600,000 of sales for the last two days of the third quarter which ended October 30, 2004.

### 3. Debt

#### Credit Agreement with Fleet Retail Finance, Inc.

On October 29, 2004, in connection with the financing of the Rochester Acquisition, the Company amended its credit facility with Fleet Retail Group, Inc. (the "Amended Credit Facility"). The Amended Credit Facility continues to principally provide for a total commitment of \$90 million with the ability to issue documentary and standby letters of credits of up to \$20 million. The maturity date of the Amended Credit Facility was extended to October 29, 2007 and is subject to prepayment penalties through October 29, 2006. Borrowings under the Amended Credit Facility bear interest at variable rates based on Fleet National Bank's prime rate or the London Interbank Offering Rate ("LIBOR") and vary depending on the Company's levels of excess availability. The amendment lowered the Company's interest costs under the Amended Credit Facility by approximately 25 basis points depending on its level of excess availability. The Company's ability to borrow under the Amended Credit Facility is determined using an availability formula based on eligible assets, with increased advance rates based on seasonality.

The Company's obligations under the Amended Credit Facility continue to be secured by a lien on all of its assets. The Amended Credit Facility includes certain covenants and events of default customary for credit facilities of this nature, including change of control provisions and limitations on payment of dividends by the Company. The Company is also subject to a financial covenant requiring minimum levels of EBITDA if a minimum excess availability level of \$12.5 million is not maintained. The Company was in compliance with all debt covenants under the Credit Facility at October 30, 2004.

At October 30, 2004, the Company had borrowings outstanding under the Amended Credit Facility of \$51.5 million and outstanding standby letters of credit of \$2.0 million, with no outstanding documentary letters of credit. Average borrowings outstanding under this facility during the first nine months of fiscal 2004 were approximately \$24.7 million, resulting in an average unused excess availability of approximately \$38.8 million.

The fair value of amounts outstanding under the Amended Credit Facility approximates the carrying value at October 30, 2004. At the Company's option, any portion of the outstanding borrowings can be converted to LIBOR-based contracts; the remainder bears interest based on prime. At October 30, 2004, the prime-based borrowings interest rate was 4.75% and the Company had one outstanding LIBOR contract with an interest rate of 4.29%.

#### **Other Long-Term Debt**

Components of other long-term debt are as follows (in thousands):

	October 30, 2004	January 31, 2004
5% convertible senior subordinated notes due 2024	\$ 100,000	\$ 100,000
12% senior subordinated notes due 2010	—	6,415
5% senior subordinated notes due 2007	7,563	8,938
Term loan	7,500	—
Mortgage note	10,018	10,731
<b>Total other long-term debt</b>	<b>125,081</b>	<b>126,084</b>
Less: current portion of long-term debt	(5,651)	(3,710)
<b>Other long-term debt, less current portion</b>	<b>\$ 119,430</b>	<b>\$ 122,374</b>

## 12% senior subordinated notes due 2010

During fiscal 2003, the Company issued through private placements approximately \$29.6 million principal amount of 12% senior subordinated notes due 2010. Interest on such notes was paid semi-annually. Together with these notes, the Company also issued, through such private placements, detachable warrants to purchase 1,182,400 million shares of Common Stock at exercise prices ranging from \$4.76 to \$7.32 per share. The assigned value of \$5.6 million for these warrants was reflected as a component of stockholder's equity to be amortized over the seven-year life of the notes as additional interest expense. Although the Company's 12% senior subordinated notes due 2010 were not redeemable until July 3, 2004, the Company sought early redemption from the respective note holders in the fourth quarter of fiscal 2003. As a result, the Company prepaid approximately \$21.8 million of such notes through the end of fiscal 2003.

During the second quarter of fiscal 2004, the Company prepaid the remaining \$7.8 million outstanding on the notes. In connection with the early redemption, the Company incurred \$1.9 million of additional expense related to prepayment charges and the write-off of remaining deferred costs associated with the warrants. The \$1.9 million is included in the Consolidated Statement of Operations for the nine months ended October 30, 2004 as a component of "Other income (expense), net."

## Term Loan

Pursuant to the Amended Credit Facility, on October 29, 2004, the Company also entered into a 3 year term loan for \$7.5 million with Fleet Retail Group, Inc., the proceeds of which were used for the Rochester Acquisition. Such loan will require principal payments in the amount of approximately \$1.9 million on each of the first two anniversaries of the loan with the remaining balance due at maturity. The term loan will accrue interest at the prevailing LIBOR rate plus 5% per annum.

## **4. Equity**

### Earnings Per Share

SFAS No. 128, *Earnings per Share*, requires the computation of basic and diluted earnings per share. Basic earnings per share is computed by dividing net income (loss) by the weighted average number of shares of Common Stock outstanding during the respective period. Diluted earnings per share is determined by giving effect to the exercise of stock options and certain warrants using the treasury stock method. The following table provides a reconciliation of the number of shares outstanding for basic and diluted earnings per share (in thousands):

	For the three months		For the nine months	
	10/30/04	11/1/03	10/30/04	11/1/03
Basic weighted average common shares outstanding	34,209	35,992	34,607	35,855
Stock options, excluding the effect of anti-dilutive options and warrants totaling 1,227 shares and 1,709 shares for the three and nine months ended October 30, 2004, respectively and 1,786 and 1,095 for the three and nine months ended November 1, 2003, respectively	—	—	—	—
Diluted weighted average common shares outstanding	34,209	35,992	34,607	35,855

In addition, the following potential Common Stock equivalents were also excluded from the computation of diluted earnings per share in each period because the exercise price of such options, warrants and convertible notes was greater than the average market price per share of Common Stock for the respective periods:

(in thousands)	For the three months ended		For the nine months ended	
	10/30/04	11/1/03	10/30/04	11/1/03
Options	1,552	46	638	302
Warrants	1,902	1,176	1,296	2,017
Convertible notes at \$10.65 per share	9,390	—	9,390	—
Range of exercise prices of such options, warrants and convertible notes	\$ 5.67 - \$10.65	\$ 8.50 - \$9.00	\$ 7.27 - \$10.65	\$ 5.24 - \$9.00

The above options, warrants and convertible notes which were outstanding and out-of-the-money at October 30, 2004 expire from June 13, 2005 to April 27, 2024.

### Stock-Based Compensation

The Company accounts for stock option plans in accordance with the provisions of APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and related Interpretations in accounting for its plans.

The Company has elected the disclosure-only alternative prescribed in SFAS 123, *Accounting for Stock-Based Compensation*, and, accordingly, no compensation cost has been recognized. The Company has disclosed the pro forma net income or loss and per share amounts using the fair value based method. Had compensation costs for the Company's grants for stock-based compensation been determined consistent with SFAS 123, the Company's net loss and loss per share would have been as indicated below:

	For the three months ended		For the nine months ended	
	October 30, 2004	November 1, 2003	October 30, 2004	November 1, 2003
<i>(in thousands, except per share amounts)</i>				
Net loss – as reported	\$ (1,366)	\$ (1,204)	\$ (6,361)	\$ (3,300)
Net loss – pro forma	(1,840)	(1,493)	(7,784)	(4,134)
Loss per share – diluted as reported	\$ (0.04)	\$ (0.03)	\$ (0.18)	\$ (0.09)
Loss per share – diluted pro-forma	\$ (0.05)	\$ (0.04)	\$ (0.22)	\$ (0.12)

The effects of applying SFAS 123 in this pro forma disclosure are not likely to be representative of the effects on reported net income or loss for future years.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes Option Pricing Model with the following weighted-average assumptions used for grants for the nine months ended October 30, 2004 and November 1, 2003:

	October 30, 2004	November 1, 2003
Expected volatility	65.0%	65.0%
Risk-free interest rate	2.69% - 3.71%	2.70%
Expected life	4.5 yrs.	4.5 yrs.
Dividend rate	—	—

The weighted-average fair value of options granted in the first nine months of fiscal 2004 and fiscal 2003 were \$3.96 and \$4.33, respectively.

### **5. Restructuring, Store Closings and Impairment of Assets**

In fiscal 2002, the Company implemented an aggressive plan to downsize its Levi's®/Dockers® business, with the intention to eventually exit it completely. Under the plan, the Company planned to close between 50 to 55 stores over a 24 month period, thereby reducing the sales base of its Levi's®/Dockers® outlet business to less than 10% of the Company's total sales. In fiscal 2002, the Company closed 20 of its Levi's®/Dockers® outlet stores pursuant to this plan and an additional 25 stores in fiscal 2003. During the first nine months of fiscal 2004, the Company has closed 14 additional stores, resulting in 44 Levi's®/Dockers® outlet stores at October 30, 2004. As discussed in Note 11, subsequent to the end of the third quarter of fiscal 2004, the Company completed the sale of 32 of its 44 Levi's®/Dockers® outlet stores. The Company expects to close the remaining 12 stores by the end of fiscal 2004.

During the third quarter of fiscal 2004, the Company recognized \$591,000 of income as a result of revised accruals for landlord settlements. At October 30, 2004, the remaining reserve for Levi's®/Dockers® store closings was \$2.4



million. The reserve consisted of inventory reserves of \$417,000 and accruals for landlord settlements and other costs of \$2.0 million. These remaining reserves are for stores which were identified in fiscal 2002.

(in millions)	Balance at January 31, 2004	Net Provisions/(Income)	Charges/Write-offs	Balance at October 30, 2004
Inventory reserves	\$ 0.9	\$ —	\$ 0.5	\$ 0.4
Accrued liabilities for severance and store closings	2.9	(0.6)	0.3	2.0
<b>Total reserves</b>	<b>\$ 3.8</b>	<b>\$ (0.6)</b>	<b>\$ 0.8</b>	<b>\$ 2.4</b>

## 6. Discontinued Operations

In accordance with the provisions of SFAS 144, the Company's discontinued operations reflect the operating results for stores which have been closed as part of the Company's plan to exit its Levi's®/Dockers® business. The results for the three and nine months ended October 30, 2004 and November 1, 2003 have been reclassified to show the results of operations for closed stores.

Discontinued operations for the third quarter of fiscal 2004 resulted in a loss of \$0.3 million compared to income of \$0.2 million for the third quarter of fiscal 2003. For the nine months ended October 30, 2004, discontinued operations resulted in a loss of \$1.9 million as compared to income of \$1.2 million for the nine months ended November 1, 2003. Due to the consolidated tax position, no tax benefit or provision was realized on discontinued operations. Below is a summary of the results of operations for closed stores for the three and nine months ended October 30, 2004 and November 1, 2003:

(in thousands)	For the three months ended		For the nine months ended	
	October 30, 2004	November 1, 2003	October 30, 2004	November 1, 2003
Sales	\$ 682	\$ 16,120	\$ 9,994	\$ 40,723
Gross margin	(299)	2,333	513	7,469
Selling, general and administrative expenses	19	1,945	1,776	5,780
Depreciation and amortization	4	164	628	497
<b>Income (loss) from discontinued operations</b>	<b>\$ (322)</b>	<b>\$ 224</b>	<b>\$ (1,891)</b>	<b>\$ 1,192</b>

## 7. Income Taxes

At October 30, 2004, the Company had total gross deferred tax assets of approximately \$46.3 million, which are fully reserved. These tax assets principally relate to federal net operating loss carryforwards that expire from 2017 through 2024. The ability to reduce the Company's corresponding valuation allowance of \$46.3 million in the future is dependent upon the Company's ability to achieve sustained taxable income.

Due to the circumstances described above, no tax benefit or provision has been recognized for the three and nine months ended October 30, 2004 and November 1, 2003.

## 8. Segment Information

The Company operates its business under two reportable segments: (i) the Casual Male business and (ii) the Other Branded Apparel businesses.

*Casual Male business:* This segment includes the Company's 427 Casual Male Big & Tall retail stores, 69 Casual Male Big & Tall outlet stores, 13 Sears Canada stores and its Casual Male catalog and e-commerce businesses. This segment also includes the Company's 22 Rochester Big & Tall retail stores, together with its catalog and e-commerce business, since October 29, 2004, the date of the Rochester Acquisition.

*Other Branded Apparel businesses:* This segment includes the Company's remaining 44 Levi's®/Dockers® outlet stores. As discussed below in Note 11, subsequent to the end of the third quarter, 32 of these stores were sold on

November 24, 2004. This segment also includes the results of operations through July 30, 2004 of the 29 Ecko Unltd.® outlet stores, which were owned and operated through a joint venture with Ecko.Complex, LLC. As discussed below in Note 9, on July 30, 2004, the Company sold its 50.5% interest in the joint venture to Ecko.Complex, LLC.

The accounting policies of the reportable segments are consistent with the consolidated financial statements of the Company. The Company evaluates individual store profitability in terms of a store's "Operating Income," which is defined by the Company as gross margin less occupancy costs, direct selling costs and an allocation of indirect selling costs. Historically, the Company has allocated its administrative expenses among its business segments. For the third quarter of fiscal 2004, the Company eliminated this allocation and as a result all administrative expenses will be reported as part of the Casual Male business. For comparability, all prior period allocations have been reclassified to conform to the third quarter of fiscal 2004 presentation. Below are the results of operations on a segment basis for the three and nine months ended October 30, 2004 and November 1, 2003, respectively.

(in millions)	For the three months ended October 30, 2004			For the three months ended November 1, 2003		
	Casual Male business	Other Branded Apparel businesses	Total	Casual Male business	Other Branded Apparel businesses	Total
<b>Statement of Operations:</b>						
Sales	\$ 74.6	\$ 19.3	\$93.9	\$ 73.0	\$ 24.9	\$97.9
Gross margin	30.3	5.0	35.3	30.1	8.2	38.3
Selling, general and administrative	29.3	2.9	32.2	28.5	5.3	33.8
Reversal of provision for impairment of assets, store closings and severance	—	(0.6)	(0.6)	—	—	—
Depreciation and amortization	2.5	0.4	2.9	1.7	0.5	2.2
Operating income (loss)	\$ (1.5)	\$ 2.3	\$ 0.8	\$ (0.1)	\$ 2.4	\$ 2.3
<b>Reconciliation to net income:</b>						
Other income (expense), net			—			(0.4)
Interest expense, net			(1.9)			(3.1)
Minority interest			—			(0.2)
Loss from continuing operations			(1.1)			(1.4)
Income (loss) from discontinued operations			(0.3)			0.2
Net loss			\$ (1.4)			\$ (1.2)

(in millions)	For the nine months ended October 30, 2004			For the nine months ended November 1, 2003		
	Casual Male business	Other Branded Apparel businesses	Total	Casual Male business	Other Branded Apparel businesses	Total
<b>Statement of Operations:</b>						
Sales	\$ 234.2	\$ 64.0	\$298.2	\$ 224.8	\$ 61.1	\$285.9
Gross margin	96.2	15.3	111.5	92.5	16.1	108.6
Selling, general and administrative	90.5	12.9	103.4	83.7	13.7	97.4
Reversal of provision for impairment of assets, store closings and severance	—	(0.6)	(0.6)	—	—	—
Depreciation and amortization	6.6	1.5	8.1	4.9	1.3	6.2
Operating income (loss)	\$ (0.9)	\$ 1.5	\$ 0.6	\$ 3.9	\$ 1.1	\$ 5.0
<b>Reconciliation to net loss:</b>						
Other income (expense), net			0.3			(0.4)
Interest expense, net			(6.1)			(9.0)
Minority interest			0.7			(0.1)
Loss from continuing operations			(4.5)			(4.5)
Income (loss) from discontinued operations			(1.9)			1.2
Net loss			\$ (6.4)			\$ (3.3)

	Casual Male business	Other Branded Apparel businesses	Total	Casual Male business	Other Branded Apparel businesses	Total
<b>Balance Sheet:</b>						
Inventories	\$100.9	\$ 21.5	\$122.4	\$ 82.7	\$ 37.2	\$119.9
Fixed assets	71.3	1.3	72.6	59.5	7.5	67.0
Goodwill and other intangible assets	88.4	—	88.4	81.3	—	81.3
Trade accounts payable	36.9	6.1	43.0	33.1	14.6	47.7
Capital expenditures	13.4	2.0	15.4	6.0	2.9	8.9

### 9. Sale of Interest in Ecko Joint Venture and Mark-Down Allowance Agreement

Beginning in March 2002 and through July 30, 2004, the Company operated a joint venture with Ecko.Complex, LLC (“Ecko”) under which the Company, a 50.5% partner, owned and managed retail outlet stores bearing the name Ecko Unltd.® and featuring Ecko® brand merchandise. Ecko, a 49.5% partner, contributed to the joint venture the use of its trademark and the merchandise requirements, at cost, of the retail outlet stores. Under the joint venture arrangement, the Company contributed all real estate and operating requirements for the retail outlet stores, including, but not limited to, the real estate leases, payroll needs and advertising. Each partner shared in the operating profits of the joint venture, after each partner had received reimbursements for its cost contributions. For financial reporting purposes, Ecko’s 49.5% ownership in the joint venture was included in the Company’s consolidated financial statements as a minority interest, through July 30, 2004.

On July 30, 2004, the Company sold to Ecko its 50.5% interest in the joint venture for a purchase price of \$800,000 in cash and a secured promissory note in the principal amount of \$6.2 million. The secured promissory note accrues interest at 8% annually and is secured by all of the membership interests of the former joint venture and substantially all of its assets. This note requires Ecko to make monthly principal payments to the Company of \$516,667 plus interest, commencing August 31, 2004. The Company will also continue to receive fees based on a percentage of sales for providing transitional services to the joint venture related to its operating and accounting systems, as needed until June 30, 2005. At October 30, 2004, the outstanding balance on this note was \$4.5 million.

The above transaction resulted in a gain of approximately \$3.1 million, which is included in the Consolidated Statements of Operations as a component of “Other income (expense), net” for the nine months ended October 30, 2004.

Pursuant to a mark-down allowance agreement entered into on July 30, 2004, Ecko also executed and delivered an additional secured promissory note for \$1.0 million as a markdown allowance with respect to purchases of certain goods made by the Company from Ecko. The secured promissory note accrues interest at 8% annually and is also secured by all of the membership interests of the former joint venture and substantially all of its assets. This note requires Ecko to make monthly principal payments in the amount of \$83,333 plus interest commencing August 31, 2004. At October 30, 2004, the outstanding balance on this note was \$0.8 million.

## **10. Related Parties**

### **Jewelcor Management, Inc.**

Since October 1999, the Company has had an ongoing consulting agreement with Jewelcor Management, Inc. (“JMI”) to assist in developing and implementing strategic plans for the Company and other related consulting services as may be agreed upon between the JMI and the Company. Seymour Holtzman, who became the Company’s Chairman of the Board on April 11, 2000, is the beneficial holder of approximately 14.7% of the outstanding Common Stock (principally held by JMI). He is also chairman, president and chief executive officer and, indirectly with his wife, the primary shareholder of JMI.

On August 26, 2004, the Compensation Committee of the Board of Directors approved an increase in the annual compensation to JMI pursuant to the consulting agreement, effective May 1, 2004, to \$392,000 from \$326,000. JMI will continue to receive an additional \$24,000 per annum for expense reimbursements. At the same time, the Compensation Committee also agreed to include JMI in the Company’s Executive Incentive Program which allows for a bonus award if certain performance targets are achieved in fiscal 2004.

On July 15, 2004, the Compensation Committee granted to Mr. Holtzman, as compensation for his services as an executive officer of the Company in fiscal 2003, an option to purchase 200,000 shares of the Company’s Common Stock at an exercise price of \$6.27 per share. The option vests ratably over a three-year period. In addition, on July 15, 2004, Mr. Holtzman received a bonus in the amount of \$150,000 for services performed in fiscal 2003.

On August 31, 2004, the Compensation Committee granted to Mr. Holtzman, as compensation for his services as an executive officer of the Company in fiscal 2004, an option to purchase 100,000 shares of the Company’s Common Stock at an exercise price of \$5.89 per share, which will vest ratably over a three-year period. On August 31, 2004, the Compensation Committee also granted Mr. Holtzman an option to purchase an additional 100,000 shares of the Company’s Common Stock at an exercise price of \$5.89 per share. However, this option is scheduled to vest on the seventh anniversary of the date of grant, but will accelerate and become exercisable over a three-year period if the Company achieves certain performance targets in fiscal 2004. In addition to the above options, Mr. Holtzman also receives an annual salary of \$24,000 as compensation for services.

### **Other Directors and Officers**

On October 27, 2004, in connection with the Rochester Acquisition, the Board of Directors of the Company appointed Robert L. Sockolov, the President of Rochester Big & Tall Clothing, as a director of the Company, effective upon the consummation of the acquisition. Accordingly, on October 29, 2004, the date the Rochester Acquisition was consummated, Mr. Sockolov became a director of the Company. Mr. Sockolov will serve until the Company’s 2005 annual meeting of stockholders and until his respective successor has been duly elected and qualified.

On October 29, 2004, the Company also entered into an employment agreement (the “Employment Agreement”) with Mr. Sockolov. Under the terms of the Employment Agreement, which will terminate January 31, 2008, Mr. Sockolov will serve as the Chief Executive Officer of the Company’s Rochester division. The Company will pay Mr. Sockolov an annual base salary of \$250,000, subject to annual increases as determined by the Board of Directors or a committee thereof.

Pursuant to the Employment Agreement, Mr. Sockolov received an option to purchase 100,000 shares of the Company’s Common Stock at an exercise price of \$5.03 per share, the closing price of the Company’s Common Stock on October 29, 2004. The option vests ratably over a three-year period, with the first one-third vesting on October 29, 2005.

The Employment Agreement provides that in the event Mr. Sockolov’s employment is terminated by the Company for any reason other than “cause” (as defined in the Employment Agreement) or death, Mr. Sockolov will be entitled to receive his full compensation and benefits under the Employment Agreement through January 31, 2008.

## **11. Subsequent Event – Sale of 32 Levi’s®/Dockers® outlet stores**

On November 24, 2004, the Company entered into an Asset Purchase Agreement with Hub Holding Corp., an affiliate of Sun Capital Partners, Inc. (“Hub Holding”), pursuant to which the Company sold 32 of its remaining Levi’s®/Dockers® outlet stores to Hub Holding. The closing of the transaction occurred on November 24, 2004. The sale price was approximately \$12.8 million in cash, subject to adjustment based on the valuation of inventory at

closing. In addition, the Company is also entitled to an earn out payment based on the stores' financial performance through January 31, 2005, of up to a maximum of \$500,000. As part of the Asset Purchase Agreement, Hub Holding assumed all outstanding accounts payable and accrued liabilities incurred in the ordinary course of business, including the remaining lease obligations for these 32 store locations. The Company does not expect to incur any material gains or losses as a result of this transaction.

Pursuant to the Asset Purchase Agreement, the Company and Hub Holding also entered into a Transition Services Agreement, pursuant to which the Company will provide to Hub Holding and certain of its affiliates certain transitional services for a period of up to four months.

The proceeds from the sale will be used by the Company to reduce borrowings under its Amended Credit Facility.

The Company's remaining 12 Levi's®/Dockers® outlet stores are expected to be closed by the Company before the end of fiscal 2004.

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

### FORWARD-LOOKING STATEMENTS

Certain statements contained in this Quarterly Report on Form 10-Q constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995. In some cases, forward-looking statements can be identified by the use of forward-looking terminology such as "may," "will," "estimate," "intend," "plan," "continue," "believe," "expect" or "anticipate" or the negatives thereof, variations thereon or similar terminology. The forward-looking statements contained in this Quarterly Report are generally located in the material set forth under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations," but may be found in other locations as well. These forward-looking statements generally relate to plans and objectives for future operations and are based upon management's reasonable estimates of future results or trends. The forward-looking statements in this Quarterly Report should not be regarded as a representation by the Company or any other person that the objectives or plans of the Company will be achieved. Numerous factors could cause the Company's actual results to differ materially from such forward-looking statements. The Company encourages readers to refer to the Company's Current Report on Form 8-K, previously filed with the Securities and Exchange Commission on April 14, 2004, which identifies certain risks and uncertainties that may have an impact on future earnings and the direction of the Company.

All subsequent written and oral forward-looking statements attributable to the Company or to persons acting on the Company's behalf are expressly qualified in their entirety by the foregoing. These forward-looking statements speak only as of the date of the document in which they are made. The Company disclaims any obligation or undertaking to provide any updates or revisions to any forward-looking statement to reflect any change in its expectations or any change in events, conditions or circumstances in which the forward-looking statement is based.

### BUSINESS SUMMARY

Casual Male Retail Group, Inc. together with its subsidiaries (the "Company") is the largest specialty retailer of big and tall men's apparel in the United States. The Company operates 496 Casual Male Big & Tall stores, the Casual Male catalog business and an e-commerce site, and, as of October 29, 2004, 22 Rochester Big & Tall stores as well as a direct to consumer business. The Company is also the exclusive retailer of the Comfort Zone by George Foreman™, GF Sport by George Foreman™ and Signature Collection by George Foreman™. As of October 30, 2004, the Company operated 44 Levi's®/Dockers® Outlet stores, which are located throughout the United States and Puerto Rico.

Unless the context indicates otherwise, all references to "we," "ours," "our," "us" and "the Company" refer to Casual Male Retail Group, Inc. and its consolidated subsidiaries. The Company refers to its fiscal years which end on January 29, 2005 and January 31, 2004 as "fiscal 2004" and "fiscal 2003," respectively.

### SUMMARY OF SIGNIFICANT EVENTS

#### Acquisition of Rochester Big & Tall Clothing

On October 29, 2004, the Company completed its acquisition of substantially all of the assets of Rochester Big & Tall Clothing (the "Rochester Acquisition"). Rochester Big & Tall Clothing is a premier big and tall operator specializing in suits and sportswear. As part of the acquisition, the Company acquired 22 retail stores, 21 located in major cities in the United States and one in London, England, in addition to a growing catalog and e-commerce business. The purchase price was \$15.0 million in cash and the assumption of bank and subordinated debt of approximately \$5 million, in addition to the assumption of identified operating liabilities such as accounts payable and accrued liabilities. There is a potential payment over a three-year period of an additional \$4.0 million, which is subject to an earn-out provision. The Company financed the transaction with a \$7.5 million term loan from Fleet Retail Group, Inc., together with borrowings on its existing credit facility, which was amended in connection with the acquisition. See "Liquidity and Capital Resources" for more discussion on the Company's credit facility.

The Rochester Big & Tall business provides the Company with an opportunity to increase its market share in the men's big & tall apparel industry. In addition, with only 22 retail locations, the Company believes that there are significant growth opportunities for the Rochester business.

#### Subsequent Event – Sale of 32 Levi's®/Dockers® outlet stores

Subsequent to the end of the third quarter, on November 24, 2004, the Company sold 32 of its remaining Levi's®/Dockers® outlet stores to Hub Holding Corp., an affiliate of Sun Capital Partners, Inc. ("Hub Holding"). The sale price was approximately \$12.8 million in cash, subject to adjustment based on the valuation of inventory at closing. In addition, the Company is also entitled to an earn out payment based on the stores' financial performance through January 31, 2005, of up to a maximum of \$500,000. In connection with the sale, Hub Holding assumed all outstanding accounts payable and accrued liabilities incurred in the ordinary course of business, including the remaining lease obligations for these 32 store locations.

In connection with the sale, the Company and Hub Holding also entered into a Transition Services Agreement, pursuant to which the Company will provide to Hub Holding and certain of its affiliates certain transitional services for a period of up to four months.

The proceeds from the sale will be used by the Company to reduce borrowings under the Company's credit facility.

The Company's remaining 12 Levi's®/Dockers® outlet stores are expected to close before the end of fiscal 2004.

#### Sale of Interest in Ecko Joint Venture and Mark-Down Allowance Agreement

During the second quarter of fiscal 2004, the Company sold to Ecko its 50.5% interest in the joint venture for a purchase price of \$800,000 in cash and a secured promissory note in the principal amount of \$6.2 million. The secured promissory note accrues interest at 8% annually and is secured by all of the membership interests of the former joint venture and substantially all of its assets. This note requires Ecko to make monthly principal payments to the Company of \$516,667 plus interest, commencing August 31, 2004. The Company will also continue to receive fees based on a percentage of sales for providing transitional services to the joint venture related to its operating and accounting systems, as needed until June 30, 2005. At October 30, 2004, the outstanding balance on this note was \$4.5 million.

The above transaction resulted in a gain of approximately \$3.1 million, which is included in the Consolidated Statements of Operations as a component of "Other income (expense), net" for the nine months ended October 30, 2004.

Pursuant to a mark-down allowance agreement entered into on July 30, 2004, Ecko also executed and delivered an additional secured promissory note for \$1.0 million as a markdown allowance with respect to purchases of certain goods made by the Company from Ecko. The secured promissory note accrues interest at 8% annually and is also secured by all of the membership interests of the former joint venture and substantially all of its assets. This note requires Ecko to make monthly principal payments in the amount of \$83,333 plus interest commencing August 31, 2004. At October 30, 2004, the outstanding balance on this note was \$0.8 million.

#### Early Redemption of 12% Senior Subordinated Notes due 2010

During the second quarter of fiscal 2004, the Company prepaid the remaining \$7.8 million outstanding on its Senior Subordinated Notes due 2010. In connection with the early redemption, the Company incurred \$1.9 million of additional expense in the second quarter of fiscal 2004 related to prepayment charges and the write-off of remaining deferred costs. The \$1.9 million is included in the Company's Consolidated Statements of Operations for the nine months ended October 30, 2004 as a component of "Other income (expense), net."

#### **SEGMENT REPORTING**

The Company operates its business in two reportable business segments: (i) the Casual Male business and (ii) Other Branded Apparel businesses. The Company's Casual Male business includes the operations of Rochester since October 29, 2004.

The Company's "Other Branded Apparel businesses" segment includes the operations of the Company's Levi's®/Dockers® outlet stores and through July 30, 2004, its Ecko Unltd.® outlet and retail stores. See Note 8 of the Notes to Consolidated Financial Statements for a complete disclosure of financial results for each segment.

## STORE CLOSINGS/DISCONTINUED OPERATIONS

In accordance with the provisions of Statement of Financial Accounting Standard ("SFAS") No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* ("SFAS No. 144"), results of operations for stores closed since 2003 have been presented as discontinued operations. Accordingly, the Company has reclassified all prior year results for such closed stores to conform with the current period presentation of discontinued operations.

## RESULTS OF OPERATIONS

Because of the materiality of the Casual Male business to the Company's consolidated operations, the following discussion of results of operations will first review the segment results of the Casual Male business and will conclude with a consolidated review of the Company's results. **The discussion of the Company's consolidated results of operations begins on page 18 of this Form 10-Q.** Management believes that this presentation helps investors gain a better understanding of the Company's core operating results and future prospects, consistent with how management measures and forecasts the Company's performance, especially when comparing such results to previous periods.

## CASUAL MALE BUSINESS – SEGMENT OVERVIEW

(in millions)	For the three months ended		For the nine months ended	
	October 30, 2004	November 1, 2003	October 30, 2004	November 1, 2003
Sales	\$ 74.6	\$ 73.0	\$ 234.2	\$ 224.8
Gross margin	30.3	30.1	96.2	92.5
<i>Gross margin rate</i>	40.5%	41.2%	41.1%	41.2%
Selling, general and administrative	29.3	28.5	90.5	83.7
Depreciation and amortization	2.5	1.7	6.6	4.9
Operating income (loss)	\$ (1.5)	\$ (0.1)	\$ (0.9)	\$ 3.9

### Sales

For the third quarter of fiscal 2004, sales for the Casual Male business, which includes sales from its e-commerce and catalog businesses, increased 2.2% to \$74.6 million compared to sales for the third quarter of fiscal 2003 of \$73.0 million. Comparable store sales for the third quarter and nine months ended October 30, 2004 for the Casual Male business increased 1.6% and 5.1%, respectively. Comparable stores include not only stores that have been open for at least one full fiscal year, but also include e-commerce and catalog sales. The Company's George Foreman product lines, Comfort Zone by George Foreman™, George Foreman Signature Collection™ and GF Sport™, continued to increase during the third quarter of fiscal 2004, representing approximately 30% of the Company's sales in the quarter as compared to 15% during the second quarter of fiscal 2004. The Company's Rochester Big & Tall business generated approximately \$600,000 of sales for the last two days of the third quarter.

Sales for only the Casual Male stores increased 3.3% to \$67.9 million for the third quarter of fiscal 2004 as compared to \$65.7 million for the third quarter of the prior year. Sales from the Casual Male catalog and e-commerce business decreased 7.1% to \$6.7 million, as the Company anticipated, due to the elimination of the REPP Big & Tall catalog which represented approximately \$1.0 million in sales for the third quarter of fiscal 2003.

For the nine months ended October 30, 2004, sales for the Casual Male stores increased 5.7% to \$214.5 million as compared to \$202.9 million for the nine months ended November 1, 2003. Sales from the Casual Male catalog business decreased 9.8% to \$19.8 million for the nine months ended October 30, 2004 as compared to \$21.9 million for the prior year, which again is attributable to the elimination of the REPP Big & Tall catalog which represented approximately \$4.8 million for the nine months of the prior year.



## Gross Profit Margin

For the third quarter of fiscal 2004, the gross margin rate for the Casual Male business, inclusive of occupancy costs, was 40.5%, which was a decrease of 0.7 percentage points as compared to a gross margin rate of 41.2% for the third quarter of fiscal 2003. This decrease was attributable to increased occupancy costs as a percentage of sales as a result of contractual lease increases and store growth. Merchandise margins for the third quarter of fiscal 2004 remained flat with the prior year's third quarter.

For the nine months ended October 30, 2004, the gross margin rate for the Casual Male business, inclusive of occupancy costs, was 41.1% as compared to 41.2% for the nine months of the prior year. This slight decrease was due to a 0.4 percentage point increase in occupancy costs partially offset by a 0.3 percentage point increase in merchandise margins.

## Selling, General and Administrative Expenses

Selling, general and administrative ("SG&A") expenses as a percentage of sales for the third quarter of fiscal 2004 were 39.3% of sales as compared to 39.0% for the third quarter of fiscal 2003. For the nine months ended October 30, 2004, SG&A expenses as a percentage of sales were 39.0% as compared to 37.2% for the nine months ended November 1, 2003.

During the first half of fiscal 2004, the Company invested approximately \$4.5 million in a national marketing campaign of George Foreman and the introduction of the George Foreman product lines of clothing. As the Company shifted its marketing strategy to direct marketing campaigns, the Company made further marketing investments in the third quarter of fiscal 2004 of approximately \$1.0 million.

SG&A expenses for the third quarter of fiscal 2004 were also negatively impacted by approximately \$0.7 million related to start-up costs associated with the Company's 13 Sears Canada stores which opened during the quarter and approximately \$0.3 million of expenses related to Sarbanes Oxley compliance and store repairs as a result of numerous hurricanes. Also during the third quarter of fiscal 2004, the Company benefited from the reversal of certain accrued liabilities as a result of revising estimates based on more recent experience which approximated \$1.0 million.

## Operating Income (Loss)

For the third quarter of fiscal 2004, the Casual Male business incurred an operating loss of \$1.5 million compared to an operating loss of \$0.1 million for the third quarter of fiscal 2003. For the nine months ended October 30, 2004, the operating loss for the Casual Male business was \$0.9 million as compared to operating income of \$3.9 million for the nine months ended November 30, 2003. As discussed above, the primary reason for the decrease in operating income was due to the up front marketing costs of \$4.5 million incurred in the first half of fiscal 2004 to promote the George Foreman product lines.

## OTHER BRANDED APPAREL BUSINESS – SEGMENT OVERVIEW

Other Branded Apparel business includes the results of operations, on a continuing basis, for the Company's Levi's®/Dockers® outlet stores and, through July 30, 2004, its Ecko Unltd.® outlet and retail stores. In fiscal 2002, the Company announced that it would be winding down its Levi's®/Dockers® business with the intention to eventually exit the business completely. Through October 30, 2004, the Company has closed 59 Levi's®/Dockers® Outlet stores. Accordingly, the operating results of these stores have been reclassified to discontinued operations and are discussed in more detail under "Consolidated Results of Operations-Discontinued Operations."

Included in the table below are the operating results for the 44 Levi's®/Dockers® outlet stores and, through July 30, 2004, the 29 Ecko Unltd.® stores. As discussed above, subsequent to the end of the third quarter of fiscal 2004, the Company sold 32 of its remaining 44 Levi's®/Dockers® outlet stores. The remaining 12 Levi's®/Dockers® stores are expected to be closed by the Company by the end of fiscal 2004.

(in millions)	For the three months ended		For the nine months ended	
	October 30, 2004	November 1, 2003	October 30, 2004	November 1, 2003
Sales	\$ 19.3	\$ 24.9	\$ 64.0	\$ 61.1
Gross margin	5.0	8.2	15.3	16.1
<i>Gross margin rate</i>	25.9%	32.9%	23.9%	26.4%
Selling, general and administrative	2.9	5.3	12.9	13.7
Reversal of provision for the impairment of assets, store closings and severance	(0.6)	—	(0.6)	—
Depreciation and amortization	0.4	0.5	1.5	1.3
Operating income	\$ 2.3	\$ 2.4	\$ 1.5	\$ 1.1

## CONSOLIDATED RESULTS OF OPERATIONS

(in millions)	For the three months ended		For the nine months ended	
	October 30, 2004	November 1, 2003	October 30, 2004	November 1, 2003
Sales	\$ 93.9	\$ 97.9	\$ 298.2	\$ 285.9
Gross margin	35.3	38.3	111.5	108.6
<i>Gross margin rate</i>	37.6%	39.1%	37.4%	38.0%
Selling, general and administrative	32.2	33.8	103.4	97.4
Reversal of provision for impairment of assets, store closings and severance	(0.6)	—	(0.6)	—
Depreciation and amortization	2.9	2.2	8.1	6.2
Operating income	\$ 0.8	\$ 2.3	\$ 0.6	\$ 5.0

### Sales

Sales for the third quarter of fiscal 2004 decreased 4.1% to \$93.9 million as compared to \$97.9 million for the third quarter of fiscal 2003. The decrease was primarily attributable to the continued closure of the Company's Levi's®/Dockers® outlet stores and the sale of its Ecko Unltd.® stores during the second quarter of fiscal 2004. This decrease was partially offset by a 2.2% increase in the Company's Casual Male business.

### Gross Profit Margin

For the third quarter of fiscal 2004, the gross margin rate was 37.6% compared to 39.1% for the third quarter of the prior year. For the nine months ended October 30, 2004, the gross margin rate was 37.4% as compared to 38.0% for the nine months ended November 1, 2003. These decreases in gross margin rates were principally due to lower gross margins in the Company's Other Branded Apparel Business as a result of exiting the remaining Levi's®/Dockers® outlet stores in that business segment.

### Selling General & Administrative Expense

SG&A expenses for the third quarter of fiscal 2004 were 34.2% of sales on a consolidated basis, as compared to 34.5% for the third quarter of fiscal 2003. For the nine months ended October 30, 2004, SG&A expenses were 34.7% of sales as compared to 34.1% for the nine months ended November 1, 2003. As discussed above, the majority of the increase is due to approximately \$4.5 million which was incurred in the first six months of fiscal 2004 related to increased marketing dollars associated with the national launch of the George Foreman clothing lines.

### Reversal of Provision for Impairment of Assets, Store Closings and Severance

During the third quarter of fiscal 2004, the Company recognized approximately \$591,000 of income as a result of revised estimates on the Company's remaining landlord obligations associated with its 2002 Store Closing Program. At October 30, 2004, the Company has \$2.4 million in restructuring reserves for the remaining Levi's®/Dockers® outlet stores which will either be sold or closed by the end of fiscal 2004.

#### *Other Income (Expense), Net*

As discussed above, for the nine months ended October 30, 2004, other income (expense) includes a gain of approximately \$3.1 million related to the Company's sale of its 50.5% joint venture interest in the Ecko Unltd.® stores to Ecko during the second quarter of fiscal 2004. This gain was offset by approximately \$1.9 million of costs also incurred in the second quarter of fiscal 2004 related to the Company's early prepayment of its 12% Senior Subordinated Notes, due 2010, in addition to a write-off of approximately \$0.9 million related to previously incurred costs associated with the Company's intended spin-off of its subsidiary, LP Innovations, Inc., which has been postponed due to lower than expected results of operations.

For the three and nine months ended November 1, 2003, other income (expense) includes the \$425,000 of expenses incurred related to the Company's early prepayment of \$10.0 million of principal of its term loan with Back Bay Capital.

#### *Interest Expense, Net*

Net interest expense was \$1.9 million for the third quarter of fiscal 2004 as compared to \$3.1 million for the third quarter of fiscal 2003. For the nine months ended October 30, 2004, net interest expense was \$6.0 million as compared to \$9.0 million for the nine months ended November 1, 2003. These decreases were the result of the Company's restructuring of its long-term debt in the second half of fiscal 2003. In the fourth quarter of fiscal 2003, the Company issued \$100 million in 5% convertible notes, the proceeds of which were used to prepay the Company's higher interest rate long-term senior subordinated notes, resulting in reduced interest costs.

#### *Discontinued Operations*

In accordance with the provisions of SFAS 144, the Company's discontinued operations reflect the operating results for stores which have been closed as part of the Company's plan to exit its Levi's®/Dockers® business. The results for the third quarter and first nine months of fiscal 2004 and fiscal 2003 have been reclassified to show the results of operations for the Company's Levi's®/Dockers® outlet stores closed since the beginning of fiscal 2003. For more detail on the results of discontinued operations, see Note 6 to the Consolidated Financial Statements.

#### *Income Taxes*

At October 30, 2004, the Company had total gross deferred tax assets of approximately \$46.3 million, which are fully reserved. These tax assets principally relate to federal net operating loss carryforwards that expire from 2017 through 2024. The ability to reduce the Company's corresponding valuation allowance of \$46.3 million in the future is dependent upon the Company's ability to achieve sustained taxable income.

#### *Net Loss*

For the third quarter of fiscal 2004 the Company had a net loss of \$1.4 million, or \$0.04 per diluted share, as compared to a net loss of \$1.2 million, or \$0.03 per diluted share, for the third quarter of fiscal 2003. For the nine months ended October 30, 2004, the Company had a net loss of \$6.4 million, or \$0.18 per share, as compared to a net loss of \$3.3 million, or \$0.09 per share, for the nine months ended November 1, 2003. As discussed above, the primary reason for the decrease in operating results for fiscal 2004 was primarily due to the incremental marketing costs incurred in the first half of fiscal 2004 associated with the launch of the Company's George Foreman product lines.

#### *Inventory*

At October 30, 2004, total inventory equaled \$122.4 million compared to \$98.7 million at January 31, 2004. The increase in inventory is due to an increase of approximately \$19.1 million from Casual Male store growth and \$14.6 million of inventory as a result of the Rochester Acquisition. These increases are partially offset by a reduction of approximately \$10.0 million of inventory as a result of closed Levi's®/Dockers® outlet stores and the sale of the Company's interest in the Ecko Unltd.® stores. Inventory at October 30, 2004 is net of approximately \$0.4 million in inventory reserves related to the Company's exiting of its remaining Levi's®/Dockers® outlet stores.

## SEASONALITY

Historically and consistent with the retail industry, the Company has experienced seasonal fluctuations in revenues and income, with increases traditionally occurring during the Company's third and fourth quarters as a result of the "Fall" and "Holiday" seasons.

## LIQUIDITY AND CAPITAL RESOURCES

The Company's primary cash needs are for working capital (essentially inventory requirements) and capital expenditures. Specifically, the Company's capital expenditure program includes projects for new store openings, remodeling, downsizing or combining existing stores, and improvements and integration of its systems infrastructure. The Company expects that cash flow from operations, external borrowings and trade credit will enable it to finance its current working capital and expansion requirements. The Company has financed its working capital requirements, store expansion program, stock repurchase programs and acquisitions with cash flow from operations, external borrowings, and proceeds from equity and debt offerings. The Company's objective is to maintain a positive cash flow after capital expenditures such that it can support its growth activities with operational cash flows and without the use of incurring any additional debt.

For the first nine months of fiscal 2004, cash used by operating activities was \$6.6 million as compared to \$1.6 million for the corresponding period of the prior year. Cash flow from operations was negative for the first nine months of fiscal 2004 as a result of seasonal working capital needs and increased marketing costs to fund the launch of the George Foreman product line.

In addition to cash flow from operations, the Company's other primary source of working capital is its credit facility with Fleet Retail Group, Inc., which was most recently amended on October 29, 2004 in connection with the Rochester Acquisition (the "Amended Credit Facility"). The Amended Credit Facility continues to principally provide for a total commitment of \$90 million with the ability to issue documentary and standby letters of credits of up to \$20 million. The maturity date of the Amended Credit Facility was extended to October 29, 2007 and is subject to prepayment penalties through October 29, 2006. Borrowings under the Amended Credit Facility bear interest at variable rates based on Fleet National Bank's prime rate or the London Interbank Offering Rate ("LIBOR") and vary depending on the Company's levels of excess availability. The amendment lowered the Company's interest costs under the Amended Credit Facility by approximately 25 basis points depending on its level of excess availability. The Company's ability to borrow under the Amended Credit Facility is determined using an availability formula based on eligible assets, with increased advance rates based on seasonality.

At October 30, 2004, the Company had borrowings outstanding under the Amended Credit Facility of \$51.5 million and outstanding standby letters of credit of \$2.0 million, with no outstanding documentary letters of credit. Average borrowings outstanding under this facility during the first nine months of fiscal 2004 were approximately \$24.7 million, resulting in an average unused excess availability of approximately \$38.8 million.

In connection with the Rochester Acquisition, on October 29, 2004 the Company also entered into a three-year \$7.5 million term loan with Fleet Retail Group, Inc. Such loan will require principal payments in the amount of approximately \$1.9 million on each of the first two anniversaries of the loan with the remaining balance due at maturity. The term loan will accrue interest at the prevailing LIBOR rate plus 5% per annum.

## Capital Expenditures

The following table sets forth the stores opened and related square footage at October 30, 2004 and November 1, 2003, respectively:

Store Concept	At October 30, 2004		At November 1, 2003	
	Number of Stores	Square Footage	Number of Stores	Square Footage
<i>(square footage in thousands)</i>				
Casual Male Big & Tall retail and outlet stores	496	1,697.5	480	1,630.0
Levi's®/Dockers® outlet Stores	44	429.7	57	540.0
Rochester Big & Tall <sup>(1)</sup>	22	171.9	—	—
Sears Canada	13	15.1	—	—
Ecko Unltd.® outlet stores	—	—	21	79.4
<b>Total Stores</b>	<b>575</b>	<b>2,314.2</b>	<b>558</b>	<b>2,249.4</b>

Total cash outlays for capital expenditures for the first nine months of fiscal 2004 were \$15.4 million as compared to \$8.9 million for the first nine months of fiscal 2003. Below is a summary of store openings and closings since January 31, 2004:

	Casual Male	Rochester Big & Tall	Sears Canada	Levi's®/Dockers® outlet stores <sup>(2)</sup>	Ecko® Unltd. outlet stores	Total stores
At January 31, 2004	481	—	—	58	21	560
New outlet stores	3	—	—	—	8	11
New retail stores	12	—	13	—	—	25
Remodels	127	—	—	—	—	127
Relocations	7	—	—	—	—	7
Acquired <sup>(1)</sup>	—	22	—	—	—	22
Closed stores	—	—	—	(14)	—	(14)
Sold <sup>(3)</sup>	—	—	—	—	(29)	(29)
<b>At October 30, 2004</b>	<b>496</b>	<b>22</b>	<b>13</b>	<b>44</b>	<b>—</b>	<b>575</b>

- On October 29, 2004, the Company completed its acquisition of Rochester Big & Tall Clothing, which included 22 retail store locations in addition to a direct to consumer business.
- Subsequent to the end of the quarter, the Company sold 32 of its remaining Levi's®/Dockers® outlet stores. The sale is discussed under "Management's Discussion & Analysis of Financial Condition and Results of Operations – Summary of Significant Events". The remaining 12 stores will be closed during the fourth quarter of fiscal 2004.
- During the second quarter of fiscal 2004 the Company sold its 50.5% interest in the Ecko joint venture to its joint venture partner, Ecko.Complex, LLC.

In April 2004, the Company entered into an exclusive license agreement with Sears Canada, Inc., whereby the Company will operate Sears Casual Male Big & Tall stores located within Sears Canada stores. The Company will be responsible for the marketing, merchandising and selling of its big and tall men's apparel. The merchandise will also feature the Company's Comfort Zone by George Foreman™ product line. Through the third quarter of fiscal 2004, the Company has opened 13 Sears Casual Male Big & Tall stores and, if successful, will open up to an additional 67 stores in fiscal 2005. The Company's capital investment in these stores, which will be approximately 1,000 square feet each, is limited to store fixtures.

The Company expects that its total capital expenditures for fiscal 2004 will be approximately \$18.0 million, of which approximately \$12.0 million will relate to store expansion. Included in store expansion are funds to remodel up to 175 of the Company's existing Casual Male Big & Tall retail stores at an estimated \$35,000 to \$45,000 for each location, including store signage and fixtures. The Company currently plans to open a combination of 15 new Casual Male Big & Tall retail and outlet stores in fiscal 2004. Another \$6.0 million of the 2004 budget is expected to be used for on-going MIS projects related to upgrading the Company's infrastructure, including its merchandising systems and point of sale system.

For fiscal 2005, the Company expects to incur approximately \$12-\$13 million for store expansion which will include opening 10-15 new Casual Male stores and 2-3 Rochester Big & Tall stores. In addition, the Company expects to incur approximately \$6 million for on-going MIS projects.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

In the normal course of business, the financial position and results of operations of the Company are routinely subject to a variety of risks, including market risk associated with interest rate movements on borrowings and foreign currency fluctuations. The Company regularly assesses these risks and has established policies and business practices to protect against the adverse effects of these and other potential exposures.

#### Interest Rates

The Company utilizes cash from operations and the Amended Credit Facility to fund its working capital needs. The Amended Credit Facility is not used for trading or speculative purposes. In addition, the Company has available letters of credit as sources of financing for its working capital requirements. Borrowings under the Amended Credit Facility, which expires in October 29, 2007, bear interest at variable rates based on Fleet National Bank's prime rate or the London Interbank Offering Rate ("LIBOR"). At October 30, 2004, the Company had an outstanding LIBOR contract with a rate of 4.29% and the interest rate on its prime based borrowings was 4.75%. Based upon a sensitivity analysis as of October 30, 2004, assuming average outstanding borrowing during fiscal 2004 of \$24.7 million, a 50 basis point increase in the prime based interest rates would have resulted in a potential increase in interest expense of approximately \$124,000.

#### Foreign Currency

The Company's Sears Canada store locations conduct business in Canadian dollars. If the value of the Canadian dollar against the U.S. dollar weakens, the revenues and earnings of these stores will be reduced when they are translated to U.S. dollars. Also, the value of these assets to U.S. dollars may decline. As of October 30, 2004, sales from the Company's Sears Canada stores were immaterial to consolidated sales. As such, the Company believes that movement in foreign currency exchange rates will not have a material adverse affect on the financial position or results of operations of the Company.

### **Item 4. Controls and Procedures.**

#### Evaluation of Disclosure Controls and Procedures

As required by Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Company's management, under the supervision and with the participation of the Company's Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of October 30, 2004. Based on this evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded that, as of October 30, 2004, the Company's disclosure controls and procedures were effective, in that they provide reasonable assurance that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

#### Changes in Internal Control over Financial Reporting

No change in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the quarter ended October 30, 2004 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings.

There have been no material developments in the legal proceedings reported in the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 2004.

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

None.

### Item 3. Default Upon Senior Securities.

None.

### Item 4. Submission of Matters to a Vote of Security Holders.

The Company held its Annual Meeting of Stockholders on August 4, 2004. The matters submitted to a vote of the Company's stockholders were (i) the election of eight directors, and (ii) the ratification of Ernst & Young LLP as independent auditors for the Company for the current fiscal year.

- (i) The Company's Stockholders elected eight directors to hold office until the 2005 Annual Meeting of Stockholders and until their respective successors are duly elected and qualified. The results of the voting were as follows:

<u>Directors</u>	<u>Votes FOR</u>	<u>Votes AGAINST</u>
Seymour Holtzman	30,207,662	67,707
David A. Levin	30,266,358	9,011
Alan S. Bernikow	29,977,583	297,786
Jesse Choper	29,977,583	297,786
James Frain	30,160,977	114,392
Frank J. Husic	28,955,440	1,319,929
Joseph Pennacchio	30,055,600	219,769
George T. Porter, Jr.	20,923,892	9,351,477

- (ii) The Company's stockholders also ratified the appointment of Ernst & Young LLP as the Company's independent auditors for the current fiscal year. The results of the voting were as follows:

<u>Votes FOR</u>	<u>Votes AGAINST</u>	<u>Votes ABSTAINED</u>
30,021,976	252,702	691

### Item 5. Other Information.

None.

**Item 6. Exhibits.**

- 10.1 Forth Amended and Restated Loan and Security Agreement dated October 29, 2004, by and among Fleet Retail Group, Inc., as Administrative Agent and Collateral Agent, the Lenders identified herein, the Company, as Borrowers' Representative and the Company and Designs Apparel, Inc. as Borrowers.
- 10.2 Executive Incentive Program for fiscal year ending January 29, 2005, as amended August 26, 2004.
- 10.3 Asset Purchase Agreement by and among the Company and Rochester Big & Tall Clothing, Inc., dated as of August 18, 2004.
- 10.4 Asset Purchase Agreement by and among the Company, Designs JV, LLC, Designs Apparel, Inc. and Hub Holding Corp., dated as of November 24, 2004.
- 10.5 Amendment to Consulting Agreement, dated as of August 26, 2004, between the Company and Jewelcor Management, Inc.
- 10.6 Employment Agreement dated October 29, 2004 between the Company and Robert L. Sockolov (included as Exhibit 99.1 to the Company's Current Report on Form 8-K filed on November 4, 2004, and incorporated herein by reference). \*
- 31.1 Certification of the Chief Executive Officer of the Company pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.
- 31.2 Certification of the Chief Financial Officer of the Company pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 99.1 Certain cautionary statements of the Company to be taken into account in conjunction with consideration and review of the Company's publicly-disseminated documents (including oral statements made by others on behalf of the Company) that include forward-looking information (included as Exhibit 99.1 to the Company's Current Report on Form 8-K filed on April 14, 2004, and incorporated herein by reference).\*

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\* Previously filed with the Securities and Exchange Commission.



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.

CASUAL MALE RETAIL GROUP, INC.

Date: December 9, 2004

By: /S/ DENNIS R. HERNREICH

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Dennis R. Hernreich  
Executive Vice President and Chief Financial Officer

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**FOURTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

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**FLEET RETAIL GROUP, INC.  
AS ADMINISTRATIVE AGENT AND  
COLLATERAL AGENT**

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**REVOLVING CREDIT LENDERS  
NAMED HEREIN**

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**FLEET RETAIL GROUP, INC.  
THE TRANCHE B LENDER**

**WELLS FARGO FOOTHILL, INC.  
AS SYNDICATION AGENT**

**NATIONAL CITY BUSINESS CREDIT, INC. and  
HELLER FINANCIAL, INC.  
AS CO-DOCUMENTATION AGENTS**

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**CASUAL MALE RETAIL GROUP, INC.**

**THE BORROWERS' REPRESENTATIVE  
FOR:**

**CASUAL MALE RETAIL GROUP, INC.  
DESIGNS APPAREL, INC.**

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**October 29, 2004**

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17.1	: Assignment / Assumption



October 29, 2004

THIS **FOURTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT** (the “**Agreement**”) is made amongst

Fleet Retail Group, Inc. (formerly known as Fleet Retail Finance Inc.) (in such capacity, the “**Administrative Agent**”), a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109, as Administrative Agent for the benefit of (i) the Collateral Agent, (ii) the “**Revolving Credit Lenders**” who are, at present, those financial institutions identified on the signature pages of this Agreement and any Person who becomes a “Revolving Credit Lender” in accordance with the provisions of this Agreement, (iii) the Tranche B Lender; and (iv) other Secured Parties.

and

Fleet Retail Group, Inc. (formerly known as Fleet Retail Finance Inc.) (in such capacity, the “**Collateral Agent**”), a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109, as Collateral Agent for the benefit of (i) the Administrative Agent, (ii) the Revolving Credit Lenders, (iii) the Tranche B Lender, and (iv) other Secured Parties.

and

The Revolving Credit Lenders;

and

Fleet Retail Group, Inc. (in such capacity, with any successor or assign, the “**Tranche B Lender**”), a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109,

and

Casual Male Retail Group, Inc. ( in such capacity, the “**Borrowers’ Representative**”), a Delaware corporation with its principal executive offices at 555 Turnpike Street, Canton, Massachusetts 02021, as agent for Casual Male Retail Group, Inc., and Designs Apparel, Inc. (individually, a “**Borrower**” and collectively, the “**Borrowers**”).

WHEREAS, on May 14, 2002, Designs, Inc ( now known as Casual Male Retail Group, Inc.), the Borrowers, Administrative Agent, Collateral Agent, Revolving Credit Lenders, and

Back Bay Capital Funding LLC (“**Back Bay**”) entered into a Third Amended and Restated Loan and Security Agreement (as amended and in effect, the “**Original Agreement**”), pursuant to which, among other things, the Revolving Credit Lenders agreed to make Revolving Loans to the Borrowers and Back Bay agreed to make a Tranche B Loan to the Borrowers;

WHEREAS, the Tranche B Loan to Back Bay has been paid in full;

WHEREAS, Casual Male Retail Group, Inc., through various of its Subsidiaries including its newly formed subsidiary, Casual Male RBT, LLC, contemporaneously herewith is acquiring certain of the assets of Rochester Big and Tall Clothing, Inc.;

WHEREAS, the Borrowers have requested that the Agent and Revolving Credit Lenders amend the Original Agreement in certain respects in order to, among other thing, add a new Tranche B Lender, add Casual Male RBT, LLC as a Guarantor, and otherwise amend the Original Agreement;

WHEREAS, the Agent and Revolving Credit Lenders are willing to amend the Original Agreement on the terms set forth herein; and

WHEREAS, the parties hereto desire to amend and restate the Original Agreement in its entirety.

NOW THEREFORE, the Agent, Revolving Credit Lenders, and Borrowers hereby agree that the Original Agreement shall be amended and restated in its entirety as follows:

*WITNESSETH:*

**ARTICLE 1 - DEFINITIONS:**

As used herein, the following terms have the following meanings or are defined in the section of this Agreement so indicated:

“**Acceleration**”: The making of demand or declaration that any indebtedness, not otherwise due and payable, is due and payable. Derivations of the word “Acceleration” (such as “Accelerate”) are used with like meaning in this Agreement.

“**Acceleration Notice**”: Written notice as follows:

- (a) From the Administrative Agent to the Collateral Agent and the Revolving Credit Lenders, as provided in Section 14.1(a).
- (b) From the SuperMajority Revolving Credit Lenders to the Administrative Agent, as provided in Section 14.1(b).
- (c) From the Tranche B Lender to the Administrative Agent, as provided in Section 14.2(c).

**“Account Debtor”**: Has the meaning given that term in the UCC.

**“Accounts”** and **“Accounts Receivable”** include, without limitation, “accounts” as defined in the UCC, and also all: accounts, accounts receivable, receivables, and rights to payment (whether or not earned by performance) for: property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; services rendered or to be rendered; a policy of insurance issued or to be issued; a secondary obligation incurred or to be incurred; energy provided or to be provided; for the use or hire of a vessel; arising out of the use of a credit or charge card or information contained on or used with that card; winnings in a lottery or other game of chance; and also all Inventory which gave rise thereto, and all rights associated with such Inventory, including the right of stoppage in transit; all reclaimed, returned, rejected or repossessed Inventory (if any) the sale of which gave rise to any Account.

**“ACH”**: Automated clearing house.

**“Acquisition”**: The purchase or other acquisition, by a Loan Party (no matter how structured in one transaction or in a series of transactions), of: (a) equity interests in any other Person which would constitute or which results in a Change in Control of such other Person (as if such Person were Casual Male, as used in the definition of “Change of Control”), or (b) such of the assets of any Person as would permit a Loan Party to operate one or more retail locations of such Person or to conduct other business operations with such assets (provided, however, none of the following shall constitute an “Acquisition”: purchases of inventory in the ordinary course of a Loan Party’s business; purchases, leases or other acquisitions of Equipment in the ordinary course of a Loan Party’s business; and Capital Expenditures permitted hereunder).

**“Additional Commitment Lender”**: Defined in Section 2.24

**“Administrative Agent”**: Defined in the Preamble.

**“Administrative Agent’s Cover”**: Defined in Section 13.3(c)(i).

**“Administrative Agent’s Fee”**: Defined in Section 2.14.

**“Affiliate”**: The following:

(a) With respect to any two Persons, a relationship in which (i) one holds, directly or indirectly, not less than twenty five percent (25%) of the capital stock, beneficial interests, partnership interests, or other equity interests of the other; or (ii) one has, directly or indirectly, the right, under ordinary circumstances, to vote for the election of a majority of the directors (or other body or Person who has those powers customarily vested in a board of directors of a corporation); or (iii) not less than twenty five percent (25%) of their respective ownership is directly or indirectly held by the same third Person.

(b) Any Person which: is a parent, brother-sister or Subsidiary of a Loan Party; could have such enterprise's tax returns or financial statements consolidated with that Loan Party's; could be a member of the same controlled group of corporations (within the meaning of Section 1563(a)(1), (2) and (3) of the Internal Revenue Code of 1986, as amended from time to time) of which any Loan Party is a member; or controls or is controlled by any Loan Party.

**"Agent"**: When not preceded by "Administrative" or "Collateral", the term "Agent" refers collectively and individually to the Administrative Agent and the Collateral Agent.

**"Agents' Rights and Remedies"**: Defined in Section 12.7.

**"Applicable Inventory Advance Rate"**: The following rates for the following periods:

<u>RATE</u>	<u>PERIOD</u>
85%	December 16 through April 14 of each year
90%	April 15 through June 15 of each year
85%	June 16 through September 30 of each year
90%	October 1 through December 15 of each year

**"Applicable Law"**: As to any Person: (i) All statutes, rules, regulations, orders, or other requirements having the force of law and (ii) all court orders and injunctions, arbitrator's decisions, and/or similar rulings, in each instance (i) and (ii) of or by any federal, state, municipal, and other governmental authority, or court, tribunal, panel, or other body which has or claims jurisdiction over such Person, or any property of such Person, or of any other Person for whose conduct such Person would be responsible.

**"Applicable Margin"**: The following percentages for Base Margin Loans and Libor Loans based upon the following criteria:

<u>LEVEL</u>	<u>AVERAGE EXCESS AVAILABILITY</u>		<u>LIBOR MARGIN</u>	<u>BASE MARGIN</u>
	<u>Less Than</u>	<u>Equal to Or Greater Than</u>		
I		\$ 35,000,000	1.75%	0.00%
II	\$ 35,000,000	\$ 20,000,000	2.00%	0.00%
III	\$ 20,000,000	\$ 12,500,000	2.25%	0.00%
IV	\$ 12,500,000		2.50%	.25%

The Applicable Margin shall be adjusted quarterly on the first day of each calendar quarter based upon the average Excess Availability during the prior quarter. Upon the occurrence of an Event of Default and for so long as such Event of Default continues in existence, the Applicable Margin may, at the option of the Administrative Agent, be immediately increased to the percentages set forth in Level IV (even if the Excess Availability requirements for another Level have been met) and interest shall be determined in the manner set forth in Section 2.12(f).

**“Appraised Inventory Liquidation Value”**: The product of (a) (i) the Retail of Eligible Inventory (net of Inventory Reserves) of the Casual Male Companies *plus* (ii) the Retail of Eligible Inventory (net of Inventory Reserves) of RBT, *plus* (iii) the Cost of Eligible Inventory (net of Inventory Reserves) of the Designs, Inc. Companies *multiplied* by (b) that percentage, determined from the then most recent appraisal of the Loan Parties’ Inventory undertaken at the request of the Administrative Agent, to reflect the appraiser’s estimate of the net recovery on the Loan Parties’ Inventory in the event of an in-store liquidation of that Inventory.

**“Assignee Revolving Credit Lender”**: Defined in Section 17.1(a).

**“Assigning Revolving Credit Lender”**: Defined in Section 17.1(a).

**“Assignment and Acceptance”**: Defined in Section 17.2.

**“Availability”**: The least of (a), (b), or (c), where:

(a) is the result of

(i) The Revolving Credit Ceiling

*Minus*

(ii) The aggregate unpaid balance of the Loan Account

*Minus*

(iii) The aggregate undrawn Stated Amount of all then outstanding L/Cs (less the amount of any cash collateral held by any Agent or Lender in respect of such L/Cs).

(b) is the result of

(i) The Borrowing Base

*Minus*

- (ii) The aggregate unpaid balance of the Loan Account

*Minus*

- (iii) The aggregate undrawn Stated Amount of all then outstanding L/Cs (less the amount of any cash collateral held by any Agent or Lender in respect of such L/Cs).

*Minus*

- (iv) The aggregate of the Availability Reserves.

(c) is the result of

- (i) The Tranche B Borrowing Base

*Minus*

- (ii) The aggregate unpaid balance of the Loan Account

*Minus*

- (iii) The aggregate undrawn Stated Amount of all then outstanding L/Cs (less the amount of any cash collateral held by any Agent or Lender in respect of such L/Cs).

*Minus*

- (iv) The aggregate of the Availability Reserves.

*Minus*

- (v) The then unpaid principal balance of the Tranche B Loan and all accrued but unpaid interest thereon.

**“Availability Reserves”**: Such reserves as the Administrative Agent from time to time determines in the Administrative Agent’s reasonable discretion as being appropriate to reflect the impediments to the Collateral Agent’s ability to realize upon the Collateral. Without limiting the generality of the foregoing, Availability Reserves may include (but are not limited to) reserves based on the following:

- (i) Rent (but only if a landlord’s waiver, acceptable to the Administrative Agent, has not been received by the Administrative Agent).
- (ii) Customer Credit Liabilities.

- (iii) Taxes and other governmental charges, including, ad valorem, personal property, and other taxes which might have priority over the Collateral Interests of the Collateral Agent in the Collateral.
- (iv) L/C Landing Costs.

**“Bankruptcy Breach”**: The occurrence of any Event of Default described in any of Sections 11.16, 11.17 and 11.18.

**“Bankruptcy Code”**: Title 11, U.S.C., as amended from time to time.

**“Base”**: The Base Rate announced from time to time by Fleet National Bank (or any successor in interest to Fleet National Bank). In the event that said bank (or any such successor) ceases to announce such a rate, “Base” shall refer to that rate or index announced or published from time to time as the Administrative Agent, in good faith, designates as the functional equivalent to said Base Rate. Any change in “Base” shall be effective, for purposes of the calculation of interest due hereunder, when such change is made effective generally by the bank on whose rate or index “Base” is being set.

**“Base Margin”**: As determined from the definition of Applicable Margin.

**“Base Margin Loan”**: Each Revolving Credit Loan while bearing interest at the Base Margin Rate.

**“Base Margin Rate”**: The aggregate of Base *plus* the then applicable Base Margin.

**“Blocked Account”**: Any deposit account, including, without limitation, any DDA, over which one or more of the Agents exercise control pursuant to a Blocked Account Agreement.

**“Blocked Account Agreement”**: An agreement, in form satisfactory to the Administrative Agent, which recognizes the Collateral Agent’s Collateral Interest in the contents of the deposit account which is the subject of such agreement and provides that such contents shall be transferred only to the Concentration Account or as otherwise instructed by the Collateral Agent.

**“Borrower”** and **“Borrowers”**: Defined in the Preamble.

**“Borrowers’ Representative”**: Defined in the Preamble.

**“Borrowing Base”**: The aggregate of the following:

(a) The lesser of

- (i) The (x) product of the Retail of Eligible Inventory (net of Inventory Reserves) of the Casual Male Companies multiplied by the

Revolving Credit Casual Male Companies Inventory Advance Rate; and (y) product of the Cost of Eligible Inventory (net of Inventory Reserves) of the Designs, Inc. Companies multiplied by the Revolving Credit Designs, Inc. Companies Inventory Advance Rate; and (z) product of the Retail of Eligible Inventory of RBT multiplied by the Revolving Credit RBT Inventory Advance Rate; or

(ii) The Applicable Inventory Advance Rate multiplied by the Appraised Inventory Liquidation Value.

*Plus*

(b) The face amount of Eligible Credit Card Receivables multiplied by the Credit Card Advance Rate.

*Plus*

(c) The face amount of Eligible Receivables (net of Receivables Reserves) multiplied by the Receivables Advance Rate.

**“Borrowing Base Certificate”**: Is defined in Section 6.4.

**“Business Day”**: Any day other than (a) a Saturday or Sunday; (b) any day on which banks in Boston, Massachusetts generally are not open to the general public for the purpose of conducting commercial banking business; or (c) a day on which the principal office of the Administrative Agent is not open to the general public to conduct business.

**“Business Plan”**: The Loan Parties’ business plan dated October 19, 2004, as updated from time to time by the Borrowers’ Representative pursuant to this Agreement.

**“BuyOut”**: The consummation of a transaction described in Section 16.12.

**“Canton Mortgage”**: The mortgage made by JBAK Canton Realty, Inc., to The Chase Manhattan Bank, dated as of December 30, 1996, encumbering the Canton Warehouse.

**“Canton Warehouse”**: That certain real property located at 555 Turnpike Street, Canton, Massachusetts 02021.

**“Capital Expenditures”**: The expenditure of funds or the incurrence of liabilities which may be capitalized in accordance with GAAP.

**“Capital Lease”**: Any lease which may be capitalized in accordance with GAAP.

**“Casual Male”**: Casual Male Retail Group, Inc.



“**Casual Male Corp.**”: Casual Male Corp.

“**Casual Male Companies**”: The Persons listed on **EXHIBIT 1.0(a)** annexed hereto.

“**Change in Control**”: The occurrence of any of the following:

(a) The acquisition, by any group of persons (within the meaning of the Securities Exchange Act of 1934, as amended) or by any Person, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission) of 25% or more of the issued and outstanding capital stock of Casual Male having the right, under ordinary circumstances, to vote for the election of directors of Casual Male.

(b) At any time, (a) occupation of a majority of the seats (other than vacant seats) on the board of directors of Casual Male by Persons who were neither (i) nominated by the board of directors of Casual Male nor (ii) appointed by directors so nominated.

(c) The persons who are directors of Casual Male as of the Closing Date cease, for any reason other than death, disability, or resignation in the ordinary course (and not in connection with a proxy contest or similar occurrence), to constitute a majority of the board of directors of Casual Male.

(d) The failure by Casual Male (i) to own directly 100% of the issued and outstanding capital stock of Designs Apparel, Inc. and RBT or (ii) to own, directly or indirectly, (A) 100% of the issued and outstanding capital stock or membership interests of all other Loan Parties other than LP Innovations, Inc. and (B) 80% of the issued and outstanding capital stock of LP Innovations, Inc.

“**Chattel Paper**”: Has the meaning given that term in the UCC.

“**Closing Date**”: October 29, 2004.

“**Collateral**”: Defined in Section 9.1.

“**Collateral Agent**”: Defined in the Preamble.

“**Collateral Interest**”: Any interest in property to secure an obligation, including, without limitation, a security interest, mortgage, and deed of trust.

“**Commitment Increase**”: Defined in Section 2.24

“**Commitment Increase Date**”: Defined in Section 2.24

“**Concentration Account**”: Defined in Section 8.3.

**“Consent”**: Actual consent given by the Lender from whom such consent is sought; or the passage of seven (7) Business Days from receipt of written notice to a Lender from an Agent of a proposed course of action to be followed by an Agent without such Lender’s giving that Agent written notice of that Lender’s objection to such course of action, *provided that* all Agents may rely on such passage of time as consent by a Lender only if such written notice states that consent will be deemed effective if no objection is received within such time period.

**“Consolidated”**: When used to modify a financial term, test, statement, or report, refers to the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of the Loan Parties.

**“Convertible Notes”**: The 5% Convertible Senior Subordinated Notes due January 1, 2024 issued pursuant to the Indenture in the aggregate principal amount of Seventy-Five Million (\$75,000,000.00) Dollars (subject to an increase in an amount up to One Hundred Million (\$100,000,000.00) Dollars.

**“Cost”**: The lower of

(a) the calculated cost of purchases, as determined from invoices received by Design Apparel, Inc., its purchase journal or stock ledger, based upon its accounting practices, known to the Administrative Agent, which practices are in effect on the date on which this Agreement was executed; or

(b) the lowest ticketed or promoted price at which the subject inventory is offered to the public by any Loan Party, after all mark-downs (whether or not such price is then reflected on a Loan Party’s accounting system).

“Cost” does not include inventory capitalization costs or other non-purchase price charges used in a Loan Party’s calculation of cost of goods sold (other than freight, which may be capitalized consistent with GAAP and such Loan Party’s prior practices).

**“Costs of Collection”**: Includes, without limitation, all reasonable attorneys’ fees and reasonable out-of-pocket expenses incurred by any Agent’s attorneys or the Tranche B Lender’s attorneys, and all reasonable out-of-pocket costs incurred by any Agent or the Tranche B Lender in the administration of the Liabilities and/or the Loan Documents, including, without limitation, reasonable costs and expenses associated with travel on behalf of any Agent or the Tranche B Lender, where such costs and expenses are directly or indirectly related to or in respect of any Agent’s or the Tranche B Lender’s: administration and management of the Liabilities; negotiation, documentation, and amendment of any Loan Document; or efforts to preserve, protect, collect, or enforce the Collateral, the Liabilities,

and/or the Agents' Rights and Remedies and/or any of the rights and remedies of any Agent or the Tranche B Lender against or in respect of any guarantor or other person liable in respect of the Liabilities (whether or not suit is instituted in connection with such efforts). "Costs of Collection" also includes the reasonable fees and expenses of Lenders' Special Counsel and the Tranche B Lender's counsel. The Costs of Collection are Liabilities, and at the Administrative Agent's option may bear interest at the then effective Base Margin Rate.

**"Credit Card Advance Rate"**: 85%

**"Customer Credit Liability"**: Gift certificates, gift cards, customer deposits, merchandise credits, layaway obligations, discounts, credits and similar items earned by customers in respect of frequent shopping programs, and similar liabilities of any Loan Party to its retail customers and prospective customers.

**"DDA"**: Any store level checking, demand daily depository account or other bank or like account maintained by any Loan Party for the purpose of depositing store receipts and paying *de minimis* store level expenses, as to which the applicable bank or depository has received notification of the Collateral Agent's Collateral Interest in such account, including, on the date of this Agreement, the accounts listed on **EXHIBIT 8.1** hereto, but excluding, however, any Exempt DDA.

**"Default"**: Any occurrence, circumstance, or state of facts with respect to a Loan Party which (a) is an Event of Default; or (b) would become an Event of Default if any requisite notice were given and/or any requisite period of time were to run and such occurrence, circumstance, or state of facts were not cured within any applicable grace period.

**"Delinquent Revolving Credit Lender"**: Defined in Section 13.3(c).

**"Deposit Account"**: Has the meaning given that term in the UCC.

**"DesiCand"**: DesiCand Inc., a Delaware corporation wholly-owned by Casual Male.

**"DesiCand License Agreement"**: The Retail Store License Agreement dated January 9, 2002 between Candie's, Inc. and Casual Male, as in effect on the Closing Date.

**"Designs, Inc. Companies"**: The Persons listed on **EXHIBIT 1.0(b)** annexed hereto.

**"Design Stores"**: Any store operated by any one of the Designs, Inc. Companies.

**"Documents"**: Has the meaning given that term in the UCC.

**"Documents of Title"**: Has the meaning given that term in the UCC.

**"ECKO"**: ECKO. Complex, LLC d/b/a Ecco Unltd.

**“ECKO Joint Venture”**: The joint venture between ECKO and Designs, Inc. referred to in the Letter of Intent between ECKO and Designs, Inc. dated February 18, 2002.

**“EBITDA”**: Earnings before interest, taxes, depreciation and amortization, each as determined in accordance with GAAP.

**“Eligible Assignee”**: With respect to an assignee of a Revolving Credit Lender or the Tranche B Lender: a bank, insurance company, or company engaged in the business of making commercial loans having a combined capital and surplus in excess of \$300 Million or any Affiliate of any Revolving Credit Lender, or any Person to whom a Revolving Credit Lender assigns its rights and obligations under this Agreement as part of a programmed assignment and transfer of such Revolving Credit Lender’s rights in and to a material portion of such Revolving Credit Lender’s portfolio of asset based credit facilities.

**“Eligible Credit Card Receivables”**: Under five (5) Business Day Accounts due on a non-recourse basis from major credit card processors (which, if due on account of a private label credit card program, are deemed in the discretion of the Administrative Agent to be eligible).

**“Eligible In-Transit Inventory”**: “Eligible In-Transit Inventory “ will be calculated at 75% of (i) the Retail value of such of the Inventory of the Casual Male Companies and RBT and (ii) the Cost of such of the Inventory of the Designs, Inc. Companies (in each case, without duplication as to Eligible Inventory and Eligible In-Transit Inventory ), in each case in which title has passed to a Loan Party and which is then being shipped from a foreign location for receipt, within 45 days, at a warehouse of one of the Loan Parties, *provided that*

(a) Such Inventory is of such types, character, qualities and quantities (net of Inventory Reserves) as the Administrative Agent in its discretion from time to time determines to be eligible for borrowing;

(b) If applicable, the documents which relate to such shipment names the Collateral Agent as consignee of the subject Inventory and the Collateral Agent has control over the documents which evidence ownership of the subject Inventory (such as by the providing to the Collateral Agent of a Customs Brokers Agreement in form reasonably satisfactory to the Collateral Agent); and

(c) The Collateral Agent has a first priority perfected security interest in such Inventory.

**“Eligible Inventory”**: The following (without duplication):

(a) Such of the Loan Parties’ Inventory, at such locations, and of such types, character, qualities and quantities, as the Administrative

Agent, in its sole discretion from time to time determines to be acceptable for borrowing, as to which Inventory, the Collateral Agent has a perfected security interest which is prior and superior to all security interests, claims, and encumbrances.

(b) Eligible L/C Inventory.

(c) Eligible In-Transit Inventory.

Without limiting the foregoing, "Eligible Inventory" shall not include (i) direct shipment inventory; (ii) inventory which cannot be sold including, without limitation, any non-merchandise inventory (such as labels, bags, and packaging materials, etc.); (iii) "dummy warehouse inventory"; (iv) damaged goods, return to vendor merchandise, packaways, consigned inventory, samples and other similar categories; (v) inventory which is the subject of a store closing, liquidation, going-out-of-business or similar sale, as to which in each case, any Loan Party has received an initial payment of the guaranteed price from the Person conducting the sale; and (vi) inventory in locations outside the United States or Canada (except for Eligible L/C Inventory) and in locations in the United States or Canada not under any Loan Party's control (unless waivers acceptable to the Agents are obtained).

**"Eligible L/C Inventory"**: "Eligible L/C Inventory" will be calculated at 75% of (i) the Retail value of such of the Inventory of the Casual Male Companies and RBT and (ii) the Cost of such of the Inventory of the Designs, Inc. Companies (in each case, without duplication as to Eligible Inventory and Eligible In-Transit Inventory), in each case the purchase of which is supported by a documentary L/C then having an initial expiry of forty-five (45) or less days, *provided that*

(a) Such Inventory is of such types, character, qualities and quantities (net of Inventory Reserves) as the Administrative Agent in its discretion from time to time determines to be eligible for borrowing; and

(b) The documentary L/C supporting such purchase names the Collateral Agent as consignee of the subject Inventory and the Collateral Agent has control over the documents which evidence ownership of the subject Inventory (such as by the providing to the Collateral Agent of a Customs Brokers Agreement in form reasonably satisfactory to the Collateral Agent).

**"Eligible Receivables"**: Such of the Loan Parties' Accounts and accounts receivable as arise in the ordinary course of the Loan Parties' business (without duplication of Eligible Credit Card Receivables) for goods sold and/or services rendered by the Loan Parties' to corporate customers, which Accounts and accounts receivable have been determined by the Administrative Agent to be satisfactory and have been earned by performance and are owed to the Loan Parties by such of the Loan Parties' corporate Account Debtors as the Administrative Agent determines to be satisfactory, in the Administrative Agent's discretion in each instance.

**“Employee Benefit Plan”**: As defined in ERISA.

**“Encumbrance”**: A Collateral Interest or agreement to create or grant a Collateral Interest; the interest of a lessor under a Capital Lease, conditional sale or other title retention agreement; sale of accounts receivable or chattel paper; or other arrangement pursuant to which any Person is entitled to any preference or priority with respect to the property or assets of another Person or the income or profits of such other Person; and each of the foregoing whether consensual or non-consensual and whether arising by way of agreement, operation of law, legal process or otherwise.

**“End Date”**: The date upon which all of the following conditions are met: (a) all Liabilities (other than continuing representations, warranties and indemnity obligations) have been paid in full; (b) all obligations of any Lender to make loans and advances and to provide other financial accommodations to the Borrowers hereunder shall have been irrevocably terminated; and (c) the arrangements regarding L/Cs described in Section 19.2(b) have been made.

**“Environmental Laws”**: All of the following:

(a) Applicable Law which regulates or relates to, or imposes any standard of conduct or liability on account of or in respect to environmental protection matters, including, without limitation, Hazardous Materials, as are now or hereafter in effect.

(b) The common law relating to damage to Persons or property from Hazardous Materials.

**“Equipment”**: Includes, without limitation, “equipment” as defined in the UCC, and also all furniture, store fixtures, motor vehicles, rolling stock, machinery, office equipment, plant equipment, tools, dies, molds, and other goods, property, and assets which are used and/or were purchased for use in the operation or furtherance of a Person’s business, and any and all accessions or additions thereto, and substitutions therefor.

**“ERISA”**: The Employee Retirement Income Security Act of 1974, as amended.

**“ERISA Affiliate”**: Any Person which is under common control with a Loan Party within the meaning of Section 4001 of ERISA or is part of a group which includes any Loan Party and which would be treated as a single employer under Section 414 of the Internal Revenue Code of 1986, as amended.

**“Events of Default”**: Defined in Article 11. An “Event of Default” shall be deemed to have occurred and to be continuing unless and until that Event of Default has been duly waived by the requisite Lenders or by the Administrative Agent, as applicable.

**“Excess Availability”**: The result of (a) Availability *minus* (b) all then past due obligations of the Loan Parties including accounts payable which are beyond customary trade terms and rent obligations which are beyond applicable grace periods.

**“Exempt DDA”**: A depository account maintained by any Loan Party, the only contents of which may be transfers *from* the Operating Account and actually used solely (i) for petty cash purposes; or (ii) for payroll.

**“Farm Products”**: Has the meaning given that term in the UCC.

**“Fee Letter”**: Collectively, the letters, each dated October 29, 2004, between (i) Borrowers’ Representative and the Administrative Agent and (ii) Borrowers’ Representative and the Tranche B Lender, as each such letter may from time to time be amended.

**“Financial Covenant Breach”**: The breach of any of the financial performance covenants provided for in Section 6.11.

**“Fiscal”**: When followed by “month” or “quarter”, it refers to the relevant fiscal period based on the Loan Parties’ fiscal year and accounting conventions (e.g. reference to the Loan Parties’ “Fiscal June, 2004” is to the Loan Parties’ fiscal month of June in the calendar year 2003). When followed by reference to a specific year, it refers to the fiscal year which ends in a month of the year to which reference is being made (e.g. if the Loan Parties’ fiscal year ends in January 2004 reference to that year would be to the Loan Parties’ “Fiscal 2004”).

**“5% Subordinated Note”**: Collectively, (i) the Designs, Inc. 5% Subordinated Note due April 26, 2007 in the original principal amount of \$1,000,000 made by Designs, Inc. to the Kellwood Company, and (ii) the Designs, Inc. 5% Subordinated Note due April 26, 2007 in the original principal amount of \$10,000,000 made by Designs, Inc. to the Kellwood Company.

**“Fixtures”**: Has the meaning given that term in the UCC.

**“FRG”**: Fleet Retail Group, Inc. and its Affiliates.

**“GAAP”**: Principles which are consistent with those promulgated or adopted by the Financial Accounting Standards Board and its predecessors (or successors) in effect and applicable to that accounting period in respect of which reference to GAAP is being made, *provided, however*, in the event of a Material Accounting Change, then unless otherwise specifically agreed to by the Administrative Agent, (a) the Loan Parties’ compliance with the financial performance covenants imposed pursuant to Section 6.11 shall be determined as if such Material

Accounting Change had not taken place and (b) the Borrowers' Representative shall include, with its monthly, quarterly, and annual financial statements a schedule, certified by the Borrowers' Representative's chief financial officer, on which the effect of such Material Accounting Change on that statement shall be described.

**"General Intangibles"**: Includes, without limitation, "general intangibles" as defined in the UCC; and also all: rights to payment for credit extended; deposits; amounts due to any Person; credit memoranda in favor of any Person; warranty claims; tax refunds and abatements; insurance refunds and premium rebates; all means and vehicles of investment or hedging, including, without limitation, options, warrants, and futures contracts; records; customer lists; telephone numbers; goodwill; causes of action; judgments; payments under any settlement or other agreement; literary rights; rights to performance; royalties; license and/or franchise fees; rights of admission; licenses; franchises; license agreements, including all rights of any Person to enforce same; permits, certificates of convenience and necessity, and similar rights granted by any governmental authority; patents, patent applications, patents pending, and other intellectual property; internet addresses and domain names; developmental ideas and concepts; proprietary processes; blueprints, drawings, designs, diagrams, plans, reports, and charts; catalogs; manuals; technical data; computer software programs (including the source and object codes therefor), computer records, computer software, rights of access to computer record service bureaus, service bureau computer contracts, and computer data; tapes, disks, semi-conductors chips and printouts; trade secrets rights, copyrights, mask work rights and interests, and derivative works and interests; user, technical reference, and other manuals and materials; trade names, trademarks, service marks, and all goodwill relating thereto; applications for registration of the foregoing; and all other general intangible property of any Person in the nature of intellectual property; proposals; cost estimates, and reproductions on paper, or otherwise, of any and all concepts or ideas, and any matter related to, or connected with, the design, development, manufacture, sale, marketing, leasing, or use of any or all property produced, sold, or leased, by any or credit extended or services performed, by any Person, whether intended for an individual customer or the general business of any Person, or used or useful in connection with research by any Person.

**"Goods"**: Has the meaning given that term in the UCC, and also includes all things movable when a Collateral Interest therein attaches and also all computer programs embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such manner that it customarily is considered part of the goods or (ii) by becoming the owner of the goods, a Person acquires a right to use the program in connection with the goods.



**“Guarantor”** and **“Guarantors”**: Each Person named on **EXHIBIT 1.1(c)** annexed hereto individually, and the Persons named on **EXHIBIT 1.1(c)** annexed hereto, collectively.

**“Guarantor Agreement”**: Each instrument and document executed by a Guarantor of the Liabilities to evidence or secure the Guarantor’s guaranty thereof.

**“Guarantor Default”**: Default or breach or the occurrence of any event of default under any Guarantor Agreement.

**“Hazardous Materials”**: Any (a) substance which is defined or regulated as a hazardous material in or under any Environmental Law and (b) oil in any physical state.

**“Hedge Agreement”** means any and all transactions, agreements or documents now existing or hereafter entered into, which provides for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging the Borrowers’ exposure to fluctuations in interest or exchange rates, loan, credit exchange, security or currency valuations or commodity prices and not for speculative purposes.

**“Hedge Exposure”** means, on any Business Day, the amount, if any, estimated by the Lender or its Affiliate which is party to a Hedge Agreement with a Loan Party in good faith and in a commercially reasonable manner (for which calculations and computations will be provided to such Loan Party at its request) pursuant to methodology set forth in the applicable Hedge Agreement, which would be payable to such Lender or its Affiliate if the Hedge Agreement were terminated as of such Business Day as a result of an event of default (as defined in the Hedge Agreement) with respect to the Loan Party and a payment were due thereunder to the Lender or its Affiliate.

**“Indebtedness”**: All indebtedness and obligations of or assumed by any Person on account of or with respect to any of the following:

(a) In respect of money borrowed (including any indebtedness which is non-recourse to the credit of such Person but which is secured by an Encumbrance on any asset of such Person) whether or not evidenced by a promissory note, bond, debenture or other written obligation to pay money.

(b) In connection with any letter of credit or acceptance transaction (including, without limitation, the face amount of all letters of credit and acceptances issued for the account of such Person or reimbursement on account of which such Person would be obligated).

(c) In connection with the sale or discount of accounts receivable or chattel paper of such Person.

(d) On account of deposits or advances (but not including any liabilities with respect to Customer Credit Liabilities including gift cards, gift certificates, merchandise credits and/or frequent shopper or other consumer loyalty programs).

(e) As lessee under Capital Leases.

(f) In connection with any sale and leaseback transaction.

“Indebtedness” of any Person also includes:

(x) Indebtedness of others secured by an Encumbrance on any asset of such Person, whether or not such Indebtedness is assumed by such Person.

(y) Any guaranty, endorsement, suretyship or other undertaking pursuant to which that Person may be liable on account of any obligation of any third party other than on account of the endorsement of checks and other items in the ordinary course.

(z) The Indebtedness of a partnership or joint venture for which such Person is liable as a general partner or joint venturer.

“**Indemnified Person**”: Defined in Section 20.12.

“**Indenture**”: the Indenture dated as of November 18, 2003 with respect to the 5% Convertible Senior Subordinated Notes Due January 1, 2024

“**Instruments**”: Has the meaning given that term in the UCC.

“**Interest Payment Date**”: With reference to:

Each Libor Loan: The last day of the Interest Period relating thereto (and on the last day of the third month for any such loan which has a six (6) month or twelve (12) month Interest Period); the Termination Date; and the End Date.

Each Base Margin Loan: The first day of each month; the Termination Date; and the End Date.

**“Interest Period”**: The following:

(a) With respect to each Libor Loan: Subject to Subsection (c), below, the period commencing on the date of the making or continuation of, or conversion to, the subject Libor Loan and ending one, two, three, six, or twelve months thereafter, as the Borrowers’ Representative may elect by notice (pursuant to Section 2.6) to the Administrative Agent.

(b) With respect to each Base Margin Loan: Subject to Subsection (c), below, the period commencing on the date of the making or continuation of or conversion to such Base Margin Loan and ending on that date (i) as of which the subject Base Margin Loan is converted to a Libor Loan, as the Borrowers’ Representative may elect by notice (pursuant to Section 2.6) to the Administrative Agent, or (ii) on which the subject Base Margin Loan is paid by the Borrowers.

(c) The setting of Interest Periods is in all instances subject to the following:

(i) Any Interest Period for a Base Margin Loan which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day.

(ii) Any Interest Period for a Libor Loan which would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day, unless that succeeding Business Day is in the next calendar month, in which event such Interest Period shall end on the last Business Day of the month during which the Interest Period ends.

(iii) Subject to Subsection (iv), below, any Interest Period applicable to a Libor Loan, which Interest Period begins on a day for which there is no numerically corresponding day in the calendar month during which such Interest Period ends, shall end on the last Business Day of the month during which that Interest Period ends.

(iv) Any Interest Period which would otherwise end after the Termination Date shall end on the Termination Date.

(v) The number of Interest Periods in effect at any one time is subject to Section 2.12(d) hereof.

**“Inventory”**: Includes, without limitation, “inventory” as defined in the UCC and also all: (a) Goods which are leased by a Person as lessor; are held by a Person for sale or lease or to be furnished under a contract of service; are furnished by a Person under a contract of service; or consist of raw materials, work in process, or materials used or consumed in a business; (b) Goods of said description in transit; (c) Goods of said description which are returned, repossessed and rejected; (d)

packaging, advertising, and shipping materials related to any of the foregoing; (e) all names, marks, and General Intangibles affixed or to be affixed or associated thereto; and (f) Documents and Documents of Title which represent any of the foregoing.

**“Inventory Purchase Agreement”**: The Inventory Purchase Agreement dated as of even date hereof by and between Designs Apparel, Inc. and the other Loan Parties.

**“Inventory Reserves”**: Such Reserves as may be established from time to time by the Administrative Agent in the Administrative Agent’s reasonable discretion with respect to the determination of the saleability, at Retail, of the Eligible Inventory or which reflect such other factors affecting the market value of the Eligible Inventory. Without limiting the generality of the foregoing, Inventory Reserves may include (but are not limited to) reserves based on the following:

- (i) Obsolescence (based upon Inventory on hand beyond a given number of days).
- (ii) Seasonality.
- (iii) Shrinkage.
- (iv) Imbalance.
- (v) Change in Inventory character.
- (vi) Change in Inventory composition
- (vii) Change in Inventory mix.
- (viii) Point of sale markdowns and, to the extent not reflected in Retail, permanent markdowns
- (ix) Retail markons and markups inconsistent with prior period practice and performance; industry standards; current business plans; or advertising calendar and planned advertising events.
- (x) Consigned Inventory.

**“Investment Property”**: Has the meaning given that term in the UCC.

**“Issuer”**: Fleet National Bank and any successor to Fleet National Bank.

**“L/C”**: Any letter of credit, the issuance of which is procured by the Administrative Agent for the account of any Borrower and any acceptance made on account of such letter of credit.

**“L/C Landing Costs”**: To the extent not included in the Stated Amount of an L/C, customs, duty, freight, and other out-of-pocket costs and expenses which will be expended to “land” the Inventory, the purchase of which is supported by such L/C.

**“Lease”**: Any lease or other agreement, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any space.

**“Leasehold Interest”**: Any interest of a Loan Party as lessee under any Lease.

**“Leasehold Proceeds”**: Any proceeds of the sale or other disposition of a Leasehold Interest.

**“Lender”**: Collectively and each individually, each Revolving Credit Lender and the Tranche B Lender.

**“Lenders’ Special Counsel”**: Collectively, (i) a single counsel selected by Revolving Credit Lenders holding more than 51% of the Loan Commitments (other than any Loan Commitments held by Delinquent Revolving Credit Lenders) following the occurrence of an Event of Default to represent their interests in connection with the enforcement, attempted enforcement, or preservation of any rights and remedies under this, or any other Loan Document, (ii) a single counsel selected by the Tranche B Lender to represent the interests of the Tranche B Lender in connection with the preparation, negotiation, administration, enforcement, attempted enforcement, or preservation of any rights and remedies under this, or any other Loan Document.

**“Letter-of-Credit Right”**: Has the meaning given that term in the UCC and also refers to any right to payment or performance under any letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

**“Liabilities”**: (a) Any and all direct and indirect liabilities, debts, and obligations of each Borrower to any Agent, any Lender, or any Secured Party, each of every kind, nature, and description owing on account of this Agreement or any other Loan Document, whether now existing or hereafter arising under this Agreement or under any of the other Loan Documents, including, without limitation, the following:

(i) Each obligation to repay any loan, advance, indebtedness, note, obligation, overdraft, or amount now or hereafter owing by any Borrower to any Agent or any Lender (including all future advances whether or not made pursuant to a commitment by any Agent or any Lender), whether or not any of such are liquidated, unliquidated, primary, secondary, secured, unsecured, direct, indirect, absolute, contingent, or of any other type, nature, or description, or by reason of any cause of action which any Agent or any Lender may hold against any Borrower.

(ii) All notes and other obligations of each Borrower now or hereafter assigned to or held by any Agent or any Lender, each of every kind, nature, and description

(iii) All debts, liabilities and obligations now or hereafter arising from or in connection any and all Hedge Agreements, including but not limited any Hedge Exposure.

(iv) All interest, fees, and charges and other amounts which may be charged by any Agent or any Lender to any Borrower and/or which may be due from any Borrower to any Agent or any Lender from time to time.

(v) All costs and expenses incurred or paid by any Agent in respect of any agreement between any Borrower and any Agent or instrument furnished by any Borrower to any Agent (including, without limitation, Costs of Collection, reasonable attorneys' fees, and all court and litigation costs and expenses).

(vi) Any and all covenants of each Borrower to or with any Agent or any Lender and any and all obligations of each Borrower to act or to refrain from acting in accordance with any agreement between that Borrower and any Agent or any Lender or instrument furnished by that Borrower to any Agent or any Lender.

(vii) Each of the foregoing as if each reference to "any Agent or any Lender" were to each Affiliate of the Administrative Agent.

(b) Any and all direct or indirect liabilities, debts, and obligations of each Borrower to any Agent or any Affiliate of any Agent, each of every kind, nature, and description owing on account of any service or accommodation provided to, or for the account of any Borrower pursuant to this or any other Loan Document, including cash management services and the issuances of L/C's.

**"Libor Business Day"**: Any day which is both a Business Day and a day on which the principal interbank market for Libor deposits in London in which Fleet National Bank participates is open for dealings in United States Dollar deposits.

**"Libor Loan"**: Any Revolving Credit Loan which bears interest at a Libor Rate.

**"Libor Margin"**: As determined from the definition of Applicable Margin.

**"Libor Offer Rate"**: That rate of interest (rounded upwards, if necessary, to the next 1/100 of 1%) determined by the Administrative Agent in good faith to be the highest prevailing rate per annum at which deposits on U.S. Dollars are offered to Fleet National Bank, by first-class banks in the London interbank market in which Fleet National Bank participates at or about 10:00 AM (Boston Time) two (2)

Libor Business Days before the first day of the Interest Period for the subject Libor Loan, for a deposit approximately in the amount of the subject loan for a period of time approximately equal to such Interest Period.

**“Libor Rate”**: That per annum rate which is the aggregate of the Libor Offer Rate *plus* the Libor Margin *except that*, in the event that the Administrative Agent determines in good faith that any Revolving Credit Lender may be subject to the Reserve Percentage, the “Libor Rate” shall mean, with respect to any Libor Loans then outstanding (from the date on which that Reserve Percentage first became applicable to such loans), and with respect to all Libor Loans thereafter made so long as any Lender is subject to the Reserve Percentage, an interest rate per annum equal the sum of (a) plus (b), where:

(a) is the decimal equivalent of the following fraction:

$$\frac{\text{Libor Offer Rate}}{1 \text{ minus Reserve Percentage}}$$

(b) is the applicable Libor Margin.

**“Liquidation”**: The exercise, by the Collateral Agent, of those rights accorded to the Collateral Agent under the Loan Documents as a creditor of the Loan Parties following and on account of the occurrence of an Event of Default looking towards the realization on the Collateral. Derivations of the word “Liquidation” (such as “Liquidate”) are used with like meaning in this Agreement.

**“Loan Account”**: Is defined in Section 2.9.

**“Loan Commitment”**: With respect to each Revolving Credit Lender, that respective Revolving Credit Lender’s Revolving Credit Dollar Commitment. With respect to the Tranche B Lender, the then unpaid principal balance of the Tranche B Loan.

**“Loan Documents”**: This Agreement, each instrument and document executed as contemplated by the Original Agreement and by Article 5, below, and each other instrument or document from time to time executed and/or delivered in connection with the arrangements contemplated hereby or in connection with any transaction with the Administrative Agent or the Collateral Agent or any Affiliate of the Administrative Agent or the Collateral Agent, including, without limitation, any transaction which arises out of any cash management, depository, investment, letter of credit, interest rate protection, or equipment leasing services provided by the Administrative Agent or the Collateral Agent or any Affiliate of the Administrative Agent or the Collateral Agent, as each may be amended from time to time.

**“Loan Party and Loan Parties”**: Each Borrower and each Guarantor.

**“Majority Lenders”**: Lenders (other than Delinquent Revolving Credit Lenders) holding 51% or more of the Loan Commitments (other than any Loan Commitments held by Delinquent Revolving Credit Lenders).

**“Majority Revolving Credit Lenders”**: Revolving Credit Lenders (other than Delinquent Revolving Credit Lenders) holding 51% or more the Loan Commitments which support the Revolving Credit (other than such Loan Commitments held by a Delinquent Revolving Credit Lender).

**“Material Accounting Change”**: Any change in GAAP applicable to accounting periods subsequent to the Loan Parties’ Fiscal year most recently completed prior to the execution of this Agreement, which change has a material effect on the Loan Parties’ Consolidated financial condition or operating results, as reflected on financial statements and reports prepared by or for the Loan Parties, when compared with such condition or results as if such change had not taken place or where preparation of the Loan Parties’ statements and reports in compliance with such change results in the breach of a financial performance covenant imposed pursuant to Section 6.11 where such a breach would not have occurred if such change had not taken place or *visa versa*.

**“Maturity Date”**: October 29, 2007.

**“Minimum Excess Availability Breach”**: The failure of the Borrowers at any time to comply with the provisions of Section 6.11(a).

**“Nominee”**: A business entity (such as a corporation or limited partnership) formed by the Collateral Agent to own or manage any Post Foreclosure Asset.

**“NonConsenting Lender”**: Defined in Section 16.11.

**“Operating Account”**: Defined in Section 8.3.

**“Original Agreement”**: Defined in the Preamble.

**“OverLoan”**: A loan, advance, or providing of credit support (such as the issuance of any L/C) to the extent that, immediately after its having been made, Availability is less than zero.

**“Participant”**: Is defined in Section 20.15, hereof.

**“Payment Intangible”**: Has the meaning given that term in the UCC and also refers to any general intangible under which the Account Debtor’s primary obligation is a monetary obligation.

**“Permitted Acquisition”**: An Acquisition complying with the following:

(A) Such Acquisition shall be of assets ancillary, incidental or necessary to the retail sale of apparel and related activities, or of 100% of the stock of a corporation whose assets consist substantially of such assets, or through the merger of such a corporation with a Loan Party (with a Loan Party as the surviving corporation), or with a Subsidiary of a Loan Party where, after giving effect to such merger, such corporation becomes a wholly-owned Subsidiary of a Loan Party;



(B) If such Acquisition includes the acquisition of assets by, or the merger of, a Loan Party, there shall have been no change in the identity of the president, chief financial officer or any executive vice president of such Loan Party as a consequence of such acquisition, or if there has been such a change, the Administrative Agent shall have consented in writing to such change in identity within thirty (30) days thereafter (which consent shall not be unreasonably withheld or delayed); and

(C) If a new Subsidiary is formed or acquired as a result of such Acquisition, such Subsidiary shall execute documentation, reasonably satisfactory in form and substance to the Administrative Agent, guarantying payment and performance of the Liabilities and granting a first lien, subject only to Permitted Encumbrances, in its assets in favor of the Collateral Agent, for the ratable benefit of the Lenders.

**“Permitted Asset Disposition”**: The following:

(a) A sale or other disposition of the assets of any Loan Party (other than as specified in clauses (b), (c) and (d) of this definition), not in the ordinary course, so long as the following conditions are satisfied:

(i) The sale, liquidation or other disposition of Inventory at any locations from which a Loan Party determines to cease the conduct of its business, (x) shall be on terms satisfactory to the Administrative Agent and (y) notwithstanding the Administrative Agent’s furnishing of any such consent, the Administrative Agent may, in the exercise of its reasonable discretion, impose Inventory Reserves as a result of the occurrence of any such sale, liquidation, or disposition;

(ii) The aggregate of all such sales or other dispositions of assets during the term of this Agreement shall not exceed five percent (5%) of the value of all assets of Casual Male as of the Closing Date;

(iii) Each such sale or other disposition shall be for fair consideration in an arm’s length transaction; and

(iv) On the date on which any sale or other disposition of assets is consummated, no Default shall have occurred and be continuing or will occur as a result of such consummation.

(b) The sale, spin-off or other disposition of LP Innovations, Inc. and its ownership interests in Securex, on terms reasonably satisfactory to the Administrative Agent. The Administrative Agent shall execute and deliver such releases as shall be reasonably requested in order for such disposition to be consummated.

(d) The sale of any Collateral located in any Designs Store, provided that the conditions set forth in (a)(i), (iii) and (iv), above, are satisfied.

**“Permitted Encumbrances”**: The following:

(a) Encumbrances described on **EXHIBIT 1.1** hereto.

(b) Encumbrances on properties to secure taxes, assessments and other government charges or claims for labor, material or supplies in respect of obligations not then overdue; deposits or pledges made in connection with, or to secure payment of, workmen’s compensation, unemployment insurance, old age pensions or other social security obligations; Encumbrances on property hereafter acquired (either in connection with purchase money encumbrances, rental purchase agreements, including Capital Leases, or conditional sale or other title retention agreements), which are restricted to the property so acquired and do not secure Indebtedness exceeding the fair value (at the time of acquisition) thereof; Encumbrances of carriers, warehousemen, mechanics and materialmen, and other like Encumbrances in existence less than 90 days from the date of creation thereof in respect of obligations not overdue; and Encumbrances on properties consisting of easements, rights of way, zoning restrictions, restrictions on the use of real property and defects and irregularities in the title thereto, landlord’s or lessor’s Encumbrances under leases to which any Loan Party is a party, and other minor Encumbrances or encumbrances none of which interferes materially with the use of the property affected in the ordinary conduct of the business of the Loan Parties, which defects do not individually or in the aggregate have a materially adverse effect on the business of any Loan Party individually or of the Loan Parties as a whole or which are being actively contested in good faith by appropriate proceedings as to which the Loan Parties have established reasonable reserves, *it being understood, however*, that the filing of a tax lien which includes any Inventory or Accounts does not constitute a “Permitted Encumbrance”, even if being so contested.

**“Permitted Indebtedness”:** The following Indebtedness:

- (a) Indebtedness on account of the Revolving Credit.
- (b) Indebtedness on account of the Tranche B Loan.
- (c) Indebtedness on account of the Subordinated Indebtedness, or Indebtedness on account of refinancing of the Subordinated Indebtedness, which Indebtedness is on similar terms as the existing Subordinated Indebtedness, is subordinate to the payment of the Liabilities upon terms acceptable to the Administrative Agent in its reasonable discretion, and is otherwise acceptable to the Administrative Agent in its reasonable discretion.
- (d) Indebtedness on account of the Convertible Notes, or Indebtedness on account of refinancing of the Convertible Notes, which Indebtedness is on similar terms as the Indenture, is subordinate to the payment of the Liabilities, and is otherwise acceptable to the Administrative Agent in its reasonable discretion.
- (e) Rochester Indebtedness.
- (f) Capital Leases and purchase money Indebtedness secured by Permitted Encumbrances.
- (g) Indebtedness assumed in connection with Permitted Acquisitions pursuant to Section 5.21 (it being understood that the principal amount so assumed shall be deemed part of the purchase price of any such Permitted Acquisition) and any refinancing or replacement thereof on terms and conditions (including, without limitation, interest rate and providing that, in any event, the principal amount thereof shall not exceed that outstanding on the date of refinance or replacement) at least as favorable as those being refinanced or replaced.
- (h) Intercompany Indebtedness permitted under Section 5.22.
- (i) Indebtedness arising with respect to any Hedge Agreement.

**“Permitted Investments”:** Any or all of the following:

- (a) marketable direct full faith and credit obligations of, or marketable obligations guaranteed by, the United States of America; provided that such securities, as a group, may not, on the date of determination, have a remaining weighted average maturity of more than five years;

(b) marketable direct full faith and credit obligations of States of the United States or of political subdivisions or agencies; provided that such securities, as a group, may not, on the date of determination, have a remaining weighted average maturity of more than five years; and provided, further, that such obligations carry a rating of “A” or better by a Rating Service;

(c) certificates of deposit and bankers acceptances maturing within one year after the acquisition thereof issued by (i) Fleet National Bank; (ii) Bank of America, N.A.; or (iii) any commercial bank organized under the laws of the United States of America or of any political subdivision thereof the long term obligations of which are rated “A” or better by a Rating Service;

(d) Eurodollar certificates of deposit maturing within one year after the acquisition thereof issued by any commercial bank having combined capital, surplus and undivided profits of at least \$1 billion; and

(e) tax-exempt bonds or notes which have a remaining maturity at the time of purchase of no more than five years issued by any State of the United States or the District of Columbia, or any political subdivision thereof; provided, that such obligations carry a rating of “A” or better by a Rating Service.

**“Permitted Overhead Contributions”**: Rent under the Lease Agreement, dated December 11, 1996, by and between JBAK Canton, or its assigns, as landlord, and JBI, or its assigns, as tenant, with respect to the Canton Warehouse.

**“Permitted Protective OverAdvance”** Is defined in Section 16.3(a).

**“Person”**: Any natural person, and any corporation, limited liability company, trust, partnership, joint venture, or other enterprise or entity.

**“Post Foreclosure Asset”**: All or any part of the Collateral, ownership of which is acquired by the Collateral Agent or a Nominee on account of the “bidding in” at a disposition as part of a Liquidation or by reason of a “deed in lieu” type of transaction.

**“Proceeds”**: Includes, without limitation, “Proceeds” as defined in the UCC and each type of property described in Section 9.19.1 hereof.

**“Pro-Rata”**: A proportional distribution based upon a Lender’s percentage claim to the overall aggregate amount being distributed.

**“Protective OverAdvances”**: Revolving Credit Loans which are OverLoans, but as to which each of the following conditions is satisfied: (a) the Revolving Credit Ceiling is not exceeded; (b) when aggregated with all other Protective

OverAdvances, such Revolving Credit Loans do not aggregate more than 5% of the aggregate of the Borrowing Base; and (c) such Revolving Credit Loans are made or undertaken in the Agents' discretion to protect and preserve the interests of the Lenders.

**"RBT"**: Collectively Casual Male RBT, LLC and Casual Male RBT (U.K.), LLC.

**"Receipts"**: All cash, cash equivalents, money, checks, credit card slips, receipts and other Proceeds from any sale of the Collateral.

**"Receivables Advance Rate"**: 75%.

**"Receivables Collateral"**: That portion of the Collateral which consists of Accounts, Accounts Receivable, General Intangibles, Chattel Paper, Instruments, Documents of Title, Documents, Investment Property, Payment Intangibles, Letter-of-Credit Rights, bankers' acceptances, and all other rights to payment.

**"Receivables Reserves"**: Such Reserves as may be established from time to time by the Administrative Agent in the Administrative Agent's reasonable discretion with respect to the determination of the collectibility in the ordinary course and of the creditworthiness of the applicable Account Debtor. Without limiting the generality of the foregoing, Receivables Reserves shall include (but are not limited to) reserves based on the following:

- (i) The aggregate of all accounts receivables which are more than 60 days past invoice.
- (ii) The aggregate of all accounts receivable owed by any Account Debtor 25% or more of whose accounts are more than 60 days past invoice.
- (iii) The aggregate of all accounts receivable which arise out of the sale by a Loan Party of goods consigned or delivered to such Loan Party or to the Account Debtor on sale or return terms (whether or not compliance has been made with the applicable provisions of Article 2 of the UCC).
- (iv) The aggregate of all accounts receivable which arise out of any sale made on a basis other than upon terms usual to the business of a Loan Party.
- (v) The aggregate of all accounts receivable which arise out of any sale made on a "bill and hold," dating, or delayed shipping basis.
- (vi) The aggregate of all accounts receivable which are owed by any Account Debtor whose principal place of business is not within the United States, the District of Columbia, or Canada.

- (vii) The aggregate of all accounts receivable which are owed by any Affiliate.
- (viii) The aggregate of all accounts receivable to the extent that the Account Debtor holds or is entitled to any claim, counterclaim, set off, or chargeback as determined by the Administrative Agent in its discretion.
- (ix) The aggregate of all accounts receivable which are evidenced by a promissory note or other documentation evidencing modified payment terms.
- (x) The aggregate of all accounts receivable which are owed by any person employed by, or a salesperson of, a Loan Party.
- (xi) That portion of Eligible Receivables owed by any Account Debtor which exceed 15% of all Eligible Receivables owed by all Account Debtors.

**“Register”**: Is defined in Section 17.2(c).

**“Requirements of Law”**: As to any Person:

- (a) Applicable Law.
- (b) That Person’s organizational documents.
- (c) That Person’s by-laws and/or other instruments which deal with corporate or similar governance, as applicable.

**“Reserve Percentage”**: The decimal equivalent of that rate applicable to any Lender under regulations issued from time to time by the Board of Governors of the Federal Reserve System for determining the maximum reserve requirement of Lender with respect to “Eurocurrency liabilities” as defined in such regulations. The Reserve Percentage applicable to a particular Libor Loan shall be based upon that in effect during the subject Interest Period, with changes in the Reserve Percentage which take effect during such Interest Period to take effect (and to consequently change any interest rate determined with reference to the Reserve Percentage) if and when such change is applicable to such loans.

**“Reserves”**: The following: Receivables Reserves; Availability Reserves; and Inventory Reserves.

**“Retail”**: As reflected in a Loan Party’s stock ledger, being the current ticket price aggregated by SKU, except that to the extent that Eligible Inventory is not reflected in the stock ledger, in which case “Retail” shall be determined as tracked on such non stock ledger inventory systems of a Loan Party which are deemed adequate for such purpose by the Administrative Agent in the exercise of the Administrative Agent’s discretion.

**“Revolving Credit”**: Is defined in Section 2.1.

**“Revolving Credit Casual Male Companies Inventory Advance Rate”**: The following rates for the following periods:

<u>RATE</u>	<u>PERIOD</u>
29%	December 16 through April 14 of each year
30.6%	April 15 through June 15 of each year
29%	June 16 through September 30 of each year
30.6%	October 1 through December 15 of each year

**“Revolving Credit Designs, Inc. Companies Inventory Advance Rate”**: The following rates for the following periods:

<u>RATE</u>	<u>PERIOD</u>
62%	December 16 through April 14 of each year
66%	April 15 through June 15 of each year
62%	June 16 through September 30 of each year
66%	October 1 through December 15 of each year

**“Revolving Credit RBT Inventory Advance Rate”**: The following rates for the following periods:

<u>RATE</u>	<u>PERIOD</u>
30.2%	December 16 through April 14 of each year
32%	April 15 through June 15 of each year
30.2%	June 16 through September 30 of each year
32%	October 1 through December 15 of each year

**“Revolving Credit Ceiling”**: \$90,000,000.00 subject to increase in accordance with Section 2.24.

**“Revolving Credit Commitment Fee”**: Defined in Section 2.13.

**“Revolving Credit Debt”**: At any time, the lesser of (a) or (b), where

(a) is the Revolving Credit Ceiling then in effect.

(b) is Indebtedness of the Borrowers on account of loans and advances under the Revolving Credit which Indebtedness, when incurred or when Acceleration takes place, is within amounts available to be borrowed under the Revolving Credit or constitutes Protective OverAdvances, as reflected on the Borrowing Base Certificate (if any) in reliance on which the subject loan or advance was made, *it being understood* that, (i) in the absence of manifest computational error by the Borrowers’ Representative, the Administrative Agent may rely on, and the Tranche B Lender shall be bound by, the determination of such availability as reflected on such Borrowing Base Certificate, and (ii) the status of indebtedness as “Revolving Credit Debt” is determined without regard to any subsequent declination in the appraised value of the Inventory or other assets on which such availability had been so determined, and (iii) the occurrence of a Tranche B Availability Breach, in and of itself, shall not affect the status of indebtedness as “Revolving Credit Debt”. (For purposes of the determination of whether a loan or advance to cover the honoring of a L/C constitutes “Revolving Credit Debt”, the date of issuance of the subject L/C shall constitute the date on which the subject indebtedness was incurred).

**“Revolving Credit Dollar Commitment”**: As to each Revolving Credit Lender, the amount set forth on **EXHIBIT 2.23**, annexed hereto (as such amounts may change in accordance with the provisions of this Agreement).

**“Revolving Credit Early Termination Fee”**: Defined in Section 2.16.

**“Revolving Credit Fees”**: The Unused Line Fee, Revolving Credit Commitment Fee, Revolving Credit Early Termination Fee, fees for L/C’s which are specifically for the account of the Revolving Credit Lenders and all other fees (such as a fee (if any) on account of the execution of an amendment of a Loan Document) payable by any Borrower in respect of the Revolving Credit other than any amount payable to an Agent as reimbursement for any cost or expense incurred by that Agent on account of the discharge of that Agent’s duties under the Loan Documents.

**“Revolving Credit Lenders”**: Each Revolving Credit Lender to which reference is made in the Preamble and any other Person who becomes a “Revolving Credit Lender” in accordance with the provisions of this Agreement.



**“Revolving Credit Loans”**: Loans made under the Revolving Credit, *except that* where the term “Revolving Credit Loan” is used with reference to available interest rates applicable to the loans under the Revolving Credit, it refers to so much of the unpaid principal balance of the Loan Account as bears the same rate of interest for the same Interest Period. (See Section 2.12(c)).

**“Revolving Credit Note”**: Is defined in Section 2.10.

**“Revolving Credit Obligations”**: The aggregate of the Borrowers’ liabilities, obligations, and indebtedness of any character on account of or in respect to the Revolving Credit.

**“Revolving Credit Percentage Commitment”**: As to each Revolving Credit Lender, the amount set forth on **EXHIBIT 2.23**, annexed hereto (as such amounts may change in accordance with the provisions of this Agreement).

**“Rochester Acquisition”**: The acquisition by Casual Male and certain of its Affiliates of substantially all of the assets of Rochester Big and Tall in accordance with the terms of the Rochester Acquisition Agreement.

**“Rochester Acquisition Agreement”**: The Asset Purchase Agreement dated as of August 18,2004 among Rochester Big and Tall and certain of its Affiliates and Casual Male and certain of its Affiliates, as amended through the date of this Agreement.

**“Rochester Big and Tall”**: Rochester Big and Tall Clothing, Inc.

**“Rochester Indebtedness”**: Indebtedness under Section 2.5.3 of the Rochester Acquisition Agreement.

**“SEC”**: The Securities and Exchange Commission.

**“Secured Parties”**: Collectively and each individually, the Lenders, the Agent, and FRG.

**“Securex”**: Securex LLC, a Delaware limited liability company.

**“Standstill Period”**: A 15 consecutive day period initiated by written notice by the Tranche B Lender to the Administrative Agent, in accordance with Section 14.2(a), after the occurrence of a Tranche B Loan Action Event (other than a Bankruptcy Breach).

**“Stated Amount”**: The maximum amount for which an L/C may be honored.

**“Store”**: Each location at which a Loan Party regularly offers Inventory for sale to the public.

**“Subordinated Indebtedness”**: Includes (i) the Indebtedness evidenced by the 5% Subordinated Note; and (ii) the Indebtedness evidenced by the Convertible Notes.

**“Subordination Agreements”**: The several Subordinated Agreements between the holders of the 5% Subordinated Note, on the one hand, and FRG, as agent for the Lenders, and the Borrowers, on the other hand, each dated as of May 14, 2002.

**“Subscription Agreement”**: Collectively, the Designs, Inc. Subscription Agreement for Common Stock dated as of April 26, 2002 between Designs, Inc. and the purchasers named therein and the Designs, Inc. Subscription Agreement for Preferred Stock dated as of April 26, 2002 between Designs, Inc. and the purchasers named therein.

**“Subsidiary”**: With respect to any Person, any corporation, partnership or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are at the time directly or indirectly owned by such Person.

**“SuperMajority Lenders”**: Lenders (other than Delinquent Revolving Credit Lenders) holding 66 2/3% or more of the Loan Commitments (other than Loan Commitments held by a Delinquent Revolving Credit Lender).

**“SuperMajority Revolving Credit Lenders”**: Revolving Credit Lenders (other than Delinquent Revolving Credit Lenders) holding 66 2/3% or more of the Loan Commitments which support the Revolving Credit (other than such Loan Commitments held by a Delinquent Revolving Credit Lender).

**“Supporting Obligation”**: Has the meaning given that term in UCC and also refers to a Letter-of-Credit Right or secondary obligation which supports the payment or performance of an Account, Chattel Paper, a Document, a General Intangible, an Instrument, or Investment Property.

**“SwingLine”**: The facility pursuant to which the SwingLine Lender may advance Revolving Credit Loans aggregating up to the SwingLine Loan Ceiling.

**“SwingLine Lender”**: FRG.

**“SwingLine Loan Ceiling”**: \$15,000,000.

**“SwingLine Loans”**: Defined in Section 2.8.

**“Termination Date”**: The earliest of (a) the Maturity Date; or (b) the Administrative Agent’s notice to the Borrowers’ Representative setting the Termination Date on account of the occurrence of any Event of Default; or (c) a date, irrevocable written notice of which is provided by the Borrowers’ Representative to the Administrative Agent, which is at least ninety (90) days after the date of such written notice.

**“Tranche B Amortization Payment”**: Defined in Section 3.3(a)

**“Tranche B Applicable Inventory Advance Rate”**: The following rates for the following periods:

<u>RATE</u>	<u>PERIOD</u>
95%	December 16 through April 14 of each year
100%	April 15 through June 15 of each year
95%	June 16 through September 30 of each year
100%	October 1 through December 15 of each year

**“Tranche B Availability Breach”**: A condition in which the aggregate of the following is equal to or less than zero:

(a) The Tranche B Borrowing Base,

*Minus*

(b) The aggregate unpaid balance of the Loan Account,

*Minus*

(c) The aggregate undrawn Stated Amount of all then outstanding L/Cs (less the amount of any cash collateral held by any Agent or Lender in respect of such L/Cs),

*Minus*

(d) The then unpaid principal balance of the Tranche B Loan and all accrued but unpaid interest thereon,

*Minus*

(e) The aggregate of the Availability Reserves.

**“Tranche B Borrowing Base”**: The aggregate of the following:

(a) For the Casual Male Companies, the lesser of

(i) The product of the Retail of Eligible Inventory (net of Inventory Reserves) of the Casual Male Companies multiplied by the Tranche B Casual Male Companies Inventory Advance Rate, and

- (ii) Tranche B Applicable Inventory Advance Rate of the Appraised Inventory Liquidation Value of the Inventory of the Casual Male Companies.

**Plus**

(b) For the Designs, Inc. Companies, the lesser of

- (i) The Cost of Eligible Inventory (net of Inventory Reserves) of the Designs, Inc. Companies multiplied by the Tranche B Designs, Inc. Companies Inventory Advance Rate ; or
- (ii) Tranche B Applicable Inventory Advance Rate of the Appraised Inventory Liquidation Value of the Inventory of the Designs, Inc. Companies

**Plus**

(c) For RBT, the lesser of

- (i) The product of the Retail of Eligible Inventory (net of Inventory Reserves) of RBT multiplied by the Tranche B RBT Inventory Advance Rate, and
- (ii) Tranche B Applicable Inventory Advance Rate of the Appraised Inventory Liquidation Value of the Inventory of RBT.

**Plus**

(d) The face amount of Eligible Credit Card Receivables multiplied by the Credit Card Advance Rate.

**Plus**

(e) The face amount of Eligible Receivables (net of Receivables Reserves) multiplied by the Receivables Advance Rate.

**“Tranche B Casual Male Companies Inventory Advance Rate”**: The following rates for the following periods:

<u>RATE</u>	<u>PERIOD</u>
32.4%	December 16 through April 14 of each year
34.1%	April 15 through June 15 of each year
32.4%	June 16 through September 30 of each year
34.1%	October 1 through December 15 of each year

“**Tranche B Commitment Fee**”: As defined in the Tranche B Fee Letter.

“**Tranche B Designs, Inc. Division Inventory Advance Rate**”: The following rates for the following periods:

<u>RATE</u>	<u>PERIOD</u>
69.3%	December 16 through April 14 of each year
72.9%	April 15 through June 15 of each year
69.3%	June 16 through September 30 of each year
72.9%	October 1 through December 15 of each year

“**Tranche B Fees**”: The Tranche B Commitment Fee and all other fees (such as a fee (if any) on account of the execution of an amendment of any Loan Document) payable by any Borrower in respect of the Tranche B Loan other than any amount payable to an Agent as reimbursement for any cost or expense incurred by that Agent on account of the discharge of that Agent’s duties under the Loan Documents.

“**Tranche B Interest Payment Date**”: Defined in Section 3.4(c).

“**Tranche B Interest Rate**”: Defined in Section 3.4(a).

“**Tranche B Lender**”: Defined in the Preamble.

“**Tranche B Loan** “: Defined in Section 3.1.

“**Tranche B Loan Action Event**”: The occurrence of any of the following: a Tranche B Availability Breach; a Financial Covenant Breach; a Bankruptcy Breach; or a Tranche B Payment Breach.

“**Tranche B Note**”: Defined in Section 3.2.

“**Tranche B Payment Breach**”: The failure by the Borrowers to have made any payment on account of the Borrowers’ Liabilities to the Tranche B Lender under the Loan Documents prior to expiry of any grace period applicable to such payment.

“**Tranche B Loan Prepayment Conditions**”: The following:

- (a) The subject prepayment is made after October 29, 2005.

(b) Excess Availability, for each of the 45 days prior to the making of such prepayment, is not less than \$40,000,000.

(c) Immediately after, and giving effect to such prepayment, Excess Availability is not less than \$30,000,000.

(d) EBITDA for the 12 months immediately prior to such prepayment is not less than 80% of EBITDA for such period projected in the Business Plan.

(e) No more than fifteen days prior to such prepayment, the Borrowers' Representative has provided the Administrative Agent with a forecast for the then next succeeding 12 month period which reflects that Excess Availability will never be less than \$30,000,000.

(f) On the date on which such prepayment is made and immediately after giving effect to such prepayment, no Default shall have occurred and be continuing.

**"Tranche B RBT Inventory Advance Rate"**: The following rates for the following periods:

<u>RATE</u>	<u>PERIOD</u>
33.7%	December 16 through April 14 of each year
35.5%	April 15 through June 15 of each year
33.7%	June 16 through September 30 of each year
35.5%	October 1 through December 15 of each year

**"Transfer"**: Wire transfer pursuant to the wire transfer system maintained by the Board of Governors of the Federal Reserve Board, or as otherwise may be agreed to from time to time by the Administrative Agent making such Transfer and the subject Revolving Credit Lender. Wire instructions may be changed in the same manner that Notice Addresses may be changed (Section 18.1), except that no change of the wire instructions for Transfers to any Revolving Credit Lender shall be effective without the consent of the Administrative Agent.

**"UCC"**: The Uniform Commercial Code as in effect from time to time in Massachusetts.

**“Unanimous Consent”**: Consent of Lenders (other than Delinquent Revolving Credit Lenders) holding 100% of the Loan Commitments (other than Loan Commitments held by a Delinquent Revolving Credit Lender).

**“Unused Line Fee”**: Is defined in Section 2.15.

## **ARTICLE 2 - The Revolving Credit:**

### **2.1. Establishment of Revolving Credit.**

(a) The Revolving Credit Lenders hereby establish a revolving line of credit (the **“Revolving Credit”**) in the Borrowers’ favor pursuant to which each Revolving Credit Lender, subject to, and in accordance with, this Agreement, acting through the Administrative Agent, shall make loans and advances and otherwise provide financial accommodations to and for the account of the Borrowers as provided herein.

(b) Loans, advances, and financial accommodations under the Revolving Credit shall be subject to Availability. The Borrowing Base and Availability shall be determined by the Administrative Agent by reference to Borrowing Base Certificates furnished as provided in Section 6.4, below, and shall be subject to the following:

(i) Such determination shall take into account such Reserves as the Administrative Agent may determine as being applicable thereto.

(ii) The Retail of Eligible Inventory will be calculated in a manner consistent with current tracking practices, based on stock ledger inventory at Retail, and the Cost of Eligible Inventory will be calculated in a manner consistent with current tracking practices, based on stock ledger inventory at Cost.

(c) The commitment of each Revolving Credit Lender to provide such loans, advances, and financial accommodations is subject to Section 2.23.

(d) The proceeds of borrowings under the Revolving Credit shall be used solely as follows:

(i) For the Rochester Acquisition.

(ii) For the Borrowers’ working capital needs and general corporate purposes.

(iii) For advances by the Borrowers to Guarantors to finance the purchases by Guarantors of Inventory pursuant to the Inventory Purchase Agreement and to permit such Guarantors to pay ordinary course operating expenses (including, without limitation, rent, utilities and taxes).

(iv) For Capital Expenditures to the extent permitted by this Agreement.

## **2.2. ADVANCES IN EXCESS OF BORROWING BASE (OVERLOANS).**

(a) No Revolving Credit Lender has any obligation to make any loan or advance, or otherwise to provide any credit to or for the benefit of the Borrowers where the result of such loan, advance, or credit is an OverLoan.

(b) The Revolving Credit Lenders' obligations, among themselves, are subject to Section 13.3(a) (which relates to each Revolving Credit Lender's making amounts available to the Administrative Agent) and to Section 16.3(a) (which relates to Protective OverAdvances).

(c) The Revolving Credit Lenders' providing of an OverLoan on any one occasion does not affect the obligations of each Borrower hereunder (including each Borrower's obligation to immediately repay any amount which otherwise constitutes an OverLoan) nor obligate the Revolving Credit Lenders to do so on any other occasion.

## **2.3. INITIAL RESERVES. CHANGES TO RESERVES.**

(a) At the execution of this Agreement, the only Reserves are as reflected on the Borrowing Base Certificate, a specimen of which is annexed hereto as **EXHIBIT 6.4**.

(b) The Administrative Agent shall provide not less than seven (7) days prior notice to the Borrowers' Representative of the establishment of any Reserve (other than those established at the execution of this Agreement) *except that* the following may be undertaken without such prior notice:

(i) a change to the amount of a then existing Reserve (as distinguished from a change by which such Reserve is measured or determined), which change reflects the Administrative Agent's reasonable determination of changed circumstances (e.g. the amount of the Reserve for Customer Credit Liability will change based on the aggregate of Customer Credit Liability at any one time); and

(ii) the creation of, or a change to an existing, Reserve on account of circumstances which the Administrative Agent determines as having a material adverse change on the maintenance of loan to collateral values.

**2.4. RISKS OF VALUE OF COLLATERAL.** The Administrative Agent's reference to a given asset in connection with the making of loans, credits, and advances and the providing of financial accommodations under the Revolving Credit and/or the monitoring of compliance with the provisions hereof shall not be deemed a determination by the Administrative Agent or any Revolving Credit Lender relative to the actual value of the asset in question. All risks concerning the value of the Collateral are and remain upon the Borrowers. All Collateral secures the prompt, punctual, and faithful performance of the Liabilities whether or not relied upon by the Administrative Agent in connection with the making of loans, credits, and advances and the providing of financial accommodations under the Revolving Credit.



**2.5. COMMITMENT TO MAKE REVOLVING CREDIT LOANS AND SUPPORT LETTERS OF CREDIT.** Subject to the provisions of this Agreement, the Revolving Credit Lenders shall make a loan or advance under the Revolving Credit and the Administrative Agent shall cause L/C's to be issued for the account of the Borrowers' Representative, in each instance if duly and timely requested by the Borrowers' Representative as provided herein *provided that*:

(a) No OverLoan is then outstanding and none will result therefrom.

(b) No Default has occurred and is continuing or will occur as a result of the borrowing of such loan or advance or the issuance of such L/C.

**2.6. REVOLVING CREDIT LOAN REQUESTS.**

(a) Requests for loans and advances under the Revolving Credit or for the continuance or conversion of an interest rate applicable to a Revolving Credit Loan may be requested by the Borrowers' Representative in such manner as may from time to time be reasonably acceptable to the Administrative Agent.

(b) Subject to the provisions of this Agreement, the Borrowers' Representative may request a Revolving Credit Loan and elect an interest rate and Interest Period to be applicable to that Revolving Credit Loan by giving notice to the Administrative Agent by no later than the following:

(i) If such Revolving Credit Loan is to be or is to be converted to a Base Margin Loan: By 1:00PM on the Business Day prior to the Business Day on which the subject Revolving Credit Loan is to be made or is to be so converted. Base Margin Loans requested by the Borrowers' Representative, other than those resulting from the conversion of a Libor Loan, shall not be less than \$10,000.00.

(ii) If such Revolving Credit Loan is to be, or is to be continued as, or converted to, a Libor Loan: By 1:00PM three (3) Libor Business Days before the commencement of any new Interest Period or the end of the then applicable Interest Period. Libor Loans and conversions to Libor Loans shall each be not less than \$1,000,000.00 and in increments of \$100,000.00 in excess of such minimum.

(iii) Any Libor Loan which matures while a Default has occurred and is continuing shall be converted, at the option of the Administrative Agent, to a Base Margin Loan notwithstanding any notice from the Borrowers' Representative that such Loan is to be continued as a Libor Loan.

(c) Any request for a Revolving Credit Loan or for the continuance or conversion of an interest rate applicable to a Revolving Credit Loan which is made after the applicable deadline therefore, as set forth above, shall be deemed to have been made at the opening of business on the then next Business Day or Libor Business Day, as applicable. Each request for a Revolving Credit Loan or for the conversion of a Revolving Credit Loan shall be made in such manner as may from time to time be acceptable to the Administrative Agent.

(d) The Borrowers' Representative may request that the Administrative Agent cause the issuance by the Issuer of L/C's for the account of a Borrower as provided in Section 2.18.

(e) The Administrative Agent may rely on any request for a loan or advance, or other financial accommodation under the Revolving Credit which the Administrative Agent, in good faith, believes to have been made by a Person duly authorized to act on behalf of the Borrowers' Representative and may decline to make any such requested loan or advance, or issuance, or to provide any such financial accommodation pending the Administrative Agent's being furnished with such documentation concerning that Person's authority to act as reasonably may be satisfactory to the Administrative Agent.

(f) A request by the Borrowers' Representative for a loan or advance, or other financial accommodation under the Revolving Credit shall be irrevocable and shall constitute certification by each Borrower that as of the date of such request, each of the following is true and correct:

(i) There has been no material adverse change in the Loan Parties' financial condition (taken as a whole) from the most recent financial information furnished Administrative Agent or any Lender pursuant to this Agreement.

(ii) Each representation, not relating to a specific date, which is made herein or in any of the Loan Documents is then true and correct in all material respects as of and as if made on the date of such request (except (A) to the extent of changes resulting from transactions contemplated or permitted by this Agreement or the other Loan Documents and changes occurring in the ordinary course of business which singly or in the aggregate are not materially adverse and (B) to the extent that such representations and warranties expressly relate to a then earlier date).

(iii) Unless accompanied by the Certificate of the Borrowers' Representative's Chief Executive Officer, President, or Chief Financial Officer describing (in reasonable detail) the facts and circumstances thereof and the steps (if any) being taken to remedy such condition, no Default has occurred and is continuing.

(g) If, at any time or from time to time, a Default shall occur:

(i) The Administrative Agent may suspend the Revolving Credit immediately, in which event, neither the Administrative Agent nor any Revolving Credit Lender shall be obligated during such suspension, to make any loan or advance, or to provide any financial accommodation hereunder or to seek the issuance of any L/C.

(ii) The Administrative Agent may suspend the right of the Borrowers' Representative to request any Libor Loan or to convert any Base Margin Loan to a Libor Loan.

## 2.7. MAKING OF REVOLVING CREDIT LOANS.

(a) A loan or advance under the Revolving Credit shall be made by the transfer of the proceeds of such loan or advance to the Operating Account or as otherwise instructed by the Borrowers' Representative.

(b) A loan or advance shall be deemed to have been made under the Revolving Credit (and the Borrowers shall be indebted to the Administrative Agent and the Revolving Credit Lenders for the amount thereof immediately) at the following:

(i) The Administrative Agent's initiation of the transfer of the proceeds of such loan or advance in accordance with the Borrowers' Representative's instructions (if such loan or advance is of funds requested by the Borrowers' Representative).

(ii) The charging of the amount of such loan to the Loan Account (in all other circumstances).

(c) There shall not be any recourse to or liability of any Agent or any Lender on account of:

(i) Any delay, beyond the reasonable control of the Agents and the Revolving Credit Lenders, in the making of any loan or advance requested under the Revolving Credit.

(ii) Any delay, beyond the reasonable control of the Agents and the Revolving Credit Lenders, by any bank or other depository institution in treating the proceeds of any such loan or advance as collected funds.

(iii) Any delay in the receipt, and/or any loss, of funds which constitute a loan or advance under the Revolving Credit, the wire transfer of which was properly initiated by the Administrative Agent in accordance with wire instructions provided to the Administrative Agent by the Borrowers' Representative.

## 2.8. SWINGLINE LOANS.

(a) For ease of administration, Base Margin Loans may be made by the SwingLine Lender (in the aggregate, the "**SwingLine Loans**") in accordance with the procedures set forth in this Agreement for the making of loans and advances under the Revolving Credit. The unpaid principal balance of the SwingLine Loans shall not at any one time be in excess of the SwingLine Loan Ceiling.

(b) The aggregate unpaid principal balance of SwingLine Loans shall bear interest at the rate applicable to Base Margin Loans and shall be repayable as a loan under the Revolving Credit.

(c) The Borrowers' obligation to repay SwingLine Loans shall be evidenced by a Note in the form of **EXHIBIT 2.8**, annexed hereto, executed by the Borrowers, and payable to the SwingLine Lender. Neither the original nor a copy of that Note shall be required, *however*, to establish or prove any Liability. The Borrowers shall execute a replacement of any SwingLine Note which has been lost, mutilated, or destroyed thereof and deliver such replacement to the SwingLine Lender.

(d) For all purposes of this Loan Agreement, the SwingLine Loans and the Borrowers' obligations to the SwingLine Lender constitute Revolving Credit Loans and are secured as "Liabilities".

(e) SwingLine Loans may be subject to periodic settlement with the Revolving Credit Lenders as provided in this Agreement.

## **2.9. THE LOAN ACCOUNT.**

(a) An account ("**Loan Account**") shall be opened on the books of the Administrative Agent in which a record shall be kept of all loans and advances made under the Revolving Credit.

(b) The Administrative Agent shall also keep a record (either in the Loan Account or elsewhere, as the Administrative Agent may from time to time elect) of all interest, fees, service charges, costs, expenses, and other debits owed to the Administrative Agent and each Lender on account of the Liabilities and of all credits against such amounts so owed.

(c) All credits against the Liabilities shall be conditional upon final payment to the Administrative Agent for the account of each Lender of the items giving rise to such credits. The amount of any item credited against the Liabilities which is charged back against the Administrative Agent or any Lender for any reason or is not so paid shall be a Liability and, if arising under the Revolving Credit, shall be added to the Loan Account, whether or not the item so charged back or not so paid is returned.

(d) Except as otherwise provided herein, all fees, service charges, costs, and expenses for which any Borrower is obligated hereunder are payable on demand. In the determination of Availability, the Administrative Agent may deem fees, service charges, accrued interest, and other payments which will be due and payable between the date of such determination and the first day of the then next succeeding month as having been advanced under the Revolving Credit whether or not such amounts are then due and payable.

(e) The Administrative Agent, without the request of the Borrowers' Representative, may advance under the Revolving Credit any interest, fee, service charge, or other payment to which any Agent or any Lender is entitled from any Borrower pursuant hereto and may charge the same to the Loan Account notwithstanding that an OverLoan may result thereby. Such action on the part of the Administrative Agent shall not constitute a waiver of the Administrative Agent's rights and each Borrower's obligations under Section 2.11(b). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.9(e) shall bear interest at the interest rate then and thereafter applicable to Base Margin Loans.

(f) In the absence of manifest error, a statement rendered by the Administrative Agent or any Lender to the Borrowers' Representative concerning the Liabilities shall be considered correct and accepted by each Borrower and shall be conclusively binding upon each Borrower unless the Borrowers' Representative provides the Administrative Agent with written objection thereto within thirty (30) days from the mailing of such statement, which written objection shall indicate, with particularity, the reason for such objection. In the absence of manifest error, the Loan Account and the Administrative Agent's books and records concerning the loan arrangement contemplated herein and the Liabilities shall be prima facie evidence and proof of the items described therein.

**2.10. THE REVOLVING CREDIT NOTES.** The Borrowers' obligation to repay loans and advances under the Revolving Credit, with interest as provided herein, shall be evidenced by notes (each, a "**Revolving Credit Note**") in the form of **EXHIBIT 2.10**, annexed hereto, executed by each Borrower, one payable to each Revolving Credit Lender. Neither the original nor a copy of any Revolving Credit Note shall be required, *however*, to establish or prove any Liability. Upon the Borrowers' Representative's being provided with an affidavit, from the Administrative Agent to the effect that any Revolving Credit Note has been lost, mutilated, or destroyed, the Borrowers shall execute a replacement thereof and deliver such replacement to the Administrative Agent.

**2.11. PAYMENT OF THE LOAN ACCOUNT.**

(a) The Borrowers *may* repay all or any portion of the principal balance of the Loan Account from time to time until the Termination Date. Unless the Borrowers' Representative otherwise advises the Administrative Agent, such payments shall be applied first to Base Margin Loans and only then to Libor Loans.

(b) The Borrowers, without notice or demand from the Administrative Agent or any Revolving Credit Lender, *shall* pay the Administrative Agent that amount, from time to time, which is necessary so that there is no OverLoan outstanding.

(c) The Borrowers *shall* repay the then entire unpaid balance of the Loan Account and all other Liabilities on the Termination Date.

(d) The Administrative Agent shall endeavor to cause the application of payments (if any), pursuant to Sections 2.11(a) and 2.11(b) against Libor Loans then outstanding in such manner as results in the least cost to the Borrowers, but shall not have any affirmative obligation to do so nor liability on account of the Administrative Agent's failure to have done so. In no event shall action or inaction taken by the Administrative Agent excuse any Borrower from any indemnification obligation under Section 2.11(e).

(e) The Borrowers shall indemnify the Administrative Agent and each Revolving Credit Lender and hold the Administrative Agent and each Revolving Credit Lender harmless from and against any loss, cost or expense (including loss of anticipated profits and amounts payable by the Administrative Agent or such Revolving Credit Lender on account of "breakage fees" (so-called)) which the Administrative Agent or such Revolving Credit Lender

may sustain or incur (including, without limitation, by virtue of acceleration after the occurrence of any Event of Default) as a consequence of the following:

(i) Default by any Borrower in payment of the principal amount of or any interest on any Libor Loan as and when due and payable, including any such loss or expense arising from interest or fees payable by such Revolving Credit Lender in order to maintain its Libor Loans.

(ii) Default by any Borrower in making a borrowing or conversion after the Borrowers' Representative has given (or is deemed to have given) a request for a Revolving Credit Loan or a request to convert a Revolving Credit Loan from one applicable interest rate to another.

(iii) The making of any payment on a Libor Loan or the making of any conversion of any such Loan to a Base Margin Loan on a day that is not the last day of the applicable Interest Period with respect thereto.

#### **2.12. INTEREST ON REVOLVING CREDIT LOANS.**

(a) Each Revolving Credit Loan shall bear interest at the Base Margin Rate unless timely notice is given (as provided in Section 2.6) that the subject Revolving Credit Loan (or a portion thereof) is, or is to be converted to, a Libor Loan.

(b) Each Revolving Credit Loan which consists of a Libor Loan shall bear interest at the applicable Libor Rate.

(c) Subject to, and in accordance with, the provisions of this Agreement, the Borrowers' Representative may cause all or a part of the unpaid principal balance of the Loan Account to bear interest at the Base Margin Rate or the Libor Rate as specified from time to time by notice to the Administrative Agent. For ease of reference and administration, each part of the Loan Account which bears interest at the same interest and for the same Interest Period is referred to herein as if it were a separate "Revolving Credit Loan".

(d) The Borrowers' Representative shall not select, renew, or convert any interest rate for a Revolving Credit Loan such that, in addition to interest at the Base Margin Rate, there are more than seven (7) Libor Rates applicable to the Revolving Credit Loans at any one time.

(e) The Borrowers shall pay accrued and unpaid interest on each Revolving Credit Loan in arrears as follows:

(i) On the applicable Interest Payment Date for that Revolving Credit Loan.

(ii) On the Termination Date and on the End Date.

(iii) Following the occurrence of any Event of Default, with such frequency as may be determined by the Administrative Agent.

(f) Following the occurrence of any Event of Default (and whether or not the Administrative Agent exercises the Administrative Agent's rights on account thereof), all Revolving Credit Loans shall bear interest, at the option of the Administrative Agent or at the instruction of the SuperMajority Revolving Credit Lenders, at a rate which is the aggregate of the rate applicable to Base Margin Loans *plus* three percent (3%) per annum.

**2.13. REVOLVING CREDIT COMMITMENT FEE.** In consideration of the commitment to make loans and advances to the Borrowers under the Revolving Credit, and to maintain sufficient funds available for such purpose, there has been earned by FRG and the Borrowers shall pay the "**Revolving Credit Commitment Fee**" (so referred to herein) to the Administrative Agent in the amount and payable as provided in the Fee Letter.

**2.14. ADMINISTRATIVE AGENT'S FEE.** In addition to any other fee or expense to be paid by the Borrowers on account of the Revolving Credit, the Borrowers shall pay the Administrative Agent the "**Administrative Agent's Fee**" at the times and in the amounts as set forth in the Fee Letter.

**2.15. UNUSED LINE FEE.** In addition to any other fee to be paid by the Borrowers on account of the Revolving Credit, the Borrowers shall pay the Administrative Agent the "**Unused Line Fee**" (so referred to herein) of (i) 0.25% per annum for any quarter during which average Excess Availability is greater than \$20,000,000.000 or (ii) 0.375% per annum for any quarter during which average Excess Availability is less than or equal to \$20,000,000.00 of the average difference, during the quarter just ended (or relevant period with respect to the payment being made on the Termination Date) between the Revolving Credit Ceiling and the aggregate of the unpaid principal balance of the Loan Account and the undrawn Stated Amount of L/C's outstanding during the relevant period. The Unused Line Fee shall be paid in arrears, on the first day of each quarter after the execution of this Agreement and on the Termination Date.

**2.16. REVOLVING CREDIT EARLY TERMINATION FEE.**

(a) In the event that the Termination Date occurs, for any reason (whether by virtue of Acceleration or otherwise), prior to the date one year prior to the Maturity Date, then except as provided in Section 2.16(b), the Borrowers shall pay the Administrative Agent, for the Pro-Rata account of the Revolving Credit Lenders, the "**Revolving Credit Early Termination Fee**" (so referred to herein) consisting of (i) one and one-half percent (1 1/2%) of the Revolving Credit Ceiling in effect as of the date of this Agreement if the Termination Date shall occur at any time prior to the first anniversary of the Closing Date and (i) one percent (1%) of the Revolving Credit Ceiling in effect as of the date of this Agreement if the Termination Date shall occur at any time after the first anniversary of the Closing Date and prior to one year prior to the Maturity Date.

(b) No Revolving Credit Early Termination Fee shall be due and payable in the event of the early termination of the Revolving Credit in connection with a refinancing of the

Revolving Credit which is agented or provided by FRG or any Affiliate of FRG, *it being understood that* neither FRG nor any affiliate of FRG has agreed to provide any such refinancing.

#### **2.17. AGENTS' AND LENDERS' DISCRETION.**

(a) Each reference in the Loan Documents to the exercise of discretion, reasonable discretion, or the like by any Agent or any Lender shall be to such Person's reasonable exercise of its judgment, in good faith (which shall be rebuttably presumed), based upon such Person's consideration of any such factors as that Agent or that Lender, taking into account information of which that Person then has actual knowledge, reasonably believes:

(i) Will or reasonably could be expected to affect, in more than a *de minimis* manner, the value of the Collateral, the enforceability of the Collateral Agent's Collateral Interests therein, or the amount which the Collateral Agent would likely realize therefrom (taking into account delays which may possibly be encountered in the Collateral Agent's realizing upon the Collateral and likely Costs of Collection).

(ii) Indicates that any report or financial information delivered to any Agent or any Lender by or on behalf of any Loan Party is incomplete, inaccurate, or misleading in any material manner or was not prepared in accordance with the requirements of this Agreement.

(iii) That a Default has occurred and is continuing.

(b) In the exercise of such judgment, each Agent or each Lender reasonably also may take into account any of the following factors:

(i) Those included in, or tested by, the definitions of "Eligible Accounts" and "Eligible Inventory".

(ii) The current financial and business climate of the industry in which each Loan Party competes (having regard for that Loan Party's position in that industry).

(iii) General macroeconomic conditions which have a material effect on the Loan Parties' cost structure.

(iv) Material changes in or to the mix of the Borrowers' Inventory.

(v) Seasonality with respect to the Borrowers' Inventory and patterns of retail sales.

(vi) Such other factors as each Agent and each Lender reasonably determine as having a material bearing on credit risks associated with the providing of loans and financial accommodations to the Borrowers.



(c) The burden of establishing the failure of any Agent or any Lender to have acted in a reasonable manner in such Person's exercise of such discretion shall be the Loan Parties' and may be made only by clear and convincing evidence.

## **2.18. PROCEDURES FOR ISSUANCE OF L/C's.**

(a) The Borrowers' Representative may request that the Administrative Agent cause the issuance by the Issuer of L/C's for the account of a Borrower. Each such request shall be in such manner as may from time to time be reasonably acceptable to the Administrative Agent.

(b) The Administrative Agent will endeavor to cause the issuance of any L/C so requested by the Borrowers' Representative, *provided that*, at the time that the request is made, the Revolving Credit has not been suspended as provided in Section 2.6(g) and if so issued:

(i) The aggregate Stated Amount of all L/C's then outstanding, does not exceed \$20,000,000.

(ii) The expiry of the L/C is not later than the earlier of thirty (30) days prior to the Maturity Date or the following:

(A) Standby's: One (1) year from initial issuance.

(B) Documentaries: one hundred (100) days from issuance.

(iii) If the expiry of an L/C is later than the Maturity Date, it is 103% cash collateralized at its issuance.

(iv) An OverLoan will not result from the issuance of the subject L/C.

(c) Each Borrower shall execute such documentation to apply for and support the issuance of an L/C as may be required by the Issuer.

(d) There shall not be any recourse to, nor liability of, any Agent or any Lender on account of

(i) Any delay or refusal by an Issuer to issue an L/C;

(ii) Any action or inaction of an Issuer on account of or in respect to, any L/C except where there is a specific finding in a judicial proceeding (in which the Administrative Agent has had an opportunity to be heard), from which finding no further appeal is available, that the subject action or omission to act had been in actual bad faith or grossly negligent or constituted willful misconduct.

(e) The Borrowers shall reimburse the Issuer for the amount of any honoring of a drawing under an L/C on the same day on which such honoring takes place. The

Administrative Agent, without the request of any Borrower, may advance under the Revolving Credit (and charge to the Loan Account) the amount of any honoring of any L/C and other amount for which any Borrower, the Issuer, or the Revolving Credit Lenders become obligated on account of, or in respect to, any L/C. Such advance shall be made whether or not any Default has occurred and is continuing or such advance would result in an OverLoan. Such action shall not constitute a waiver of the Administrative Agent's rights under Section 2.11(b) hereof.

#### 2.19. FEES FOR L/C's.

(a) The Borrowers shall pay to the Administrative Agent the following per annum fees on account of L/C's, the issuance of which had been procured by the Administrative Agent monthly in arrears, and on the Termination Date and on the End Date based on the weighted average Stated Amount of L/C's outstanding during the period in respect of which such fee is being paid *except that*, following the occurrence and during the continuance of any Event of Default (and whether or not the Administrative Agent exercises the Administrative Agent's rights on account thereof), such fees, at the option of the Administrative Agent or the direction of the SuperMajority Revolving Credit Lenders, shall be the respective aggregate of those set forth below *plus* three percent (3%) per annum.

(i) Documentaries: The Libor Margin then in effect *minus* 50 basis points.

(ii) Standbys: The Libor Margin then in effect.

(b) In addition to the fee to be paid as provided in Subsection 2.19(a) above, the Borrowers shall pay to the Administrative Agent (or to the Issuer, if so requested by Administrative Agent), on demand, all customary issuance, processing, negotiation, amendment, and administrative fees and other amounts charged by the Issuer on account of, or in respect to, any L/C.

(c) If any change in Applicable Law shall either:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirements against letters of credit heretofore or hereafter issued by any Issuer or with respect to which any Revolving Credit Lender or any Issuer has an obligation to lend to fund drawings under any L/C; or

(ii) impose on any Issuer any other condition or requirements relating to any such letters of credit;

and the result of any event referred to in Section 2.19(c)(i) or 2.19(c)(ii), above, shall be to increase the cost to any Revolving Credit Lender or to any Issuer of issuing or maintaining any L/C (which increase in cost shall be the result of such Issuer's reasonable allocation among that Revolving Credit Lender's or Issuer's letter of credit customers of the aggregate of such cost increases resulting from such events), then, upon demand by the Administrative Agent and delivery by the Administrative Agent to the Borrowers' Representative of a certificate of an officer of the subject Revolving Credit Lender or the subject Issuer describing such change in

law, executive order, regulation, directive, or interpretation thereof, its effect on such Revolving Credit Lender or such Issuer, and the basis for determining such increased costs and their allocation, the Borrowers shall immediately pay to the Administrative Agent, from time to time as specified by the Administrative Agent, such amounts as shall be sufficient to compensate the subject Revolving Credit Lender or the subject Issuer for such increased cost. In the absence of manifest error, any Revolving Credit Lender's or any Issuer's determination of costs incurred under Sections 2.19(c)(i) or 2.19(c)(ii), above, and the allocation, if any, of such costs among the Borrowers and other letter of credit customers of such Revolving Credit Lender or such Issuer, if done in good faith and made on an equitable basis and in accordance with such officer's certificate, shall be conclusive and binding on the Borrowers.

**2.20. CONCERNING L/CS.**

(a) None of the Issuer, the Issuer's correspondents, any Lender, any Agent, or any advising, negotiating, or paying bank with respect to any L/C shall be responsible in any way for:

(i) The performance by any beneficiary under any L/C of that beneficiary's obligations to any Borrower.

(ii) The form, sufficiency, correctness, genuineness, authority of any person signing; falsification; or the legal effect of; any documents called for under any L/C if (with respect to the foregoing) such documents on their face appear to be in order.

(b) The Issuer may honor, as complying with the terms of any L/C and of any drawing thereunder, any drafts or other documents otherwise in order, but signed or issued by an administrator, executor, conservator, trustee in bankruptcy, debtor in possession, assignee for the benefit of creditors, liquidator, receiver, or other legal representative of the party authorized under such L/C to draw or issue such drafts or other documents.

(c) Unless otherwise agreed to, in the particular instance, each Borrower hereby authorizes any Issuer to:

(i) Select an advising bank, if any.

(ii) Select a paying bank, if any.

(iii) Select a negotiating bank, if any.

(d) All directions, correspondence, and funds transfers relating to any L/C are at the risk of the Borrowers. The Issuer shall have discharged the Issuer's obligations under any L/C which, or the drawing under which, includes payment instructions, by the initiation of the method of payment called for in, and in accordance with, such instructions (or by any other commercially reasonable and comparable method). None of the Agent, the Lenders, or the Issuer shall have any responsibility for any inaccuracy, interruption, error, or delay in transmission or delivery by post, telegraph or cable, or for any inaccuracy of translation.

(e) Each Agent's, each Lender's and the Issuer's rights, powers, privileges and immunities specified in or arising under this Agreement are in addition to any heretofore or at any time hereafter otherwise created or arising, whether by statute or rule of law or contract.

(f) Except to the extent otherwise expressly provided hereunder or agreed to in writing by the Issuer and the Borrowers' Representative, documentary L/C's will be governed by the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce, Publication No. 500, and standby L/C's will be governed by International Standby Practices ISP98 (adopted by the International Chamber of Commerce on April 6, 1998) and any respective subsequent revisions thereof.

(g) The obligations of the Borrowers under this Agreement with respect to L/C's are absolute, unconditional, and irrevocable and shall be performed strictly in accordance with the terms hereof under all circumstances, whatsoever including, without limitation, the following:

(i) Any lack of validity or enforceability or restriction, restraint, or stay in the enforcement of this Agreement, any L/C, or any other agreement or instrument relating thereto.

(ii) Any Borrower's consent to any amendment or waiver of, or consent to the departure from, any L/C.

(iii) The existence of any claim, set-off, defense, or other right which any Borrower may have at any time against the beneficiary of any L/C.

(iv) Any good faith honoring of a drawing under any L/C, which drawing possibly could have been dishonored based upon a strict construction of the terms of the L/C.

(h) Each Issuer shall be deemed to have agreed as follows:

(i) That any action taken or omitted by that Issuer, that Issuer's correspondents, or any advising, negotiating or paying bank with respect to any L/C and the related drafts and documents, shall be done in good faith and in compliance with foreign or domestic laws.

(ii) That the Borrowers shall not be required to indemnify the Issuer, the Issuer's correspondents, or any advising, negotiating or paying bank with respect to any L/C for any claims, damages, losses, liabilities, costs or expenses to the extent, caused by (x) the willful misconduct or gross negligence of the Issuer, the Issuer's correspondents, or any advising, negotiating or paying bank with respect to any L/C in determining whether a request presented under any Letter of Credit complied with the terms of such Letter of Credit or (y) the Issuer's failure to pay under any Letter of Credit after the presentation to it of a request strictly complying with the terms and conditions of such Letter of Credit.

## **2.21. CHANGED CIRCUMSTANCES.**

(a) The Administrative Agent may advise the Borrowers' Representative (in reasonable detail as to the facts and circumstances thereof) that the Administrative Agent has made the good faith determination (which determination, in the absence of manifest error, shall be final and conclusive) of any of the following:

(i) Adequate and fair means do not exist for ascertaining the rate for Libor Loans .

(ii) The continuation of or conversion of any Revolving Credit Loan to a Libor Loan has been made impracticable or unlawful by the occurrence of a contingency that materially and adversely affects the applicable market or the compliance by the Administrative Agent or any Revolving Credit Lender in good faith with any Applicable Law.

(iii) The indices on which the interest rates for Libor Loans are based shall no longer represent the effective cost to the Administrative Agent or any Revolving Credit Lender for U.S. dollar deposits in the interbank market for deposits in which it regularly participates.

(b) In the event that the Administrative Agent advises the Borrowers' Representative of an occurrence described in Section 2.21(a), then, until the Administrative Agent notifies the Borrowers' Representative that the circumstances giving rise to such notice no longer apply:

(i) The obligation of the Agent or each Revolving Credit Lender to make loans of the type affected by such changed circumstances or to permit the Borrowers' Representative to select the affected interest rate as otherwise applicable to any Revolving Credit Loans shall be suspended.

(ii) Any notice which the Borrowers' Representative had given the Administrative Agent with respect to any Libor Loan, the time for action with respect to which has not occurred prior to the Administrative Agent's having given notice pursuant to Section 2.21(a), shall be deemed at the option of the Administrative Agent to not having been given.

## **2.22. DESIGNATION OF BORROWERS' REPRESENTATIVE AS BORROWERS' AGENT.**

(a) Each Borrower hereby irrevocably designates and appoints the Borrowers' Representative as that Borrower's agent to obtain loans and advances under the Revolving Credit, and Tranche B Loan, the proceeds of which shall be available to each Borrower for those uses set forth in this Agreement. As the disclosed principal for its agent, each Borrower shall be obligated to the Agents and each Lender on account of loans and advances so made as if made directly by the Lenders to that Borrower, notwithstanding the manner by which such loans and advances are recorded on the books and records of the Borrowers' Representative and of any Borrower. In addition, each Loan Party other than the Borrowers hereby irrevocably designates and appoints the Borrowers' Representative as that Loan Party's agent to represent such Loan Party in all respects under this Agreement and the other Loan Documents.

(b) Each Borrower recognizes that credit available to it under the Revolving Credit and the Tranche B Loan is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to discharge all Liabilities of each of the other Borrowers as if the Borrower which is so assuming and agreeing was each of the other Borrowers.

(c) The Borrowers' Representative shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Borrowers' Representative has requested a Revolving Credit Loan or Tranche B Loan.

(d) The proceeds of each loan and advance provided under the Revolving Credit which is requested by the Borrowers' Representative shall be deposited into the Operating Account or as otherwise indicated by the Borrowers' Representative. The Borrowers' Representative shall cause the transfer of the proceeds thereof to the (those) Borrower(s) on whose behalf such loan and advance was obtained. Neither the Agent nor any Lender shall have any obligation to see to the application of such proceeds.

### **2.23. LENDERS' COMMITMENTS.**

(a) Subject to Section 17.1 (which provides for assignments and assumptions of commitments) and Section 2.24 (which provides for the increase of commitments), each Revolving Credit Lender's "**Revolving Credit Percentage Commitment**", and "**Revolving Credit Dollar Commitment**" (respectively so referred to herein) is set forth on **EXHIBIT 2.23**, annexed hereto.

(b) The obligations of each Revolving Credit Lender are several and not joint. No Revolving Credit Lender shall have any obligation to make any loan or advance under the Revolving Credit in excess of either of the following:

- (i) That Revolving Credit Lender's Revolving Credit Percentage Commitment of the subject loan or advance or of Availability.
- (ii) that Revolving Credit Lender's Revolving Credit Dollar Commitment.

(c) No Revolving Credit Lender shall have any liability to the Borrowers on account of the failure of any other Revolving Credit Lender to provide any loan or advance under the Revolving Credit nor any obligation to make up any shortfall which may be created by such failure.

(d) The Revolving Credit Dollar Commitments, Revolving Credit Commitment Percentages, and identities of the Revolving Credit Lenders (but not the Revolving Credit Ceiling) may be changed, from time to time by the reallocation or assignment of

Revolving Credit Dollar Commitments and Revolving Credit Commitment Percentages amongst the Revolving Credit Lenders or with other Persons who determine to become "Revolving Credit Lenders"; *provided, however* unless an Event of Default has occurred (in which event, no consent of any Borrower is required) any assignment to a Person not then a Revolving Credit Lender shall be subject to the prior consent of the Borrowers' Representative (not to be unreasonably withheld), which consent will be deemed given unless the Borrowers' Representative provides the Administrative Agent with written objection not more than five (5) Business Days after the Administrative Agent shall have given the Borrowers' Representative written notice of a proposed assignment, such notice to state that consent will be deemed given by the Borrowers' Representative if written objection is not received by the Administrative Agent within such five (5) Business Days.

(e) Upon written notice given the Borrowers' Representative from time to time by the Administrative Agent of any assignment or allocation referenced in Section 2.23(d):

(i) Each Borrower shall execute one or more replacement Revolving Credit Notes to reflect such changed Revolving Credit Dollar Commitments, Revolving Credit Commitment Percentages, and identities and shall deliver such replacement Revolving Credit Notes to the Administrative Agent (which promptly thereafter shall deliver to the Borrowers' Representative the Revolving Credit Notes so replaced) *provided however*, in the event that a Revolving Credit Note is to be exchanged following its acceleration or the entry of an order for relief under the Bankruptcy Code with respect to any Borrower, the Administrative Agent, in lieu of causing the Borrowers to execute one or more new Revolving Credit Notes, may issue the Administrative Agent's Certificate confirming the resulting Revolving Credit Dollar Commitments and Revolving Credit Percentage Commitments.

(ii) Such change shall be effective from the effective date specified in such written notice and any Person added as a Revolving Credit Lender shall have all rights, privileges, and obligations of a Revolving Credit Lender hereunder thereafter as if such Person had been a signatory to this Agreement and any other Loan Document to which a Revolving Credit Lender is a signatory and any Person removed as a Revolving Credit Lender shall be relieved of any obligations or responsibilities of a Revolving Credit Lender hereunder thereafter.

#### **2.24. INCREASE OF COMMITMENTS**

(a) So long as no Default or Event of Default exist or would arise as a result thereof, Borrowers' Representative shall have the right at any time, but only one time during the term of this Agreement, to request an increase of the Revolving Credit Ceiling and the Revolving Credit Dollar Commitments to an amount not to exceed \$110,000,000. Any such requested increase shall be first made to all existing Revolving Credit Lenders on a pro rata basis. In the event that any existing Revolving Credit Lender does not notify the Administrative Agent within ten (10) Business Days from the receipt of the requested increase that the such existing Revolving Credit Lender will increase its Revolving Credit Dollar Commitment, and the amount of its increase, the existing Revolving Credit Lender shall be deemed to have declined the

requested increase of its Revolving Credit Dollar Commitment. To the extent that one or more existing Revolving Credit Lenders decline to increase their respective Revolving Credit Dollar Commitments, or decline to increase their Revolving Credit Dollar Commitments to the amount requested by the Borrowers' Representative, the Agent shall use reasonable efforts to arrange for other Persons to become Revolving Credit Lenders hereunder and to issue commitments in an amount equal to the amount of the increase in the Revolving Credit Ceiling and Revolving Credit Dollar Commitments requested by the Borrowers' Representative and not accepted by the existing Revolving Credit Lenders (each such increase by either means, a "**Commitment Increase**", and each such Person issuing, or Revolving Credit Lender increasing, its Revolving Credit Dollar Commitment, an "**Additional Commitment Lender**"), *provided, however*, that (x) no Revolving Credit Lender shall be obligated to provide a Commitment Increase as a result of any such request by the Borrower' Representative, and (y) any Additional Commitment Lender which is not an existing Revolving Credit Lender shall be subject to the approval of the Administrative Agent and (z) nothing contained herein shall constitute the unconditional obligation of the Administrative Agent to provide or obtain commitments for such Commitment Increase, as the Administrative Agent only is agreeing hereby to use its reasonable efforts to arrange for Commitment Increases and Additional Commitment Lenders.

(b) No Commitment Increase shall become effective unless and until each of the following conditions has been satisfied:

(i) the Borrowers' Representative, the Administrative Agent, and any Additional Commitment Lender shall have executed and delivered a joinder to the Loan Documents in such form as the Administrative Agent may reasonably require;

(ii) the Borrowers shall have paid such commitment fees and other compensation to the Additional Commitment Lenders as the Borrowers' Representative, the Administrative Agent and each such Additional Commitment Lenders may agree;

(iii) the Borrowers shall have paid such arrangement fees to the Administrative Agent as the Borrowers' Representative and the Agent may agree;

(iv) to the extent requested by any Additional Commitment Lender, a Revolving Credit Note will be issued at the Borrowers' expense, to each such Additional Commitment Lender, to the extent necessary to reflect the new Revolving Credit Dollar Commitment of such Additional Commitment Lender; and

(v) the Borrower and the Additional Commitment Lenders shall have delivered such other instruments, documents and agreements as the Administrative Agent may have reasonably requested.

(c) The Administrative Agent shall promptly notify each Revolving Credit Lender as to the effectiveness of each Commitment Increase (with each date of such effectiveness being referred to herein as a "**Commitment Increase Date**"), and at such time (x) the Revolving Credit Dollar Commitments under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Commitment Increases, (y) **EXHIBIT 2.23** shall



be deemed modified, without further action, to reflect the revised Revolving Credit Dollar Commitments and Revolving Credit Percentage Commitments of the Revolving Credit Lenders, and (z) this Agreement shall be deemed amended, without further action, to the extent necessary to reflect such increase in the Revolving Credit Ceiling, such Commitment Increases, and the addition of the Additional Commitment Lenders (if applicable).

(d) In connection with Commitment Increases hereunder, the Revolving Credit Lenders and the Borrowers agree that, notwithstanding anything to the contrary in this Agreement, the Borrowers shall, in coordination with the Administrative Agent, (x) repay outstanding Revolving Credit Loans of certain Revolving Credit Lenders, and obtain Revolving Credit Loans from certain other Revolving Credit Lenders (including the Additional Commitment Lenders), but in no event in excess of any such Revolving Credit Lender's respective Revolving Credit Dollar Commitment, or (y) take such other actions as reasonably may be required by the Administrative Agent, in each case to the extent necessary so that all of the Revolving Credit Lenders effectively participate in each of the outstanding Revolving Credit Loans pro rata on the basis of their respective Revolving Credit Percentage (determined after giving effect to any Commitment Increase).

**2.25. REFERENCES TO ORIGINAL AGREEMENT** The terms "Loan and Security Agreement," "this Agreement," "Loan Agreement," and similar references as used in the documents, instruments and agreements executed and/or delivered in connection with the Original Agreement, shall mean the Original Agreement as amended and restated hereby in its entirety, and each of such documents, instruments and agreements is hereby so amended. Except as specifically agreed herein or in any of the Loan Documents executed concurrently herewith, each of the Loan Documents executed and delivered in connection with the Original Agreement is hereby ratified and confirmed and shall remain in full force and effect in accordance with its terms. Without limitation of the foregoing, the Loan Parties hereby confirm that the Collateral Interests granted under the Original Agreement and each other applicable Loan Document continue to secure all of the Liabilities.

### **ARTICLE 3 - The Tranche B Loan:**

#### **3.1. THE TRANCHE B LOAN.**

(a) Subject to satisfaction of the conditions precedent set forth in Article 4 on the Closing Date, the Borrowers shall borrow from the Tranche B Lender and the Tranche B Lender shall lend to the Borrowers the sum of \$7,500,000.00 (the "**Tranche B Loan**"), repayable with interest as provided herein.

(b) The proceeds of the Tranche B Loan shall be used solely for the Rochester Acquisition.

**3.2. THE TRANCHE B NOTE.** The obligation to repay the Tranche B Loan, with interest as provided herein, shall be evidenced by a note (the "**Tranche B Note**") in the form of **EXHIBIT 3.2**, annexed hereto, executed by the Borrowers. Neither the original nor a copy of the Tranche B Note shall be required, *however*, to establish or prove any Liability. Upon the

Borrowers' Representative's receipt of an affidavit from the Administrative Agent to the effect that the Tranche B Note has been lost, mutilated, or destroyed, the Borrowers shall execute a replacement thereof and deliver such replacement to the Tranche B Lender.

### 3.3. PAYMENT OF PRINCIPAL OF THE TRANCHE B LOAN.

(a) Provided at the time and after giving effect to the proposed payment, Excess Availability is greater than \$12,500,000.00, the Borrowers shall make to the Administrative Agent for the account of the Tranche B Lender the following payments on or before the dates specified (the "**Tranche B Amortization Payment**"), such payments to be applied to the unpaid principal balance of the Tranche B Loan:

<u>Date</u>	<u>Payment</u>
October 29, 2005	\$1,875,000.00
October 29, 2006	\$1,875,000.00

(b) Except as specifically set forth in Section 3.3(a) with respect to the Tranche B Amortization Payment, the Borrowers may not prepay all or any portion of the principal balance of the Tranche B Loan prior to the Maturity Date or Acceleration unless each of the Tranche B Loan Prepayment Conditions is satisfied in connection with such prepayment; *provided, however*, that notwithstanding the foregoing, so long as no Default shall have occurred and be continuing on the date on which such prepayment is made and immediately after giving effect to such prepayment, the Tranche B Loan may be prepaid without satisfaction of the Tranche B Loan Prepayment Conditions if the sole source of funds for such prepayment shall be proceeds from the sale of equity in Casual Male on terms and conditions and subject to execution of documentation satisfactory to the Administrative Agent. Subject to satisfaction of the Tranche B Loan Prepayment Conditions or the exception described in the preceding sentence, any prepayment of the Tranche B Loan shall be without penalty or premium.

(c) If any portion of the Tranche B Loan is paid prior to the Maturity Date for any reason, other than the Tranche B Amortization Payment (whether following satisfaction of the Tranche B Loan Prepayment Conditions, Acceleration, or otherwise), all such prepayments in a minimum amount of \$2,000,000. and in increments in excess thereof of \$500,000.

(d) The Borrowers shall repay the then entire unpaid balance of the Tranche B Loan and all accrued and unpaid interest thereon on the Termination Date.

### 3.4. INTEREST ON THE TRANCHE B LOAN.

(a) The unpaid principal balance of the Tranche B Loan shall bear interest, until repaid, at the rate of LIBOR +5% per annum (the "**Tranche B Interest Rate**").

(b) In the event of the amendment of any interest rate which is or which may be applicable to the unpaid principal balance of the Revolving Credit, the Tranche B Interest

Rate shall be increased by a like amount (e.g. if the Base Margin Rate is increased by one-quarter of one percent per annum or the Libor Rate is increased by 25 basis points, the Tranche B Interest Rate shall likewise be increased by one-quarter of one percent per annum).

(c) Following the occurrence of any Event of Default (and whether or not Acceleration has taken place), at the direction of the Tranche B Lender, interest shall accrue and shall be payable on the unpaid principal balance of the Tranche B Loan at the aggregate of the Tranche B Interest Rate then in effect plus four percent (4%) per annum.

(d) The Borrowers shall pay accrued and unpaid interest on the unpaid principal balance of the Tranche B Loan as follows:

- (i) Monthly on the last date of each month;
- (ii) On the Termination Date and on the End Date; and
- (iii) Following the occurrence of an Event of Default, with such frequency as may be determined by the Tranche B Lender.

**3.5. PAYMENTS ON ACCOUNT OF TRANCHE B LOAN.** The Borrowers authorize the Administrative Agent to determine and to pay over directly to the Tranche B Lender any and all amounts due and payable from time to time under or on account of the Tranche B Loan as advances under the Revolving Credit *it being understood, however*, that the authorization of the Administrative Agent provided in this Section 3.5 shall not excuse the Borrowers from fulfilling their obligations to the Tranche B Lender on account of the Tranche B Loan nor place any obligation on the Administrative Agent to do so. The Administrative Agent shall provide prompt advice to the Borrowers' Representative of any amount which is so paid over by the Administrative Agent to the Tranche B Lender pursuant to this Section 3.5. The Tranche B Lender shall refund to the Administrative Agent any overpayment which may have been made pursuant to this Section 3.5. The Borrowers shall not be entitled to any credit, rebate or repayment of any fee previously earned by the Tranche B Lender pursuant to this Agreement notwithstanding any termination of this Agreement or suspension or termination of the Administrative Agent's and any Lender's respective obligation to make loans and advances hereunder.

**ARTICLE 4 - CONDITIONS PRECEDENT:**

As a condition to the effectiveness of this Agreement, the establishment of the Revolving Credit, the making of the first loan under the Revolving Credit, and the making of the Tranche B Loan, each of the documents respectively described in Sections 4.1 through and including 4.5, (each in form and substance satisfactory to the Administrative Agent and the Tranche B Lender) shall have been delivered to the Administrative Agent, and the conditions respectively described in Sections 4.6 through and including 4.13, shall have been satisfied:

**4.1. DUE DILIGENCE.**

- (a) Certificates of good standing for each Loan Party, respectively issued by the Secretary of State for the state in which that Loan Party is organized.

(b) Certificates of due qualification, in good standing, issued by the Secretary(ies) of State of each State in which the nature of a Loan Party's business conducted or assets owned could require such qualification.

(c) Certificates of each Loan Party's clerk or secretary, as applicable, of the due adoption, continued effectiveness, and setting forth the texts of, each resolution adopted in connection with the establishment of the loan arrangement contemplated by the Loan Documents and attesting to the true signatures of each Person authorized as a signatory to any of the Loan Documents.

**4.2. OPINION.** One or more reasonable and customary opinions of counsel to the Loan Parties

**4.3. ADDITIONAL DOCUMENTS.** Such additional instruments and documents as the Administrative Agent or its counsel or the Tranche B Lender reasonably may require or request, including, without limitation, written instructions to the Administrative Agent to apply the proceeds of the Tranche B Loan and the first funding under the Revolving Credit to the Rochester Acquisition.

**4.4. OFFICERS' CERTIFICATES.** Certificates executed by (a) either the President or the Chief Executive Officer and (b) the Chief Financial Officer of the Borrowers' Representative and stating that the representations and warranties made by the Loan Parties to the Agents and the Lenders in the Loan Documents are true and complete in all material respects as of the date of such Certificate, and that no event has occurred which is or which, solely with the giving of notice or passage of time (or both) would be an Event of Default.

**4.5. ROCHESTER ACQUISITION.** The Administrative Agent shall have received (i) a fully executed copy of the Rochester Acquisition Agreement, together with all exhibits and schedules thereto and all other agreements, documents and instruments executed and delivered in accordance therewith, each certified by an officer of the Borrowers' Representative as being true and correct copies thereof; (ii) evidence that the Rochester Acquisition Agreement is in full force and effect, all filings, consents and approvals required by applicable law for consummation of the Rochester Acquisition shall have been obtained and shall be effective and that the Rochester Acquisition shall be consummated contemporaneously with the making of the first Revolving Credit Loan and the making of the Tranche B Loan; (iii) evidence that all assets acquired pursuant to the Rochester Acquisition Agreement are free and clear of any lien, claim, and encumbrance, other than the liens granted to the Lenders pursuant to this Agreement and Permitted Encumbrances.

**4.6. REPRESENTATIONS AND WARRANTIES.** Each of the representations made by or on behalf of each Loan Party in this Agreement or in any of the other Loan Documents or in any other report, statement, document, or paper provided by or on behalf of each Loan Party shall be true and complete in all material respects as of the date as of which such representation or warranty was made.

**4.7. MINIMUM DAY ONE EXCESS AVAILABILITY.** After giving effect to the first funding under the Revolving Credit, the making of the Tranche B Loan, and the issuance of any L/Cs, Excess Availability shall not be less than \$20,000,000.

**4.8. ALL FEES AND EXPENSES PAID.** All fees due at or immediately after the first funding under the Revolving Credit and the making of the Tranche B Loan, and all costs and expenses incurred by the Administrative Agent, the Collateral Agent and the Tranche B Lender in connection with the establishment of the credit facility contemplated hereby (including the reasonable fees and expenses of counsel to the Administrative Agent, the Collateral Agent and the Tranche B Lender), shall have been paid in full.

**4.9. COLLATERAL, ETC.**

(a) Each document (including, without limitation, Uniform Commercial Code financing statements) required by law or requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Collateral Agent a first priority perfected security interest in the Collateral shall have been properly filed, registered or recorded in each jurisdiction where required and the Collateral Agent shall have a first priority perfected security interest in the Collateral, subject only to Permitted Encumbrances.

(b) All accounts payable of the Loan Parties shall be within invoice terms (subject only to good faith disputes).

(c) The Inventory Purchase Agreement shall have been executed and delivered by all the Loan Parties, shall be in full force and effect and shall be satisfactory to the Administrative Agent.

**4.10. No Default.**

(a) No Default shall have occurred and be continuing.

(b) Except as specifically set forth on **EXHIBIT 4.10(b)**, no default shall have occurred and be continuing under any material contract or other agreement to which any Loan Party is a party.

**4.11. Financial Statements; Legal Due Diligence; No Adverse Change.**

(a) The Administrative Agent shall be satisfied that all financial statements and projections delivered to it fairly present the Consolidated business and financial condition of the Borrowers and their Consolidated Subsidiaries.

(b) No event shall have occurred or failed to occur, which occurrence or failure is or could have a materially adverse effect upon any Loan Party's financial condition when compared with the financial condition of such Loan Party as reflected in its most recent interim management prepared financial statements, annual report(s), public filings and projections provided to the Administrative Agent or any Lender.

(c) Counsel to the Administrative Agent shall have completed its legal due diligence (including, without limitation, with respect to the RBT Acquisition) with results reasonably satisfactory to the Administrative Agent and such counsel.

(d) The Administrative Agent and the Tranche B Lender shall be satisfied that no information or materials supplied by or on behalf of the Loan Parties contain material misstatements or omissions which could be materially misleading.

(e) The Administrative Agent and the Tranche B Lender shall be satisfied that no materially adverse change in any governmental regulations or policies affecting any Loan Party or Agent shall have occurred.

**4.12. NO LITIGATION.** The Administrative Agent and its counsel shall have received evidence satisfactory to each that there are no actions, suits or proceedings at law or in equity or by or before any governmental instrumentality or other agency or regulatory authority now pending or threatened against any Loan Party the result of which is reasonably likely to have a material adverse effect on the RBT Acquisition or on such Loan Party or its businesses or assets.

**4.13. BENEFIT OF CONDITIONS PRECEDENT.** The conditions set forth in this Article 4 are for the sole benefit of each Agent and each Lender and may be waived by the Administrative Agent and the Tranche B Lender, in whole or in part, without prejudice to any Agent or any Lender.

No document shall be deemed delivered to the Administrative Agent, the Collateral Agent, the Tranche B Lender or any Revolving Credit Lender until received and accepted by the Administrative Agent at its offices in Boston, Massachusetts. Under no circumstances shall this Agreement take effect until executed and accepted by the Administrative Agent at said offices.

**ARTICLE 5 - GENERAL REPRESENTATIONS, COVENANTS AND WARRANTIES:**

To induce each Lender to establish the credit facilities contemplated herein and to induce the Revolving Credit Lenders to provide loans and advances under the Revolving Credit (each of which loans shall be deemed to have been made in reliance thereupon) and to induce the Tranche B Lender to make the Tranche B Loan, respectively, as contemplated hereby, the Loan Parties, in addition to all other representations, warranties, and covenants made by any Loan Party in any other Loan Document, make those representations, warranties, and covenants included in this Agreement.

**5.1. PAYMENT AND PERFORMANCE OF LIABILITIES.** The Borrowers shall pay each payment Liability when due (or when demanded, if payable on demand) and shall promptly, punctually, and faithfully perform each other Liability.

**5.2. DUE ORGANIZATION. AUTHORIZATION. NO CONFLICTS.**

(a) Each Loan Party presently is and hereafter shall remain in good standing under the laws of the State in which it is organized, as set forth in the Preamble and is and shall hereafter remain duly qualified and in good standing in every other State in which, by reason of the nature or location of such Loan Party's assets or operation of such Loan Party's business, such qualification is necessary, except where the failure to so qualify could not reasonably be expected to have a material adverse effect on the business or assets of that Loan Party.

(b) Each Loan Party's respective organizational identification number assigned to it by the State of its organization and its respective federal employer identification number is stated on **EXHIBIT 5.2**, annexed hereto.

(c) No Loan Party shall change its State of organization; any organizational identification number assigned to that Loan Party by that State; or that Loan Party's federal taxpayer identification number on less than sixty (60) days prior written notice (in reasonable detail) to the Administrative Agent.

(d) Each Affiliate of the Loan Parties is listed on **EXHIBIT 5.2**. The Borrowers' Representative shall provide the Administrative Agent with prior written notice of any entity's becoming or ceasing to be an Affiliate.

(e) Each Loan Party has all requisite power and authority to execute and deliver all Loan Documents to which that Loan Party is a party and has and will hereafter retain all requisite power to perform all Liabilities.

(f) The execution and delivery by each Loan Party of each Loan Document to which it is a party; each Loan Party's consummation of the transactions contemplated by such Loan Documents (including, without limitation, the creation of Collateral Interests by that Loan Party to secure the Liabilities); each Loan Party's performance under those of the Loan Documents to which it is a party; the borrowings hereunder; and the use of the proceeds thereof:

(i) Have been duly authorized by all necessary action.

(ii) Do not, and will not, contravene in any material respect any provision of any Requirement of Law or obligation of that Loan Party, where such contravention would have a material adverse effect on that Loan Party.

(iii) Will not result in the creation or imposition of, or the obligation to create or impose, any Encumbrance upon any assets of that Loan Party pursuant to any Requirement of Law or obligation, except pursuant to or as permitted by the Loan Documents.

(g) The Loan Documents have been duly executed and delivered by each Loan Party and are the legal, valid and binding obligations of each Loan Party, enforceable against each Loan Party in accordance with their respective terms, except as such enforceability may be subject to limitations on the rights and remedies of secured creditors generally imposed under bankruptcy or insolvency law and that the availability of equitable relief is subject to the discretion of the court from which such relief is sought.

### 5.3. TRADE NAMES.

(a) **EXHIBIT 5.3**, annexed hereto, is a listing of:

(i) All names under which any Loan Party conducted its business during the five (5) years preceding the date of this Agreement.

(ii) All Persons with whom any Loan Party consolidated or merged, or from whom any Loan Party acquired in a single transaction or in a series of related transactions substantially all of such Person's assets, in each case during the five (5) years preceding the date of this Agreement.

(b) The Borrowers' Representative will provide the Administrative Agent with not less than twenty-one (21) days prior written notice (with reasonable particularity) of any change to any Loan Party's name from that under which that Loan Party is conducting its business at the execution of this Agreement and will not effect such change unless each Loan Party is then in compliance with all provisions of this Agreement.

### 5.4. INFRASTRUCTURE.

(a) Each Loan Party has and will maintain a sufficient infrastructure to conduct its business as presently conducted and as contemplated to be conducted following its execution of this Agreement.

(b) To the Borrowers' knowledge, except as set forth in **EXHIBIT 5.4(b)**, each Loan Party owns and possesses, or has the right to use (and will hereafter own, possess, or have such right to use) all patents, industrial designs, trademarks, trade names, trade styles, brand names, service marks, logos, copyrights, trade secrets, know-how, confidential information, and other intellectual or proprietary property of any third Person necessary for that Loan Party's conduct of that Loan Party's business except where the failure to own, possess, or have such right or use will not have more than a *de minimis* adverse effect on any Loan Party.

(c) To the Borrowers' knowledge, the conduct by each Loan Party of that Loan Party's business does not presently infringe (nor will any Loan Party conduct its business in the future so as to infringe) the patents, industrial designs, trademarks, trade names, trade styles, brand names, service marks, logos, copyrights, trade secrets, know-how, confidential information, or other intellectual or proprietary property of any third Person except where such infringement will not have no more than a *de minimis* adverse effect on that Loan Party.

### 5.5. LOCATIONS.

(a) The Collateral, and the books, records, and papers of the Loan Parties pertaining thereto, are kept and maintained solely at the following locations:

(i) The Borrowers' Representative's chief executive offices which are at 555 Turnpike Street, Canton, Massachusetts 02021.



(ii) Those locations which are listed on **EXHIBIT 5.5**, annexed hereto, which EXHIBIT includes, with respect to each such location, the name and address of the landlord on the Lease which covers such location (or an indication that a Loan Party owns the subject location) and of all service bureaus with which any such records are maintained and the names and addresses of each Loan Party's landlord(s).

(b) No Loan Party shall remove any of the Collateral from said chief executive office or those locations listed on **EXHIBIT 5.5** except for the following purposes:

(i) To accomplish sales of Inventory in the ordinary course of business or sales permitted by Section 5.14(d).

(ii) To move Inventory from one such location to another such location.

(iii) To utilize such of the Collateral as is removed from such locations in the ordinary course of business (such as motor vehicles).

(c) Except where caused by a force majeure or as otherwise agreed by the Administrative Agent, and except with respect to the locations referred to in Section 5.14(d) as to which five (5) days notice shall be deemed sufficient, no Loan Party shall cease the conduct of business at any of its present or future Stores for more than fifteen (15) consecutive days without first furnishing the Administrative Agent with not less than thirty (30) days (or such lesser period as the Administrative Agent may agree) prior written notice thereof.

#### **5.6. STORES.**

(a) No Loan Party is or may commit to or become legally obligated to open additional Stores where such commitment, obligation, or opening is prohibited by, or would result in a breach of, this Agreement.

(b) Except for in-transit Inventory, no tangible personal property of any Loan Party (beyond a *de minimis* amount of such property) is in the care or custody of any third party or stored or entrusted with a bailee or other third party *other than* as otherwise consented to in writing by the Administrative Agent.

#### **5.7. TITLE TO ASSETS.**

(a) The Loan Parties are, and shall hereafter remain, the owners of the Collateral free and clear of all Encumbrances with the exceptions of the following:

(i) Encumbrances in favor of the Collateral Agent.

(ii) Permitted Encumbrances.

(b) Except as disclosed on **EXHIBIT 5.7(b)**, annexed hereto, the Loan Parties do not have possession of any property on consignment to the Loan Parties and will not have possession of property on consignment hereafter.

(c) No Loan Party shall acquire or obtain the right to use any Equipment in which any third party has an interest, except for:

(i) Equipment which is merely incidental to the conduct of that Loan Party's business; or

(ii) Equipment, the acquisition or right to use of which has been consented to by the Administrative Agent, which consent may be conditioned solely upon the Administrative Agent's receipt of an agreement, substantially in the form of **EXHIBIT 5.7(c)(ii)**, annexed hereto with the third party which has an interest in such Equipment; or

(iii) Equipment subject to Leases, Capital Leases or licenses otherwise permitted hereunder.

(d) No Affiliate (other than a Loan Party) which is owned, directly or indirectly, by a Loan Party has, and none will acquire, any assets other than assets of nominal value, unless (i) such acquisition of assets is not prohibited by another provision of this Agreement and (ii) the ownership interests of such Affiliate shall have been pledged to the Collateral Agent for the benefit of the Lenders as their interests may appear and the Collateral Agent has a first priority, perfected security interest in such ownership interests.

#### **5.8. INDEBTEDNESS.**

(a) The Loan Parties do not, and shall not hereafter, have any Indebtedness with the exception of Permitted Indebtedness and shall not make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness except Permitted Indebtedness; *provided, however*, that the Loan Parties will not make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of the Rochester Indebtedness or principal of or interest on any Subordinated Indebtedness except for the following:

(i) with respect to the 5% Subordinated Note, (x) regularly scheduled payments of interest and (y) commencing with May 14, 2003, regularly scheduled payments of principal (the aggregate of principal payments during any twelve month period not in any event to exceed \$3,000,000), so long as in the case of any payment under clause (x) or (y), as of the date of such payment, and after giving effect thereto, there exists no Default; and

(ii) with respect to the Rochester Indebtedness the amount of the contingent purchase price, if any, as and when due pursuant to Section 2.5.3 of the Rochester Acquisition Agreement so long as on the date of any such payment, and after giving effect thereto, (x) there exist no Default; and (y) Excess Availability is greater than \$12,500,000.00;

(iii) with respect to the Convertible Notes regularly scheduled payments of interest so long as of the date of such payment, and after giving effect thereto, there exists no Default.

The terms and conditions (including without limitation, the payment terms thereunder (including, without limitation, the timing thereof)) of the Rochester Acquisition Agreement, the Convertible Notes, the Indenture, the 5% Subordinated Note, and Subordination Agreements may not be amended, modified or supplemented in any respect without the prior written consent of the Administrative Agent, SuperMajority Revolving Credit Lenders and the Tranche B Lender.

#### 5.9. INSURANCE.

(a) **EXHIBIT 5.9**, annexed hereto, is a schedule of all insurance policies owned by the Loan Parties or under which any Loan Party is the named insured. Each of such policies is in full force and effect. Neither the issuer of any such policy nor any Loan Party is in default or violation of any such policy.

(b) The Loan Parties shall have and maintain at all times insurance covering such risks, in such amounts, containing such terms, in such form, for such periods, and written by such companies as may be satisfactory to the Administrative Agent.

(c) All insurance carried by the Loan Parties shall provide for a minimum of thirty (30) days' prior written notice of cancellation to the Administrative Agent and all such insurance which covers the Collateral shall include an endorsement in favor of the Agents, which endorsement shall provide that the insurance, to the extent of the Agent's respective interest therein, shall not be impaired or invalidated, in whole or in part, by reason of any act or neglect of any Loan Party or by the failure of any Loan Party to comply with any warranty or condition of the policy, and shall not include an endorsement in favor of any other Person except for endorsements naming one or more of the sellers under the Casual Male Acquisition Agreement as additional insureds to the extent required or contemplated by such Casual Male Acquisition Agreement.

(d) The coverage reflected on **EXHIBIT 5.9** presently satisfies the foregoing requirements, *it being recognized by each Loan Party, however*, that such requirements may hereafter be modified as required by the Administrative Agent in its reasonable discretion to reflect changing circumstances.

(e) The Borrowers' Representative shall furnish the Administrative Agent from time to time with certificates or other evidence satisfactory to the Administrative Agent regarding compliance by the Loan Parties with the foregoing requirements.

(f) In the event of the failure by the Loan Parties to maintain insurance as required herein, the Administrative Agent, at its option, may obtain such insurance, *provided, however*, the Administrative Agent's obtaining of such insurance shall not constitute a cure or waiver of any Event of Default occasioned by the Loan Parties' failure to have maintained such insurance.

**5.10. LICENSES.** Each license, distributorship, franchise, and similar agreement issued to, or to which any Loan Party is a party, is in full force and effect, except where the failure thereof to be in full force and effect could not reasonably be expected to have a material adverse effect on the Loan Parties. Neither the Borrowers nor, to the best knowledge of the Borrowers, any other party to any such license or agreement is in default or violation thereof. No Loan Party has received any notice or threat of cancellation of any such license or agreement.

**5.11. LEASES. EXHIBIT 5.11,** annexed hereto, is a schedule of all presently effective Capital Leases. Exhibit 5.5 includes a list of all other presently effective Leases. Each of such Leases and Capital Leases is in full force and effect. Neither the Borrower nor, to the best knowledge of the Borrowers, any other party to any such Lease or Capital Lease is in default or violation of any such Lease or Capital Lease and no Loan Party has received notice or a threat of cancellation of any such Lease or Capital Lease. Each Loan Party hereby authorizes the Administrative Agent at any time and from time to time, with the consent of the Borrowers' Representative and at any time following the occurrence of an Event of Default, to contact any of the Loan Parties' respective landlords in order to confirm the Loan Parties' continued compliance with the terms and conditions of the Lease(s) between the subject Loan Party and that landlord and to discuss such issues, concerning the subject Loan Party's occupancy under such Lease(s), as the Administrative Agent may determine.

**5.12. REQUIREMENTS OF LAW.** Each Loan Party is in compliance with, and shall hereafter comply with and use its assets in compliance with, all Requirements of Law except where the failure of such compliance will not have more than a *de minimis* adverse effect on the Loan Party's business. No Loan Party has received any notice of any violation of any Requirement of Law (other than of a violation which has no more than a *de minimis* adverse effect on the Loan Party's business or assets), which violation has not been cured or otherwise remedied.

**5.13. LABOR RELATIONS.**

(a) Except as disclosed on **EXHIBIT 5.13(a)**, annexed hereto, no Loan Party is presently a party to any collective bargaining or other labor contract.

(b) There is not presently pending and, to any Loan Party's knowledge, there is not threatened any of the following:

(i) Any strike, slowdown, picketing, work stoppage, or material employee grievance process.

(ii) Any proceeding against or affecting any Loan Party relating to the alleged violation of any Applicable Law pertaining to labor relations or before National Labor Relations Board, the Equal Employment Opportunity Commission, or any comparable governmental body, organizational activity, or other labor or employment dispute against or affecting any Loan Party, which, if determined adversely to that Loan Party could have more than a *de minimis* adverse effect on that Loan Party.

(iii) Any lockout of any employees by any Loan Party (and no such action is contemplated by any Loan Party).

(iv) Any application for the certification of a collective bargaining agent.

(c) To the knowledge of the Borrowers' Representative and each Loan Party, no material event has occurred or circumstance exists which could provide the basis for any work stoppage or other labor dispute.

(d) Each Loan Party:

(i) Has complied in all material respects with all Applicable Law relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar taxes, occupational safety and health, and plant closing.

(ii) Is not liable for the payment of more than a *de minimis* amount of compensation, damages, taxes, fines, penalties, or other amounts, however designated, for that Loan Party's failure to comply with any Applicable Law referenced in Section 5.13(d)(i).

**5.14. MAINTAIN PROPERTIES.** The Loan Parties shall:

(a) Keep the Collateral in good order and repair (ordinary reasonable wear and tear and insured casualty excepted).

(b) Not suffer or cause the waste or destruction of any material part of the Collateral.

(c) Not use any of the Collateral in violation of any policy of insurance thereon.

(d) Not sell, lease, or otherwise dispose of any of the Collateral, other than the following:

(i) The sale of Inventory in compliance with this Agreement.

(ii) The disposal of Equipment which is obsolete, worn out, or damaged beyond repair, which Equipment is replaced to the extent necessary to preserve or improve the operating efficiency of any Loan Party.

(iii) The turning over to the Administrative Agent of all Receipts as provided herein.

**5.15. TAXES.**

(a) The Loan Parties, in compliance with all Applicable Law, have properly filed the Loan Party's tax returns due to be filed up to the date of this Agreement. All federal and state taxes and other amounts in the nature of taxes for which any Loan Party is liable or obligated are presently due and payable without penalty; or have been paid or settled.

(b) The Loan Parties shall: pay, as they become due and payable, all taxes and unemployment contributions and other charges of any kind or nature levied, assessed or claimed against any Loan Party or the Collateral by any Person whose claim could result in an Encumbrance upon any asset of any Loan Party or by any governmental authority; properly exercise any trust responsibilities imposed upon any Loan Party by reason of withholding from employees' pay or by reason of any Loan Party's receipt of sales tax or other funds for the account of any third party; timely make all contributions and other payments as may be required pursuant to any Employee Benefit Plan now or hereafter established by any Loan Party; and timely file all tax and other returns and other reports with each governmental authority to whom any Loan Party is obligated to so file except where failure to file could not reasonably be expected to have a material adverse effect *provided however*, nothing included in this Section 5.15(b) shall prevent the Loan Parties from contesting, in good faith and by appropriate proceedings, any tax liability claimed against any Loan Party, but only *provided that* and so long as no tax lien is filed with respect thereto.

(c) At its option, with prior notice to the Borrowers' Representative, the Administrative Agent may pay any tax, charge levied, assessed, or claimed upon any Loan Party or the Collateral by any Person, or entity or governmental authority, and make any payments on account of any Loan Party's Employee Benefit Plan as the Administrative Agent, in the Administrative Agent's discretion, may deem necessary or desirable, to protect the Agents' Rights and Remedies.

**5.16. NO MARGIN STOCK.** No Loan Party is engaged in the business of extending credit for the purpose of purchasing or carrying any margin stock (within the meaning of Regulations U, T, and X of the Board of Governors of the Federal Reserve System of the United States). No part of the proceeds of any borrowing hereunder will be used at any time to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock.

**5.17. ERISA.**

(a) Neither any Loan Party nor any ERISA Affiliate has ever:

- (i) Violated or failed to be in full compliance with any Employee Benefit Plan maintained by any Loan Party.
- (ii) Failed timely to file all reports and filings required by ERISA to be filed by any Loan Party.

- (iii) Engaged in any nonexempt “prohibited transactions” or “reportable events” (respectively as described in ERISA).
  - (iv) Engaged in, or committed, any act such that a tax or penalty could be imposed upon any Loan Party on account thereof pursuant to ERISA.
  - (v) Accumulated any material cumulative funding deficiency within the meaning of ERISA.
  - (vi) Terminated any Employee Benefit Plan such that a lien could be asserted against any assets of any Loan Party on account thereof pursuant to ERISA.
  - (vii) Been a member of, contributed to, or had any obligation under any Employee Benefit Plan which is a multiemployer plan within the meaning of Section 4001(a) of ERISA.
- (b) Neither any Loan Party nor any ERISA Affiliate shall ever engage in any action of the type described in Section 5.17(a).

**5.18. HAZARDOUS MATERIALS.**

(a) No Loan Party has ever: (i) been legally responsible for any release or threat of release of any Hazardous Material or (ii) received notification of the incurrence of any expense in connection with the assessment, containment, or removal of any Hazardous Material for which that Loan Party would be responsible.

(b) Each Loan Party shall: (i) dispose of any Hazardous Material only in compliance with all Environmental Laws and (ii) have possession of any Hazardous Material only in the ordinary course of that Loan Party’s business and in compliance with all Environmental Laws.

**5.19. LITIGATION.** Except as described in **EXHIBIT 5.19**, annexed hereto, there is not presently pending or to the knowledge of the Borrowers, threatened in writing, by or against any Loan Party, any suit, action, proceeding, or investigation which if determined adversely to such Loan Party, would have a material adverse effect upon the Loan Parties’ financial condition or the ability of the Loan Parties to conduct their business as such business is presently conducted or is contemplated to be conducted in the foreseeable future.

**5.20. DIVIDENDS. INVESTMENTS. ENTITY ACTION.** No Loan Party shall:

(a) Pay any cash dividend or make any other distribution in respect of any class of their respective capital stock or other ownership interests, other than payments to another Loan Party.

(b) Redeem, retire, purchase, or acquire any of Casual Male’s capital stock.

(c) Invest in or purchase any stock or securities or other ownership interests, or rights to purchase any such stock or securities or other ownership interests, of any corporation or other Person, except for

(i) Permitted Investments,

(ii) capital stock or other ownership interests of LP Innovations, Inc. and wholly owned direct or indirect Subsidiaries (in existence on the Closing Date) of the Loan Parties,

(iii) investments in the ECKO Joint Venture evidenced by a note due from the ECKO Joint Venture to Casual Male in an amount not in excess of \$5,500,000.00, and

(iv) Permitted Acquisitions, and subject to the provisions of Section 5.21(d), investments in new wholly owned Subsidiaries formed in connection with any such Permitted Acquisition.

(d) Merge or consolidate or be merged or consolidated with or into any other corporation or other entity; provided that nothing in this Agreement shall prevent any Loan Party from merging into any other Loan Party.

(e) Consolidate any of that Loan Party's operations with those of any other corporation or other entity other than another Loan Party.

(f) Subordinate any debts or obligations owed to that Loan Party by any third party to any other debts owed by such third party to any other Person.

(g) Engage in any interest rate swaps, caps, or similar activities, or any hedging activities, other than in the ordinary course and conduct of that Loan Party's business and then only with a Lender or any Affiliate of a Lender.

**5.21. PERMITTED ACQUISITIONS.** The Loan Parties may make Permitted Acquisitions without the consent of the Agent or the Lenders; provided that:

(a) Not less than fifteen (15) days prior written notice (with reasonable particularity as to the facts and circumstances in respect of which such notice is being given) of such Permitted Acquisition is given to the Administrative Agent.

(b) The aggregate purchase price (exclusive of the portion of the purchase price paid for with capital stock of the Loan Parties) of all such Permitted Acquisitions undertaken from and after the Closing Date is not greater than \$5,000,000.

(c) No Event of Default then exists or would result from any such Permitted Acquisition.



(d) With respect, to and in the event of any Permitted Acquisition which consists of, or results in the creation of, a Subsidiary, the Administrative Agent shall be provided with such Subsidiary's Guarantor Agreement (in form and substance satisfactory to the Administrative Agent), which Guarantor Agreement shall be secured by first perfected security interests and liens on substantially all of the assets of such Subsidiary, subject to the same limitations set forth in Section 9.1 hereof and subject to Permitted Encumbrances.

(e) The Agent and the Lenders shall have no obligation to include any Inventory acquired in such Permitted Acquisition (or Inventory of a similar type and nature acquired after the Permitted Acquisition) as Eligible Inventory.

**5.22. LOANS.** The Loan Parties shall not make any loans to, nor acquire the Indebtedness of, any Person, *provided, however*, the foregoing does not prohibit any of the following:

(a) Subject to such conditions respectively as apply thereto, the making of Permitted Investments.

(b) Advance payments made to a Loan Party's suppliers in the ordinary course.

(c) Advances to a Loan Party's officers, employees, and salespersons with respect to reasonable expenses to be incurred by such officers, employees, and salespersons for the benefit of a Loan Party, which expenses are properly substantiated by the person seeking such advance and properly reimbursable by a Loan Party.

(d) Loans to a Loan Party's officers and employees not exceeding \$400,000 in the aggregate at any one time outstanding, provided that each such loan is for a term of not more than 90 days from the date on which it is made and is paid within such 90-day period; provided that, all amounts due on account of loans permitted under this clause (d) shall constitute Collateral and shall be pledged to the Collateral Agent for the benefit of the Lenders; and

(e) Advances to contractors for the construction or renovation of stores, buildings or improvements for use in the business of a Loan Party.

(f) Loans by Casual Male to LP Innovations, Inc. not to exceed \$5,000,000 in the aggregate during the term of this Agreement, so long as in each case such intercompany loans shall be evidenced by, and subject to, such documentation (including, without limitation, notes and pledge agreements) as the Collateral Agent may require, and no Default shall have occurred and be continuing on the date of any such loan.

(g) Loans by Casual Male or Designs Apparel, Inc. to Guarantors to finance the purchases by Guarantors of Inventory pursuant to the Inventory Purchase Agreement and to permit such Guarantors to pay ordinary course operating expenses (including, without limitation, rent, utilities and taxes) so long as in each case such intercompany loans shall be evidenced by, and subject to, such documentation (including, without limitation, notes and pledge agreements) as the Collateral Agent may require.

**5.23. RESTRICTIONS ON SALE OF COLLATERAL; LICENSE AGREEMENTS.** To the Loan Parties' knowledge, the Loan Parties are not, and shall not become, party to any agreement or understanding which limits, impairs, or otherwise restricts the ability of the Collateral Agent to freely sell and dispose of any of the Collateral (including, without limitation, any repurchase agreements, rights of first refusal or other agreements which limit or condition the time, manner, place or price for the sale or disposition of the Collateral), other than certain Trademark License Agreements with Levi Strauss & Co. dated November 1, 1991 and November 15, 1996. The Loan Parties shall not effect or permit any material change or amendment to the terms of such License Agreements which would impose further restrictions to the Collateral Agent's disposition of the Collateral or would shorten the term of such License Agreements, other than as contemplated in the Amendment and Distribution Agreement dated as of October 31, 1998 by and among Designs JV Corp., LDJV, Inc. and The Designs/OLS Partnership.

**5.24. PROTECTION OF ASSETS.** The Administrative Agent, in the Administrative Agent's discretion, from time to time, may discharge any tax or Encumbrance on any of the Collateral, or take any other action which the Administrative Agent may deem necessary or desirable to repair, insure, maintain, preserve, collect, or realize upon any of the Collateral. The Administrative Agent shall not have any obligation to undertake any of the foregoing and shall have no liability on account of any action so undertaken except where there is a specific finding in a judicial proceeding (in which the Administrative Agent has had an opportunity to be heard), from which finding no further appeal is available, that the Administrative Agent had acted in actual bad faith or in a grossly negligent manner. The Loan Parties shall pay to the Administrative Agent, on demand, or the Administrative Agent, in its discretion, may add to the Loan Account, all amounts paid or incurred by the Administrative Agent pursuant to this Section 5.24.

**5.25. LINE OF BUSINESS.**

(a) Except as provided in Sections 5.20, 5.23 and 5.25(c), no Loan Party shall engage in any business other than the business in which it is currently engaged or plans to be engaged, as reflected in the Business Plan, or a business reasonably related thereto (the conduct of which reasonably related business is reflected in the Business Plan), provided that the foregoing shall not prohibit the expansion or contraction of a Loan Party's business so long as the Loan Parties are still engaged solely in the retail sale of apparel, footwear and related accessories and other activities, ancillary, incidental or necessary thereto, and such expansion or contraction is otherwise permitted under other Sections of this Agreement.

(b) The Loan Parties, with the prior written notice to the Administrative Agent in each instance, may license the use of up to 5% of the selling space of any Store (measured in terms of square feet) for the operation of certain departments of their Stores by third parties.

(c) The Loan Parties, with the prior written consent of the Administrative Agent (as to which, *see* Section 5.25(c)(i)), may (x) license the use of more than 5% of the selling space of any Store (measured in terms of square feet) for the operation of certain

departments by third parties and (y) franchise to others the right to operate comparable Stores, *it being understood that*:

(i) The Administrative Agent's determination to consent to the Loan Parties' activities described in Section 5.25(c) may be conditioned on the Administrative Agent's being satisfied that the secured position of the Collateral Agent, and the Agents' Rights and Remedies, would not be adversely affected by such restructuring and that such restructuring does not place any material additional administrative burdens on the Agents.

(ii) The Administrative Agent may provide such consent pursuant to this Section 5.25(c) on its own authority and without obtaining the Consent of the Majority Lenders.

(iii) The Administrative Agent may condition its providing of such consent pursuant to this Section 5.25(c) on the Consent of the Majority Lenders.

**5.26. AFFILIATE TRANSACTIONS.** No Loan Party shall make any payment, nor give any value, to any Affiliate except for:

(a) Goods and services actually purchased by that Loan Party from, or sold by that Loan Party to, such Affiliate for a price and on terms which shall

(i) be competitive and fully deductible as an "ordinary and necessary business expense" and/or fully depreciable under the Internal Revenue Code of 1986 and the Treasury Regulations, each as amended; and

(ii) be no less favorable to that Loan Party than those which would have been charged and imposed in an arms length transaction.

(b) Permitted Overhead Contributions. It is hereby agreed that Permitted Overhead Contributions shall be deemed to include lease payments under any amendment to or replacement of the Lease Agreement referred to in the definition of Permitted Overhead Contributions *provided* that such lease amendment or replacement is on terms and conditions satisfactory to the Administrative Agent.

**5.27. FURTHER ASSURANCES.**

(a) No Loan Party is the owner of, nor has it any interest in, any property or asset which, immediately upon the satisfaction of the conditions precedent to the effectiveness of the credit facility contemplated hereby (Article 4) and the proper filing of Uniform Commercial Code Financing Statements and delivery of any Collateral in which a security interest must be perfected by possession, will not be subject to a perfected Collateral Interest in favor of the Collateral Agent (subject only to Permitted Encumbrances) to secure the Liabilities.

(b) Except as otherwise permitted by this Agreement, no Loan Party will hereafter acquire any asset or any interest in property which is not, immediately upon such acquisition, subject to such a perfected Collateral Interest in favor of the Collateral Agent to secure the Liabilities (subject only to Permitted Encumbrances).

(c) Each Loan Party shall execute and deliver to the Administrative Agent such instruments, documents, and papers, and shall do all such things from time to time hereafter as the Administrative Agent reasonably may request, to carry into effect the provisions and intent of this Agreement; to protect and perfect the Collateral Agent's Collateral Interests in the Collateral; and to comply with all applicable statutes and laws, and facilitate the collection of the Receivables Collateral. Each Loan Party shall execute all such instruments as may be required by the Administrative Agent with respect to the recordation and/or perfection of the Collateral Interests created or contemplated herein.

(d) Each Loan Party hereby designates the Collateral Agent as and for that Loan Party's true and lawful attorney, with full power of substitution, to sign and file any financing statements in order to perfect or protect the Collateral Agent's Collateral Interests in the Collateral.

(e) This Agreement constitutes an authenticated record which authorizes the Collateral Agent to file such financing statements as the Collateral Agent determines as appropriate to perfect or protect the Agent's Collateral Interests created hereby.

(f) A carbon, photographic, or other reproduction of this Agreement or of any financing statement or other instrument executed pursuant to this Section 5.27 shall be sufficient for filing to perfect the security interests granted herein.

#### **5.28. ADEQUACY OF DISCLOSURE.**

(a) All financial statements furnished to each Agent and each Lender by each Loan Party have been prepared in accordance with GAAP consistently applied and present fairly the condition of the Loan Parties at the date(s) thereof and the results of operations and cash flows for the period(s) covered (*provided however*, that unaudited financial statements are subject to normal year end adjustments and to the absence of footnotes). There has been no change in the Consolidated financial condition, results of operations, or cash flows of the Loan Parties since the date(s) of the most recent financial statements delivered to the Administrative Agent, as supplemented by the Business Plan, other than changes in the ordinary course of business, which changes have not been materially adverse, either singularly or in the aggregate.

(b) Except as set forth on **EXHIBIT 5.28(b)**, annexed hereto, no Loan Party has any contingent obligations or obligation under any Lease or Capital Lease which is not noted in the Loan Parties' Consolidated financial statements furnished to each Agent and each Lender prior to the execution of this Agreement other than obligations which are entered into in the ordinary course of business since the date of such financial statement.

(c) No document, instrument, agreement, or paper now or hereafter given to any Agent and any Lender by or on behalf of each Loan Party or any guarantor of the Liabilities in connection with the execution of this Agreement by each Agent and each Lender (except for any projections provided by or on behalf of any Loan Party) contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements therein not misleading.

**5.29. NO RESTRICTIONS ON LIABILITIES.** No Loan Party shall enter into or directly or indirectly become subject to any agreement which prohibits or restricts, in any manner, any Loan Party's:

- (a) Creation of, and granting of Collateral Interests in favor of the Collateral Agent.
- (b) Incurrence of Liabilities.

**5.30. OTHER COVENANTS.** No Loan Party shall indirectly do or cause to be done any act which, if done directly by that Loan Party, would breach any covenant contained in this Agreement.

**5.31. INVENTORY PURCHASING.** Any Person which at any time becomes a Loan Party shall become party to, and shall at all times comply with the terms and conditions set forth in, the Inventory Purchase Agreement including, without limitation, the obligation of each Loan Party (other than Designs Apparel, Inc.) to purchase of all of its Inventory exclusively from Designs Apparel, Inc. The Inventory Purchase Agreement may not be amended, modified or supplemented, except for the addition of Loan Parties, or terminated without the prior written consent of the Administrative Agent.

**ARTICLE 6 - FINANCIAL REPORTING AND PERFORMANCE COVENANTS:**

**6.1. MAINTAIN RECORDS.** The Loan Parties shall:

(a) At all times, keep proper books of account, in which full, true, and accurate entries shall be made of all of the Loan Parties' financial transactions, all in accordance with GAAP applied consistently with prior periods to fairly reflect the Consolidated financial condition of the Loan Parties at the close of, and its results of operations for, the periods in question.

(b) Timely provide the Administrative Agent with those financial reports, statements, and schedules required by this Article 6 or otherwise, each of which reports, statements and schedules shall be prepared, to the extent applicable, in accordance with GAAP applied consistently with prior periods to fairly reflect the Consolidated financial condition of the Loan Parties at the close of, and the results of operations for, the period(s) covered therein.

(c) At all times, keep accurate current records of the Collateral including, without limitation, accurate current stock, cost, and sales records of its Inventory, accurately and sufficiently itemizing and describing the kinds, types, and quantities of Inventory and the cost and selling prices thereof.

(d) At all times, retain Ernst & Young, LLP or such other independent certified public accountants who are reasonably satisfactory to the Administrative Agent and

instruct such accountants to fully cooperate with, and be available to, the Administrative Agent to discuss the Loan Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such accountants, as may be raised by the Administrative Agent.

(e) Not change any Loan Party's Fiscal year.

## **6.2. ACCESS TO RECORDS.**

(a) Each Loan Party shall accord the Administrative Agent with reasonable access on reasonable notice during customary business hours from time to time as the Administrative Agent reasonably may require to all properties owned by or over which any Loan Party has control. The Administrative Agent shall have the right during customary business hours on reasonable notice, and each Loan Party will permit the Administrative Agent from time to time as Administrative Agent reasonably may request, to examine, inspect, copy, and make extracts from any and all of the Loan Parties' books, records, electronically stored data, papers, and files. Each Loan Party shall make all of that Loan Party's copying facilities available to the Administrative Agent.

(b) Each Loan Party hereby authorizes the Administrative Agent during customary business hours on reasonable notice to:

(i) Inspect, copy, duplicate, review, cause to be reduced to hard copy, run off, draw off, and otherwise use any and all computer or electronically stored information or data which relates to any Loan Party, or any service bureau, contractor, accountant, or other person, and directs any such service bureau, contractor, accountant, or other person fully to cooperate with the Administrative Agent with respect thereto.

(ii) Verify at any time the Collateral or any portion thereof, including verification with Account Debtors, and/or with each Loan Party's computer billing companies, collection agencies, and accountants and to sign the name of each Loan Party on any notice to each Loan Party's Account Debtors or verification of the Collateral.

(c) The Borrowers' Representative, on reasonable request from time to time from the Administrative Agent, will make representatives of management available from time to time to discuss the Loan Parties' operating results and other related matters with the Administrative Agent.

(d) The Administrative Agent from time to time may designate one or more representatives to exercise the Administrative Agent's rights under this Section 6.2 as fully as if the Administrative Agent were doing so.

(e) The Tranche B Lender and its participants, likewise shall have those rights accorded to the Administrative Agent under this Section 6.2.

**6.3. PROMPT NOTICE TO ADMINISTRATIVE AGENT.**

(a) The Borrowers' Representative shall provide the Administrative Agent with written notice promptly upon its becoming aware of the occurrence of any of the following events, which written notice shall be with reasonable particularity as to the facts and circumstances in respect of which such notice is being given:

(i) Any material adverse change in the business affairs of any Loan Party.

(ii) Any change in the executive officers of any Loan Party.

(iii) Any ceasing of the Loan Parties' making of payments, in the ordinary course, to any of its creditors, on account of obligations aggregating in excess of \$180,000.00 (including the ceasing of the making of such payments on account of a dispute with the subject creditor).

(iv) Any failure by a Loan Party to pay rent at any of the Loan Parties' locations which rent in the aggregate exceeds \$180,000.00, which failure continues for more than ten (10) days following the day on which such rent first came due.

(v) Any Default.

(vi) Any intention on the part of a Loan Party to discharge that Loan Party's present independent accountants or any withdrawal or resignation by such independent accountants from their acting in such capacity (as to which, *see* Subsection 6.1(d)).

(vii) Any litigation which, if determined adversely to a Loan Party, would have a material adverse effect on the financial condition of that Loan Party.

(b) The Borrowers' Representative shall:

(i) Add the Administrative Agent as an addressee on all mailing lists maintained by or for any Loan Party.

(ii) At the request of the Administrative Agent provide the Administrative Agent with a copy of the results of any physical or cycle count of a Loan Party's Inventory.

(iii) Provide the Administrative Agent, when received by any Loan Party, with a copy of any management letter or similar communications from any accountant of that Loan Party.

(iv) Provide the Administrative Agent with copies of all filings by each Loan Party with the Securities and Exchange Commission, when so filed, and when received, copies of all correspondence from the SEC, other than routine non-substantive general communications from the SEC.

(v) Provide the Administrative Agent with written notice of any intended bulk sale, liquidation, or other disposition of assets of any Loan Party at least ten (10) Business Days prior to the consummation of such sale or disposition, or commencement of such liquidation and a detailed summary of the net proceeds expected to be received therefrom, *provided* that nothing in this Section is intended to be, or shall be deemed to be, a waiver of any restriction on such disposition of assets set forth elsewhere in this Agreement including without limitation Section 5.14 .

(vi) Provide the Administrative Agent, when so distributed, with copies of any materials distributed to the shareholders of Casual Male and each of the other Loan Parties (*qua* such shareholders).

**6.4. BORROWING BASE CERTIFICATE.** The Borrowers' Representative shall provide the Administrative Agent by 11:30 a.m., daily, with a Borrowing Base Certificate (in the form of **EXHIBIT 6.4** annexed hereto, as such form may be revised from time to time by the Administrative Agent, the "**Borrowing Base Certificate**"). Such Certificate may be sent to the Administrative Agent by facsimile transmission, *provided that* the original thereof is forwarded to the Administrative Agent on the date of such transmission.

**6.5. WEEKLY AND MONTHLY REPORTS.** The Borrowers' Representative shall provide the Administrative Agent with those financial statements and reports described in **EXHIBIT 6.5**.

**6.6. QUARTERLY REPORTS.** Quarterly, within fifty (50) days following the end of each Fiscal quarter of the Loan Parties, the Borrowers' Representative shall provide the Administrative Agent with the following:

(a) An original counterpart of a management prepared Consolidated and consolidating financial statement of the Loan Parties for the period from the beginning of the Loan Parties' then current Fiscal year through the end of the subject quarter, with comparative information for the same period of the previous Fiscal year, which statement shall include, at a minimum, a balance sheet, income statement, cash flows and a schedule of consolidation, as well as a comparison of same store sales and operating results for the corresponding quarter of the then immediately previous year and to the year-to-date period and to the Business Plan or updated forecast.

(b) The officer's compliance certificate described in Section 6.8.

**6.7. ANNUAL REPORTS.**

(a) Commencing with the Loan Parties' Fiscal 2004, and annually thereafter, within ninety-five (95) days following the end of the Loan Parties' Fiscal year, the Borrowers' Representative shall furnish the Administrative Agent with the following:

(i) An original signed counterpart of the Loan Parties' annual Consolidated financial statement (with consolidating schedules), which statement shall have been prepared by, and bear the unqualified opinion of, the Loan Parties' independent certified public accountants (i.e. said statement shall be "certified" by such accountants). Such annual statement shall include, at a minimum (with comparative information for the then prior Fiscal year, a balance sheet, income statement, statement of changes in shareholders' equity, and cash flows.



(ii) The following Consolidated and consolidating financial statements for the Loan Parties for the prior Fiscal year (each prepared by the Loan Parties' independent accountants): Balance sheet, income statement, statement of changes in stockholders' equity and cash flow.

(b) No later than the earlier of fifteen (15) days prior to the end of each Fiscal year of the Loan Parties or the date on which such accountants commence their work on the preparation of the Loan Parties' annual financial statement, the Borrowers' Representative shall give written notice to such accountants (with a copy of such notice, when sent, to the Administrative Agent), that:

(i) Such annual financial statement will be delivered by the Borrowers' Representative to the Administrative Agent (for subsequent distribution to each Lender).

(ii) Among other things, it is the intention of each Loan Party, in its engagement of such accountants, to satisfy the financial reporting requirements set forth in this Article 7.

(iii) The Borrowers' Representative has been advised that the Administrative Agent and each Lender)

will rely thereon with respect to the administration of, and transactions under, the credit facility contemplated by this Agreement.

(c) Each annual financial statement shall be accompanied by such accountant's Certificate indicating that, in conducting the audit for such annual statement, nothing came to the attention of such accountants to believe that such Loan Party is in Default (or that if the Loan Party is in Default, the facts and circumstances thereof).

**6.8. OFFICERS' CERTIFICATES.** The Borrowers' Representative shall cause the Borrowers' Representative's Chief Executive Officer, its President or its Chief Financial Officer of the Borrowers' Representative, in each instance, to provide such Person's Certificate with those monthly, quarterly, and annual statements to be furnished pursuant to this Agreement, which Certificate shall:

(a) Indicate that the subject financial statement was prepared in accordance with GAAP consistently applied and presents fairly the Consolidated financial condition of the

Loan Parties at the close of, and the results of the Loan Parties' operations and cash flows for, the period(s) covered thereby, *subject, however* to the following:

(i) Usual year end adjustments (this exception shall not be included in the Certificate which accompanies the Loan Parties' annual financial statement).

(ii) Material Accounting Changes (in which event, such Certificate shall include a schedule (in reasonable detail) of the effect of each such Material Accounting Change) not previously specifically taken into account in the determination of the financial performance covenant(s) imposed pursuant to Section 6.11.

(b) Indicate either that (i) no Default has occurred and is continuing, or (ii) if a Default has occurred and is continuing, its nature (in reasonable detail) and the steps (if any) being taken or contemplated by the Loan Parties to be taken on account thereof.

(c) Include calculations concerning the Loan Parties' compliance (or failure to comply) at the date of the subject statement with each of the financial performance covenants included in Section 6.11 hereof.

#### **6.9. INVENTORIES, APPRAISALS, AND AUDITS.**

(a) The Administrative Agent and the Tranche B Lender may observe each inventory and any cycle count of the Collateral which is undertaken on behalf of any Loan Party. The Loan Parties shall conduct not less than one physical inventory, per Store and per warehouse, per Fiscal year. The Administrative Agent does not contemplate undertaking or requiring any additional physical inventories by or of the Loan Parties, *provided, however*, the Administrative Agent may do so if a Default has occurred and is continuing.

(i) On the Administrative Agent's request, the Borrowers' Representative shall provide the Administrative Agent with a copy of the preliminary results of each such inventory (as well as of any other physical inventory undertaken by any Loan Party) within ten (10) days following the completion of such inventory.

(ii) The Borrowers' Representative, within thirty (30) days following the completion of such inventory, shall provide the Administrative Agent with a reconciliation of the results of each such inventory (as well as of any other physical inventory undertaken by any Loan Party) and shall post such results to the Loan Parties' stock ledger and, as applicable to the Loan Parties' other financial books and records.

(iii) The Administrative Agent, in its discretion, if a Default has occurred and is continuing, may cause such additional inventories to be taken as the Administrative Agent determines (each, at the expense of the Loan Parties)

(b) The Administrative Agent may obtain appraisals of the Collateral, from time to time (in all events, at the Loan Parties' expense) conducted by such appraisers as are satisfactory to the Administrative Agent. As of the Closing Date, the Administrative Agent contemplates obtaining (and at the request of the Tranche B Lender shall obtain) four (4)

appraisals (in all events, at the Loan Parties' expense) of the Loan Parties' Inventory during any twelve (12) month period during which this Agreement is in effect, each conducted by such appraisers as are satisfactory to the Administrative Agent. In addition, following the occurrence of an Event of Default, the Administrative Agent may cause additional such appraisals to be undertaken (in each event, at the Loan Parties' expense).

(c) The Administrative Agent contemplates conducting (and at the request of the Tranche B Lender shall conduct) four (4) commercial finance audits (in each event, at the Loan Parties' expense) of the Loan Parties' books and records during any twelve (12) month period during which this Agreement is in effect. In addition, following the occurrence of an Event of Default, the Administrative Agent may cause additional such audits to be undertaken (in each event, at the Loan Parties' expense).

#### **6.10. ADDITIONAL FINANCIAL INFORMATION.**

(a) In addition to all other information required to be provided pursuant to this Article 6, the Borrowers' Representative promptly shall provide the Administrative Agent with such other and additional information concerning the Loan Parties (and any guarantor of the Liabilities), the Collateral, the operation of the Loan Parties' business, and the Loan Parties' financial condition, including original counterparts of financial reports and statements, as the Administrative Agent reasonably may from time to time request, in its own discretion or upon the reasonable request of the Tranche B Lender.

(b) The Borrowers' Representative *may* provide the Administrative Agent, from time to time hereafter, with updated forecasts of the Loan Parties' anticipated performance and operating results.

(c) In all events, the Borrowers' Representative, by no later than thirty (30) days prior the end of each Fiscal year, shall furnish the Administrative Agent with an updated and extended forecast (which shall include, on a month-by-month basis, balance sheets, income statements, and statements of cash flow, as well as of all components of the Borrowing Base as of the end of each month) through the end of the succeeding Fiscal year.

(d) Each Loan Party recognizes that all appraisals, inventories, analyses, financial information, and other materials which the Administrative Agent may obtain, develop, or receive with respect to the Loan Parties are confidential to the Administrative Agent and that, except as otherwise provided herein, no Loan Party is entitled to receipt of any of such appraisals, inventories, analyses, financial information, and other materials, nor copies or extracts thereof or therefrom.

#### **6.11. FINANCIAL PERFORMANCE COVENANTS.**

(a) The Loan Parties shall maintain at all times Excess Availability of not less than the lesser of: (i) \$6,000,000, and (ii) 8.5% of the Borrowing Base.

(b) The Loan Parties shall not incur Capital Expenditures in excess of the amounts set forth below for the Fiscal years indicated:

(i) Fiscal year ending January 29, 2005, to be greater than \$20,000,000.

- (ii) Fiscal year ending January 29, 2006, to be greater than \$20,000,000.
- (iii) Fiscal year ending January 29, 2007, to be greater than \$20,000,000.
- (iv) Period from January 30, 2007, through the Maturity Date, to be greater than \$16,000,000.00.

Notwithstanding the foregoing, any amount set forth in clauses (i) through (iii) which is not committed or spent in such Fiscal year may be carried over for Capital Expenditures during the next Fiscal year.

(c) In the event that the Loan Parties' Excess Availability is less than the aggregate of (A) \$12,500,000.00, and (B) the Excess Availability requirement pursuant to Section 6.11(a) above, the Loan Parties shall maintain minimum EBITDA in the amounts set forth below as of the end of each Fiscal month indicated:

- (i) \$25,500,000 as of October, 2004;
- (ii) 19,700,000 as of November, 2004;
- (iii) \$23,100,000 as of December, 2004;
- (iv) \$24,500,000 as of January, 2005;
- (v) \$22,000,000 as of February, 2005;
- (vi) \$25,500,000 as of March, 2005;
- (vii) \$27,800,000 as of April, 2005;
- (viii) \$29,200,000 as of May, 2005;
- (ix) \$31,600,000 as of June, 2005;
- (x) \$31,800,000 as of July, 2005;
- (xi) \$32,800,000 as of August, 2005;
- (xii) \$33,700,000 as of September, 2005;
- (xiii) \$34,600,000 as of October, 2005;
- (xiv) \$34,800,000 as of November, 2005;

- (xv) \$34,800,000 as of December, 2005;
- (xvi) \$34,900,000 as of January, 2006;
- (xvii) \$35,700,000 as of February, 2006;
- (xviii) \$36,590,000 as of March, 2006;
- (xix) \$37,500,000 as of April, 2006;
- (xx) \$38,200,000 as of May, 2006;
- (xxi) \$38,900,000 as of June, 2006;
- (xxii) \$39,300,000 as of July, 2006;
- (xxiii) \$39,400,000 as of August, 2006;
- (xxiv) \$40,000,000 as of September, 2006;
- (xxv) \$40,600,000 as of October, 2006;
- (xxvi) \$41,800,000 as of November, 2006;
- (xxvii) \$43,600,000 as of December, 2006;
- (xxviii) \$44,300,000 as of January, 2007; and
- (xxix) \$42,000,000 for each fiscal month thereafter.

EBITDA will be tested as of the end of any Fiscal monthly period on the basis of the twelve (12) months then ended; *provided, however*, that to the extent that the Loan Parties' Excess Availability as of the end of any Fiscal month exceeds the sum of (A) \$12,500,000 plus (B) the Excess Availability requirement pursuant to Section 6.11(a), the Loan Parties shall have no minimum EBITDA requirement pursuant to this Section 6.11(c) as of the end of such Fiscal month.

The Administrative Agent may determine the Loan Parties' compliance with such covenants based upon financial reports and statements provided by the Borrowers' Representative to the Administrative Agent (whether or not such financial reports and statements are required to be furnished pursuant to this Agreement) as well as by reference to interim financial information provided to, or developed by, the Administrative Agent.

**ARTICLE 7 - USE OF COLLATERAL:**

**7.1. Use of Inventory Collateral.**

(a) No Loan Party shall engage in any of the following with respect to its Inventory:

- (i) Any sale other than for fair consideration in the conduct of the Loan Parties' business in the ordinary course.
- (ii) Sales or other dispositions to creditors.
- (iii) Sales or other dispositions in bulk.
- (iv) Sales of any Collateral in breach of any provision of this Agreement.

(b) No sale of Inventory shall be on consignment, approval, or under any other circumstances such that, with the exception of the Loan Parties' customary return policy applicable to the return of Inventory purchased by the Loan Parties' retail customers in the ordinary course, such Inventory may be returned to a Loan Party without the consent of the Administrative Agent.

**7.2. INVENTORY QUALITY.** All Inventory now owned or hereafter acquired by a Loan Party is and will be of good and merchantable quality and free from defects (other than defects within customary trade tolerances), other than Inventory owned or acquired for outlet stores, which in the ordinary course sell manufacturer's overruns, discontinued lines, and irregulars.

**7.3. ADJUSTMENTS AND ALLOWANCES.** Each Loan Party may grant such allowances or other adjustments to that Loan Party's Account Debtors (exclusive of extending the time for payment of any material Account or Account Receivable, which shall not be done without first obtaining the Administrative Agent's prior written consent in each instance) as that Loan Party may reasonably deem to accord with sound business practice, *provided, however*, at any time that a Default has occurred and is continuing, the authority granted the Loan Parties pursuant to this Section 7.3 may be limited or terminated by the Administrative Agent at any time in the Administrative Agent's discretion.

**7.4. VALIDITY OF ACCOUNTS.**

(a) The amount of each Account shown on the books, records, and invoices of the Loan Parties represented as owing by each Account Debtor is and will be the correct amount actually owing by such Account Debtor and shall have been fully earned by performance by the Loan Parties.

(b) The Administrative Agent from time to time may verify the Receivables Collateral directly with the Loan Parties' Account Debtors, such verification to be undertaken in keeping with commercially reasonable commercial lending standards.

(c) The Loan Parties have no knowledge of any impairment of the validity or collectibility of any of the Accounts and shall notify the Administrative Agent of any such fact immediately after the Loan Parties become aware of any such impairment.

(d) No Loan Party shall post any bond to secure any Loan Party's performance under any agreement to which any Loan Party is a party nor cause any surety, guarantor, or other third party obligee to become liable to perform any obligation of any Loan Party (other than to the Administrative Agent) in the event of any Loan Party's failure to so perform.

**7.5. NOTIFICATION TO ACCOUNT DEBTORS.** The Administrative Agent shall have the right at any time that an Event of Default has occurred to notify any of the Loan Parties' Account Debtors to make payment directly to the Administrative Agent and to collect all amounts due on account of the Collateral.

**ARTICLE 8 - Cash Management. Payment of Liabilities:**

**8.1. DEPOSITORY ACCOUNTS.**

(a) Annexed hereto as **EXHIBIT 8.1** is a Schedule of all present DDA's, which Schedule includes, with respect to each depository (i) the name and address of that depository; (ii) the account number(s) of the account(s) maintained with such depository; and (iii) a contact person at such depository.

(b) The Borrowers' Representative shall deliver to the Administrative Agent, as a condition to the effectiveness of this Agreement:

(i) Notifications (in a form satisfactory to the Administrative Agent) executed on behalf of the relevant Loan Party to each depository institution with which any DDA (other than any Exempt DDA and the Operating Account ) is maintained of the Collateral Agent's Collateral Interest in such DDA.

(ii) A Blocked Account Agreement with any depository institution at which:

(A) Both a DDA (other than the Operating Account) and the Operating Account are maintained.

(B) A deposit account other than solely a DDA is maintained.

(iii) An agreement (generally referred to as a "Blocked Account Agreement"), in form satisfactory to the Administrative Agent, with each depository institution at which a Blocked Account is maintained.

(c) No Loan Party will establish any DDA hereafter unless, contemporaneously with such establishment, the Borrowers' Representative provides a notification of the Collateral Agent's Collateral Interest in such DDA, no Loan Party will establish any deposit account other than a DDA or Exempt DDA, unless the Borrowers' Representative provides the Administrative Agent with a Blocked Account Agreement.

## **8.2. CREDIT CARD RECEIPTS.**

(a) Annexed hereto as **EXHIBIT 8.2**, is a Schedule which describes all arrangements to which each Loan Party is a party with respect to the payment to such Loan Party of the proceeds of all credit card charges for sales by such Loan Party.

(b) The Borrowers' Representative shall deliver to the Administrative Agent, as a condition to the effectiveness of this Agreement, notification, executed on behalf of the relevant Loan Party, to each of such Loan Party's credit card clearinghouses and processors (in form satisfactory to the Administrative Agent), which notice provides that payment of all credit card charges submitted by any Loan Party to that clearinghouse or processor and any other amount payable to any Loan Party by such clearinghouse or processor shall be directed to the Concentration Account or as otherwise designated from time to time by the Administrative Agent. No Loan Party shall change such direction or designation except upon and with the prior written consent of the Administrative Agent.

## **8.3. THE CONCENTRATION, BLOCKED, AND OPERATING ACCOUNTS .**

(a) The following checking accounts have been or will be established (and are so referred to herein):

(i) The "**Concentration Account**" (so referred to herein): Established by the Administrative Agent with Fleet National Bank.

(ii) The "**Blocked Account**" (so referred to herein): Established by the Borrowers' Representative with Fleet National Bank.

(iii) The "**Operating Account**" (so referred to herein): Established by the Borrowers' Representative with Fleet National Bank.

(b) The contents of each DDA and of the Blocked Account constitutes Collateral and Proceeds of Collateral. The contents of the Concentration Account constitutes the Administrative Agent's property.

(c) The Loan Parties shall pay all fees and charges of, and maintain such impressed balances as may be required by the depository in which any account is opened as required hereby (even if such account is opened by and/or is the property of the Administrative Agent).

## **8.4. PROCEEDS AND COLLECTIONS .**

(a) All Receipts and all other cash proceeds of any sale or other disposition of any of each Loan Party's assets:

(i) Constitute Collateral and proceeds of Collateral.



(ii) Shall be held in trust by the Loan Parties for the Administrative Agent.

(iii) Shall not be commingled with any of any Loan Party's other funds.

(iv) Shall be deposited and/or transferred only to the Blocked Account or the Concentration Account or DDAs which are swept on a periodic basis to a Blocked Account or the Concentration Account.

(b) The Borrowers' Representative shall cause by ACH or wire transfer to the Blocked Account or the Concentration Account, no less frequently than daily (and whether or not there is then an outstanding balance in the Loan Account) the following:

(i) The entire contents (net of any minimum required balance not in any event to exceed \$2500) of each DDA (but excluding any Exempt DDA).

(ii) The proceeds of all credit card charges not otherwise provided for pursuant hereto.

Telephone advice (confirmed by written notice) shall be provided to the Administrative Agent on each Business Day on which any such transfer is made.

(c) The Borrowers' Representative shall cause by ACH or wire transfer to the Concentration Account, no less frequently than daily (and whether or not any Liabilities are then outstanding), of the entire ledger balance (net of any minimum required balance not in any event to exceed \$2500) of the Blocked Account.

(d) In the event that, notwithstanding the provisions of this Section 8.4, any Loan Party receives or otherwise has dominion and control of any Receipts, or any other proceeds or collections of any Collateral, such Receipts, proceeds, and collections shall be held in trust by that Loan Party for the Administrative Agent and shall not be commingled with any of that Loan Party's other funds or deposited in any account of any Loan Party other than as instructed by the Administrative Agent.

#### **8.5. PAYMENT OF LIABILITIES.**

(a) On each Business Day, the Administrative Agent shall apply the then collected balance of the Concentration Account (net of fees charged, and of such impressed balances as may be required by the bank at which the Concentration Account is maintained) first, against the SwingLine Loans (if any), and second, against the unpaid balance of the Loan Account and all other Liabilities, other than principal and interest on the Tranche B Loan; provided, however, for purposes of the calculation of interest on the unpaid principal balance of the Loan Account, such payment shall be deemed to have been made one (1) Business Day after such transfer, and further provided that until the occurrence, and during the continuance, of an

Event of Default, unless the Borrower Representative otherwise instructs the Administrative Agent, the balance of the Concentration Account shall not be applied to any LIBOR Loans until the end of the applicable Interest Period therefor.

(b) The following rules shall apply to deposits and payments under and pursuant to this Section 8.5:

(i) Funds shall be deemed to have been deposited to the Concentration Account on the Business Day on which deposited, *provided that* notice of such deposit is delivered to the Administrative Agent by 2:00PM on that Business Day.

(ii) Funds paid to the Administrative Agent, other than by deposit to the Concentration Account, shall be deemed to have been received on the Business Day when they are good and collected funds, *provided that* notice of such payment is delivered to the Administrative Agent by 2:00PM on that Business Day.

(iii) If notice of a deposit to the Concentration Account (Section 8.5(b)(i)) or payment (Section 8.5(b)(ii)) is not delivered to the Administrative Agent until after 2:00PM on a Business Day, such deposit or payment shall be deemed to have been made at 9:00AM on the then next Business Day.

(iv) All deposits to the Concentration Account and other payments to the Administrative Agent are subject to clearance and collection.

(c) The Administrative Agent shall transfer to the Operating Account any surplus in the Concentration Account remaining after the application towards the Liabilities referred to in Section 8.5(a) above (less those amount which are to be netted out, as provided therein) *provided, however*, in the event that

(i) a Default has occurred and is continuing; and

(ii) either

(A) one or more L/C's are then outstanding; or

(B) there is any amount unpaid on account of the Tranche B Loan,

then the Administrative Agent may establish a funded reserve of up to (x) 110% of the aggregate of the Stated Amounts of such L/C's *plus* (y) amounts unpaid on account of the Tranche B Loan. Such funded reserve shall either be (i) returned to the Borrowers' Representative at such time that no Default has occurred and is continuing or (ii) applied towards the Liabilities following Acceleration.

**8.6. THE OPERATING ACCOUNT.** Except as otherwise specifically provided in, or permitted by, this Agreement, all checks shall be drawn by the Borrowers' Representative upon, and other disbursements shall be made by the Borrowers' Representative solely from, the Operating Account.

**ARTICLE 9 - GRANT OF SECURITY INTEREST:**

**9.1. GRANT OF SECURITY INTEREST.** To secure the Borrowers' prompt, punctual, and faithful performance of all and each of the Liabilities, each Borrower hereby grants to the Collateral Agent, for the benefit of the Secured Parties as their interests may appear herein, a continuing security interest in and to, and assigns to the Collateral Agent, for the benefit of the Secured Parties as their interests may appear herein the following, and each item thereof, whether now owned or now due, or in which that Borrower has an interest, or hereafter acquired, arising, or to become due, or in which that Borrower obtains an interest, and all products, Proceeds, substitutions, and accessions of or to any of the following (all of which, together with any other property in which the Collateral Agent may in the future be granted a security interest, is referred to herein as the "**Collateral**"; any of the following terms not defined in this Agreement shall have the meanings attributed thereto in the UCC):

(a) All Accounts and accounts receivable.

(b) All Inventory.

(c) All General Intangibles.

(d) All Equipment.

(e) All Goods.

(f) All Farm Products.

(g) All Fixtures.

(h) All Chattel Paper.

(i) All Letter-of-Credit Rights.

(j) All Payment Intangibles.

(k) All Supporting Obligations.

(l) All books, records, and information relating to the Collateral and/or to the operation of each Borrower's business, and all rights of access to such books, records, and information, and all property in which such books, records, and information are stored, recorded, and maintained.

(m) All Leasehold Interests.

(n) All Investment Property, Instruments, Documents, Deposit Accounts, money, policies and certificates of insurance, deposits, impressed accounts, compensating balances, cash, or other property.

(o) Commercial Tort Claims

(p) All insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing (9.1(a) through 9.1(n)) or otherwise.

(q) All liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing (9.1(a) through 9.1(p)), including the right of stoppage in transit.

Notwithstanding anything in this Agreement to the contrary, with respect to each item of Collateral constituting Equipment subject to a Capital Lease, or constituting an agreement, license, permit or other instrument of a Borrower, such item shall be subject to the security interest created hereby only to the extent that the granting of such security interest, under the terms of such Capital Lease, agreement, license, permit or other instrument, or as provided by law, does not cause any default under or termination of such Capital Lease, agreement, license, permit or other instrument or the loss of any material right of a Borrower thereunder; provided, however, that in no event shall the foregoing be construed to exclude from the security interest created by this Agreement, proceeds or products of any such Capital Lease, agreement, license, permit or other instrument of a Borrower or any accounts receivable or the right to payments due or to become due a Borrower under any such agreement or other instrument.

#### **9.2. EXTENT AND DURATION OF SECURITY INTEREST; NOTICE.**

(a) The security interest created and granted herein is in addition to, and supplemental of, any security interest previously granted by any Borrower to the Collateral Agent and shall continue in full force and effect applicable to all Liabilities until both (a) all Liabilities have been paid and/or satisfied in full and (b) the security interest created herein is specifically terminated in writing by a duly authorized officer of the Collateral Agent.

(b) It is intended that the Collateral Interests created herein extend to and cover all assets of each Borrower.

(c) If a Borrower shall at any time acquire a Commercial Tort Claim, the Borrowers' Representative shall promptly notify the Administrative Agent in writing of the details thereof and the Borrower shall take such actions as the Collateral Agent shall request in order to grant to the Collateral Agent, for the benefit of the Lenders as their interests may appear herein, a perfected and first priority security interest therein and in the Proceeds thereof.

#### **ARTICLE 10 - Collateral Agent As Attorney-In-Fact:**

**10.1. APPOINTMENT AS ATTORNEY-IN-FACT.** Each Borrower hereby irrevocably constitutes and appoints the Collateral Agent as that (acting through any of its officers) Borrower's true and lawful attorney, with full power of substitution, following the occurrence of

an Event of Default, to convert the Collateral into cash at the sole risk, cost, and expense of that Borrower, but for the sole benefit of the Agents and the Secured Parties. The rights and powers granted the Collateral Agent by this appointment include but are not limited to the right and power to:

(a) Prosecute, defend, compromise, or release any action relating to the Collateral.

(b) Sign change of address forms to change the address to which each Borrower's mail is to be sent to such address as the Collateral Agent shall designate; receive and open each Borrower's mail; remove any Receivables Collateral and Proceeds of Collateral therefrom and turn over the balance of such mail either to the Borrowers' Representative or to any trustee in bankruptcy or receiver of the Borrowers' Representative, or other legal representative of a Borrower whom the Collateral Agent determines to be the appropriate person to whom to so turn over such mail.

(c) Endorse the name of the relevant Borrower in favor of the Collateral Agent upon any and all checks, drafts, notes, acceptances, or other items or instruments; sign and endorse the name of the relevant Borrower on, and receive as secured party, any of the Collateral, any invoices, schedules of Collateral, freight or express receipts, or bills of lading, storage receipts, warehouse receipts, or other documents of title respectively relating to the Collateral.

(d) Sign the name of the relevant Borrower on any notice to that Borrower's Account Debtors or verification of the Receivables Collateral; sign the relevant Borrower's name on any Proof of Claim in Bankruptcy against Account Debtors, and on notices of lien, claims of mechanic's liens, or assignments or releases of mechanic's liens securing the Accounts.

(e) Take all such action as may be necessary to obtain the payment of any letter of credit and/or banker's acceptance of which any Borrower is a beneficiary.

(f) Repair, manufacture, assemble, complete, package, deliver, alter or supply goods, if any, necessary to fulfill in whole or in part the purchase order of any customer of each Borrower.

(g) Use, license or transfer any or all General Intangibles of each Borrower.

**10.2. NO OBLIGATION TO ACT.** The Collateral Agent shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 10.1 herein, but if the Collateral Agent elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to any Borrower for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Collateral Agent has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith or constituted willful misconduct.

**ARTICLE 11 - EVENTS OF DEFAULT:**

The occurrence of any event described in this Article 11 respectively shall constitute an “**Event of Default**” herein. The occurrence of any Event of Default shall also constitute, without notice or demand, a default under all other agreements between any Agent and any Lender and any Loan Party and instruments and papers heretofore, now, or hereafter given any Agent and any Lender by any Loan Party.

**11.1. FAILURE TO PAY THE REVOLVING CREDIT OR THE TRANCHE B LOAN** The failure by any Loan Party to pay when due any principal of, interest on, or fees in respect of, the Revolving Credit or the Tranche B Loan.

**11.2. FAILURE TO MAKE OTHER PAYMENTS.** The failure by any Loan Party to pay within five (5) Business Days when due (or upon demand, if payable on demand) any payment Liability other than any payment liability on account of the principal of, or interest on, or fees in respect of, the Revolving Credit or the Tranche B Loan.

**11.3. FAILURE TO PERFORM COVENANT OR LIABILITY (NO GRACE PERIOD).** The failure by any Loan Party to promptly, punctually, faithfully and timely perform, discharge, or comply with any covenant or Liability not otherwise described in Section 11.1 or Section 11.2 hereof, and included in any of the following provisions hereof:

<u>Section</u>	<u>Relates to:</u>
5.2(c)	State of Organization, State Identification Number and Taxpayer Identification Number
5.3(b)	Notice of Name Change
5.5	Location of Collateral
5.7(a)	Title to Assets
5.8	Indebtedness
5.9	Insurance Policies
5.20, 5.21	Dividends, Investments and Other Entity Actions
5.26	Affiliate Transactions
5.27	Further Assurances
6.11	Minimum Excess Availability and Capital Expenditures
7.1	Use of Inventory Collateral
Article 8	Cash Management (except if the failure to comply is as a result of force majeure or through no fault of the Loan Parties)

**11.4. FINANCIAL REPORTING REQUIREMENTS.** The failure by any Loan Party to promptly, punctually, faithfully and timely perform, discharge, or comply with the financial reporting requirements included in Article 6, subject, however, to the following limited number of grace periods applicable to certain of those requirements:

<u>REPORT / STATEMENT</u>	<u>REQUIRED BY SECTION</u>	<u>GRACE PERIOD</u>	<u>NUMBER OF GRACE PERIODS</u>
Borrowing Base Certificates	6.4	One Business Day	Three per Fiscal Quarter
Weekly Report	6.5	Two Business Days	Six in any 12 months
Monthly Report (15 Days)	6.5	Three Business Days	Three in any 12 months
Monthly Reports (30 Days)	6.5	Three Business Days	Three in any 12 months

**11.5. FAILURE TO PERFORM COVENANT OR LIABILITY (GRACE PERIOD).** The failure by any Loan Party, within fifteen (15) days following the earlier of any Loan Party's knowledge of a breach of any covenant or Liability not described in any of Sections 11.1, 11.2, 11.3, or 11.4, or of the Borrowers' Representative's receipt of written notice from the Administrative Agent of the breach of any such covenants or Liabilities.

**11.6. TRANCHE B LOAN ACTION EVENT ACCELERATION.**

(a) The occurrence of any Tranche B Loan Action Event.

(b) The Administrative Agent's receipt of an Acceleration Notice pursuant to Section 14.2.

**11.7. MISREPRESENTATION.** The determination by the Administrative Agent that any representation or warranty at any time made by any Loan Party to any Agent or any Lender was not true or complete in all material respects when given; provided, however, that for purposes of this Section 11.7, any representation or warranty made by the Loan Parties in reliance on representations and warranties made by Rochester Big and Tall and certain of its Subsidiaries in the Rochester Acquisition Agreement shall be deemed to have been made to the Loan Parties' knowledge; and, provided further, that if any such representation or warranty is deemed repeated by the Loan Parties under the terms of this Agreement on and after October 29, 2004, and such representation and warranty was not true or complete in all material respects when given, and the Loan Parties have failed to correct such representation or warranty by providing revised schedules or exhibits, or otherwise, in each case to the Administrative Agent's satisfaction, then the foregoing proviso shall be of no effect.

**11.8. ACCELERATION OF OTHER DEBT; BREACH OF LEASE.** The occurrence of any event such that any Indebtedness of any Loan Party in excess of \$1,000,000.00 to any creditor other than the Agent or any Lender could be accelerated (provided, that an event of default under the 12% Subordinated Note (or any Note Purchase Agreement under which such Subordinated Note is issued) caused solely by a breach of a representation or warranty shall not be an Event of Default hereunder) or, without the consent of a Loan Party, Leases with aggregate monthly rents of at least \$500,000.00 could be terminated prior to the stated termination date thereof (whether or not the subject creditor or lessor takes any action on account of such occurrence).

**11.9. DEFAULT UNDER OTHER AGREEMENTS.** The occurrence of any breach or default under any agreement between the Agent or any Lender and any Loan Party or instrument or paper given the Agent or any Lender by any Loan Party not constituting a Loan Document, whether such agreement, instrument, or paper now exists or hereafter arises, with respect to Indebtedness in excess of \$1,000,000.00 (notwithstanding that the Agent or the subject Lender may not have exercised its rights upon default under any such other agreement, instrument or paper).

**11.10. UNINSURED CASUALTY LOSS.** The occurrence of any uninsured loss, theft, damage, or destruction of or to any material portion of the Collateral.

**11.11. ATTACHMENT; JUDGMENT; RESTRAINT OF BUSINESS.**

(a) The service of process upon any Agent or any Lender or any Participant of a court order or order of any other applicable governmental authority attaching, by trustee, mesne, or other process, any funds of any Loan Party on deposit with, or assets of any Loan Party in the possession of, that Agent or that Lender or such Participant.

(b) The entry of judgments against any Loan Party, to the extent not covered by insurance (subject to a reasonable deductible) aggregating more than \$750,000, which judgments are not satisfied (if a money judgment) or appealed from (with execution or similar process stayed) within thirty (30) days of entry.

(c) The entry of any order or the imposition of any other process having the force of law, the effect of which is to restrain in any material way the conduct by any Loan Party of its business in the ordinary course.

**11.12. CANTON MORTGAGE DEFAULT.** The (i) acceleration of any Indebtedness which is secured by the Canton Warehouse or (ii) the failure of the Loan Parties to cause the proceeds of any refinancing or replacement of the Canton Mortgage, and/or any second mortgage on the Canton Warehouse, in each case in excess of the principal outstanding under the Canton Mortgage on the Closing Date, to be applied immediately upon receipt thereof to repayment of the Revolving Credit Obligations.

**11.13. INDICTMENT - FORFEITURE.** The indictment of, or institution of any legal process or proceeding against, any Loan Party, under any federal, state, municipal, and other civil or criminal statute, rule, regulation, order, or other requirement having the force of law where the relief, penalties, or remedies sought or available include the forfeiture of more than a *de minimis* part of the property of that Loan Party and/or the imposition of any stay or other order, the effect of which could be to restrain in any material way the conduct by any Loan Party of its business in the ordinary course.

**11.14. CHALLENGE TO LOAN DOCUMENTS.**

(a) Any challenge by or on behalf of the Borrowers' Representative, any Loan Party to the validity of any Loan Document or the applicability or enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto.



(b) Any determination by any court or any other judicial or government authority that any Loan Document is not enforceable strictly in accordance with the subject Loan Document's terms or which voids, avoids, limits, or otherwise adversely affects any security interest created by any Loan Document or any payment made pursuant thereto.

**11.15. CHANGE IN CONTROL.** Any Change in Control.

**11.16. BUSINESS FAILURE.** Any act by, against or relating to any Loan Party, or its property or assets, which act constitutes the determination by any Loan Party to initiate or acquiesce to: a program of partial or total self-liquidation; an application for, consent to, or sufferance of the appointment of a receiver, trustee, or other person, pursuant to court action or otherwise, with respect to all or any part of any Loan Party's property; the granting of any trust mortgage or execution of an assignment for the benefit of the creditors of any Loan Party; any other voluntary or involuntary liquidation or extension of debt agreement for any Loan Party; the offering by, or entering into by, any Loan Party of any composition, extension, or any other arrangement seeking relief from or extension of the debts of any Loan Party; or the initiation of any judicial or non-judicial proceeding or agreement by, against, or including any Loan Party which seeks or intends to accomplish a reorganization or arrangement with creditors; and/or the initiation by or on behalf of any Loan Party of the liquidation or winding up of all or any part of any Loan Party's business or operations.

**11.17. BANKRUPTCY.** The failure by any Loan Party to generally pay the debts of that Loan Party as they mature; adjudication of bankruptcy or insolvency relative to any Loan Party; the entry of an order for relief or similar order with respect to any Loan Party in any proceeding pursuant to the Bankruptcy Code or any other federal bankruptcy law; the filing of any complaint, application, or petition by any Loan Party initiating any matter in which any Loan Party is or may be granted any relief from the debts of that Loan Party pursuant to the Bankruptcy Code or any other insolvency statute or procedure; the filing of any complaint, application, or petition against any Loan Party initiating any matter in which that Loan Party is or may be granted any relief from the debts of that Loan Party pursuant to the Bankruptcy Code or any other insolvency statute or procedure, which complaint, application, or petition is not timely contested in good faith by that Loan Party by appropriate proceedings or, if so contested, is not dismissed within ninety (90) days of when filed.

**11.18. TERMINATION OF BUSINESS.** Unless subject to the prior written consent of the Agent, the determination of the Loan Parties, whether by vote of the Loan Parties' board of directors or otherwise to: suspend the operation of the Loan Parties' business in the ordinary course, liquidate all or a material portion of the Loan Parties' assets or Stores, or employ an agent or other third party to conduct any so-called store closing, store liquidation or "Going-Out-Of-Business" sales (other than in connection with a Permitted Asset Disposition).

**11.19. PAYMENT OF OTHER INDEBTEDNESS.** The Loan Parties shall prepay or discharge any Indebtedness prior to its maturity date except as expressly permitted hereunder.

**11.20. DEFAULT BY GUARANTOR; TERMINATION OF GUARANTY.** The occurrence of any Guarantor Default and/or the termination or attempted termination of any Guaranty Agreement by any Person.

**11.21. MATERIAL ADVERSE CHANGE.** An event shall have occurred or failed to occur, which occurrence or failure is or could have a materially adverse effect upon the financial condition of Casual Male and its Subsidiaries when compared with such financial condition as of July 30, 2004.

**ARTICLE 12 - RIGHTS AND REMEDIES UPON DEFAULT:**

**12.1. ACCELERATION.** Upon the occurrence of any Event of Default, the Administrative Agent may (and on the issuance of Acceleration Notice(s) requisite to the causing of Acceleration, the Administrative Agent shall) declare all Indebtedness of the Loan Parties to the Lenders to be immediately due and payable and may exercise all of the Administrative Agent's Rights and Remedies (and the Collateral Agent may likewise exercise all of its rights and remedies upon default) as the Administrative Agent from time to time thereafter determines as appropriate.

**12.2. RIGHTS OF ENFORCEMENT.** The Collateral Agent shall have all of the rights and remedies of a secured party upon default under the UCC, in addition to which the Collateral Agent shall have all and each of the following rights and remedies:

(a) To give notice to any bank at which any DDA or Blocked Account is maintained and in which Proceeds of Collateral are deposited, to turn over such Proceeds directly to the Collateral Agent.

(b) To give notice to any customs broker of any of the Loan Parties to follow the instructions of the Collateral Agent as provided in any written agreement or undertaking of such broker in favor of the Collateral Agent.

(c) To collect the Receivables Collateral with or without the taking of possession of any of the Collateral.

(d) To take possession of all or any portion of the Collateral.

(e) To sell, lease, or otherwise dispose of any or all of the Collateral, in its then condition or following such preparation or processing as the Collateral Agent deems advisable and with or without the taking of possession of any of the Collateral.

(f) Subject to the terms of store leases and provisions of applicable law, to conduct one or more going out of business sales which include the sale or other disposition of the Collateral.

(g) To apply the Receivables Collateral or the Proceeds of the Collateral towards (but not necessarily in complete satisfaction of) the Liabilities.

(h) To exercise all or any of the rights, remedies, powers, privileges, and discretions under all or any of the Loan Documents.

### 12.3. SALE OF COLLATERAL.

(a) Any sale or other disposition of the Collateral may be at public or private sale upon such terms and in such manner as the Collateral Agent deems advisable, having due regard to compliance with any statute or regulation which might affect, limit, or apply to the Collateral Agent's disposition of the Collateral.

(b) The Collateral Agent, in the exercise of the Collateral Agent's rights and remedies upon default, may, subject to the terms of store leases and provisions of applicable law, conduct, or may require the Loan Parties to conduct, one or more going out of business sales, in the Collateral Agent's own right or by one or more agents and contractors. Subject to the terms of store leases such sale(s) may be conducted upon any premises owned, leased, or occupied by any Loan Party. Subject to applicable law, the Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor). The Borrowers shall have no responsibility or liability for any such augmented inventory. Any amounts realized from the sale of such goods which constitute augmentations to the Inventory (net of an allocable share of the costs and reasonable expenses incurred in their disposition) shall be the sole property of the Collateral Agent or such agent or contractor and neither any Loan Party nor any Person claiming under or in right of any Loan Party shall have any interest therein. The proceeds of any such going out of business sale which is conducted by a Loan Party at the request of the Collateral Agent shall be first applied to the direct costs of such sale.

(c) Unless the Collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market (in which event the Collateral Agent shall provide the Borrowers' Representative such notice as may be practicable under the circumstances), the Collateral Agent shall give the Borrowers' Representative at least ten (10) days prior written notice of the date, time, and place of any proposed public sale, and of the date after which any private sale or other disposition of the Collateral may be made. Each Borrower agrees that such written notice shall satisfy all requirements for notice to that Borrower which are imposed under the UCC or other applicable law with respect to the exercise of the Collateral Agent's rights and remedies upon default.

(d) The Collateral Agent, the Administrative Agent, and any Lender may purchase the Collateral, or any portion of it at any sale held under this Article.

(e) If any of the Collateral is sold, leased, or otherwise disposed of by the Collateral Agent on credit, the Liabilities shall not be deemed to have been reduced as a result thereof unless and until payment is finally received thereon by the Collateral Agent.

(f) The Collateral Agent shall turn over to the Administrative Agent the proceeds of the exercise by the Collateral Agent of its rights and remedies under this Article 12. The Administrative Agent shall apply the proceeds of the Collateral Agent's exercise of its rights and remedies upon default pursuant to this Article 12 in accordance with Sections 14.7 and 14.8.

**12.4. OCCUPATION OF BUSINESS LOCATION.** In connection with the Collateral Agent's exercise of the Collateral Agent's rights under this Article 12, the Collateral Agent may enter upon, occupy, and use any premises owned or occupied by each Loan Party, and may exclude each Loan Party from such premises or portion thereof as may have been so entered upon, occupied, or used by the Collateral Agent. The Collateral Agent shall not be required to remove any of the Collateral from any such premises upon the Collateral Agent's taking possession thereof, and may render any Collateral unusable to the Loan Parties. In no event shall the Collateral Agent be liable to any Loan Party for use or occupancy by the Collateral Agent of any premises pursuant to this Article 12, nor for any charge (such as wages for any Loan Party's employees and utilities) incurred in connection with the Collateral Agent's exercise of the Collateral Agent's Rights and Remedies.

**12.5. GRANT OF NONEXCLUSIVE LICENSE.** Except to the extent prohibited by a Borrower's contractual obligations, which prohibition has been disclosed to the Administrative Agent, each Borrower hereby grants to the Collateral Agent a royalty free, nonexclusive and irrevocable license to use, apply, and affix any trademark, trade name, logo, or the like in which any Borrower now or hereafter has rights, such license being with respect to the Collateral Agent's exercise of the rights hereunder including, without limitation, in connection with any completion of the manufacture of Inventory or sale or other disposition of Inventory.

**12.6. ASSEMBLY OF COLLATERAL.** The Collateral Agent may require any Borrower to assemble the Collateral and make it available to the Collateral Agent at the Loan Parties' sole risk and expense at a place or places which are reasonably convenient to both the Collateral Agent and the Borrowers' Representative.

**12.7. RIGHTS AND REMEDIES.** The rights, remedies, powers, privileges, and discretions of the Administrative Agent hereunder (herein, the "**Agents' Rights and Remedies**") shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. No delay or omission by an Agent in exercising or enforcing any of the Agents' Rights and Remedies shall operate as, or constitute, a waiver thereof. No waiver by an Agent of any Event of Default or of any default under any other agreement shall operate as a waiver of any other default hereunder or under any other agreement. No single or partial exercise of any of the Agents' Rights or Remedies, and no express or implied agreement or transaction of whatever nature entered into between any Agent and any person, at any time, shall preclude the other or further exercise of the Agents' Rights and Remedies. No waiver by any Agent of any of the Agents' Rights and Remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. The Agents' Rights and Remedies may be exercised at such time or times and in such order of preference as the Agents may determine. The Agents' Rights and Remedies may be exercised without resort or regard to any other source of satisfaction of the Liabilities.

**ARTICLE 13 - Revolving Credit Fundings and Distributions:**

**13.1. REVOLVING CREDIT FUNDING PROCEDURES.**

(a) The Agent shall advise each Revolving Credit Lender, no later than 2:00PM on a date on which any Revolving Credit Loan (other than a SwingLine Loan) is to be made, that such Revolving Credit Loan is to be made. Such advice, in each instance, may be by telephone or facsimile transmission, *provided that* if such advice is by telephone, it shall be confirmed in writing. Advice of a Revolving Credit Loan shall include the amount of and interest rate applicable to the subject Revolving Credit Loan.

(b) Subject to that Revolving Credit Lender's Revolving Credit Dollar Commitment, each Revolving Credit Lender, by no later than the end of business on the day on which the subject Revolving Credit Loan is to be made, shall Transfer that Revolving Credit Lender's Revolving Credit Percentage Commitment of the subject Revolving Credit Loan to the Administrative Agent.

**13.2. SWINGLINE LOANS.**

(a) In the event that, when a Revolving Credit Loan is requested, the aggregate unpaid balance of the SwingLine Loan is less than the SwingLine Loan Ceiling, then the SwingLine Lender may advise the Administrative Agent that the SwingLine Lender has determined to include up to the amount of the requested Revolving Credit Loan as part of the SwingLine Loan. In such event, the SwingLine Lender shall Transfer the amount of the requested Revolving Credit Loan to the Administrative Agent.

(b) The SwingLine Loan shall be converted to a Revolving Credit Loan in which all Revolving Credit Lenders participate as follows:

(i) At any time and from time to time, the SwingLine Lender may advise the Administrative Agent that all, or any part, of the SwingLine Loan is to be converted to a Revolving Credit Loan in which all Revolving Credit Lenders participate, provided that if the Administrative Agent is not so advised by the SwingLine Lender, then all SwingLine Loans shall be converted no less frequently than weekly to Revolving Credit Loans in which all Revolving Credit Lenders participate.

(ii) At the initiation of a Liquidation, the then entire unpaid principal balance of the SwingLine Loan shall be converted to a Revolving Credit Loan in which all Revolving Credit Lenders participate.

In either such event, the Administrative Agent shall advise each Revolving Credit Lender of such conversion as if, and with the same effect as if, such conversion were the making of a Revolving Credit Loan as provided in Section 14.1.

(c) The SwingLine Lender, in separate capacities, may also be one or more Agents, a Revolving Credit Lender or the Tranche B Lender.

(d) The SwingLine Lender, in its capacity as SwingLine Lender, is not a "Revolving Credit Lender" for any of the following purposes:

- (i) Except as otherwise specifically provided in the relevant Section, any distribution pursuant to Section 14.8.
- (ii) Determination of whether the requisite holders of Loan Commitments have Consented to action requiring such Consent.

**13.3. ADMINISTRATIVE AGENT'S COVERING OF FUNDINGS:**

(a) Each Revolving Credit Lender shall make available to the Administrative Agent, as provided herein, that Revolving Credit Lender's Revolving Credit Percentage Commitment of the following:

(i) Each Revolving Credit Loan, up to the maximum amount of that Revolving Credit Lender's Revolving Credit Dollar Commitment of the Revolving Credit Loans.

(ii) Up to the maximum amount of that Revolving Credit Lender's Revolving Credit Dollar Commitment of each L/C Drawing (to the extent that such L/C Drawing is not "covered" by a Revolving Credit Loan as provided herein).

(b) In all circumstances, the Administrative Agent may:

(i) Assume that each Revolving Credit Lender, subject to Section 13.3(a), timely shall make available to the Administrative Agent that Revolving Credit Lender's Revolving Credit Percentage Commitment of each Revolving Credit Loan, notice of which is provided pursuant to Section 13.1 and shall make available, to the extent not "covered" by a Revolving Credit Loan, that Revolving Credit Lender's Revolving Credit Percentage Commitment of any honoring of an L/C.

(ii) In reliance upon such assumption, make available the corresponding amount to the Loan Parties.

(iii) Assume that each Revolving Credit Lender timely shall pay, and shall make available, to the Administrative Agent all other amounts which that Revolving Credit Lender is obligated to so pay and/or make available hereunder or under any of the other Loan Documents.

(c) In the event that, in reliance upon any of such assumptions, the Administrative Agent makes available a Revolving Credit Lender's Revolving Credit Percentage Commitment of one or more Revolving Credit Loans, or any other amount to be made available hereunder or under any of the other Loan Documents, which amount a Revolving Credit Lender (a "**Delinquent Revolving Credit Lender**") fails to provide to the Administrative Agent within One (1) Business Day of written notice of such failure, then:

(i) The amount which had been made available by the Administrative Agent is an "**Administrative Agent's Cover**" (and is so referred to herein).

(ii) All interest paid by the Loan Parties on account of the Revolving Credit Loan or coverage of the subject L/C Drawing which consist of the Administrative Agent's Cover shall be retained by the Administrative Agent until the Administrative Agent's Cover, with interest, has been paid.

(iii) The Delinquent Revolving Credit Lender shall pay to the Administrative Agent, on demand, interest at a rate equal to the prevailing federal funds rate on any Administrative Agent's Cover in respect of that Delinquent Revolving Credit Lender

(iv) The Administrative Agent shall have succeeded to all rights to payment to which the Delinquent Revolving Credit Lender otherwise would have been entitled hereunder in respect of those amounts paid by or in respect of the Loan Parties on account of the Administrative Agent's Cover together with interest until it is repaid. Such payments shall be deemed made first towards the amounts in respect of which the Administrative Agent's Cover was provided and only then towards amounts in which the Delinquent Revolving Credit Lender is then participating. For purposes of distributions to be made pursuant to Section 13.4(a) (which relates to ordinary course distributions) or Section 14.7 (which relates to distributions of proceeds of a Liquidation) below, amounts shall be deemed distributable to a Delinquent Revolving Credit Lender (and consequently, to the Administrative Agent to the extent to which the Administrative Agent is then entitled) at the highest level of distribution (if applicable) at which the Delinquent Revolving Credit Lender would otherwise have been entitled to a distribution.

(v) Subject to Subsection 13.3(c)(iv) the Delinquent Revolving Credit Lender shall be entitled to receive any payments from the Loan Parties to which the Delinquent Revolving Credit Lender is then entitled, *provided however* there shall be deducted from such amount and retained by the Administrative Agent any interest to which the Administrative Agent is then entitled on account of Subsection 13.3(c)(ii) above.

(d) A Delinquent Revolving Credit Lender shall not be relieved of any obligation of such Delinquent Revolving Credit Lender hereunder (all and each of which shall constitute continuing obligations on the part of any Delinquent Revolving Credit Lender).

(e) A Delinquent Revolving Credit Lender may cure its status as a Delinquent Revolving Credit Lender by paying the Administrative Agent the aggregate of the following:

(i) The Administrative Agent's Cover (to the extent not previously repaid by the Loan Parties and retained by the Administrative Agent in accordance with Subsection 13.3(c)(iv), above) with respect to that Delinquent Revolving Credit Lender.

*Plus*

(ii) The aggregate of the amount payable under Subsection 13.3(c)(iii), above (which relates to interest to be paid by that Delinquent Revolving Credit Lender).

*Plus*

(iii) All such costs and expenses as may be incurred by the Administrative Agent in the enforcement of the Administrative Agent's rights against such Delinquent Revolving Credit Lender.

**13.4. ORDINARY COURSE DISTRIBUTIONS: REVOLVING CREDIT.** (This Section 13.4 applies unless the provisions of Section 14.7 (which relates to distributions in the event of a Liquidation) become operative).

(a) Weekly, on such day as may be set from time to time by the Administrative Agent (or more frequently at the Administrative Agent's option), the Administrative Agent and each Revolving Credit Lender shall settle up on amounts advanced under the Revolving Credit and collected funds received in the Concentration Account.

(b) The Administrative Agent shall distribute to the SwingLine Lender and to each Revolving Credit Lender such Person's respective Pro-Rata share of interest payments on the Revolving Credit Loans when actually received and collected by the Administrative Agent (excluding the one Business Day for settlement provided for in 8.5(a) which shall be for the account of the Administrative Agent only). For purposes of calculating interest due to a Revolving Credit Lender, that Revolving Credit Lender shall be entitled to receive interest on the actual amount contributed by that Revolving Credit Lender towards the principal balance of the Revolving Credit Loans outstanding during the applicable period covered by the interest payment made by the Loan Parties. Any net principal reductions to the Revolving Credit Loans received by the Administrative Agent in accordance with the Loan Documents during such period shall not reduce such actual amount so contributed, for purposes of calculation of interest due to that Revolving Credit Lender, until the Administrative Agent has distributed to that Revolving Credit Lender its Pro-Rata share thereof.

(c) The Administrative Agent shall distribute fees paid on account of the Revolving Credit, as follows:

(i) L/C Fee (Section 2.19(a)): Pro-Rata to the Revolving Credit Lenders.

(ii) Unused Line Fee (Section 2.15): Pro-Rata to the Revolving Credit Lenders.

(iii) Revolving Credit Early Termination Fee (Section 2.16) : Pro-Rata to the Revolving Credit Lenders.

(iv) Revolving Credit Commitment Fee (Section 2.13) : As provided in separate letter agreements with the respective Revolving Credit Lenders.



(d) No Lender shall have any interest in or right to receive any part of the following:

- (i) Any interest which reflects “float” as described in the *proviso* included in Section 8.5(a), all of which float shall be for the account of the Administrative Agent only.
- (ii) The Administrative Agent’s Monitoring Fee (Section 2.14) to be paid by the Loan Parties to the Administrative Agent.
- (iii) Fees described in Section 2.19(b) (which relates to fees associated with, among other things, the issuance of L/C’s): Retained by the Issuer.

(e) No Revolving Credit Lender shall have any interest in or right to receive any part of the Tranche B Fees.

(f) Any amount received by the Administrative Agent or the Collateral Agent as reimbursement for any cost or expense (including without limitation, reasonable attorneys’ fees) shall be distributed by the Administrative Agent to that Person which is entitled to such reimbursement as provided in this Agreement (and if such Person(s) is (are) the Lenders, Pro-Rata determined as of the date on which the expense, in respect of which such reimbursement is being made, was incurred).

(g) Each distribution pursuant to this Section 13.4 is subject to Section 13.3(c), above (which relates to the effect of the failure of any Revolving Credit Lender to have Transferred to the Administrative Agent any amount which that Revolving Credit Lender is then obligated to so Transfer pursuant to the within Agreement).

**13.5. ORDINARY COURSE DISTRIBUTIONS: THE TRANCHE B LOAN** (This Section 13.5 applies unless the provisions of Section 14.7 (which relates to distributions in the event of a Liquidation) become operative).

(a) The Administrative Agent shall distribute to the Tranche B Lender payments on account of principal of, and interest on, the Tranche B Loan and the Tranche B Fees as received and collected by the Administrative Agent from the Loan Parties in accordance with the provisions of this Agreement or as made available by the Administrative Agent as the proceeds of advances under the Revolving Credit. As provided in Section 13.4(f), any amount received by the Administrative Agent or the Collateral Agent as reimbursement for any cost or expense (including without limitation, reasonable attorneys’ fees) shall be distributed by the Administrative Agent to that Person which is entitled to such reimbursement as provided in this Agreement (and if such Person(s) is (are) the Lenders, Pro-Rata determined as of the date on which the expense, in respect of which such reimbursement is being made, was incurred).

(b) Unless otherwise specifically agreed to in writing, the Administrative Agent shall distribute the proceeds of a disposition of Collateral, other than in the ordinary course, in accordance with the ordering of distributions set forth in 14.8.

**ARTICLE 14 - Acceleration and Liquidation:**

**14.1. ACCELERATION NOTICES.**

(a) The Administrative Agent may give the Collateral Agent and Lenders an Acceleration Notice at any time following the occurrence of an Event of Default.

(b) The SuperMajority Revolving Credit Lenders may give the Administrative Agent an Acceleration Notice at any time following the occurrence of an Event of Default. Such notice may be by multiple counterparts, *provided that* counterparts executed by the requisite Lenders are received by the Administrative Agent within a period of five (5) consecutive Business Days.

(c) The Tranche B Lender may give the Administrative Agent an Acceleration Notice as follows:

(i) At any time following the occurrence of an Event of Default which occurs after the Revolving Credit Debt has been paid in full, all L/C's have been cash collateralized, and there is no obligation on the Revolving Credit Lenders to make any further loans or to provide any further financial accommodation under the Revolving Credit.

(ii) At any time following the occurrence of an Event of Default which occurs after a BuyOut by the Tranche B Lender.

(iii) At any time following the occurrence of a Bankruptcy Breach.

(iv) At any time as permitted pursuant to Section 14.2.

**14.2. MANDATORY ACCELERATION RIGHT OF THE TRANCHE B LENDER.**

(a) The Tranche B Lender may initiate a Standstill Period by written notice to the Administrative Agent at any time after the occurrence of any Tranche B Loan Action Event and may so initiate a Standstill Period on account of a separate Tranche B Loan Action Event during the pendency of another Standstill Period which has been initiated by it.

(b) After the expiry of a Standstill Period initiated upon a Tranche B Loan Action Event, the Tranche B Lender may give the Administrative Agent and the Collateral Agent an Acceleration Notice unless either 14.2(b)(i) or 14.2(b)(ii) is applicable:

(i) Acceleration has been stayed by judicial or statutory process.

(ii) As applicable:

(A) If the relevant Tranche B Loan Action Event is a Tranche B Availability Breach: On three (3) consecutive days during the relevant Standstill Period, no Tranche B Availability Breach existed or occurred.

(B) If the relevant Tranche B Loan Action Event is a Minimum Excess Availability Breach: On any three (3) days during the relevant Standstill Period, no Minimum Excess Availability Breach existed or occurred.

(C) If the relevant Tranche B Loan Action Event is a Tranche B Payment Breach: All payments which are due or overdue on account of the Tranche B Loan (other than those which would be due only if the Tranche B Loan were accelerated) are paid prior to the expiry of the relevant Standstill Period.

(c) Notwithstanding the foregoing Section 14.2(b), after the expiry of more than two Standstill Periods initiated upon the same type of Tranche B Loan Action Event within any 45 day period, the Tranche B Lender may give the Administrative Agent and the Collateral Agent an Acceleration Notice.

**14.3. ACCELERATION.** Unless stayed by judicial or statutory process, the Administrative Agent shall Accelerate the Revolving Credit Obligations and the Tranche B Loan within a commercially reasonable time following:

(a) The Administrative Agent's giving of an Acceleration Notice to the Collateral Agent and the Revolving Credit Lenders as provided in Section 14.1(a).

(b) The Administrative Agent's receipt of an Acceleration Notice from the SuperMajority Revolving Credit Lenders, in compliance with Section 14.1(b).

(c) The Administrative Agent's receipt of an Acceleration Notice from the Tranche B Lender, in compliance with Section 14.2(c).

**14.4. INITIATION OF LIQUIDATION.** Unless stayed by judicial or statutory process, a Liquidation shall be initiated by the Collateral Agent within a commercially reasonable time following Acceleration of the Revolving Credit Obligations and the Tranche B Loan.

**14.5. ACTIONS AT AND FOLLOWING INITIATION OF LIQUIDATION.**

(a) At the initiation of a Liquidation:

(i) The unpaid principal balance of the SwingLine Loan (if any) shall be converted, pursuant to Section 14.2(b)(ii), to a Revolving Credit Loan in which all Revolving Credit Lenders participate.

(ii) The Administrative Agent and the Revolving Credit Lenders shall "net out" each Revolving Credit Lender's respective contributions towards the Revolving Credit Loans, so that each Revolving Credit Lender holds that Revolving Credit Lender's Revolving Credit Percentage Commitment of the Revolving Credit Loans and advances.

(b) Following the initiation of a Liquidation, each Revolving Credit Lender shall contribute, towards any L/C thereafter honored and not immediately reimbursed by the Loan Parties, that Revolving Credit Lender's Revolving Credit Percentage Commitment of such honoring.

(c) Following the initiation of a Liquidation, each Revolving Credit Lender shall contribute, towards any L/C thereafter honored and not immediately reimbursed by the Loan Parties, that Revolving Credit Lender's Revolving Credit Percentage Commitment of such honoring.

**14.6. COLLATERAL AGENT'S CONDUCT OF LIQUIDATION.**

(a) Any Liquidation shall be conducted by the Collateral Agent in the manner determined by it to be commercially reasonable.

(b) The Collateral Agent may establish one or more Nominees to "bid in" or otherwise acquire ownership to any Post Foreclosure Asset.

(c) The Collateral Agent shall manage the Nominee and manage and dispose of any Post Foreclosure Assets with a view towards the realization of the economic benefits of the ownership of the Post Foreclosure Assets and in such regard, the Collateral Agent and/or the Nominee may operate, repair, manage, maintain, develop, and dispose of any Post Foreclosure Asset in such manner as the Collateral Agent determines as appropriate under the circumstances.

(d) Each Agent may decline to undertake or to continue taking a course of action or to execute an action plan (whether proposed by an Agent or a Lender) unless indemnified Pro-Rata to that Agent's satisfaction by the Lenders against any and all liability and expense which may be incurred by that Agent by reason of taking or continuing to take that course of action or action plan.

(e) The Administrative Agent and each Lender shall execute all such instruments and documents not inconsistent with the provisions of this Agreement as the Administrative Agent and/or the Nominee reasonably may request with respect to the creation and governance of any Nominee, the conduct of the Liquidation, and the management and disposition of any Post Foreclosure Asset.

**14.7. DISTRIBUTION OF LIQUIDATION PROCEEDS.**

(a) The Collateral Agent may establish one or more reasonably funded reserve accounts into which proceeds of the conduct of any Liquidation may be deposited in anticipation of future expenses which may be incurred by any Agent in the exercise of rights as a secured creditor of the Loan Parties and prior claims which the Agents anticipate may need to be paid.

(b) The Collateral Agent shall distribute the proceeds of any Liquidation to the Administrative Agent.

(c) The Administrative Agent shall distribute the net proceeds of Liquidation, as distributed to the Administrative Agent by the Collateral Agent pursuant to Section 14.7(b), in accordance with the relative priorities set forth in Section 14.8.

(d) Each Revolving Credit Lender, on the written request of the Administrative Agent and/or any Nominee, not more frequently than once each month, shall reimburse the Agents and/or any Nominee, Pro-Rata, for any cost or expense reasonably incurred by the Agents and/or the Nominee in the conduct of a Liquidation, which amount is not covered out of current proceeds of the Liquidation, which reimbursement shall be paid over to and distributed by the Administrative Agent.

**14.8. RELATIVE PRIORITIES TO PROCEEDS OF LIQUIDATION.**

(a) All distributions of proceeds of a Liquidation shall be net of payment over to the Agents as reimbursement for all reasonable third party costs and expenses incurred by the Agents and to Lenders' Special Counsel and to any funded reserve established pursuant to Section 14.7(a).

(b) The relative priorities to the proceeds of a Liquidation shall be distributed based on the following relative priorities:

(i) First, to the SwingLine Lender, on account of any SwingLine Loans not converted to Revolving Credit Loans pursuant to Section 14.5(a)(i); and then

(ii) Second, to the Revolving Credit Lenders (other than any Delinquent Revolving Credit Lender) and to FRG or any of its Affiliates providing cash management services or L/Cs to the extent of any credit exposure in connection therewith (but excluding any fees earned on account thereof), Pro-Rata, to the unpaid principal balance of Revolving Credit Debt and any amounts owed on account of such cash management services and any L/Cs (including as cash collateral for any undrawn L/Cs) and fees due to the Issuer on account thereof; and then

(iii) Third, to the Revolving Credit Lenders (other than any Delinquent Revolving Credit Lender), Pro-Rata, to accrued interest which constitutes Revolving Credit Debt; and then

(iv) Fourth, to the Revolving Credit Lenders (other than any Delinquent Revolving Credit Lender), Pro-Rata, to Revolving Credit Fees, other than the Revolving Credit Early Termination Fee; and then

(v) Fifth, to any Delinquent Revolving Credit Lenders, Pro-Rata to amounts to which such Revolving Credit Lenders otherwise would have been entitled pursuant to Subsections 14.8(b)(ii), 14.8(b)(iii), and 14.8(b)(iv); and then

(vi) Sixth, to the Tranche B Lender; and then

- (vii) Seventh, to the Secured Parties on account of any Liabilities arising in connection with any Hedge Agreement and then
- (viii) Eighth, to the Revolving Credit Early Termination Fee.

**ARTICLE 15 - THE AGENTS:**

**15.1. APPOINTMENT OF THE AGENTS.**

(a) Each Lender appoints and designates Fleet Retail Group Inc. as the “Administrative Agent” hereunder and under the Loan Documents.

(b) Each Lender appoints and designates Fleet Retail Group Inc. as the “Collateral Agent” hereunder and under the Loan Documents.

(c) Each Lender authorizes each Agent:

(i) To execute those of the Loan Documents and all other instruments relating thereto to which that Agent is a party.

(ii) To take such action on behalf of the Lenders and to exercise all such powers as are expressly delegated to that Agent hereunder and in the Loan Documents and all related documents, together with such other powers as are reasonably incident thereto.

(d) Each Lender recognizes that Fleet Retail Group Inc. and Bank of America, N.A. are interrelated and waives any potential claim which may be based on an Agent’s acting in conflict of interest on account thereof. Nothing contained herein shall be deemed to release the Agents from liability under Section 15.2(f) hereof for conduct undertaken in a grossly negligent manner, in actual bad faith, or in willful misconduct.

(e) Wells Fargo Foothill, Inc. has been granted the title of “Syndication Agent”, and National City Business Credit, Inc. and Heller Financial, Inc. have each been granted the title of “Co-Documentation Agent” in which capacity none shall have any rights nor any responsibilities. Any of the foregoing may resign such position at any time by written notice to the Administrative Agent and, in any event, shall cease to be Syndication Agent or Co-Documentation Agent, as the case may be, contemporaneously with its ceasing to be a Revolving Credit Lender.

**15.2. RESPONSIBILITIES OF AGENTS.**

(a) The Administrative Agent shall have principal responsibilities for and primary authority for the administration of the credit facilities contemplated by this Agreement and for all matters for which the Collateral Agent is not responsible. In all instances where the allocation of responsibility and authority, as between the Collateral Agent and the Administrative Agent is in doubt, the Administrative Agent shall be vested with such responsibility and authority.

(b) The Collateral Agent shall have principal responsibilities for and primary authority for the conduct of the Liquidation and the distribution of the proceeds of such Liquidation.

(c) Neither Agent shall have any duties or responsibilities to, or any fiduciary relationship with, any Lender except for those expressly set forth in this Agreement.

(d) Neither Agent nor any of its Affiliates shall be responsible to any Lender for any of the following:

(i) Any recitals, statements, representations or warranties made by any Loan Party or any other Person.

(ii) Any appraisals or other assessments of the assets of any Loan Party or of any other Person responsible for or on account of the Liabilities.

(iii) The value, validity, effectiveness, genuineness, enforceability, or sufficiency of the Loan Agreement, the Loan Documents or any other document referred to or provided for therein.

(iv) Any failure by any Loan Party or any other Person (other than the subject Agent) to perform its obligations under the Loan Documents.

(e) Each Agent may employ attorneys, accountants, and other professionals and agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such attorneys, accountants, and other professionals or agents or attorneys-in-fact selected by the subject Agent with reasonable care. No such attorney, accountant, other professional, agent, or attorney-in-fact shall be responsible for any action taken or omitted to be taken by any other such Person.

(f) Neither Agent, nor any of its directors, officers, or employees shall be responsible for any action taken or omitted to be taken or omitted to be taken by any other of them in connection herewith in reliance upon advice of their respective counsel nor, in any other event except for any action taken or omitted to be taken as to which a final judicial determination has been or is made (in a proceeding in which such Person has had an opportunity to be heard) that such Person had acted in a grossly negligent manner, in actual bad faith, or in willful misconduct.

(g) Neither Agent shall have any responsibility in any event for more funds than that Agent actually receives and collects.

(h) The Agents, in their separate capacities as Lenders, shall have the same rights and powers hereunder as any other Lender.

### 15.3. CONCERNING DISTRIBUTIONS BY THE AGENTS.

(a) Each Agent, in that Agent's reasonable discretion based upon that Agent's determination of the likelihood that additional payments will be received, expenses incurred, and/or claims made by third parties to all or a portion of such proceeds, may delay the distribution of any payment received on account of the Liabilities.

(b) Each Agent may disburse funds prior to determining that the sums which that Agent expects to receive have been finally and unconditionally paid to that Agent. If and to the extent that Agent does disburse funds and it later becomes apparent that the Agent did not then receive a payment in an amount equal to the sum paid out, then any Lender to whom the Agent made the funds available, on demand from the Agent, shall refund to the Administrative Agent the sum paid to that person.

(c) If, in the opinion of an Agent, the distribution of any amount received by that Agent might involve that Agent in liability, or might be prohibited hereby, or might be questioned by any Person, then that Agent may refrain from making distribution until that Agent's right to make distribution has been adjudicated by a court of competent jurisdiction.

(d) The proceeds of any Lender's exercise of any right of, or in the nature of, set-off shall be deemed, *First*, to the extent that a Lender is entitled to any distribution hereunder, to constitute such distribution and *Second*, shall be shared with the other Lenders as if distributed pursuant to (and shall be deemed as distributions under) Section 14.8.

(e) Each Lender recognizes that the crediting of the Loan Parties with the "proceeds" of any transaction in which a Post Foreclosure Asset is acquired is a non-cash transaction and that, in consequence, no distribution of such "proceeds" will be made by the Administrative Agent to any Lender.

(f) In the event that (x) a court of competent jurisdiction shall adjudge that any amount received and distributed by the Administrative Agent is to be repaid or disgorged or (y) the requisite Lenders (as provided in Section 16.4(h)) determine to effect such repayment or disgorgement, then each Lender to which any such distribution shall have been made shall repay, to the Agent which had made such distribution, that Lender's Pro-Rata share of the amount so adjudged or determined to be repaid or disgorged.

**15.4. DISPUTE RESOLUTION.** Any dispute among the Lenders and/or any Agent concerning the interpretation, administration, or enforcement of the financing arrangements contemplated by this or any other Loan Document or the interpretation or administration of this or any other Loan Document which cannot be resolved amicably shall be resolved in the United States District Court for the District of Massachusetts, sitting in Boston or in the Superior Court of Suffolk County, Massachusetts, to the jurisdiction of which courts each Lender hereby submits.

**15.5. DISTRIBUTIONS OF NOTICES AND OF DOCUMENTS.** The Administrative Agent will forward to each Lender, promptly after the Administrative Agent's receipt thereof, a copy of each notice or other document furnished to the Administrative Agent pursuant to this Agreement,



including monthly, quarterly, and annual financial statements received from the Borrowers' Representative pursuant to Article 6 of this Agreement, other than any of the following:

- (a) Routine communications associated with requests for Revolving Credit Loans and/or the issuance of L/C's.
- (b) Routine or nonmaterial communications.
- (c) Any notice or document required by any of the Loan Documents to be furnished to the Lenders by the Borrowers' Representative.
- (d) Any notice or document of which the Administrative Agent has knowledge that such notice or document had been forwarded to the Lenders other than by the Administrative Agent.

**15.6. CONFIDENTIAL INFORMATION.**

(a) Each Lender will maintain, as confidential (other than to their respective attorneys, agents, accountants, participants and prospective participants) all of the following:

- (i) Proprietary approaches, techniques, and methods of analysis which are applied by the Administrative Agent in the administration of the credit facility contemplated by this Agreement.
- (ii) Proprietary forms and formats utilized by the Administrative Agent in providing reports to the Lenders pursuant hereto, which forms or formats are not of general currency.
- (iii) Confidential information provided by any Loan Party pursuant to the Loan Documents, other than any information which becomes known to the general public through sources other than that Lender.

(b) Nothing included herein shall prohibit the disclosure of any such information as may be required to be provided by judicial process or by regulatory authorities having jurisdiction over any party to this Agreement.

**15.7. RELIANCE BY AGENTS.** Each Agent shall be entitled to rely upon any certificate, notice or other document (including any cable, telegram, telex, or facsimile) reasonably believed by that Agent to be genuine and correct and to have been signed or sent by or on behalf of the proper person or persons, and upon advice and statements of attorneys, accountants and other experts selected by that Agent. As to any matters not expressly provided for in this Agreement, any Loan Document, or in any other document referred to therein, that Agent shall in all events be fully protected in acting, or in refraining from acting, in accordance with the applicable Consent required by this Agreement. Instructions given with the requisite Consent shall be binding on all Lenders.

**15.8. NON-RELIANCE ON AGENTS AND OTHER LENDERS.**

(a) Each Lender represents to all other Lenders and to the Agents that such Lender:

(i) Independently and without reliance on any representation or act by any Agent or by any other Lender, and based on such documents and information as that Lender has deemed appropriate, has made such Lender's own appraisal of the financial condition and affairs of the Loan Parties and decision to enter into this Agreement.

(ii) Has relied upon that Lender's review of the Loan Documents by that Lender and by counsel to that Lender as that Lender deemed appropriate under the circumstances.

(b) Each Lender agrees that such Lender, independently and without reliance upon any Agent or any other Lender, and based upon such documents and information as such Lender shall deem appropriate at the time, will continue to make such Lender's own appraisals of the financial condition and affairs of the Loan Parties when determining whether to take or not to take any discretionary action under this Agreement.

(c) Neither Agent in the discharge of that Agent's duties hereunder, shall be required to make inquiry of, or to inspect the properties or books of, any Person.

(d) Except for notices, reports, and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent hereunder (as to which, *see* Section 15.5), the Agents shall not have any affirmative duty or responsibility to provide any Lender with any credit or other information concerning any Person, which information may come into the possession of Agents or any Affiliate of an Agent.

(e) Each Lender, at such Lender's request, shall have reasonable access to all nonprivileged documents in the possession of the Agents, which documents relate to the Agents' performance of their duties hereunder.

**15.9. INDEMNIFICATION.** Without limiting the liabilities of the Loan Parties under any this or any of the other Loan Documents, each Lender shall indemnify each Agent, Pro-Rata, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including reasonable attorneys' fees and expenses and other out-of-pocket expenditures) which may at any time be imposed on, incurred by, or asserted against that Agent and in any way relating to or arising out of this Agreement or any other Loan Document or any documents contemplated by or referred to therein or the transactions contemplated thereby or the enforcement of any of terms hereof or thereof or of any such other documents, *provided, however*, no Lender shall be liable for any of the foregoing to the extent that any of the foregoing arises from any action taken or omitted to be taken by the subject Agent as to which a final judicial determination has been or is made (in a proceeding in which the subject Agent has had an opportunity to be heard) that the subject Agent had acted in a grossly negligent manner, in actual bad faith, or in willful misconduct.

**15.10. RESIGNATION OF AGENT.**

(a) An Agent may resign at any time by giving 60 days prior written notice thereof to the Lenders and to the other Agent. Upon receipt of any such notice of resignation, the SuperMajority Lenders and the Tranche B Lender shall have the right to appoint a successor to such Agent (and if no Event of Default has occurred, with the consent of the Borrowers' Representative, not to be unreasonably withheld and, in any event, deemed given by the Borrowers' Representative if no written objection is provided by the Borrowers' Representative to the (resigning) Agent within seven (7) Business Days notice of such proposed appointment). If a successor Agent shall not have been so appointed and accepted such appointment within 30 days after the giving of notice by the resigning Agent, then the resigning Agent may appoint a successor Agent, which shall be a financial institution having a combined capital and surplus in excess of \$500,000,000.00 (unless, after a BuyOut such Agent shall be the Tranche B Lender in which case the foregoing capital and surplus requirement shall not apply). The consent of the Borrowers' Representative otherwise required by this Section 15.10(a) shall not be required if an Event of Default has occurred.

(b) Upon the acceptance of any appointment as an Agent hereunder by a successor Agent, such successor shall thereupon succeed to, and become vested with, all the rights, powers, privileges, and duties of the (resigning) Agent so replaced, and the (resigning) Agent shall be discharged from the (resigning) Agent's duties and obligations hereunder, other than on account of any responsibility for any action taken or omitted to be taken by the (resigning) Agent as to which a final judicial determination has been or is made (in a proceeding in which the (resigning) Person has had an opportunity to be heard) that such Person had acted in a grossly negligent manner or in bad faith.

(c) After any retiring Agent's resignation, the provisions of this Agreement and of all other Loan Documents shall continue in effect for the retiring Person's benefit in respect of any actions taken or omitted to be taken by it while it was acting as an Agent.

**ARTICLE 16 - Action By Agents - Consents - Amendments - Waivers:**

**16.1. ADMINISTRATION OF CREDIT FACILITIES.**

(a) Except as otherwise specifically provided in this Agreement, each Agent may take any action with respect to the credit facility contemplated by the Loan Documents as that Agent determines to be appropriate within their respective areas of responsibility and authority, as set forth in Sections 15.2(b) and 15.2(a), *provided, however*, neither Agent is under any affirmative obligation to take any action which it is not required by this Agreement or the Loan Documents specifically to so take.

(b) Except as specifically provided in the following Sections of this Agreement, whenever a Loan Document or this Agreement provides that action may be taken or omitted to be taken in an Agents' discretion, that Agent shall have the sole right to take, or refrain from taking, such action without, and notwithstanding, any vote of the Lender:

<u>ACTIONS DESCRIBED IN SECTION</u>	<u>TYPE OF CONSENT REQUIRED</u>
16.2	Majority Lenders
16.3	SuperMajority Revolving Credit Lenders
16.4	Certain Consent
16.5	Unanimous Consent
17.4	Consent of SwingLine Lender
16.7	Consent of Tranche B Lender
16.8	Consent of the Agents

(c) The rights granted to the Lenders in those sections referenced in Section 16.1(b) shall not otherwise limit or impair any Agent's exercise of its discretion under the Loan Documents.

**16.2. ACTIONS REQUIRING OR ON DIRECTION OF MAJORITY LENDERS.** Except as otherwise provided in this Agreement, the Consent or direction of the Majority Lenders is required for any amendment, waiver, or modification of any Loan Document.

**16.3. ACTIONS REQUIRING OR ON DIRECTION OF SUPERMAJORITY REVOLVING CREDIT LENDERS.** The Consent or direction of the SuperMajority Revolving Credit Lenders is required as follows:

(a) The Lenders agree that any loan or advance under the Revolving Credit which results in a Protective OverAdvance may be made by the Administrative Agent in its discretion without the Consent of the Lenders and that each Lender shall be bound thereby, *provided, however*, the Consent or direction of the SuperMajority Revolving Credit Lenders is required to permit a Protective OverAdvance to be outstanding for more than 45 consecutive Business Days or more than twice in any twelve month period. (Any Protective OverAdvance which is permitted by this Section 16.3(a) is referred to as a "**Permitted Protective OverAdvance**").

(b) If any Default has occurred and is continuing, the SuperMajority Revolving Credit Lenders may direct the Administrative Agent to suspend the Revolving Credit, whereupon, as long as a Default shall have occurred and be continuing, the only Revolving Credit Loans which may be made are the following:

(i) Revolving Credit Loans made to "cover" the honoring of L/C's.

(ii) Permitted Protective OverAdvances.

(iii) Revolving Credit Loans made with Consent of the SuperMajority Lenders.

(c) If an Event of Default has occurred and not been duly waived, the SuperMajority Revolving Credit Lenders may:

(i) Give the Administrative Agent an Acceleration Notice in accordance with Section 14.1(b)

(ii) Direct the Administrative Agent to increase the rate of interest to the default rate of interest as provided in, and to the extent permitted by, this Agreement.

**16.4. ACTION REQUIRING CERTAIN CONSENT.** The following Consent shall be required for the following actions:

<u>ACTION</u>	<u>REQUIRED CONSENT</u>
(a) Any change to the dates on which any payment of principal of the Tranche B Loan shall be due and payable or the amount of any such payment.	SuperMajority Revolving Credit Lenders and the Tranche B Lender
(b) Any amendment to the definition of Tranche B Loan Prepayment Conditions.	SuperMajority Revolving Credit Lenders and the Tranche B Lender
(c) Waiver or amendment of financial performance covenants in Section 6.11	SuperMajority Revolving Credit Lenders and the Tranche B Lender.
(d) Increase in the SwingLine Ceiling:	SwingLine Lender and the Majority Lenders.
(e) Any increase in any Revolving Credit Lender's Revolving Credit Dollar Commitment or Revolving Credit Percentage Commitment (other than by reason of the application of Section 16.11 (which deals with NonConsenting Revolving Credit Lenders) or Section 17.1 (which deals with assignments and participations)), it being understood that this Section 16.4(e) addresses changes to commitments inter se and not any increase in the overall size of the Revolving Credit.	All Revolving Credit Lenders affected thereby other than any Delinquent Revolving Credit Lender.

**ACTION**

**REQUIRED CONSENT**

(f) Any forgiveness of all or any portion of any payment Liability.

All Lenders whose payment Liability is being so forgiven (other than any Delinquent Revolving Credit Lender, if otherwise applicable).

(g) Any decrease in any interest rate, fee or assessment payable under any of the Loan Documents (other than any Administrative Agent's Monitoring Fee (for which the consent of the Administrative Agent shall also be required)) and of any fee provided for by any Fee Letter (which may be amended by written agreement between the Borrowers' Representative on the one hand, and the Administrative Agent on the other).

All Lenders adversely affected thereby (other than any Delinquent Revolving Credit Lender, if otherwise applicable).

(h) Disgorgement as described in Section 15.3(f).

If disgorgement is  
By the Revolving Credit Lenders- The SuperMajority Revolving Credit Lenders.  
By the Tranche B Lender - The Tranche B Lender.

**16.5. ACTIONS REQUIRING OR DIRECTED BY UNANIMOUS CONSENT.** None of the following may take place except with Unanimous Consent:

(a) Any extension of the Maturity Date.

(b) Any release of all or substantially all of the Collateral not otherwise required or provided for in the Loan Documents or to facilitate a Liquidation.

(c) Any amendment of the definition of the terms "Borrowing Base", "Tranche B Borrowing Base", or "Availability" or of any definition of any component thereof, such that more credit would be available to the Loan Parties, based on the same assets, as would have been available to the Loan Parties immediately prior to such amendment, *it being understood, however*, that:

(i) The foregoing shall not limit the adjustment by the Administrative Agent of any Reserve in the Administrative Agent's administration of the Revolving Credit as otherwise permitted by this Agreement.

(ii) The foregoing shall not prevent the Administrative Agent, in its administration of the Revolving Credit, from restoring any component of Borrowing Base which had been lowered by the Administrative Agent back to the value of such component, as stated in this Agreement or to an intermediate value.

(d) Any release of any Person obligated on account of the Liabilities (except in connection with a sale of such Person approved by the SuperMajority Lenders in accordance with the terms of this Agreement).

(e) The making of any Revolving Credit Loan which, when made, exceeds Availability and is not a Permitted Protective OverAdvance, *provided, however,*

(i) no Consent shall be required in connection with the making of any Revolving Credit Loan to “cover” any honoring of a drawing under any L/C; and

(ii) each Lender recognizes that subsequent to the making of a Revolving Credit Loan which does not constitute a Permitted Protective OverAdvance, the unpaid principal balance of the Loan Account may exceed the Borrowing Base on account of changed circumstances beyond the control of the Administrative Agent (such as a drop in collateral value).

(f) The waiver of the obligation of the Loan Parties to reduce the unpaid principal balance of loans under the Revolving Credit to an amount which does not exceed a Permitted Protective OverAdvance or, subject to the time limits included in Section 16.3(a) (which places time and frequency limits on Permitted Protective OverAdvances).

(g) Any amendment of this Article 16.

(h) Amendment of any of the following Sections of this Agreement:

(i) 13.4

(ii) 13.5

(iii) 14.7

(iv) 14.8

(i) Amendment of any of the following Definitions:

“Appraised Inventory Liquidation Value”

“Majority Lenders”

“Majority Revolving Credit Lenders”

“Minimum Excess Availability Breach”

“Tranche B Availability Breach”

“Tranche B Payment Breach”

“Permitted Protective OverAdvance”

“Standstill Period”

“SuperMajority Lenders”

“SuperMajority Revolving Credit Lenders”

“Tranche B Loan Action Events”

“Unanimous Consent”

**16.6. ACTIONS REQUIRING SWINGLINE LENDER CONSENT.** No action, amendment, or waiver of compliance with, any provision of the Loan Documents or of this Agreement which affects the SwingLine Lender may be undertaken without the Consent of the SwingLine Lender.

**16.7. ACTIONS REQUIRING TRANCHE B LENDER CONSENT.** None of the following may be made without the Consent of the Tranche B Lender:

(a) Any increase in any interest rate or fee payable to the Revolving Credit Lenders on account of the Revolving Credit Loans in excess of 150 basis points per annum in the aggregate.

(b) Any increase in any interest rate or fee payable to the Revolving Credit Lenders on account of the Revolving Credit Loans not requiring the Consent of the Tranche B Lender pursuant to Section 16.7(a), unless the Loan Parties agree to increase the interest rate and fees payable to the Tranche B Lender contemporaneously therewith by a like amount.

(c) Any amendment, modification, or waiver of any provision of Article 3 (entitled "The Tranche B Loan").

(d) Any amendment of Sections 2.2, 11.6, 14.1(c), 14.2, 14.3(c) or 14.4.

(e) Amendment of any of the following Definitions:

"Change in Control"

"Equipment"

"Overloan"

"Protective OverAdvances"

"Revolving Credit Ceiling"

"Standstill Period."

**16.8. ACTIONS REQUIRING AGENTS' CONSENT.**

(a) No action, amendment, or waiver of compliance with, any provision of the Loan Documents or of this Agreement which affects an Agent in its capacity as an Agent may be undertaken without the written consent of the Agents.

(b) No action referenced herein which affects the rights, duties, obligations, or liabilities of an Agent shall be effective without the written consent of the Agents.

**16.9. MISCELLANEOUS ACTIONS.**

(a) Notwithstanding any other provision of this Agreement, no single Lender independently may exercise any right of action or enforcement against or with respect to any Loan Party.



(b) Each Agent shall be fully justified in failing or refusing to take action under this Agreement or any Loan Document on behalf of any Lender unless that Agent shall first:

(i) receive such clear, unambiguous, written instructions as that Agent deems appropriate; and

(ii) be indemnified to that Agent's satisfaction by the Lenders against any and all liability and expense which may be incurred by that Agent by reason of taking or continuing to take any such action, unless such action had been grossly negligent, in willful misconduct, or in bad faith.

(c) Each Agent may establish reasonable procedures for the providing of direction and instructions from the Lenders to that Agent, including its reliance on multiple counterparts, facsimile transmissions, and time limits within which such direction and instructions must be received in order to be included in a determination of whether the requisite Loan Commitments has provided its direction, Consent, or instructions.

**16.10. ACTIONS REQUIRING BORROWERS' REPRESENTATIVE'S CONSENT.**

(a) The Borrowers' Representative's consent is required for any amendment of this Agreement, except that each of the following Articles of this Agreement may be amended without the consent of the Borrowers' Representative:

<u>Article</u>	<u>Title of Article</u>
13	Revolving Credit Fundings and Distributions
15	The Agents

(b) The Borrowers' Representative's consent to the amendment of those provisions referenced in Section 16.10(a) shall be deemed given unless written objection is made, within seven (7) Business Days following the Administrative Agent's giving notice to the Borrowers' Representative of the proposed amendment; and

(i) shall not be required following the occurrence of any Event of Default.

**16.11. NONCONSENTING REVOLVING CREDIT LENDER.**

(a) In the event that a Revolving Credit Lender (in this Section 16.11, a "**NonConsenting Lender**") does not provide its Consent to a proposal by the Administrative Agent to take action which requires consent under this Article 16, then one or more Revolving Credit Lenders who provided Consent to such action may require the assignment, without recourse and in accordance with the procedures outlined in Section 17.1, below, of the NonConsenting Lender's commitment hereunder on five (5) days written notice to the Administrative Agent and to the NonConsenting Lender.

(b) At the end of such five (5) days, *and provided that* the NonConsenting Lender delivers the Note held by the NonConsenting Lender to the Administrative Agent, the Revolving Credit Lenders who have given such written notice shall Transfer the following to the NonConsenting Lender:

(i) Such NonConsenting Lender's Pro-Rata share of the principal and interest of the Loans to the date of such assignment.

(ii) All fees distributable hereunder to the NonConsenting Lender to the date of such assignment.

(iii) Any out-of-pocket costs and expenses for which the NonConsenting Lender is entitled to reimbursement from the Loan Parties.

(c) In the event that the NonConsenting Lender fails to deliver to the Administrative Agent the Note held by the NonConsenting Lender as provided in Section 16.11(b), then:

(i) The amount otherwise to be Transferred to the NonConsenting Lender shall be Transferred to the Administrative Agent and held by the Administrative Agent, without interest, to be turned over to the NonConsenting Lender upon delivery of the Note held by that NonConsenting Lender.

(ii) The Note held by the NonConsenting Lender shall have no force or effect whatsoever.

(iii) The NonConsenting Lender shall cease to be a "Lender".

(iv) The Revolving Credit Lender(s) which have Transferred the amount to the Administrative Agent as described above shall have succeeded to all rights and become subject to all of the obligations of the NonConsenting Lender as a "Revolving Credit Lender".

(d) In the event that more than One (1) Revolving Credit Lender wishes to require such assignment, the NonConsenting Lender's commitment hereunder shall be divided among such Revolving Credit Lenders, pro-rata based upon their respective Loan Commitments, with the Administrative Agent coordinating such transaction.

(e) The Administrative Agent shall coordinate the retirement of the Note held by the NonConsenting Lender and the issuance of Notes to those Lenders which "take-out" such NonConsenting Lender, *provided, however*, no processing fee otherwise to be paid as provided in Section 17.2(b) shall be due under such circumstances.

#### **16.12. THE BUYOUT.**

(a) The Tranche B Lender may (but shall not be obligated to) cause the assignment to the Tranche B Lender, or its designee, by the Revolving Credit Lenders, of all

right, title and interest in, to, arising under, or in respect of the Revolving Credit Obligations upon five (5) Business Days prior written notice given at any time that the Tranche B Lender has the right, under Section 14.1, to give an Acceleration Notice.

(b) Such assignments shall be effected on the Business Day next following the expiry of such five (5) Business Days by the execution, by the Revolving Credit Lenders, of an Assignment and Assumption (in the form of **EXHIBIT 17.1**, annexed hereto) in exchange for the payment, in immediately available funds, of the amount of Revolving Credit Obligations (including the Revolving Credit Early Termination Fee as if the same were then due and payable), providing that if the Revolving Credit Early Termination Fee is not collected on such date by the Tranche B Lender, then the Tranche B Lender shall use its best efforts to collect such Revolving Credit Early Termination Fee and upon collection thereof shall cause it to be paid in the order of priority set forth in 14.8.

The Tranche B Lender's buy out right under this Section 16.12 may only be exercised completely with respect to the entire Revolving Credit.

## **ARTICLE 17 - Assignments By Lenders:**

### **17.1. ASSIGNMENTS AND ASSUMPTIONS.**

(a) Except as provided herein, each Revolving Credit Lender (in this Section 17.1(a), an "**Assigning Revolving Credit Lender**") may assign to one or more Eligible Assignees (in this Section 17.1(a), each an "**Assignee Revolving Credit Lender**") all or a portion of that Lender's interests, rights and obligations under this Agreement and the Loan Documents (including all or a portion of its Commitment) and the same portion of the Loans at the time owing to it, and of the Note held by the Assigning Revolving Credit Lender, *provided that*:

(i) The Administrative Agent shall have given its prior written consent to such assignment, which consent shall not be unreasonably withheld, but need not be given if the proposed assignment would result in any Assigning Revolving Credit Lender's having a Dollar Commitment of less than the "minimum hold" amount specified in Section 17.1(a)(iii).

(ii) Each such assignment shall be of a constant, and not a varying, percentage of all the Assigning Revolving Credit Lender's rights and obligations under this Agreement.

(iii) Following the effectiveness of such assignment, the Assigning Revolving Credit Lender's Dollar Commitment (if not an assignment of all of the Assigning Revolving Credit Lender's Commitment) shall not be less than \$10,000,000.00.

(iv) If no Event of Default has occurred, such assignment shall be subject to the consent of the Borrowers' Representative, not to be unreasonably withheld or delayed and which consent shall be deemed given if no written objection is received within seven (7) days of the Borrowers' Representative's receipt of notice of such proposed assignment.

(b) The Tranche B Lender, with prior written notice to the Administrative Agent, may assign all or a portion of that Lender's interests, rights and obligations under this Agreement and the Loan Documents freely to any Person.

**17.2. ASSIGNMENT PROCEDURES.** (This Section 17.2 describes the procedures to be followed in connection with an assignment effected pursuant to this Article 17 and permitted by Section 17.1).

(a) The parties to such an assignment shall execute and deliver to the Administrative Agent, for recording in the Register, an Assignment and Acceptance substantially in the form of **EXHIBIT 17.1**, annexed hereto (an "**Assignment and Acceptance**").

(b) The Assigning Revolving Credit Lender shall deliver to the Administrative Agent, with such Assignment and Acceptance, the Note held by the subject Assigning Revolving Credit Lender and the Administrative Agent's processing fee of \$3,000.00, *provided, however*, no such processing fee shall be due where the Assigning Revolving Credit Lender is one of the Lenders at the initial execution of this Agreement.

(c) The Administrative Agent shall maintain a copy of each Assignment and Acceptance delivered to it and a register or similar list (the "**Register**") for the recordation of the names and addresses of the Lenders and of the Loan Commitments, the Revolving Credit Percentage Commitment and Revolving Credit Percentage Commitment of each Lender. The Register shall be available for inspection by the Lenders at any reasonable time and from time to time upon reasonable prior notice. In the absence of manifest error, the entries in the Register shall be conclusive and binding on all Lenders. The Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as a "Lender" hereunder for all purposes of this Agreement.

(d) The Assigning Revolving Credit Lender and Assignee Revolving Credit Lender, directly between themselves, shall make all appropriate adjustments in payments for periods prior to the effective date of an Assignment and Assumption.

**17.3. EFFECT OF ASSIGNMENT.**

(a) From and after the effective date specified in an Assignment and Acceptance which has been executed, delivered, and recorded (which effective date the Administrative Agent may delay by up to five (5) Business Days after the delivery of such Assignment and Acceptance):

(i) The Assignee Revolving Credit Lender:

(A) Shall be a party to this Agreement and the other Loan Documents (and to any amendments thereof) as fully as if the Assignee Revolving Credit Lender had executed each.

(B) Shall have the rights of a Lender hereunder to the extent of the Loan Commitment, the Revolving Credit Percentage Commitment and Revolving Credit Percentage Commitment assigned by such Assignment and Acceptance.

(ii) The Assigning Revolving Credit Lender shall be released from the Assigning Revolving Credit Lender's obligations under this Agreement and the Loan Documents to the extent of the Commitment assigned by such Assignment and Acceptance.

(iii) The Administrative Agent shall undertake to obtain and distribute replacement Notes to the subject Assigning Revolving Credit Lender and Assignee Revolving Credit Lender.

(b) By executing and delivering an Assignment and Acceptance, the parties thereto confirm to and agree with each other and with all parties to this Agreement as to those matters which are set forth in the subject Assignment and Acceptance.

**ARTICLE 18 - Notices:**

**18.1. NOTICE ADDRESSES.** All notices, demands, and other communications made in respect of any Loan Document (other than a request for a loan or advance or other financial accommodation under the Revolving Credit) shall be made to the following addresses, each of which may be changed upon seven (7) days written notice to all others given by certified mail, return receipt requested:

If to either Agent:

Fleet Retail Group Inc.  
40 Broad Street  
Boston, Massachusetts 02109  
Attention: Kathleen Dimock  
Managing Director  
Fax: 617-434-4339

*With a copy to:*

Riemer & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts 02108  
Attention: Robert E. Paul Esquire  
Fax: 617-880-3456

If to the Tranche B Lender

Fleet Retail Group, Inc.  
40 Broad Street  
Boston, Massachusetts 02109  
Attention: Kathleen Dimock  
Managing Director  
Fax: 617-434-4339

If to the Borrowers' Representative

And All Loan Parties:

Casual Male Retail Group, Inc.  
555 Turnpike Street  
Canton, Massachusetts 02021  
Attention: Dennis Hernreich  
Chief Financial Officer  
Fax: 781-444-8999

*With a copy to:*

Greenberg Traurig LLP  
One International Place  
Boston, Massachusetts 02110  
Attention: Jonathan Bell, Esquire  
Fax: 617-310-6001

**18.2. NOTICE GIVEN.**

(a) Except as otherwise specifically provided herein, notices shall be deemed made and correspondence received, as follows (all times being local to the place of delivery or receipt):

(i) By mail: the sooner of when actually received or three (3) days following deposit in the United States mail, postage prepaid.

(ii) By recognized overnight express delivery: the Business Day following the day when sent.

(iii) By hand: If delivered on a Business Day after 9:00 AM and no later than three (3) hours prior to the close of customary business hours of the recipient, when delivered. Otherwise, at the opening of the then next Business Day.

(iv) By facsimile transmission (which must include a header on which the party sending such transmission is indicated): If sent on a Business Day after 9:00 AM and no later than three (3) hours prior to the close of customary business hours of the recipient, one (1) hour after being sent. Otherwise, at the opening of the then next Business Day.

(b) Rejection or refusal to accept delivery and inability to deliver because of a changed address or Facsimile Number for which no due notice was given shall each be deemed receipt of the notice sent.

**18.3. WIRE INSTRUCTIONS.** Subject to change in the same manner that a notice address may be changed (as to which, *see* Section 18.1), wire transfers to the Administrative Agent shall be made in accordance with the following wire instructions:

Fleet National Bank  
ABA No. 011000390  
Acct Name: Fleet Retail Group, Inc.  
Acct No. : 530-39952  
Reference: [Designs, Inc.]

**ARTICLE 19 - Term:**

**19.1. TERMINATION OF REVOLVING CREDIT.** The Revolving Credit shall remain in effect (subject to suspension as provided in Section 2.6(g) hereof) until the Termination Date.

**19.2. ACTIONS ON TERMINATION.**

(a) On the Termination Date, the Loan Parties shall pay the Administrative Agent (whether or not then due), in immediately available funds, all then Liabilities including, without limitation: the following:

- (i) The entire balance of the Loan Account (including the unpaid principal balance of the Revolving Credit Loans, SwingLine Loan and the Tranche B Loan).
- (ii) Any then remaining unpaid installments of the Revolving Credit Commitment Fee.
- (iii) Any then remaining unpaid installments of the Administrative Agent's Monitoring Fee.
- (iv) Any payments due on account of the indemnification obligations included in Section 2.11(e).
- (v) Any accrued and unpaid Unused Line Fee.
- (vi) Any applicable Revolving Credit Early Termination Fee.
- (vii) All accrued and unpaid interest on the Tranche B Loan.

(viii) Any then remaining unpaid installments of the Tranche B Commitment Fee.

(ix) All unreimbursed costs and expenses of each Agent and of Lenders' Special Counsel for which each Loan Party is responsible.

(b) On the Termination Date, the Loan Parties shall also shall make such arrangements concerning any L/C's then outstanding as are reasonably satisfactory to the Administrative Agent (such as their being cash collateralized at 103 % of their then Stated Amount).

(c) Until such payment (Section 19.2(a)) and arrangements concerning L/C's (Section 19.2(b)), all provisions of this Agreement, other than those included in Article 2 which place any obligation on the Administrative Agent or any Revolving Credit Lender to make any loans or advances or to provide any financial accommodations to any Borrower and those included in Article 3 which place any obligation on the Tranche B Lender to make any loan or advance or to provide any financial accommodation to any Borrower, shall remain in full force and effect until all Liabilities shall have been paid in full.

(d) The release by the Collateral Agent of the Collateral Interests granted the Collateral Agent by the Loan Parties hereunder may be upon such conditions and indemnifications as the Administrative Agent reasonably may require.

#### **ARTICLE 20 - GENERAL:**

**20.1. PROTECTION OF COLLATERAL.** No Agent has any duty as to the collection or protection of the Collateral beyond the safe custody of such of the Collateral as may come into the possession of that Agent.

**20.2. PUBLICITY.** The Agents (or either of them) and the Tranche B Lender respectively may issue a "tombstone" notice of the establishment of the credit facility contemplated by this Agreement and may make reference to each Loan Party (and may utilize any logo or other distinctive symbol associated with each Loan Party) in connection with any advertising, promotion, or marketing undertaken by the Agents (or either of them) and/or by the Tranche B Lender.

**20.3. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the Borrowers' Representative, each Loan Party, and their respective representatives, successors, and assigns and shall enure to the benefit of each Agent and each Lender and their respective successors and assigns, *provided, however,* no trustee or other fiduciary appointed with respect to any Loan Party shall have any rights hereunder. In the event that any Agent or any Lender assigns or transfers its rights under this Agreement, the assignee shall thereupon succeed to and become vested with all rights, powers, privileges, and duties of such assignor hereunder and such assignor shall thereupon be discharged and relieved from its duties and obligations hereunder.

**20.4. SEVERABILITY.** Any determination that any provision of this Agreement or any application thereof is invalid, illegal, or unenforceable in any respect in any instance shall not affect the validity, legality, or enforceability of such provision in any other instance, or the validity, legality, or enforceability of any other provision of this Agreement.



## 20.5. AMENDMENTS. COURSE OF DEALING.

(a) This Agreement and the other Loan Documents incorporate all discussions and negotiations between each Loan Party and each Agent and each Lender, either express or implied, concerning the matters included herein and in such other instruments, any custom, usage, or course of dealings to the contrary notwithstanding. No such discussions, negotiations, custom, usage, or course of dealings shall limit, modify, or otherwise affect the provisions thereof. No failure by any Agent or any Lender to give notice to the Borrowers' Representative of any Loan Party's having failed to observe and comply with any warranty or covenant included in any Loan Document shall constitute a waiver of such warranty or covenant or the amendment of the subject Loan Document.

(b) Each Loan Party may undertake any action otherwise prohibited hereby, and may omit to take any action otherwise required hereby, upon and with the express prior written consent of the Administrative Agent. Subject to Article 16, no consent, modification, amendment, or waiver of any provision of any Loan Document shall be effective unless executed in writing by or on behalf of the party to be charged with such modification, amendment, or waiver (and if such party is the Administrative Agent then by a duly authorized officer thereof). Any modification, amendment, or waiver provided by the Administrative Agent shall be in reliance upon all representations and warranties theretofore made to the Administrative Agent by or on behalf of the Loan Parties (and any other guarantor, endorser, or surety of the Liabilities) and consequently may be rescinded in the event that any of such representations or warranties was not true and complete in all material respects when given.

**20.6. POWER OF ATTORNEY.** In connection with all powers of attorney included in this Agreement, each Loan Party hereby grants unto the Administrative Agent (acting through any of its officers) full power to do any and all things necessary or appropriate in connection with the exercise of such powers as fully and effectually as that Loan Party might or could do, hereby ratifying all that said attorney shall do or cause to be done by virtue of this Agreement. No power of attorney set forth in this Agreement shall be affected by any disability or incapacity suffered by any Loan Party and each shall survive the same. All powers conferred upon the Administrative Agent or the Collateral Agent by this Agreement, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a written instrument executed by a duly authorized officer of the Administrative Agent.

**20.7. APPLICATION OF PROCEEDS.** The proceeds of any collection, sale, or disposition of the Collateral, or of any other payments received hereunder, shall be applied towards the Liabilities in such order and manner as the Administrative Agent determines in its sole discretion, consistent, *however*, with Sections 14.7 and 14.8 and any other applicable provisions of this Agreement. The Loan Parties shall remain liable for any deficiency remaining following such application.

**20.8. INCREASED COSTS.** If, as a result of any Requirement of Law, or of the interpretation or application thereof by any court or by any governmental or other authority or entity charged with the administration thereof, whether or not having the force of law, which on and after the Closing Date:

(a) subjects any Lender to any taxes or changes the basis of taxation, or increases any existing taxes, on payments of principal, interest or other amounts payable by any Loan Party to the Administrative Agent or any Lender under this Agreement (except for taxes on the Administrative Agent or any Lender based on net income or capital imposed by the jurisdiction in which the principal or lending offices of the Administrative Agent or that Lender are located);

(b) imposes, modifies or deems applicable any reserve, cash margin, special deposit or similar requirements against assets held by, or deposits in or for the account of or loans by or any other acquisition of funds by the relevant funding office of any Lender;

(c) imposes on any Lender any other condition with respect to any Loan Document; or

(d) imposes on any Lender a requirement to maintain or allocate capital in relation to the Liabilities;

and the result of any of the foregoing, in such Lender's reasonable opinion, is to increase the cost to that Lender of making or maintaining any loan, advance or financial accommodation or to reduce the income receivable by that Lender in respect of any loan, advance or financial accommodation by an amount which that Lender deems to be material, then upon written notice from the Administrative Agent, from time to time, to the Borrowers' Representative (such notice to set out in reasonable detail the facts giving rise to and a summary calculation of such increased cost or reduced income), the Loan Parties shall forthwith pay to the Administrative Agent, for the benefit of the subject Revolving Credit Lender, upon receipt of such notice, that amount which shall compensate the subject Lender for such additional cost or reduction in income.

**20.9. COSTS AND EXPENSES OF AGENTS AND LENDERS.**

(a) The Loan Parties shall pay from time to time on demand all Costs of Collection and all reasonable costs, expenses, and disbursements (including reasonable attorneys' fees and expenses) which are incurred by each Agent and by the Tranche B Lender (and the respective Participants with the Tranche B Lender) in connection with the preparation, negotiation, execution, and delivery of this Agreement and of any other Loan Documents, and all other reasonable costs, expenses, and disbursements which may be incurred in connection with or in respect to the credit facility contemplated hereby or which otherwise are incurred with respect to the Liabilities.

(b) The Loan Parties shall pay from time to time on demand all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Lenders to Lenders' Special Counsel.

(c) Each Loan Party authorizes the Administrative Agent to pay all such fees and expenses and in the Administrative Agent's discretion, to add such fees and expenses to the Loan Account.

(d) The undertaking on the part of each Loan Party in this Section 20.9 shall survive payment of the Liabilities and/or any termination, release, or discharge executed by any Agent in favor of any Loan Party, other than a termination, release, or discharge which makes specific reference to this Section 20.9.

**20.10. COPIES AND FACSIMILES.** Each Loan Document and all documents and papers which relates thereto which have been or may be hereinafter furnished any Agent or any Lender may be reproduced by any Lender or by any Agent by any photographic, microfilm, xerographic, digital imaging, or other process, and such Person making such reproduction may destroy any document so reproduced. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business). Any facsimile which bears proof of transmission shall be binding on the party which or on whose behalf such transmission was initiated and likewise shall be so admissible in evidence as if the original of such facsimile had been delivered to the party which or on whose behalf such transmission was received.

**20.11. MASSACHUSETTS LAW.** This Agreement and all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the law of The Commonwealth of Massachusetts (without regard to the conflict of laws principles thereof).

**20.12. INDEMNIFICATION.** The Borrowers' Representative and each Loan Party shall indemnify, defend, and hold each Agent and each Lender and any of their respective employees, officers, or agents (each, an "Indemnified Person") harmless of and from any claim brought or threatened against any Indemnified Person by any Loan Party, any other guarantor or endorser of the Liabilities, or any other Person (as well as from reasonable attorneys' fees, expenses, and disbursements in connection therewith) on account of the relationship of the Borrowers' Representative, the Loan Parties or of any other guarantor or endorser of the Liabilities, including all costs, expenses, liabilities, and damages as may be suffered by any Indemnified Person in connection with (x) the Collateral; (y) the occurrence of any Event of Default; or (z) the exercise of any rights or remedies under any of the Loan Documents (each of claims which may be defended, compromised, settled, or pursued by the Indemnified Person with counsel of the Administrative Agent's selection, but at the expense of the Borrowers' Representative and the Loan Parties) other than any claim as to which a final determination is made in a judicial proceeding (in which the Administrative Agent and any other Indemnified Person has had an opportunity to be heard), which determination includes a specific finding that the Indemnified Person seeking indemnification had acted in a grossly negligent manner or in actual bad faith or willful misconduct. This indemnification shall survive payment of the Liabilities and/or any termination, release, or discharge executed by the Administrative Agent in favor of the Borrowers' Representative and/or the Loan Parties, other than a termination, release, or discharge duly executed on behalf of the Administrative Agent which makes specific reference to this Section 20.12.

**20.13. RULES OF CONSTRUCTION.** The following rules of construction shall be applied in the interpretation, construction, and enforcement of this Agreement and of the other Loan Documents:

(a) Unless otherwise specifically provided for herein, interest and any fee or charge which is stated as a per annum percentage shall be calculated based on a 360 day year and actual days elapsed.

(b) Words in the singular include the plural and words in the plural include the singular.

(c) Any reference, herein, to a circumstance or event's having "more than a *de minimis* adverse effect" and any similar reference is to a circumstance or event which (x) in a well managed enterprise, would receive the active attention of senior management with a view towards its being reversed or remedied; or (y) if not reversed or remedied could reasonably be expected to lead to its becoming a material adverse effect.

(d) Titles, headings (indicated by being underlined or shown in SMALL CAPITALS) and any Table of Contents are solely for convenience of reference; do not constitute a part of the instrument in which included; and do not affect such instrument's meaning, construction, or effect.

(e) The words "includes" and "including" are not limiting.

(f) Text which follows the words "including, without limitation" (or similar words) is illustrative and not limitational.

(g) Text which is shown in *italics* (except for parenthesized italicized text), shown in **bold**, shown IN ALL CAPITAL LETTERS, or in any combination of the foregoing, shall be deemed to be conspicuous.

(h) The words "may not" are prohibitive and not permissive.

(i) Any reference to a Person's "knowledge" (or words of similar import) are to such Person's knowledge assuming that such Person has undertaken reasonable and diligent investigation with respect to the subject of such "knowledge" (whether or not such investigation has actually been undertaken).

(j) Terms which are defined in one section of any Loan Document are used with such definition throughout the instrument in which so defined.

(k) The symbol "\$" refers to United States Dollars.

(l) Unless limited by reference to a particular Section or provision, any reference to "herein", "hereof", or "within" is to the entire Loan Document in which such reference is made.

(m) References to “this Agreement” or to any other Loan Document is to the subject instrument as amended to the date on which application of such reference is being made.

(n) Except as otherwise specifically provided, all references to time are to Boston time.

(o) In the determination of any notice, grace, or other period of time prescribed or allowed hereunder:

(i) Unless otherwise provided (I) the day of the act, event, or default from which the designated period of time begins to run shall not be included and the last day of the period so computed shall be included unless such last day is not a Business Day, in which event the last day of the relevant period shall be the then next Business Day and (II) the period so computed shall end at 5:00 PM on the relevant Business Day.

(ii) The word “from” means “from and including”.

(iii) The words “to” and “until” each mean “to, but excluding”.

(iv) The word “through” means “to and including”.

(p) The Loan Documents shall be construed and interpreted in a harmonious manner and in keeping with the intentions set forth in Section 20.14 hereof, *provided, however*, in the event of any inconsistency between the provisions of this Agreement and any other Loan Document, the provisions of this Agreement shall govern and control.

**20.14. Intent.** It is intended that:

(a) This Agreement take effect as a sealed instrument.

(b) The scope of all Collateral Interests created by any Loan Party to secure the Liabilities be broadly construed in favor of the Administrative Agent and that they cover all assets of each Loan Party.

(c) All Collateral Interests created in favor of the Collateral Agent at any time and from time to time by any Loan Party secure all Liabilities, whether now existing or contemplated or hereafter arising.

(d) All reasonable costs, expenses, and disbursements incurred by any Agent, and, to the extent provide in Section 20.9 each Lender, in connection with such Person’s relationship(s) with any Loan Party shall be borne by the Loan Parties.

(e) Unless otherwise explicitly provided herein, the Administrative Agent’s consent to any action of any Loan Party which is prohibited unless such consent is given may be given or refused by the Administrative Agent in its sole discretion and without reference to Section 2.17 hereof.

**20.15. PARTICIPATIONS.** Each Lender may sell participations to one or more financial institutions (each, a “**Participant**”) in that Lender’s interests herein *provided that* no such participation shall include any provision which accords that Participant with any rights, *vis a vis* any Agent, with respect to any requirement herein for approval by a requisite number or proportion of the Lenders, but *provided further*, such participation, if in the Tranche B Loan, may be on such “voting” rights between that Lender and its Participant as the two may determine. No such sale of a participation shall relieve a Lender from that Lender’s obligations hereunder nor obligate any Agent to any Person other than a Lender.

**20.16. RIGHT OF SET-OFF.** Any and all deposits or other sums at any time credited by or due to any Loan Party from any Agent or any Lender or any Participant or from any Affiliate of any of the foregoing, and any cash, securities, instruments or other property of any Loan Party in the possession of any of the foregoing, whether for safekeeping or otherwise (regardless of the reason such Person had received the same) to the extent permitted by law, shall at all times constitute security for all Liabilities and for any and all obligations of each Loan Party to each Agent and such Lender or any Participant or such Affiliate and following the occurrence of an Event of Default may be applied or set off against the Liabilities and against such obligations at any time, whether or not such are then due and whether or not other collateral is then available to any Agent or that Lender.

**20.17. PLEDGES TO FEDERAL RESERVE BANKS.** Nothing included in this Agreement shall prevent or limit any Lender, to the extent that such Lender is subject to any of the twelve Federal Reserve Banks organized under §4 of the Federal Reserve Act (12 U.S.C. §341) from pledging all or any portion of that Lender’s interest and rights under this Agreement, *provided, however*, neither such pledge nor the enforcement thereof shall release the pledging Lender from any of its obligations hereunder or under any of the Loan Documents.

**20.18. MAXIMUM INTEREST RATE.** Regardless of any provision of any Loan Document, neither any Agent nor any Lender shall be entitled to contract for, charge, receive, collect, or apply as interest on any Liability, any amount in excess of the maximum rate imposed by Applicable Law. Any payment which is made which, if treated as interest on a Liability would result in such interest’s exceeding such maximum rate shall be held, to the extent of such excess, as additional collateral for the Liabilities as if such excess were “Collateral.”

**20.19. WAIVERS.**

(a) The Borrowers’ Representative and each Loan Party (and all guarantors, endorsers, and sureties of the Liabilities) make each of the waivers included in Section 20.19(b), below, knowingly, voluntarily, and intentionally, and understands that each Agent and each Lender, in establishing the facilities contemplated hereby and in providing loans and other financial accommodations to or for the account of the Loan Parties as provided herein, whether not or in the future, is relying on such waivers.

(b) THE BORROWERS’ REPRESENTATIVE, EACH LOAN PARTY, AND EACH SUCH GUARANTOR, ENDORSER, AND SURETY RESPECTIVELY **WAIVES** THE FOLLOWING:

(i) Except as otherwise specifically required hereby, notice of non-payment, demand, presentment, protest and all forms of demand and notice, both with respect to the Liabilities and the Collateral.

(ii) Except as otherwise specifically required hereby, the right to notice and/or hearing prior to an Agent's exercising of that Agent's rights upon default.

**(iii) THE RIGHT TO A JURY IN ANY TRIAL OF ANY CASE OR CONTROVERSY IN WHICH ANY AGENT OR ANY LENDER IS OR BECOMES A PARTY (WHETHER SUCH CASE OR CONTROVERSY IS INITIATED BY OR AGAINST ANY AGENT OR ANY LENDER OR IN WHICH ANY AGENT OR ANY LENDER IS JOINED AS A PARTY LITIGANT), WHICH CASE OR CONTROVERSY ARISES OUT OF OR IS IN RESPECT OF, ANY RELATIONSHIP AMONGST OR BETWEEN THE BORROWERS' REPRESENTATIVE, ANY LOAN PARTY OR ANY OTHER PERSON AND THE AGENT AND EACH LENDER LIKEWISE WAIVES THE RIGHT TO A JURY IN ANY TRIAL OF ANY SUCH CASE OR CONTROVERSY).**

(iv) Except for manifest error, any defense, counterclaim, set-off, recoupment, or other basis on which the amount of any Liability, as stated on the books and records of the Administrative Agent or any Lender, could be reduced or claimed to be paid otherwise than in accordance with the tenor of and written terms of such Liability.

(v) Any claim to consequential, special, or punitive damages.

[SIGNATURE PAGES FOLLOW]

**THE BORROWERS' REPRESENTATIVE  
CASUAL MALE RETAIL GROUP, INC.**

By \_\_\_\_\_

Name: Dennis R. Hernreich  
Title: Executive Vice President, Chief Operating Officer,  
Chief Financial Officer, Treasurer and Secretary

**BORROWERS  
CASUAL MALE RETAIL GROUP, INC.**

By \_\_\_\_\_

Name: Dennis R. Hernreich  
Title: Executive Vice President, Chief Operating Officer,  
Chief Financial Officer, Treasurer and Secretary

**DESIGNS APPAREL, INC.**

By \_\_\_\_\_

Name: Dennis R. Hernreich  
Title: Executive Vice President, Chief Operating Officer,  
Chief Financial Officer, Treasurer and Secretary



ADMINISTRATIVE AGENT AND  
COLLATERAL AGENT  
**FLEET RETAIL GROUP, INC.**

By \_\_\_\_\_

Name: Kathleen A. Dimock  
Title: Managing Director

TRANCHE B LENDER  
**FLEET RETAIL GROUP, INC.**

By \_\_\_\_\_

Name: Kathleen A. Dimock  
Title: Managing Director

THE REVOLVING CREDIT LENDERS:

**FLEET RETAIL GROUP, INC.**

By \_\_\_\_\_

Name: Kathleen A. Dimock  
Title: Managing Director

**HELLER FINANCIAL, INC.**  
(CO-DOCUMENTATION AGENT AND REVOLVING CREDIT  
LENDER)

By \_\_\_\_\_

Name:  
Title:

**NATIONAL CITY BUSINESS CREDIT, INC.**  
(CO-DOCUMENTATION AGENT AND REVOLVING CREDIT  
LENDER)

By \_\_\_\_\_

Name:  
Title:

**WELLS FARGO FOOTHILL, INC.**  
(SYNDICATION AGENT AND REVOLVING CREDIT LENDER)

By \_\_\_\_\_

Name:  
Title:

**WELLS FARGO BUSINESS CREDIT INC.**

By \_\_\_\_\_

Name:

Title:

**THE PROVIDENT BANK**

By \_\_\_\_\_

Name:

Title:

**WEBSTER BUSINESS CREDIT CORPORATION**

By \_\_\_\_\_

Name:

Title:

**LASALLE RETAIL FINANCE**, a division of LaSalle  
Business Credit, as Agent for Standard Federal Bank National  
Association

By \_\_\_\_\_

Name:

Title:

Casual Male Retail Group  
Executive Incentive Program

**Program Period:** February 1, 2004 – January 29, 2005

**Eligible Participants:** Jewelcor Management Inc. (“JMI”)  
David A. Levin - President, Chief Executive Officer  
Dennis R. Hernreich – Executive VP, COO, CFO, Treasurer & Secretary

**Award Percentage:**

The executives’ discretionary Bonus Awards, pursuant to Section 3(c) of each executives’ Employment Agreement, for the fiscal year ending January 29, 2005, will be based on a percentage of their annual salary as of the last day of such fiscal year. Seymour Holtzman’s management company, JMI, will receive a discretionary Bonus Award based on a percentage of \$440,000 as of the last day of such fiscal year.

**Award Determination:**

The Bonus Award is based on the following percentages of base salary of each executive, respectively; JMI’s Bonus Award is based on the following percentages of \$440,000; provided that the Company achieves the following specified Sales Thresholds (Company’s gross receipts from its Casual Male Big & Tall business, excluding receipts from its LP Innovations, Inc. subsidiary and any other business lines of the Company) and EBITDA Thresholds (Company’s earnings before interest, taxes, depreciation and amortization of assets of its Casual Male Big & Tall business, excluding EBITDA associated with its LP Innovations, Inc. subsidiary and any other business lines of the Company) for its Fiscal Year ending January 29, 2005 (determined based upon the results of the Company’s audit for such fiscal year):

[As supported by the Securities and Exchange Commission’s Frequently Asked Questions dated November 23, 2004 (Question 13), and consistent with the treatment of similar information under Instruction 2 to Item 402(k) of Regulation S-K, the Registrant has excluded information relating to target levels with respect to specific quantitative or qualitative performance-related factors, or factors or criteria involving confidential commercial or business information, the disclosure of which would have an adverse effect on the Registrant.]

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**Eligibility Requirements:**

Executive must be actively employed at end of the fiscal year and at the time the bonus is distributed to be eligible. The Consulting Agreement between Jewelcor and the Company must be in force at end of the fiscal year and at the time the bonus is distributed to be eligible.

**Award Distribution:**

Bonus payments will be distributed as soon as possible following the close of the fiscal year less necessary tax withholdings.

**ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (the "Purchase Agreement"), dated August 18, 2004, by and among Casual Male Retail Group, Inc., a Delaware corporation ("Buyer") and Rochester Big and Tall Clothing, Inc., a California corporation ("Seller"). Robert Sockolov, William Sockolov, Stephen Sockolov and John Soares (the "Principal Shareholders") are joining this Purchase Agreement for the limited purpose set forth on the signature page hereof.

**WITNESSETH:**

A. Seller is engaged in the business of owning and operating 22 retail "Big and Tall" men's clothing and accessories stores, a menswear "Big and Tall" catalogue and internet business and related activities (the "Business").

B. Seller owns, among other things, intellectual property that is used exclusively in the operation of the Business, including, without limitation, the rights to the tradenames and service marks "Rochester Big and Tall", "Rochester Sport" and "California Big and Tall" (the "Tradenames").

C. Seller desires to sell, and Buyer desires to purchase, substantially all of the assets of Seller related to the Business on the terms and subject to the conditions of this Agreement.

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

**ARTICLE 1 - DEFINITIONS**

1.1 "Accounting Arbitrator" shall have the meaning set forth in Section 2.5.3(g).

1.2 "Acquisition Proposal" shall have the meaning set forth in Section 5.11.

1.3 "Adjusted Closing Statement" shall have the meaning set forth in Section 10.1(a).

1.4 "Affiliate" means, with respect to any Person, any other Person that controls, is controlled by or is under common control with such Person.

1.5 "agreement" means any contract, agreement, understanding, indenture, note, bond, loan, instrument, lease, mortgage, franchise, license, commitment or binding arrangement, whether express or implied, whether written or oral.

1.6 "Annual Calculation" shall have the meaning set forth in Section 2.5.3(g).

1.7 "Assumed Liabilities" shall have the meaning set forth in Section 2.3(d).

1.8 "Balance Sheet Date" shall have the meaning set forth in Section 3.6(b).

1.9 “Base Financial Statements” shall have the meaning set forth in Section 3.6(b).

1.10 “Base Year Gross Margin” shall have the meaning set forth in Section 2.5.3(a).

1.11 “Base year Gross Profit” shall have the meaning set forth in Section 2.5.3(a).

1.12 “Benefit Plans” shall have the meaning set forth in Section 3.18.

1.13 “Books and Records” shall have the meaning set forth in Section 2.1(o).

1.14 “Broker” shall have the meaning set forth in Section 3.21.

1.15 “Business” shall have the meaning set forth in the Recitals.

1.16 “Buyer” shall have the meaning set forth in the Recitals.

1.17 “Buyer Claim Amount” shall have the meaning set forth in Section 7.3.

1.18 “Buyer Claim Establishment Date” shall have the meaning set forth in Section 7.3.

1.19 “Buyer Group” shall have the meaning set forth in Section 7.1.

1.20 “Buyer Third Party Action” shall have the meaning set forth in Section 7.5.

1.21 “Cash Purchase Price” shall mean the payment set forth in Section 2.5.1.

1.22 “Closing” shall have the meaning set forth in Section 2.8.

1.23 “Closing Date” shall have the meaning set forth in Section 2.8.

1.24 “Closing Statement” shall have the meaning set forth in Section 8.12.

1.25 “Contingent Purchase Price” shall mean the contingent payments set forth in Section 2.5.3.

1.26 “control” (including with correlative meaning, controlled by and under common control with) shall mean, as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

1.27 “Credit Card Portfolio Assets” means all of Sellers’ right, title and interest as of the Closing in and to: (A) all of its credit card accounts; (B) all of its credit card Receivables; (C) all of its outstanding credit cards; and (D) all credit card account related information that Seller possesses.

1.28 “Due Diligence Review” shall have the meaning set forth in Section 5.1.

1.29 "Employment Agreement" or "Employment Agreements" shall have the meaning set forth in Section 8.4.

1.30 "End Date" shall have the meaning set forth in Section 11.13(c).

1.31 "Equipment" shall have the meaning set forth in Section 2.1(b).

1.32 "ERISA" shall have the meaning set forth in Section 3.18.

1.33 "Excluded Assets" shall have the meaning set forth in Section 2.2.

1.34 "Excluded Obligations" shall have the meaning set forth in Section 7.15.

1.35 "Existing Stores" shall mean the 22 existing Rochester Clothing stores at the locations and as listed on Schedule 1.35 hereto.

1.36 "Final Annual Calculation" shall have the meaning set forth in Section 2.5.3(g).

1.37 "Final Statement" shall have the meaning set forth in Section 10.1(b).

1.38 "GAAP" shall mean United States generally accepted accounting principles.

1.39 "Governmental Agency" shall mean any federal, state, county, local or foreign governmental or regulatory body.

1.40 "Intellectual Property" shall mean Seller's:

(a) patents, patent applications, patent disclosures and all related continuation, continuation-in-part, divisional, reissue, reexamination, utility model, certificate of invention and design patents, patent applications, registrations and applications for registrations;

(b) trademarks, service marks, trade dress, Internet domain names, logos, trade names and corporate names and registrations and applications for registration thereof, including, without limitation, all of its right, title and interest in and to the Tradenames;

(c) copyrights and registrations and applications for registration thereof;

(d) computer software, data and documentation;

(e) inventions, trade secrets and confidential business information, whether patentable or nonpatentable and whether or not reduced to practice, know-how, manufacturing and product processes and techniques, research and development information, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information;

(f) other proprietary rights relating to any of the foregoing (including remedies against infringements thereof and rights of protection of interest therein under the laws of all jurisdictions); and

(g) copies and tangible embodiments thereof.

1.41 "Inventory" shall have the meaning set forth in Section 2.1(f).

1.42 "Law" shall mean any federal, state, county, local and foreign law, ordinance, regulation, order, judgment, injunction, award or decree.

1.43 "Leased Real Estate" shall have the meaning set forth in Section 2.1(a).

1.44 "Leasehold Interests" shall have the meaning set forth in Section 2.1(a).

1.45 "Leases" shall mean those certain leases of real property described on Schedule 1.45 by and between Seller, as tenant, and the landlords noted thereon, relating to Seller's corporate offices located in San Francisco and Alpharetta, Georgia and the Existing Stores, and "Lease" shall mean any one of the Leases.

1.46 "Lessor Consents" shall have the meaning set forth in Section 2.6.3.

1.47 "Liens" shall mean any lien, charge, mortgage, pledge, security interest, assignment, preference, priority, charge or other encumbrance of any nature, whether voluntary or involuntary.

1.48 "Merchandising and Administrative Services Agreement" shall mean an agreement in the form separately initialed by the parties simultaneously herewith pursuant to which Buyer may provide services to one or more of the Existing Stores pursuant the terms of Section 2.6 hereof.

1.49 "Material Adverse Change" shall have the meaning set forth in Section 3.7.

1.50 "Material Adverse Effect" shall mean an effect, whether or not covered by insurance, that is or will be materially adverse to the business, operations, property, prospects, condition (financial or otherwise), assets or liabilities of Seller.

1.51 "Material Agreements" shall have the meaning set forth in Section 3.13.

1.52 "Permit" shall mean any license, permit, order and approval of any federal, state, county, local or foreign governmental or regulatory body relating to or used or useful in connection with the Business.

1.53 "Permitted Liens" shall have the meaning set forth in Section 3.5.

1.54 "Person" shall mean any natural person, firm, partnership, association, corporation, company, limited liability company, trust, public body or government or other entity.

1.55 "Principal Shareholders" shall have the meaning set forth in the Recitals.

1.56 "Purchase Agreement" shall have the meaning set forth in the Recitals.



1.57 "Purchase Orders" shall have the meaning set forth in Section 2.1(g).

1.58 "Purchase Price" shall have the meaning set forth in Section 2.5.

1.59 "Purchased Assets" shall have the meaning set forth in Section 2.1.

1.60 "Real Estate Agreements" shall have the meaning set forth in Section 2.1(i).

1.61 "Receivables" shall have the meaning set forth in Section 2.1(e).

1.62 "Related Agreements" means the Employment Agreements and any other agreements contemplated by this Purchase Agreement to be signed at or before the Closing.

1.63 "Repaid Indebtedness" shall have the meaning set forth in Section 2.5.2.

1.64 "Tangible Assets" shall mean the Purchased Assets consisting of tangible assets.

1.65 "Tax" or "Taxes" shall mean all federal, state, county, local, foreign and other taxes, including income taxes, estimated taxes, excise taxes, sales taxes, use taxes, gross receipts taxes, franchise taxes, employment and payroll related taxes, unemployment taxes, property taxes and import duties, whether or not measured in whole or in part by net income and including deficiencies or other additions to tax, interest and penalties with respect thereto.

1.66 "Seller" shall have the meaning set forth in the Recitals.

1.67 "Seller Claim Amount" shall have the meaning set forth in Section 7.11.

1.68 "Seller Group" shall have the meaning set forth in Section 7.8.

1.69 "Seller Third Party Action" shall have the meaning set forth in Section 7.14.

1.70 "Seller Working Capital" shall mean that portion of the Purchased Assets comprised of the sum of cash, accounts receivable (net of allowance for doubtful and/or uncollectible accounts), Inventory (net of reserves), pre-paid expenses and other current assets of Seller, minus the sum of accounts payable, accrued expenses and other current liabilities, in each case as determined in accordance with GAAP as applied on an accrual basis, and using methodologies consistent with those used to prepare Buyer's audited financial statements provided, however, that the Repaid Indebtedness and shareholder distributions to cover federal and state income Taxes with respect to the corporate taxable income of Seller prior to Closing shall be excluded from the calculation of Seller Working Capital.

1.71 "Special Closing Conditions" shall have the meaning set forth in Section 2.6.4.

1.72 "Special Closing Notice" shall have the meaning set forth in Section 2.6.4.

1.73 "Subsidiary" shall mean any corporation, partnership, trust, limited liability company or other non-corporate business enterprise in which the Seller (or another Subsidiary) holds stock or other ownership interests representing (a) more than 50% of the voting power of

all outstanding stock or ownership interests of such entity or (b) the right to receive more than 50% of the net assets of such entity available for distribution to the holders of outstanding stock or ownership interests upon a liquidation or dissolution of such entity.

1.74 "Tradenames" shall have the meaning set forth in the Recitals.

1.75 "Unaudited Balance Sheet" means the balance sheet of the Seller as of June 30, 2004 included within the Unaudited Financial Statements.

1.76 "Unaudited Financial Statements" means the unaudited financial statements of the Seller as of June 30, 2004, a copy of which will be deemed annexed hereto as Schedule 1.76 once the same have been delivered to the Buyer pursuant to the terms of Section 3.6.

1.77 "Warranties" shall have the meaning set forth in Section 2.1(c).

1.78 "Working Capital Shortfall" shall have the meaning set forth in Section 10.1(c).

1.79 "2006 Gross Margin" shall have the meaning set forth in Section 2.5.3(b).

1.80 "2006 Gross Profit" shall have the meaning set forth in Section 2.5.3(b).

1.81 "2007 Gross Margin" shall have the meaning set forth in Section 2.5.3(c).

1.82 "2007 Gross Profit" shall have the meaning set forth in Section 2.5.3(c).

1.83 "2008 Gross Margin" shall have the meaning set forth in Section 2.5.3(d).

1.84 "2008 Gross Profit" shall have the meaning set forth in Section 2.5.3(d).

## ARTICLE 2 - PURCHASE AND SALE OF ASSETS.

2.1 **PURCHASE AND SALE.** Upon and subject to the terms and conditions hereof, at the Closing, Seller shall sell, transfer and assign to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to all of the tangible and intangible assets of Seller of any kind or nature other than the Excluded Assets (the "Purchased Assets"), in each case free and clear of all Liens whatsoever, including, without limitation:

(a) The leasehold and subleasehold interests of the Seller in all real property listed on Schedule 2.1(a) hereto (collectively, "Leased Real Estate"), together with all interests of Seller in the buildings, structures, installations, fixtures, trade fixtures and other improvements situated thereon and all easements, rights of way and other rights, interests, and appurtenances of Seller therein or thereunto pertaining (collectively with the Leased Real Estate, the "Leasehold Interests").

(b) The machinery, equipment, furniture, tools, computer hardware and network infrastructure and spare parts and other tangible assets of the Seller as of the Closing exclusive of Inventory and the motor vehicles owned by Seller (collectively, "Equipment").

- (c) All warranties or guarantees by any manufacturer, supplier or other vendor to the extent solely related to any of the Purchased Assets (“Warranties”).
- (d) The Credit Card Portfolio Assets.
- (e) All unpaid accounts, notes and other miscellaneous receivables in favor of Seller with respect to the Business (including the credit card receivables), together with all collateral security therefor (“Receivables”).
- (f) The inventory of goods and materials, packaging materials and supplies of the Seller as of the Closing wherever located (collectively, the “Inventory”).
- (g) All purchase orders issued by the Company in the ordinary course (“Purchase Orders”).
- (h) All contracts, guarantees, leases, licenses (including those relating to concessions or licensed departments), commitments and other agreements related to the Business (exclusive of Real Estate Agreements), including, without limitation, the Material Agreements.
- (i) All reciprocal easement and operating agreements, agreements supplemental thereto, easements, Seller’s interests as landlord and/or tenant under the Leases and any purchase and lease termination options, rights of first refusal or first offer, subordination, non-disturbance and attornment agreements, and other agreements that run with the land (collectively, “Real Estate Agreements”).
- (j) The Intellectual Property and all goodwill associated therewith.
- (k) The franchises, approvals, permits, licenses, orders, registrations, certificates, variances and similar rights obtained from governments and governmental agencies of the Seller.
- (l) All existing written or computer stored information regarding customers of the Business.
- (m) All material sales records, accounting records, purchase records, supplier lists, advertising and promotional materials, production records and other records; real estate and engineering data, blueprints and other property records; the material records regarding the Occupational Safety and Health Act and other governmental examinations and clearances related to the Business; personnel, benefits and payroll records, to the extent permitted by law; and all other material books and records primarily related to the Business, (collectively, “Books and Records”); provided that Seller shall maintain custody of the Books and Records and shall provide Buyer with access thereto for any legitimate business purpose.
- (n) All cash and cash equivalents of the Seller including cash in transit and “Register cash” in an amount as is necessary to open the stores of the Business on the day after the Closing Date, determined by reference to the historical practices of the Business.
- (o) All rights of Seller under any refunds, deposits (other than customer deposits), security deposits, claims, causes of action, rights of set off and rights of recoupment, in each case to the extent not included on the Unaudited Balance Sheet as an asset.
- (p) The computer software (including intellectual property rights related thereto) listed on Schedule 2.1(p) hereto, and all telephone numbers, domain names and URL addresses related to the Business or the Purchased Assets, including those listed on Schedule 2.1(p).

(q) All prepaid expenses and goodwill.

(r) All other assets (other than Excluded Assets) of the nature of the assets reflected on the Unaudited Balance Sheet.

Seller agrees that it will, forthwith after receipt, transfer and deliver to Buyer any cash or property that Seller may receive in respect of any of the Purchased Assets and any mail or other documents received by Seller relating to any of the Purchased Assets transferred to Buyer hereunder, such property, mail and documents to be delivered in the form and condition in which received, except for the opening of any envelope or package, and the endorsement of any instrument for collection, if required.

**2.2 EXCLUDED ASSETS.** The assets excluded from the Purchased Assets and not being sold, assigned or otherwise transferred to Buyer are those listed on Schedule 2.2 (collectively, the "Excluded Assets").

**2.3 ASSUMPTION OF LIABILITIES.** From and after the Closing Date, Buyer shall assume and perform the following:

(a) All accounts payable, accrued expenses and other obligations for which the Seller is responsible as of the Closing Date, to the extent the same were incurred in the ordinary course of the Seller's Business prior to the Closing Date;

(b) Seller's actual future lease costs for its closed Denver, Colorado store and deferred lease costs in connection therewith to the extent of the accrual for same on the books of the Seller as of the Closing Date; and

(c) Seller's obligations that accrue on or after the Closing Date under the Material Agreements and the Real Estate Agreements (whether or not the Lessor has consented to the assignment thereof to Buyer).

(d) Except for the liabilities described in Sections 2.3(a), (b) and (c) (the "Assumed Liabilities"), Buyer assumes no obligations or liabilities of Seller in connection with the transactions contemplated by this Purchase Agreement. Without limiting the generality of the foregoing, Seller shall be solely responsible for payment promptly when due of all amounts at any time owing by Seller with respect to the Business of Seller, both before and after the Closing, whether accrued or contingent, known or unknown, other than the Assumed Liabilities, including, without limitation, liabilities arising out of the provision by Seller of goods or services prior to the Closing, obligations for any of Seller's Taxes. Seller agrees that it will, forthwith after receipt, transfer and deliver to Buyer any mail or other documents received by Seller relating to any of the Assumed Liabilities transferred to Buyer hereunder, such mail and documents to be delivered in the form and condition in which received, except for the opening of any envelope or package.

**2.4 INSTRUMENTS OF TRANSFER.** The transfer of the Purchased Assets to be transferred to Buyer at the Closing shall be effected by bills of sale, deeds, assignments and such

other instruments of transfer as shall transfer to Buyer full title to the Purchased Assets free and clear of all Liens whatsoever (except for Permitted Liens), all of which documents shall contain appropriate and customary warranties and covenants of title consistent herewith and shall be in form and substance reasonably acceptable to Buyer and its counsel.

**2.5 PURCHASE PRICE.** In consideration of the transfer of the Purchased Assets to Buyer hereunder, Buyer shall pay to Seller a purchase price (the "Purchase Price") which will consist of the Cash Purchase Price, the Contingent Purchase Price and the Repaid Indebtedness.

**2.5.1 CASH PURCHASE PRICE.** The Cash Purchase Price will consist of \$15,000,000 in cash (the "Cash Purchase Price"). At the Closing, Buyer shall deliver the Cash Purchase Price to Seller by wire transfer of immediately available funds.

**2.5.2 REPAYMENT OF INDEBTEDNESS.** At the Closing, in addition to the Cash Purchase Price, Buyer shall pay to Seller an amount not to exceed \$3,800,000 (plus accrued interest) for application to its existing indebtedness to Comerica Bank, N.A. and an amount not to exceed \$1,543,103 (plus accrued interest) for application to its existing subordinated indebtedness to Moskovitz Properties Limited Partnership, Janet Hastings and Myron Moskovitz as noted on Schedule 2.5.2 (collectively, the "Repaid Indebtedness"). Such repayments shall be made by wire transfer of immediately available funds to an account of the applicable payee designated by Seller.

**2.5.3 CONTINGENT PURCHASE PRICE.**

(a) Upon delivery to the Buyer of the Base Financial Statements, the parties shall calculate as a dollar amount the difference between the gross revenues and the cost of goods sold of the Seller for its fiscal year ending June 30, 2004 (the "Base Year Gross Profit") and the percentage of total revenues of the Seller for such fiscal year represented by the Base Year Gross Profit (the "Base Year Gross Margin").

(b) Within 90 days after January 31, 2006, the Buyer shall calculate the difference between the gross revenues and the cost of goods sold of the Buyer's Rochester Clothing Division for its 2006 fiscal year (the "2006 Gross Profit") and the percentage of total revenues of the Buyer's Rochester Clothing Division for such fiscal year represented by the 2006 Gross Profit (the "2006 Gross Margin"). Seller shall be entitled to an earn-out payment in an amount equal to 60% of the amount by which the 2006 Gross Profit exceeds the Base Year Gross Profit up to a maximum earn-out payment of \$1,333,333 with respect to such period; provided, however, that no earn-out payment shall be due in the event that the 2006 Gross Margin is less than the difference between (i) the Base Year Gross Margin less (ii) 2.0%.

(c) Within 90 days after January 31, 2007, the Buyer shall calculate the difference between the gross revenues and the cost of goods sold of the Buyer's Rochester Clothing Division for its 2007 fiscal year (the "2007 Gross Profit") and the percentage of total revenues of the Buyer's Rochester Clothing Division for such fiscal year represented by the 2007 Gross Profit (the "2007 Gross Margin"). Seller shall be entitled to an earn-out payment in an amount equal to 60% of the amount by which the sum of the 2006 Gross Profit and the 2007 Gross Profit exceeds the sum of (A)(i) the Base Year Gross Profit, times (ii) two (2), plus (B)

\$1,500,000, which 2007 contingent payment is being reduced by the amount of any earn-out payment made with respect to the 2006 fiscal year and up to a maximum earn-out payment of \$2,666,667 for the 2006 and 2007 fiscal years; provided, however, that no earn-out payment shall be due with respect to the 2007 fiscal year in the event that the average of the 2006 Gross Margin and the 2007 Gross Margin is less than the difference between (i) the Base Year Gross Margin less (ii) 2.0%.

(d) Within 90 days after January 31, 2008, the Buyer shall calculate the difference between the gross revenues and the cost of goods sold of the Buyer's Rochester Clothing Division for its 2008 fiscal year (the "2008 Gross Profit") and the percentage of total revenues of the Buyer's Rochester Clothing Division for such fiscal year represented by the 2008 Gross Profit (the "2008 Gross Margin"). Seller shall be entitled to an earn-out payment in an amount equal to 60% of the amount by which the sum of the 2006 Gross Profit, the 2007 Gross Profit and the 2008 Gross profit exceeds the sum of (A)(i) the Base Year Gross Profit, times (ii) three (3), plus (B) \$3,000,000, which 2008 contingent payment is being reduced by the total amount of any earn-out payments made with respect to the 2006 fiscal year and the 2007 fiscal year and up to a maximum earn-out payment of \$4,000,000 for the 2006, 2007 and 2008 fiscal years; provided, however, that no earn-out payment shall be due with respect to the 2008 fiscal year in the event that the average of the 2006 Gross Margin, the 2007 Gross Margin and the 2008 Gross Margin is less than the difference between (i) the Base Year Gross Margin less (ii) 2.0%.

(e) In making the foregoing calculations, the following principles shall apply: (i) cost of goods sold shall be calculated to include as an expense any license fee or royalty cost attributable to the George Foreman clothing line; and (ii) gross margin shall otherwise be calculated in accordance with GAAP consistent with the principles utilized by Seller prior to Closing.

(f) In the event that for any reason one or more of the Existing Stores is not transferred to Buyer at Closing, and Buyer nevertheless determines in its sole discretion, to go forward with the Closing, and the transfer of such Existing Store(s) is not secured on or before the commencement of the Buyer's fiscal year commencing February 1, 2005, the parties shall reduce the Base Year Gross Margin and Base Year Gross Profit by the amounts attributable to such Existing Stores and the revenues and cost of goods sold attributable to such Existing Stores shall not thereafter be utilized in calculating Buyer's gross margin or gross profit regardless of whether such Existing Stores are ever transferred to the Buyer.

(g) Within 30 days after the end of each month during each fiscal year referenced above, Buyer shall deliver to Seller its calculation of gross profit and gross margin for such month and year-to-date and within ninety days after the end of each such fiscal year its detailed calculation thereof for such fiscal year (an "Annual Calculation"), which reflects gross sales, returns and allowances, net sales, the method of determining cost of goods sold, including beginning and ending inventory balances, purchases and discounts and, as to George Foreman merchandise, a detailed computation of any royalties, and will provide Seller with access to and the opportunity to make copies of all books and supporting records (including privileged federal and state sales and income tax returns) on which such calculation was based within 15 days after Seller's request. Within 30 days after Seller's receipt of an Annual Calculation, Seller shall notify Buyer whether it accepts or disputes the accuracy thereof. If Seller accepts such Annual

Calculation or fails to notify Buyer of any dispute with respect thereto within the 30 day period, such Annual Calculation shall be deemed to be final, conclusive and binding on Seller and Buyer for the applicable period (a "Final Annual Calculation"). If Seller disputes the accuracy of any Annual Calculation, Seller shall in such notice set forth in reasonable detail those items that Seller believes are not fairly presented and the reasons for its opinion. The parties shall then meet and in good faith use their best efforts to try to resolve their disagreements over the disputed items. If the parties resolve their disagreements over the disputed items in accordance with the foregoing procedure, the Buyer's Annual Calculation, with those modifications to which the parties shall have agreed, shall be deemed to be the Final Annual Calculation. If the parties have not resolved their disagreements over the disputed items on any Annual Calculation within 15 days after Seller's notice of dispute, the parties, including any assignee of Buyer, shall irrevocably and forthwith submit such dispute to arbitration for all purposes according to the Commercial Rules of the American Arbitration Association for final determination, which arbitration shall be conducted by a partner associated with an independent accounting firm located in San Francisco, California ("Accounting Arbitrator") mutually agreed to by Seller and Buyer or selected as hereinafter provided, which arbitrator shall make a binding determination of those disputed items in accordance with this Purchase Agreement as between Seller and Buyer and Buyer's assignee. Such arbitration shall be conducted in San Francisco, California. In the event that the parties fail to agree upon the Accounting Arbitrator, either party may petition the American Arbitration Association in San Francisco, California to select the Accounting Arbitrator. The Accounting Arbitrator will have 30 days from the date of referral (or such additional time as the Accounting Arbitrator may require or to allow the parties to conduct discovery, which discovery the parties expressly agree is provided for in such arbitration proceedings) to render a decision with respect to the disputed items concerning any Annual Calculation, which decision shall be final and binding upon Seller, Buyer and any assignee of Buyer (each of whom irrevocably agrees to be bound by such arbitration) on a joint and several basis. Judgment on any such award or decision may be entered in and enforced by any court of competent jurisdiction. The Annual Calculation, with any modifications determined by the Accounting Arbitrator, shall be deemed to be the Final Annual Calculation. The fees and expenses of the Accounting Arbitrator engaged pursuant to this Section 2.5.3 shall be borne 50% by Seller and 50% by Buyer. If any Final Annual Calculation indicates that Seller is due any payment of any Contingent Purchase Price, then Buyer shall deliver such Contingent Purchase Price to Seller in cash not later than ten (10) business days after the date of completion of the Final Annual Calculation, together with interest on the unpaid amount at the prime rate of Bank of America from time to time in effect. No change to the Buyer's fiscal year will negatively impact Seller's rights hereunder.

(h) During the fiscal periods for which the Seller may be entitled to an earn-out pursuant to the foregoing, Buyer will use commercially reasonable efforts in good faith to maximize the gross margin, gross profit and net income attributable to its Rochester Clothing Division. Catalog management and personnel decisions are to be made during the period prior to January 31, 2008 with the mutual consent of Buyer and Seller.

(i) The Rochester Clothing Division includes all Existing Stores, locations under Real Estate Agreements as to which a Merchandising and Administrative Services Agreement is in effect (whether or not the Lessor has consented to the assignment thereof to Buyer), catalogue and internet sales and all of the new locations operated under the Tradenames Buyer shall open prior to January 31, 2008.

## 2.6 CONSENT OF THIRD PARTIES.

2.6.1 **OBTAINING CONSENTS.** Immediately upon the execution hereof, Seller shall use all reasonable efforts to obtain all consents and approvals required to be obtained from any third party in connection with the transactions contemplated hereby without condition or if with conditions such conditions being satisfactory to Buyer and such other waiver, approval, consent or amendment Buyer may require and without any adverse economic impact or burden to which Buyer in its discretion may object from that previously experienced by Seller (collectively, "Consents"). Buyer shall use all reasonable effort to cooperate with Seller in such endeavor. This Purchase Agreement does not constitute an agreement to assign or transfer any governmental approval, instrument, contract, Lease, permit or other agreement or arrangement or any claim, right or benefit arising thereunder or resulting therefrom if an assignment or transfer or an attempt to make such an assignment or transfer without the consent of a third party would constitute a breach or violation thereof or affect adversely the rights of the Buyer or Seller thereunder.

2.6.2 **ALTERNATIVE ARRANGEMENTS.** In the event any such consent or approval is not obtained on or prior to the Closing Date, Seller shall continue to use all reasonable efforts to obtain any such approval or consent after the Closing Date until such time as such consent or approval has been obtained, and Seller will cooperate with the Buyer in any lawful and economically feasible arrangement to provide that the Buyer shall receive the interest of Seller, as the case may be, in the benefits under any such instrument, contract, lease or permit or other agreement or arrangement, including performance by Seller, as the case may be, as agent, if economically feasible, provided that the Buyer shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such benefit to the extent the Buyer would have been responsible therefor hereunder if such consent or approval had been obtained. In furtherance of the foregoing, Buyer and Seller agree, at the request of Buyer in its sole discretion, to enter into a Merchandising and Administrative Services Agreement with respect to any Existing Store for which such consent is not obtained at or prior to the Closing.

2.6.3 **EXTENSIONS OF CLOSING DATE.** In the event that, on or prior to the original Closing Date, one or more Consents of Lessors under the Leases (the "Lessor Consents") has not been obtained, either Seller or Buyer shall have the unilateral right, by notice to the other, to extend the Closing Date to November 30, 2004 whereupon November 30, 2004 shall be deemed to have been substituted for October 31, 2004 in Section 2.8 of this Purchase Agreement. In the event that, on or prior to the such extended Closing Date, one or more of the Lessor Consents has not been obtained, either Seller or Buyer shall have the unilateral right, by notice to the other, to extend the Closing Date to December 31, 2004 whereupon December 31, 2004 shall be deemed to have been substituted for November 30, 2004 in Section 2.8 of this Purchase Agreement.

2.6.4 **SPECIAL CLOSING NOTICE.** In the event that neither party has elected to extend the Closing Date or the Closing Date has been extended and no further extensions are available, either party may elect to terminate this Purchase Agreement on the



Closing Date pursuant to Section 11.13(c) thereof unless on or prior to the Closing Date (as the same may be extended pursuant to the terms hereof) Buyer has notified Seller that it wishes to proceed with the Closing under the terms of the "Special Closing Conditions" set forth below (the "Special Closing Notice"). Buyer may elect to give such notice at any time and in the event that Buyer has given such notice no further extensions of the Closing Date shall be available for either party.

**2.6.5 SPECIAL CLOSING CONDITIONS.** In the event that the Buyer timely gives the Seller the Special Closing Notice, the Closing shall proceed on the then current Closing Date notwithstanding the fact that not all of the Lessor Consents have been obtained subject to the following conditions:

(a) Buyer shall notify Seller in the Special Closing Notice of any Lease that Buyer wishes to be assigned to Buyer at the Closing notwithstanding that no Lessor Consent has been obtained. Each such Lease shall be assigned to Buyer at the Closing as a part of the Purchased Assets and Buyer shall assume all of Seller's obligations under any such Lease and defend at its cost and indemnify Seller pursuant to the terms of Sections 7.8 hereof for all liabilities under any such Lease, including, without limitation, claims that any such Lease has been assigned to Buyer in violation of the terms thereof (except for claims as to which Seller is required to indemnify Buyer pursuant to the terms of Section 7.1 hereof with respect to a violation of a representation or warranty hereunder).

(b) At Buyer's election (given in the Special Closing Notice), Buyer may choose to delay the assignment of any such Lease until such time as a Lessor Consent with respect thereto is obtained and instead Buyer and Seller shall enter into a Merchandising and Administrative Services Agreement with respect to each Existing Store operated under any such Lease. If Buyer so elects, the Closing shall proceed, the parties shall continue to use their respective commercially reasonable best efforts to obtain any such Lessor Consent and the Buyer shall defend at its cost and indemnify Seller pursuant to the terms of Sections 7.8 of the Purchase Agreement for all liabilities under any such Lease, including, without limitation, claims that any such Lease has been assigned to Buyer in violation of the terms thereof (except for claims as to which Seller is required to indemnify Buyer pursuant to the terms of Section 7.1 of the Purchase Agreement with respect to a violation of a representation or warranty under the Purchase Agreement).

(c) If Buyer delivers a Special Closing Notice, Buyer shall either accept the assignment of each Lease pursuant to the foregoing or enter into a Merchandising and Administrative Services Agreement with respect thereto.

(d) The terms of Seller's non-competition obligations and non-disclosure and other obligations under Section 5.5, 5.6, 5.9 and 5.10 hereof and the terms of the employee's non-competition obligations under each of the Employment Agreements shall be deemed not to apply with respect to the operations of any Existing Store that Buyer is managing pursuant to a Merchandising and Administrative Services Agreement provided that Seller is in compliance with the terms of such Merchandising and Administrative Services Agreement.

**2.7 UNACCRUED PENSION LIABILITY.** Seller has made Buyer aware of its liability for a multi-employer defined benefit pension plan previously maintained for its tailors in San Francisco. Seller has agreed to use all commercially reasonable efforts to negotiate a final settlement and payment of such liability at or prior to the Closing for an amount of not greater than \$489,000. Buyer has agreed to reimburse Seller for the cost of such settlement in an amount not to exceed the lesser of 50% of the amount required to settle such claim or \$150,000 in the event that such liability can be finally settled on or prior to the Closing Date. For the avoidance of doubt, such liability shall in no event be considered an Assumed Liability.

**2.8 CLOSING.** The closing of the purchase and sale of the Purchased Assets (the "Closing") shall be held at 10:00 A.M. at the offices of Greenberg Traurig, LLP in Palo Alto, California on October 31, 2004 or on such other date as the parties hereto may mutually agree upon in writing or as the same may be extended pursuant to the terms hereof (the "Closing Date").

### **ARTICLE 3 - REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer that the statements contained in this Article 3 are true and correct as of the date of this Purchase Agreement and will be true and correct as of the Closing as though made as of the Closing, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date) and will be true and correct as of the Closing as though made as of the Closing.

The officers of the Seller executing this Purchase Agreement or any certificate delivered in connection herewith shall not have personal liability for fraud or the accuracy of such representations except for intentional misrepresentation with respect to matters of which such officer had knowledge at the time of executing this Purchase Agreement or any certificate delivered in connection herewith.

**3.1 ORGANIZATION, QUALIFICATION AND CORPORATE POWER.** Seller is a corporation duly organized, validly existing and in corporate good standing under the laws of the State of California. Seller is duly qualified to conduct business and is in corporate good standing under the laws of each jurisdiction listed in Schedule 3.1, which jurisdictions constitute the only jurisdictions in which the nature of the Seller's businesses or the ownership or leasing of its properties requires such qualification except where any failure to so qualify will not have a Material Adverse effect. Seller has all requisite corporate power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. Seller has furnished to Buyer complete and accurate copies of its Articles of Incorporation and by-laws. Seller is not in default under or in violation of any provision of its Articles of Incorporation or by-laws.

**3.2 CAPITALIZATION.** Schedule 3.2 sets forth a complete and accurate list, as of the date of this Purchase Agreement, of (i) all shareholders of Seller, indicating the number and class or series of shares of capital stock of Seller held by each shareholder and (for shares other than common stock) the number of shares of common stock (if any) into which such shares are convertible, (ii) all outstanding options, warrants or other instruments giving any party the

right to acquire any of capital stock of Seller, indicating (A) the holder thereof, (B) the number and class or series of capital stock of Seller subject thereto and (for shares other than common stock) the number of shares of common stock (if any) into which such shares are convertible, and (C) the exercise price, date of grant, vesting schedule and expiration date for each such option, warrant or other instrument. There are no outstanding agreements or commitments to which Seller is a party or which are binding upon Seller providing for the redemption of any of its capital stock.

**3.3 SUBSIDIARIES AND OTHER AFFILIATES.** Seller has no Subsidiaries.

**3.4 AUTHORITY TO EXECUTE AND PERFORM AGREEMENT; BINDING EFFECT.** Seller has full right, power and authority to enter into this Purchase Agreement and the Related Agreements to which it is a party and to perform fully its obligations hereunder and thereunder. The board of directors and the shareholders of the Seller have approved the Seller's execution and delivery of this Purchase Agreement and the transactions contemplated hereby. No other approval by any class or series of stock or by any other person is required to approve the Seller's execution and delivery of this Purchase Agreement and the transactions contemplated hereby. The execution and delivery of this Purchase Agreement and such Related Agreements and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action of Seller. This Purchase Agreement and such Related Agreements have been duly executed and delivered by Seller, and, assuming due authorization, execution and delivery by the other parties hereto and thereto, are the legal, valid and binding obligation of Seller, enforceable against it in accordance with their terms.

**3.5 TITLE TO PROPERTIES; ABSENCE OF LIENS AND ENCUMBRANCES.** Except as set forth of Schedule 3.5, Seller has the full right to sell, transfer, and assign all of the Purchased Assets to Buyer, and has good title thereto, free and clear of all Liens whatsoever, other than current period property taxes and materialmen's and repairmen's Liens arising in the ordinary course of Seller's business (collectively, such tax Liens and materialmen's and repairmen's Liens being referred to as "Permitted Liens"). Following the Closing, Buyer will be the lawful owner of, and have good title to, the Purchased Assets except as to any Existing Stores as to which a consent to assignment has not been received, free and clear of any Liens whatsoever other than Permitted Liens. The Purchased Assets include all of the assets and properties necessary for Buyer to conduct the Business, substantially as Seller has conducted its business in the past. None of the Purchased Assets is in the possession, custody or control of any Person other than Seller.

**3.6 FINANCIAL STATEMENTS.**

(a) Seller has delivered to Buyer an audited balance sheet and related statements of income and cash flow as at the end of and for its fiscal years ended June 30, 2002 and 2003, that have been audited by Seller's independent public accountants.

(b) Seller will deliver to Buyer on or before September 30, 2004 an unaudited balance sheet and related unaudited statements of income and cash flow reviewed by Stonefield Josephson, Inc. (the "Base Financial Statements") as at the end of and for the twelve-month period ended June 30, 2004 ("Balance Sheet Date").

(c) To the knowledge of Seller, all of the foregoing Financial Statements have been (or will be in the case of the Base Financial Statements) prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, fairly present the financial condition, results of operations and cash flows of Seller as of the respective dates thereof and for the periods referred to therein and are consistent with the books and records of Seller.

(d) All accounting ledgers and other books and records of Seller are and will continue to be located at the offices of Seller in San Francisco, California, and present fairly the transactions they purport to represent. There has been no transaction with respect to the business of Seller which is not fully described in such ledgers, books and records.

**3.7 NO MATERIAL ADVERSE CHANGE.** Since the Balance Sheet Date, and except as noted on Schedule 3.7 hereto, there has not been any event that has had a Material Adverse Effect (a "Material Adverse Change"), and Seller does not know of any Material Adverse Change that is threatened or reasonably likely to occur.

**3.8 TAX MATTERS.** Except as set forth on Schedule 3.8 hereto, to the knowledge of Seller, within the times and in the manner prescribed by law, (a) all Tax returns that were or are required to be filed by Seller have been filed, and all such filed Tax returns were true, correct and complete; (b) all Taxes that have become due or assessed from or against Seller have been timely paid in full; (c) no Tax liens have been filed and no claims are being asserted or, to the knowledge of Seller, have been threatened with respect to any of such Taxes; (d) no federal, state, local or foreign audits are presently pending with regard to any Taxes or Tax returns of Seller; (e) Seller has not executed any waiver of the statute of limitations on or extending the period for the assessment of collection of any Tax; and (f) Seller has withheld and collected all amounts which it has been required by law to withhold or collect as of the Closing Date.

### **3.9 COMPLIANCE WITH LAWS.**

**3.9.1 GENERAL MATTERS.** Except as set forth on Schedule 3.9.1 hereto, to the knowledge of Seller, Seller has complied with all Laws applicable to it or the Business and with respect to which the failure to comply would or could have a Material Adverse Effect. Seller has not made any illegal payment to officials or employees of any Governmental Agency or to any other Person. Except as set forth on Schedule 3.9.1 hereto, to the knowledge of Seller, Seller has all Permits and has made all required registrations, notices and filings with any Governmental Agencies that are material to, or necessary for, the lawful conduct of its Business. To the knowledge of Seller, all Permits of Seller are set forth on Schedule 3.9.1 hereto and are in full force and effect, no violations to the business of Seller have been recorded with respect to any Permit, and no proceeding is pending or, to the knowledge of Seller, threatened for the revocation or limitation of any Permit. Seller has no knowledge of any notice by any Governmental Agency, written or oral, asserting any noncompliance with any Permit.

**3.9.2 ENVIRONMENTAL MATTERS.** To the Seller's knowledge, Seller has duly complied with all Laws relating to the protection of the environment and with respect to which the failure to comply would or could have a Material Adverse Effect. There are no past or

present actions or activities by Seller, or, to the knowledge of Seller, any circumstances, conditions, events or incidents, including the storage, treatment, release, emission, discharge, disposal or arrangement for disposal of any hazardous substances, that is reasonably likely to form the basis of a claim against Seller or against any Person whose liability for any such claim Seller has or may have retained either contractually or by operation of law and no such claim is pending or, to the knowledge of Seller, threatened.

**3.10 EXECUTION AND PERFORMANCE OF AGREEMENT.** Except as set forth on Schedule 3.10 hereto:

**3.10.1 NO CONFLICT.** Except as set forth on Schedule 3.10.1, the execution, delivery and performance of this Purchase Agreement and the Related Agreements and the consummation of the transactions contemplated hereby do not, and will not, violate, conflict with or otherwise result in the material breach or violation of any of the terms and conditions of, result in the creation of (or require Seller to create) any Lien on any of the Purchased Assets, or result in a modification of the effect of or constitute (or with notice, lapse of time or both constitute) a default under (a) the articles of incorporation or bylaws of Seller, (b) any material Real Estate Agreement, any Material Agreement or any instrument, contract or other agreement to which Seller is a party or by or to which it or he or any of its or his assets or properties (including the Purchased Assets) is bound or subject, or (c) any statute or any regulation, order, judgment, injunction, award or decree of any court, arbitrator or Governmental Agency known to be against or binding upon, or applicable to, Seller or upon its assets or properties (including the Purchased Assets). Except as set forth on Schedule 3.10.1, no approval or consent of any Person is needed in order to transfer any of the Purchased Assets, including any Real Estate Agreement or Material Agreement, to Buyer at the Closing or to give Buyer the full benefit of the Purchased Assets after the Closing.

**3.10.2 REQUIRED FILINGS AND CONSENTS.** Seller is not required to submit any notice, report or other filing with any Governmental Agency in connection with the execution, delivery and performance of this Purchase Agreement or the Related Agreements and the consummation of the transactions contemplated hereby and thereby, except for notices, reports or other filings for which failure to submit would not or could not reasonably be expected to impair the value to Buyer of the Purchased Assets. Except as noted on Schedule 3.10.2, no waiver, consent, approval or authorization of (a) any Governmental Agency or (b) any party to any agreement to which Seller is a party or by which Seller or any of its assets or properties (including the Purchased Assets) is bound or affected, is required to be obtained or made by Seller in connection with the execution, delivery and performance of this Purchase Agreement or the Related Agreements and the consummation of the transactions contemplated hereby and thereby.

**3.11 LITIGATION.** Except as noted on Schedule 3.11, Seller has not received notice of any outstanding order, judgment, injunction, award or damage of any court, Governmental Agency or arbitration tribunal against or adversely affecting Seller. Seller is not a party to or, to the knowledge of Seller, threatened with, any litigation or judicial, administrative, investigative or arbitration proceeding. Seller does not know of any dispute with any Person that is reasonably likely to give rise to any such litigation or judicial, administrative, investigative or arbitration proceeding and there is no fact, event or circumstance that is reasonably likely to give rise to any such litigation or judicial, administrative, investigative or arbitration proceeding.

### 3.12 EMPLOYMENT MATTERS.

3.12.1 **GENERAL.** Schedule 3.12 hereto sets forth (a) the names, positions and current compensation rates of all full-time and part-time employees of Seller and any consultants of Seller and (b) any agreement currently in effect to which Seller is a party with any current or former member, manager, officer, employee, consultant or agent. The Seller has not at any time had, nor to the best knowledge of Seller is there now threatened, any walkout, strike, union activity, picketing, work stoppage, work slowdown or any other similar occurrence. Seller has complied with all applicable Laws, rules and regulations relating to the employment of labor, including those relating to wages, hours and collective bargaining. Except in the ordinary course of business, Seller has withheld any amounts required by Law or agreement to be withheld from the wages or salaries of its employees and it has paid all such amounts to the appropriate Governmental Agency, insurer or other Person in accordance with such Laws or agreements. Seller is not liable in any respect for any arrears of wages or other Taxes or penalties for failure to comply with such Laws or agreements. No controversies are pending between Seller and any of its employees, and no controversies have been threatened by any such employee.

3.12.2 **CONTINUED EMPLOYMENT.** Except as noted on Schedule 3.12.2, Seller does not have any knowledge of any current full-time or part-time senior management employee of Seller who will refuse to accept an offer from Buyer for employment.

3.13 **AGREEMENTS.** Except as set forth on Schedule 3.13 hereto (the "Material Agreements"), Seller is not a party to, and it and its assets or properties are not bound or subject to any:

(a) Agreement for the sale by Seller of its products or services under which Seller has or could have any continuing liability, or obligation to perform after the Closing, other than catalog orders, special orders, COD's and layaways, gift certificates and alterations to be performed in the ordinary course of business;

(b) Agreement, whether a license, royalty agreement or otherwise, relating to copyrights, know-how, technology, processes, formulae, trade secrets, confidential or proprietary information or materials, royalties, distribution or agency arrangements or patents or other similar Agreements;

(c) Agreement for the sale of Seller's assets or properties other than in the ordinary course of business;

(d) Agreement under which Seller agrees to indemnify any party or to share any Tax liability of any party other than this Purchase Agreement (other than pursuant to the Real Estate Agreements);

(e) Agreement containing covenants of Seller not to compete in any line of business or with any Person in any geographical area or confidentiality provisions;

- (f) Agreement to pay commissions, brokerage or finder's fees;
- (g) Agreement entered into by Seller with a current shareholder, current executive officer or current directors of Seller;
- (h) Collective bargaining or similar agreement;
- (i) Joint venture agreement or partnership agreement to which Seller is a party or is otherwise bound; or

(j) any other Agreement calling for payments or receipts in excess of \$10,000 over any 12-month period, or that has a remaining term in excess of twelve months and is not terminable at will by Seller on not more than 60 days notice (in either case whether or not made in the ordinary course of business), or any other Agreement which a reasonable person would consider is material to the assets, condition (financial or otherwise), results of operations, business or prospects of Seller.

Copies of each written Agreement identified on Schedule 3.13 or any other Schedule have been delivered or made available to Buyer, and the terms of each oral Agreement set forth on Schedule 3.13 have been disclosed thereon. Each Agreement identified on Schedule 3.13 or any other Schedule is in full force and effect except as set forth on such Schedule. Seller is not in default under any Agreement set forth on Schedule 3.13, and to the knowledge of Seller no condition exists that, with notice or lapse of time or both, would constitute a default thereunder by Seller (other than defaults that may result from the consummation of the transactions contemplated by this Purchase Agreement as to which the Buyer and Seller shall seek consent pursuant to the terms of Section 2.6). To the knowledge of Seller, (i) no Person (other than Seller) that is a party to any Agreement set forth on Schedule 3.13 or any other Schedule is in default thereunder and (ii) no condition exists that, with notice or lapse of time or both, would constitute a default thereunder by such Person (other than defaults that may result from the consummation of the transactions contemplated by this Purchase Agreement as to which the Buyer and Seller shall seek consent pursuant to the terms of Section 2.6).

**3.14 TANGIBLE ASSETS.** Except for normal wear and tear, all of the Tangible Assets are in reasonable operating condition and repair, and Seller has not received any notice that it or any of the Tangible Assets is in violation of any existing Law or any building, zoning, health, safety or other ordinance, code or regulation. All of the Tangible Assets are located at Seller's corporate offices in San Francisco, California and Alpharetta, Georgia or at the Seller's store locations.

### **3.15 INTELLECTUAL PROPERTY.**

(a) The Intellectual Property constitutes all intellectual property rights owned by or licensed to Seller and material or necessary to the conduct of the Business as conducted by Seller. Except for Agreements regarding confidentiality, Seller is not a party to any written or oral agreement whereby the use of any Intellectual Property is restricted, and Buyer's use after the Closing of the Intellectual Property will not cause any violation or infringement of the rights of others.

(b) To the knowledge of Seller, the Seller is the sole owner of the Tradenames and no other party has any right to use the Tradenames for the sale of goods or the provision of services such as those sold and provided by Seller. The Intellectual Property included in the Purchased Assets includes all Intellectual Property rights in and to all material inventions, works of authorship, and know-how created, invented or authored, as the case may be, by any employee of, or consultant to, Seller in the course of such employment or consulting relationship with Seller. Any expenses associated with the transfer of the Intellectual Property shall be borne by the Buyer.

(c) Schedule 3.15(c) lists all (i) software owned or licensed by, or otherwise used in the business of, Seller other than (x) third party software applications that are generally available and have an individual acquisition cost of \$5,000 or less, or (y) software applications that are used in general infrastructure and administrative functions that are generally available and have an individual acquisition cost of \$5,000 or less, and (ii) identifies whether each of the foregoing items of software are owned, licensed, or otherwise used, as the case may be. Except as set forth on Schedule 3.15(c), none of the Seller-owned software incorporates, links to or otherwise depends on any freeware, open source software or publicly available libraries. In addition, no Intellectual Property that is used or incorporated into Seller-owned software creates, or purports to create, obligations or immunities with respect to any Intellectual Property, including but not limited to obligations requiring the disclosure or distribution of all or a portion of the source code for any Seller-owned Software.

(d) Schedule 3.15(d)(i) identifies each item of Intellectual Property that is owned by a party other than Seller, and the license or agreement pursuant to which Seller has acquired the right to use such Intellectual Property (excluding off the shelf software programs licensed by Seller pursuant to “shrink wrap” licenses). Schedule 3.15(d)(ii) lists each license or agreement pursuant to which Seller has licensed, distributed or otherwise granted any rights to any third party with respect to, any Intellectual Property, specifying the name of the parties thereto. Each such license is in full force and effect and is enforceable in accordance with its terms. Seller is in material compliance with, and have not materially breached any term of any of such licenses and, all other parties to such licenses are in compliance with, and have not breached any term of, such licenses. Except as described in Schedule 3.15(d)(iii), Seller has not agreed to indemnify any person or entity against any infringement, violation or misappropriation of any Intellectual Property or of any third party intellectual property right.

3.16 **LIABILITIES.** Except as set forth on Schedule 3.16, Seller has no liabilities or other obligations of any nature which are required by the basis of accounting set forth in Section 3.6(b) to be reflected on the balance sheets referred to in Section 3.6 and which were not reflected on such balance sheets, except for liabilities and obligations incurred since the Balance Sheet Date in the ordinary course of business that are not, either in any case or in the aggregate, material to Seller. Seller has no undisclosed liability that has not been so reflected for escheat laws or unclaimed property laws with respect to any of its previously conducted business including with respect to gift certificates and other similar obligations.

3.17 **[Intentionally omitted]**



**3.18 EMPLOYEE BENEFIT PLANS.** Schedule 3.18 hereto sets forth a list of all pension, profit sharing, retirement, deferred compensation, security purchase, security option, incentive, bonus, vacation, severance, disability, hospitalization, medical insurance, life insurance and other employee benefit plans, programs or arrangements maintained by Seller or under which Seller has any obligations (other than obligations to make current wage or salary payments or sales commissions terminable on notice of thirty days or less) in respect of, or which otherwise cover, any of the current or former members, managers, officers, employees or consultants of Seller, or their beneficiaries, including without limitation any such plans, programs or arrangements, whether written or oral, that Seller may have with its employees created by Seller's custom and usage in dealing with its employees (collectively, the "Benefit Plans"). Except as set forth on Schedule 3.18, Seller has no accrued obligations or liabilities under any Benefit Plan to any of the current or former members, managers, officers, employees or consultants of Seller, or their beneficiaries and Seller has never been obligated to make any contributions to any "multiemployer plan" within the meaning of Section 3(37) (a) of Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Except as set forth on Schedule 3.18, Seller does not currently maintain, and has not in the past five years maintained, an employee pension benefit plan within the meaning of Section 3(2) of ERISA which is or was intended to be a duly qualified plan and trust under Sections 401(a) and 501(a), respectively, of the Code. Seller has delivered or made available to Buyer copies of all plan texts and any other documents, descriptions or materials related thereto.

**3.19 INSURANCE.** Schedule 3.19 hereto sets forth (a) a list of all policies or binders of fire, liability, casualty, product liability, workmen's compensation, health, medical, life, group, vehicular or other insurance held by or on behalf of Seller and its employees, (b) a brief description thereof specifying the insurer, the policy number or covering note number with respect to hinders, each pending claim thereunder, the aggregate amounts paid out under each such policy through the date hereof, the aggregate limit, if any, of the insurer's liability thereunder, and the termination date thereof and (c) a list of claims and notices to the insurer (or its agent) of possible claims existing or made since 2001 through the date of the Closing and a description of the resolution or current status of any such claims or possible claims. Such policies and binders are in full force and effect, and the insurance provided by such policies and binders is reasonable in coverage and amounts for the industry in which Seller operates. Seller is not in default with respect to any provision contained in any such policy or binder and has not failed to give any notice or present any claim under any such policy or binder in due and timely fashion. There are no outstanding unpaid claims under any such policy or binder nor has Seller received notice from any of its insurance carriers that any insurance premiums will be increased in the future or that any insurance coverage listed on Schedule 3.19 will not be available in the future on substantially the same terms as now in effect. Seller has not received or given a notice of cancellation with respect to any such policy or binder. Seller has no knowledge of any inaccuracy in any application for such policies or binders, any failure to pay premiums when due, or any similar state of facts that might form the basis for termination of any such insurance.

**3.20 POTENTIAL CONFLICTS OF INTEREST.** Except as disclosed on Schedule 3.20, to the best knowledge of Seller, no shareholder of Seller or Affiliate of a shareholder of Seller (a) owns, directly or indirectly, any interest in (excepting not more than one percent stock holdings solely for investment purposes in securities of publicly held and traded companies) or is an officer, director, employee or consultant of any Person which is a

competitor, lessor, lessee, sublessor, sublessee, client or supplier of Seller; (b) owns, directly or indirectly, in whole or in part, any copyright, trademark, trade name, service mark, franchise, patent, invention, permit, license or trade secret or confidential information that Seller is using or the use of which is necessary for the business of Seller; (c) has any cause of action or other claim whatsoever against Seller, except for claims in the ordinary course of business, such as for accrued vacation pay, accrued benefits under Benefit Plans, and similar matters and agreements existing on the date hereof; (d) has made, on behalf of Seller, any payment to or commitment to pay any commission, fee or other amount to, or purchase or obtain or otherwise contract to purchase or obtain any goods or services from, any corporation or other Person of which any member, manager or officer of Seller, or, to the knowledge of Seller, a relative of any of the foregoing, is a partner or member; or (e) owes any money to Seller.

**3.21 NO BROKER.** No broker, finder, agent or intermediary (a “Broker”) has acted for or on behalf of Seller in connection with this Purchase Agreement, the Related Agreements or the transactions contemplated hereby and thereby, and no Broker is entitled to any broker’s, finder’s or similar fee or other commission in connection therewith based on any agreement, arrangement or understanding with Seller or any action taken by Seller. Seller has no obligation to pay to any Broker any broker’s finder’s or similar fee for or in connection with the providing by Seller of its products and services to clients.

**3.22 SUPPLIERS.** Schedule 3.22 hereto sets forth a list of all vendors or other suppliers from or through whom Seller has purchased goods (for sale or lease) or services, each in excess of \$100,000 in any of the last three calendar years, other than utilities, and summarizes all contractual arrangements for continued supply from each such firm. Except as set forth on Schedule 3.22, Seller has no currently existing open purchase orders or contracts with vendors or other suppliers of materials or services in excess of \$25,000 individually or \$100,000 in the aggregate.

**3.23 ACCOUNTS RECEIVABLE.** Schedule 3.23 hereto sets forth the aging of the Receivables of Seller. The Receivables of Seller have arisen in the ordinary course of business and are valid and expected to be paid in accordance with Seller’s normal experience and terms of trade. To the knowledge of Seller, except as set forth on Schedule 3.23, each Receivable represents the undisputed, bona fide sale and delivery of goods or services to, or as directed by, the account debtors set forth on such Schedule. Seller has good title to all of the Receivables, free and clear of all Liens and other rights and claims of other Persons, other than the Permitted Liens. To the knowledge of Seller, no Receivable other than normal course of business conditions is subject to any defense, counterclaim, set-off, discount, dispute or condition of any nature.

**3.24 PAYMENTS ON MATERIAL AGREEMENTS.** Except in the ordinary course of business, Seller is current on all of its obligations arising under the Material Agreements.

**3.25 ASSUMED LIABILITIES.** Seller has delivered to Buyer true and correct copies of all instruments and other documents which constitute or evidence, in whole or in part, any of the Assumed Liabilities. None of the Assumed Liabilities and such instruments or documents has been modified or amended, whether in writing, by custom or usage or otherwise and all of the Assumed Liabilities and such instruments and documents are in full force and effect in accordance with their respective terms.

3.26 **INVESTIGATION OF TAX EFFECTS.** Seller acknowledges that it and those Persons retained by them to advise them with respect to the tax effects of the transactions contemplated by this Purchase Agreement have fully and independently examined the tax effects of such transactions as they may relate to Seller and its shareholders. Seller acknowledges that Buyer has made no representation or warranty whatsoever with respect to such tax effects.

3.27 **INVENTORIES.** All Inventories are of good, usable and merchantable quality in all material respects and, except as set forth on Schedule 3.27, do not include obsolete or non-saleable items. Except as set forth on Schedule 3.27, (a) all Inventories are of such quality as to meet the quality control standards of Seller and any applicable governmental quality control standards, (b) all Inventories that are finished goods are saleable as current inventories at the current prices thereof in the ordinary course of business, and (c) all Inventories are recorded on the books of the Business at the lower of cost or market value (including valuation reserves) determined in accordance with GAAP. Reserves for Inventories are in accordance with GAAP. To Seller's knowledge, all Inventories have been manufactured in accordance with the legal requirements of all countries having jurisdiction over the manner of manufacture thereof.

3.28 **REAL ESTATE.** Seller owns fee simple title to no real property. The Leases constitute all agreements pursuant to which the Seller occupies real property. Except as noted on Schedule 3.28, each Lease is in full force and effect and to Seller's knowledge neither Seller nor any lessor or sublessor thereunder is in default of any terms thereof or will be in default thereunder or will be required to make any payment as a result of the consummation of the transactions contemplated hereby. The assignment to the Buyer of the rights of the Seller under any such Lease or the notice to any lessor or sublessor thereunder of the proposed assignment thereof will not result in any alteration of the terms of any such Lease from the terms and conditions prevailing prior to the Closing.

3.29 **FULL DISCLOSURE.** Neither this Purchase Agreement, the Related Agreements, nor any written statement, report or other document furnished or to be furnished by Seller pursuant to this Purchase Agreement or the Related Agreements contains, or will contain, any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not false or misleading.

#### **ARTICLE 4 - REPRESENTATIONS AND WARRANTIES OF BUYER.**

Buyer hereby represent and warrant to Seller that the statements contained in this Article 4 are true and correct as of the date of this Purchase Agreement and will be true and correct as of the Closing as though made as of the Closing, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date):

4.1 **DUE INCORPORATION.** Buyer is a corporation duly organized and validly existing as a corporation in good standing under the laws of State of Delaware, with corporate

power to own its properties, to lease the properties purported to be leased by it and to conduct its business as now conducted. Buyer is duly qualified to transact business and is in good standing in each of the jurisdictions listed on Schedule 4.1 hereto, which are the only jurisdictions in which the character of the property owned or held under lease by Buyer or the nature of the business transacted by it requires such qualification and for which failure to qualify would or could have a material adverse effect on the business, operations, property, prospects, condition (financial or otherwise), assets or liabilities of Buyer. Buyer has made all filings with the Securities Exchange Commission as required by law which fully disclose all material information. Buyer shall provide Seller with copies of all such filings between the date hereof and thirty days after the Closing.

#### **4.2 EXECUTION AND PERFORMANCE OF AGREEMENT.**

**4.2.1 AUTHORIZATION AND VALIDITY.** Buyer has full right, power and authority to enter into this Purchase Agreement and the Related Agreements to which it is party and to perform fully its obligations hereunder and thereunder. The execution and delivery of this Purchase Agreement and such Related Agreements and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action of Buyer. This Purchase Agreement and such Related Agreements have been duly executed and delivered by Buyer and, assuming due authorization, execution and delivery by the other parties hereto and thereto, are the legal, valid and binding obligation of Buyer, enforceable against it in accordance with their terms.

**4.2.2 NO CONFLICT.** The execution, delivery and performance of this Purchase Agreement and the Related Agreements to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby do not, and will not, violate, conflict with or otherwise result in the breach or violation of any of the terms and conditions of, result in the creation of (or require Buyer to create) any Lien on any of Buyer's assets, properties or business, or result in a modification of the effect of or constitute (or with notice, lapse of time or both constitute) a default under (a) the certificate of incorporation or the by-laws of Buyer, (b) any instrument, contract or other agreement to which Buyer is a party or by or to which its assets or properties are bound or subject, or (c) any statute or any regulation, order, judgment, injunction, award or decree of any court, arbitrator or governmental or regulatory body against or binding upon, or applicable to, Buyer's properties or business.

**4.2.3 REQUIRED FILINGS AND CONSENTS.** Buyer is not required to submit any notice, report or other filing with any Governmental Agency, in connection with the execution, delivery and performance of this Purchase Agreement and the Related Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby except for filings that may be required under applicable federal or state securities laws. No waiver, consent, approval or authorization of (a) any Governmental Agency or (b) any party to or pursuant to any Agreement to which Buyer is a party or by which it or any of its property is bound or affected is required to be obtained or made by Buyer in connection with the execution, delivery and performance of this Purchase Agreement and the Related Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby.

4.3 **NO BROKER.** No Broker has acted for or on behalf of Buyer in connection with this Purchase Agreement, the Related Agreements or the transactions contemplated hereby and thereby, and no Broker is entitled to any broker's, finder's or similar fee or other commission in connection therewith based on any agreement, arrangement or understanding with Buyer or any action taken by Buyer. Buyer has no obligation to pay to any Broker any broker's finder's or similar fee for or in connection with the providing by Buyer of its products and services to clients.

4.4 **BANK FINANCING COMMITMENT.** Buyer has received a written term sheet from its principal lender to provide the financing necessary for Buyer to secure sufficient funds to consummate the transactions contemplated by this Agreement and has provided Seller with a copy thereof. Buyer shall provide Seller with a comparable current bank financing term sheet within 20 calendar days after the date hereof.

#### **ARTICLE 5 - COVENANTS OF SELLER AND THE STOCKHOLDERS.**

5.1 **ACCESS TO INFORMATION.** Seller acknowledges that after the date hereof Buyer will be conducting a comprehensive due diligence review of the Seller, its assets, liabilities and operations, including, without limitation, a financial, legal, commercial, tax, insurance, lease and environmental review (which review shall also include the right to conduct a physical count of the Inventory) (the "Due Diligence Review"). Seller shall give Buyer and its representatives, as well as representatives of the Buyer's lenders, access at all reasonable times to the facilities, properties, books, financial statements, records, managers, officers, employees and agents of Seller and shall permit Buyer and such representatives to confirm with suppliers the title to any Purchased Assets in such suppliers' possession. Without limiting the generality of the foregoing, Seller acknowledges that Buyer may be required to provide audited and unaudited historical and pro forma financial information of Seller in order to comply with federal securities laws, and Seller agrees that it will cooperate, and will cause its accountants and other representatives to cooperate, with Buyer and its representatives, at Buyer's expense, to enable them to obtain, prepare and disclose such financial information in a timely manner.

5.2 **COVENANT OF FURTHER ASSURANCES.** Seller shall use its reasonable best efforts to satisfy or cause to be satisfied all the closing conditions that are set forth in Article 8 hereof, and Seller shall use its reasonable best efforts to cause the transactions contemplated hereby to be consummated. Seller shall use all reasonable best efforts to comply promptly with all legal requirements that may be imposed on them with respect to the consummation of the transactions contemplated hereby and to obtain any consent, authorization, order or approval of, or any exemption by, and to make any registration, declaration or filing with, any Governmental Agency or other third party (including, without limitation, landlords), required to be obtained or made by any of them in connection with the taking of any action contemplated hereby. In addition, Seller and the Stockholders shall, from time to time after the Closing, execute, acknowledge, seal and deliver all such instruments and documents, and do all such further things, as Buyer may request to perfect the transfer and delivery to Buyer of any and all of the Purchased Assets or to transfer to or otherwise obtain for Buyer any consent, license, permit, registration or approval necessary or desirable to accomplish the purchase of the Purchased Assets or the assumption of the Assumed Liabilities or to enable Buyer fully and without restriction to carry on the Business.

5.3 **PAYMENT OF TAXES.** Seller or the Stockholders shall pay, promptly and when due, whether at the original time fixed therefor or pursuant to any extension of time to pay, any and all Taxes, fees and other charges which shall become due or shall have accrued on account of the operation and conduct of Seller's business on or before the Closing or on account of any of the transactions contemplated by this Purchase Agreement; provided, however, that Seller and the Stockholders shall not be required to pay any such Tax, fee or charge if they are contesting the validity or amount thereof through proper proceedings, in good faith and with reasonable diligence if such contest does not, and will not, cause Buyer to be subject to any fine, penalty or other payment. Seller or the Stockholders shall file within the times and in the manner prescribed by law all Tax returns that are required to be filed with respect to Seller. Any sales tax resulting from Buyer's purchase of the Tangible Assets from Seller hereunder shall be paid promptly when due by Buyer.

5.4 **PAYMENT OF LIABILITIES.** Seller shall pay and discharge promptly when due all of its liabilities and obligations, due or to become due, accrued, contingent or otherwise, other than the Assumed Liabilities, and to the extent necessary shall apply the proceeds of the sale of the Purchased Assets to such payment and discharge. At Buyer's request, Seller shall provide to Buyer evidence of such payment and discharge, in form and substance satisfactory to Buyer.

5.5 **CHANGE OF NAME.** Within 10 days after the Closing, Seller, at its expense, shall submit all necessary documentation necessary to effect a change of its name to a new name bearing no resemblance to its present name, after which neither Seller nor the Stockholders shall, directly or indirectly, through any entity or otherwise, use the Tradenames, or any related or derivative names, in any business or venture other than in connection with their consulting for, and exclusively for the benefit of, Buyer.

5.6 **EMPLOYEES.** Seller agrees that Buyer may employ any present or former employee of Seller whom Buyer wishes to employ on and after the Closing. Seller hereby waives all contractual or other rights it may have with respect to any such employee so as to permit Buyer to employ such employee for any job Buyer shall deem appropriate and without any conflicting obligation to Seller and Seller and the Stockholders shall cooperate with and assist Buyer in its efforts to employ the employees of Seller. Seller provides no assurances that any of its employees shall accept such employment.

5.7 **CONTINUED EXISTENCE OF COMPANY.** Seller shall continue to maintain its existence as a corporation, including paying any Taxes, for a period of at least three years from the Closing under its new name.

5.8 **CONDUCT IN THE ORDINARY COURSE.** During the period from the date hereof and continuing until the earlier of the termination of this Purchase Agreement pursuant to Section 11.13 or the Closing, except as expressly provided in this Purchase Agreement or except as the Buyer may consent in writing:

(a) Seller shall: (i) conduct its business in the same manner as heretofore conducted, only in the ordinary course and in material compliance with all applicable Laws; (ii) pay its debts, Taxes and other liabilities when due and perform other material

obligations when due; (iii) use commercially reasonable efforts to (A) preserve intact its present business organization, and (B) preserve its relationships with customers and other Persons with which it has significant business dealings; (iv) not incur any indebtedness for borrowed money (except customary working capital borrowings) or issue any debt securities or assume, guarantee or indorse or otherwise as an accommodation become responsible for, the obligations of any Person or make any loans, advances or investments in any other Person; (v) not sell, pledge, dispose or encumber any of its assets (except sales of inventory in the ordinary course of business consistent with past practice); and (vi) not enter into any new Material Agreements;

(b) In furtherance of, and without limiting, the obligations set forth in subsection (a), Seller shall continue to replenish Inventory for the Business in the ordinary course of business consistent with past practice;

(c) Schedule 5.8(a) sets forth the capital expenditure budget for the Business for the year ending June 30, 2005. The Seller shall continue to make its capital expenditures in accordance with and not in excess of the amounts set forth in such budget.

(d) Seller shall not make any distribution, dividend or other payment to or for the benefit of any Stockholder or issue or become obligated to issue any equity securities except for distributions to pay Taxes due with respect to the 2004 fiscal year and estimated Taxes for the 2005 fiscal year;

(e) Seller shall not make changes in the compensation (including equity compensation) whether payable in cash or otherwise, or benefits payable or to become payable to any of their employees, except in the ordinary course of business consistent with past practice;

(f) Seller shall not voluntarily permit any insurance policy naming it as a beneficiary or a loss payable payee to be cancelled or terminated unless replaced with comparable coverage; or

(g) Seller shall not change in any material respect any of the accounting methods used by it unless required or permitted by GAAP.

#### **5.9 CONFIDENTIALITY.**

(a) Seller shall, and shall cause its Affiliates and their respective employees, agents, accountants, legal counsel and other representatives and advisers to, hold in strict confidence all, and not divulge or disclose any, information of any kind concerning this Purchase Agreement or the transactions contemplated hereby, including, without limitation, any information concerning Seller, Buyer or their respective businesses, or any information exchanged during the negotiation of this Purchase Agreement and the transactions contemplated hereby; provided, however, that the foregoing obligation of confidence shall not apply to (i) information that is or becomes generally available to the public other than as a result of a disclosure by Seller or any stockholder or any of their respective Affiliates, employees, agents, accountants, legal counsel or other representatives or advisers, or (ii) information that is required to be disclosed by Seller or any stockholder or any of their respective employees, agents, accountants, legal counsel or other representatives or advisers as a result of any applicable law, rule or regulation of any Governmental Agency; and provided further that Seller shall promptly shall notify Buyer of any disclosure pursuant to subsection (a) of this Section 5.9.

(b) Buyer shall, and shall cause its Affiliates and their respective employees, agents, accountants, legal counsel and other representatives and advisers to, hold in strict confidence all, and not divulge or disclose any, information of any kind concerning this Purchase Agreement or the transactions contemplated hereby, including, without limitation, any information concerning Seller or its businesses, or any information exchanged during the negotiation of this Purchase Agreement and the transactions contemplated hereby; provided, however, that the foregoing obligation of confidence shall not apply to (i) information that is or becomes generally available to the public other than as a result of a disclosure by Buyer or any stockholder or any of their respective Affiliates, employees, agents, accountants, legal counsel or other representatives or advisers, or (ii) information that is required to be disclosed by Buyer or any stockholder or any of their respective employees, agents, accountants, legal counsel or other representatives or advisers as a result of any applicable law, rule or regulation of any Governmental Agency; and provided further that Buyer shall promptly shall notify Buyer of any disclosure pursuant to subsection (b) of this Section 5.9.

#### 5.10 NON-COMPETITION AND NON-SOLICITATION.

(a) For a period of seven (7) years after the Closing Date, Seller agrees that it will not directly or indirectly:

(i) Engage in any business or enterprise (whether as owner, shareholder, member, partner, officer, director, employee, consultant, investor, lender or otherwise) that is in the retail men's big and tall clothing business anywhere in the world; provided, however, this Section 5.10(a)(i) shall not be deemed to restrict a Stockholder from owning, without more, up to one (1%) percent of the outstanding voting power of a corporation whose common stock is listed on an established national securities exchange or national market system; or

(ii) Either alone or in association with others (A) solicit, or permit any organization directly or indirectly to solicit, any employee or consultant of Buyer to leave the employment or engagement with Buyer, or (B) solicit for employment, hire or engage as an independent contractor, or permit any organization directly or indirectly controlled by the Employee to solicit for employment, hire or engage as an independent contractor, any person who was employed by Buyer; provided, however, that this Section 5.10(a)(ii) shall not apply to the solicitation, hiring or engagement of any individual whose employment with the Company has been terminated for a period of twelve months or longer.

(b) Seller agree that the duration and geographic scope of the non-competition provision set forth in this Section 5.10 are reasonable. In the event that any court determines that the duration or the geographic scope, or both, are unreasonable and that such provision is to that extent unenforceable, the parties agree that the provision shall remain in full force and effect for the greatest time period and in the greatest area that would not render it unenforceable. The parties intend that this non-competition provision shall be deemed to be a series of separate covenants, one for each and every county of each and every state of the United States of America and each and every political subdivision of each and every country outside the United States of America where this provision is intended to be effective.



5.11 **EXCLUSIVITY.** Seller shall immediately cease, and shall ensure that its officers, directors and shareholders immediately cease, any and all existing activities, discussions or negotiations with any parties other than Buyer conducted heretofore with respect to any acquisition, sale, merger or similar matter (an “Acquisition Proposal”) nor solicit, initiate, encourage, knowingly facilitate or induce any inquiry with respect to, or them making, submission or announcement of, any Acquisition Proposal.

#### **ARTICLE 6 - COVENANTS OF BUYER.**

6.1 **EMPLOYEES.** Buyer may, but shall not be obligated to, offer to hire as of the Closing, any Seller employees listed on Schedule 6.1 hereto on terms acceptable to Buyer in its sole discretion and will not hire any employees required to operate Existing Stores not assigned at the Closing.

6.2 **COVENANT OF FURTHER ASSURANCES.** Buyer shall use its reasonable best efforts to satisfy or cause to be satisfied all the conditions precedent that are set forth in Article 9 hereof, and Buyer shall use its reasonable best efforts in good faith to cause the transactions contemplated hereby to be consummated. Buyer shall use all reasonable efforts to comply promptly with all legal requirements that may be imposed on it with respect to the consummation of the transactions contemplated hereby and to obtain any consent, authorization, order or approval of, or any exemption by, and to make any registration, declaration or filing with, any Governmental Agency or other third party, required to be obtained or made by it in connection with the taking of any action contemplated hereby, including, without limitation, the Securities Exchange Commission.

#### **ARTICLE 7 – INDEMNIFICATION.**

7.1 **INDEMNIFICATION OF BUYER.** In addition to, and not by way of limitation of, Buyer’s rights otherwise provided in this Purchase Agreement or in any other document delivered in connection with the transactions contemplated hereby, or under applicable law, and subject to the terms and conditions of this Article 7, Seller agrees to defend, indemnify and hold harmless Buyer and its subsidiaries and each of their respective directors, officers, employees, agents and Affiliates (collectively, the “Buyer Group”) from and against any loss, liability, damage or expense suffered, incurred or paid by any member of the Buyer Group after Closing:

(a) which would not have been suffered, incurred or paid if all the representations, warranties, covenants and agreements of Seller in this Purchase Agreement, the Related Agreements, or in any other instrument or document furnished to Buyer in connection with the transactions contemplated hereby had been (with respect to representations and warranties) true, complete and correct and had been (with respect to covenants and agreements) fully performed and fulfilled;

(b) as a result of any claim, action or proceeding asserted or brought against any member of the Buyer Group or any of such member’s assets (including, without

limitation, the Purchased Assets) which arises, in whole or in part, out of or in connection with Seller's conduct of its business before or after the Closing, including, without limitation, any claim, action or proceeding relating to Seller's failure to perform under any agreement or commitment, the termination of any employee, agent, dealer or distributor or any breach of warranty (including, without limitation, any claim, action or proceeding arising at any time whatsoever in connection with the purchase or use of any Purchased Asset sold by Seller to Buyer hereunder but excluding the Assumed Liabilities);

(c) as a result of any claim, action or proceeding asserted against any member of the Buyer Group or any of such member's assets with respect to any liability or alleged liability of Seller not specifically assumed by Buyer under this Purchase Agreement;

(d) as a result of any claim, action or proceeding asserted or brought against any member of the Buyer Group or any of such member's assets which arises out of, or in connection with, Seller's failure to pay, promptly and when due, any amount owing, in whole or in part, whether before or after the Closing, with respect to Seller's business, whether due or to become due, accrued or contingent, known or unknown (other than the Assumed Liabilities)

(e) as a result of any claim, action or proceeding asserted or brought against any member of the Buyer Group or any of such member's assets which arises out of or in connection with Seller's failure to pay, promptly and when due, any Tax, fee or other charge which shall become due or shall have accrued (i) on account of Seller's use, acquisition, ownership or sale of any of the Purchased Assets or (ii) on account of the transactions contemplated hereby; and

(f) for all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by any member of the Buyer Group in connection with any action, proceeding, claim, assessment or judgment incident to any of the foregoing matters.

**7.2 BENEFIT OF BUYER GROUP.** With respect to any member of the Buyer Group other than Buyer, Seller acknowledges and agrees that Buyer is contracting on its own behalf and for such member and Buyer shall obtain and hold the rights and benefits provided for in this Article 7 in trust for and on behalf of such member.

**7.3 NOTICE OF CLAIM.** In seeking to collect the amount of any claim that Buyer is entitled to indemnification hereunder, Buyer shall first give Seller written notice of such claim. Such notice shall contain a brief summary of the basis for the claim. If Seller does not dispute the basis or amount of any such claim within 30 days of receiving written notice thereof, Buyer shall have the right promptly to recover indemnity as and to the extent provided herein. If Seller disagrees with the basis of such claim or the amount of damages caused thereby ("Dispute"), then within 30 days of receiving written notice thereof, they shall give notice to Buyer of such disagreement (the "Dispute Notice"), specifying the reasons for such disagreement, and, in that case, Buyer shall have no right to recover indemnity hereunder until such time, if at all, as (a) an arbitrator(s) selected pursuant to Section 11.2 hereof issues a final award or decision specifying the amount of Buyer's recovery, in which case Buyer shall have the right promptly to recover the amount so specified (subject to the limitations contained in this Article 7) or (b) Buyer, on the one hand, and Seller, on the other, agree in writing to the amount

of Buyer's recovery. The date upon which either (a) or (b) occurs with respect to any claim by Buyer under this Article 7 shall hereinafter be referred to as the "Buyer Claim Establishment Date," and any amount that Buyer is entitled to recover as indemnity hereunder shall hereinafter be referred to as the "Buyer Claim Amount."

**7.4 METHOD OF RECOVERY.** Within twenty (20) calendar days after the Buyer Claim Establishment Date, Seller shall pay to Buyer a cash amount equal to the Buyer Claim Amount. In the event that Buyer is not paid the full Buyer Claim Amount within twenty (20) calendar days of the Buyer Claim Establishment Date, in addition to whatever other remedies it may have, Buyer shall be entitled until such Buyer Claim Amount is paid in full (a) to offset against amounts otherwise due Seller, including, without limitation, amounts due as part of the Contingent Purchase Price. Any payment made to Buyer by the Seller pursuant to this Article 7 shall constitute a reduction in the Purchase Price hereunder.

**7.5 SETTLEMENT OF THIRD PARTY CLAIMS.** Buyer agrees to notify Seller of any action by a third party which, in the opinion of Buyer, is reasonably likely to give rise to a claim for indemnification hereunder (a "Buyer Third Party Action"). Seller may, at its election and at its sole cost and expense, participate in the defense of a Buyer Third Party Action and employ counsel separate from the counsel employed by Buyer. To the extent that Seller shall acknowledge its obligations to indemnify Buyer for any Buyer Third Party Action, Seller shall have the right to conduct and control, through counsel of its own choosing, any Buyer Third Party Action, but Buyer may, at its election and at its sole cost and expense, participate in the defense of any such Buyer Third Party Action and employ counsel separate from the counsel employed by Seller, it being understood that Seller shall have acknowledged its obligation to indemnify Buyer and shall control such defense; provided, however, that if Seller shall fail to diligently defend any such Buyer Third Party Action, or is prohibited by a conflict of interest from defending such Buyer Third Party Action, then Buyer may, through counsel of its own choosing, defend such Buyer Third Party Action and settle such Buyer Third Party Action, and recover from Seller the amount of such settlement or of any judgment and the full costs and expenses of such defense. Buyer and Seller agree that they will not settle any Buyer Third Party Action without the consent of the other, which consent shall not be unreasonably withheld. Buyer further agrees that if Seller wishes to enter into a settlement with respect to a Buyer Third Party Action on terms reasonably acceptable to Buyer, Buyer will cooperate in such settlement, provided that Seller directly pays the full amount of such settlement.

**7.6 SURVIVAL OF REPRESENTATIONS AND WARRANTIES.** Notwithstanding any investigation conducted before or after the Closing, and notwithstanding any knowledge or notice of any fact or circumstance which either Buyer or Seller may have as the result of such investigation or otherwise, Buyer, on the one hand, and Seller, on the other, shall each be entitled to rely upon the representations, warranties, covenants and agreements of the other in this Purchase Agreement. All representations, warranties, covenants and agreements made by any party in this Purchase Agreement or any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Closing and any investigation at any time made by or on behalf of any other party, subject to the following:

(a) except as set forth in this Section 7.6, any claims by Buyer for indemnification for a breach of representations and warranties must be made within 18 months of Closing (except with respect to claims under Section 3.12.1 which claims must be made within six months after the Closing); and

(b) there shall be no time limit with respect to the obligations of Seller to indemnify members of the Buyer Group for claims arising out of or relating to a breach of Sections 3.4 (Authority to Execute and Perform), 3.5 (Title; Liens), 3.8 (Tax Matters), 3.18 (Benefit Plans) or 3.26 (Tax Effects).

**7.7 LIMITATION OF LIABILITY.** Except for any liability arising out of or relating to (i) a breach of Sections 3.4 (Authority to Execute and Perform), 3.5 (Title; Liens), 3.8 (Tax Matters), 3.18 (Benefit Plans) or 3.26 (Tax Effects), (ii) intentional or fraudulent misrepresentations or actions by Seller, or (iii) a breach of a covenant or agreement by Seller which liability shall not be limited by this Section 7.8, Buyer may not assert a claim hereunder unless and until the aggregate Buyer Claim Amount of all claims equals or exceeds \$250,000 in which event Buyer may assert each such claim (and each claim accruing thereafter) regardless of the Buyer Claim Amount thereof.

**7.8 INDEMNIFICATION OF SELLER.** In addition to, and not by way of limitation of, Seller's rights otherwise provided in this Purchase Agreement or in any other document delivered in connection with the transactions contemplated hereby, or under applicable law, and subject to the terms and conditions of this Article 7, Buyer agrees to defend, indemnify and hold harmless Seller and its subsidiaries and each of their respective directors, officers, employees, agents and Affiliates (collectively, the "Seller Group") from and against any loss, liability, damage or expense suffered, incurred or paid by any member of the Seller Group after Closing:

(a) which would not have been suffered, incurred or paid if all the representations, warranties, covenants and agreements of Buyer in this Purchase Agreement, the Related Agreements, or in any other instrument or document furnished to Seller in connection with the transactions contemplated hereby had been (with respect to representations and warranties) true, complete and correct and had been (with respect to covenants and agreements) fully performed and fulfilled;

(b) as a result of any claim, action or proceeding asserted or brought against any member of the Seller Group or any of such member's assets (including, without limitation, the Purchased Assets) which arises, in whole or in part, out of or in connection with Buyer's conduct of the Business after the Closing, including, without limitation, any claim, action or proceeding relating to Buyer's failure to perform under any agreement or commitment, the termination of any employee, agent, dealer or distributor or any breach of warranty (including, without limitation, any claim, action or proceeding arising at any time whatsoever in connection with the purchase or use of any Purchased Asset sold by Seller to Buyer hereunder);

(c) as a result of any claim, action or proceeding asserted against any member of the Seller Group or any of such member's assets with respect to any liability or alleged liability of Seller specifically assumed by Buyer under this Purchase Agreement;

(d) as a result of any claim, action or proceeding asserted or brought against any member of the Seller Group or any of such member's assets which arises out of, or in connection with, Buyer's failure to pay, promptly and when due, any amount owing, in whole or in part accruing after the Closing with respect to the Business, whether due or to become due, accrued or contingent, known or unknown and including the Assumed Liabilities;

(e) as a result of any claim, action or proceeding asserted or brought against any member of the Seller Group or any of such member's assets which arises out of or in connection with Buyer's failure to pay, promptly and when due, any Tax, fee or other charge which shall become due or shall accrue after the Closing on account of Buyer's ownership or sale of any of the Purchased Assets; and

(f) for all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by any member of the Seller Group in connection with any action, proceeding, claim, assessment or judgment incident to any of the foregoing matters.

**7.10 BENEFIT OF SELLER GROUP.** With respect to any member of the Seller Group other than Seller, Buyer acknowledges and agrees that Seller is contracting on its own behalf and for such member and Seller shall obtain and hold the rights and benefits provided for in this Article 7 in trust for and on behalf of such member.

**7.11 NOTICE OF CLAIM.** In seeking to collect the amount of any claim that Seller is entitled to indemnification hereunder, Seller shall first give Buyer written notice of such claim. Such notice shall contain a brief summary of the basis for the claim. If Buyer does not dispute the basis or amount of any such claim within 30 days of receiving written notice thereof, Seller shall have the right promptly to recover indemnity as and to the extent provided herein. If Buyer disagrees with the basis of such claim or the amount of damages caused thereby, then within 30 days of receiving written notice thereof, they shall give notice to Seller of such disagreement, specifying the reasons for such disagreement, and, in that case, Seller shall have no right to recover indemnity hereunder until such time, if at all, as (a) an arbitrator(s) selected pursuant to Section 11.2 hereof issues a final award or decision specifying the amount of Seller's recovery, in which case Seller shall have the right promptly to recover the amount so specified (subject to the limitations contained in this Article 7) or (b) Seller, on the one hand, and Buyer, on the other, agree in writing to the amount of Seller's recovery. The date upon which either (a) or (b) occurs with respect to any claim by Seller under this Article 7 shall hereinafter be referred to as the "Seller Claim Establishment Date," and any amount that Seller is entitled to recover as indemnity hereunder shall hereinafter be referred to as the "Seller Claim Amount."

**7.12 METHOD OF RECOVERY.** Within ten (10) calendar days after the Seller Claim Establishment Date, Buyer shall pay to Seller a cash amount equal to the Seller Claim Amount. In the event that Seller is not paid the full Seller Claim Amount within ten (10) calendar days of the Seller Claim Establishment Date, in addition to whatever other remedies it may have, Seller shall be entitled until such Seller Claim Amount is paid in full to offset against such Seller Claim Amount amounts otherwise due Buyer by Seller hereunder.

**7.13 SETTLEMENT OF THIRD PARTY CLAIMS.** Seller agrees to notify Buyer of any action by a third party which, in the opinion of Seller, is reasonably likely to give rise to a

claim for indemnification hereunder (a “Seller Third Party Action”). Seller may, at its election and at its sole cost and expense, participate in the defense of a Seller Third Party Action and employ counsel separate from the counsel employed by Seller. To the extent that Buyer shall acknowledge its obligations to indemnify Seller for any Seller Third Party Action, Buyer shall have the right to conduct and control, through counsel of its own choosing, any Seller Third Party Action, but Seller may, at its election and at its sole cost and expense, participate in the defense of any such Seller Third Party Action and employ counsel separate from the counsel employed by Buyer, it being understood that Buyer shall have acknowledged its obligation to indemnify Seller and shall control such defense; provided, however, that if Buyer shall fail to diligently defend any such Seller Third Party Action, or is prohibited by a conflict of interest from defending such Seller Third Party Action, then Seller may, through counsel of its own choosing, defend such Seller Third Party Action and settle such Seller Third Party Action, and recover from Buyer the amount of such settlement or of any judgment and the full costs and expenses of such defense. Buyer and Seller agree that they will not settle any Seller Third Party Action without the consent of the other, which consent shall not be unreasonably withheld. Seller further agrees that if Buyer wishes to enter into a settlement with respect to a Seller Third Party Action on terms reasonably acceptable to Buyer, Seller will cooperate in such settlement, provided that Buyer directly pays the full amount of such settlement.

**7.15 LIMITATION OF LIABILITY AND THRESHOLD.** Any claims by Seller for indemnification for a breach of representations and warranties by Buyer must be made within three years of Closing, except that there shall be no time limit with respect to the obligations of Buyer to indemnify Seller for claims arising out of or relating to (i) a breach of Section 4.2 (Authority to Execute and Perform); (ii) intentional or fraudulent misrepresentations or actions by Buyer; or (iii) a breach of a covenant or agreement by Buyer (collectively, clauses (i), (ii) and (iii) are referred to as the “Excluded Obligations”). Buyer’s obligations to indemnify Seller hereunder other than for the Excluded Obligations shall be limited to aggregate amount of the Purchase Price paid by Buyer to Seller and the Stockholders hereunder.

#### **ARTICLE 8 - CONDITIONS OF BUYER’S OBLIGATIONS.**

The obligations of Buyer to consummate the transactions contemplated by this Purchase Agreement and the Related Agreements are subject, at the option of Buyer, to the fulfillment on or prior to the Closing of Buyer Board approval and all of the following conditions, any one or more of which may only be waived in writing by it:

**8.1 REPRESENTATIONS AND COVENANTS.** The representations and warranties of Seller contained in this Purchase Agreement and the Related Agreements shall be true on and as of the Closing. Seller and the Principal Shareholders shall have performed and complied with all covenants and agreements required by this Purchase Agreement and the Related Agreements to be performed or complied with by each of them on or prior to the Closing.

**8.2 GOVERNMENTAL PERMITS AND APPROVALS.** All permits and approvals from any Governmental Agency required for the lawful consummation of the transactions contemplated by this Purchase Agreement and the Related Agreements shall have been obtained.

**8.3 CONSENTS.** Subject to the terms of any side agreement that the Buyer and Seller may choose to enter into in writing with respect thereto, Seller shall have obtained and shall have delivered to the Buyer copies of all consents (including, without limitation, all consents required under any Real Estate Agreement or Material Agreement) necessary to be obtained in order to consummate the sale and transfer of the Purchased Assets pursuant to this Purchase Agreement and the consummation of the other transactions contemplated hereby.

**8.4 EMPLOYMENT AGREEMENTS.** At the Closing, each of Robert Sockolov, William Sockolov, Steven Sockolov and John Soares will enter into an Employment Agreement substantially in the forms attached hereto as Schedule 8.4 (each, an "Employment Agreement" and collectively, the "Employment Agreements").

**8.5 OPINION OF COUNSEL FOR SELLER.** Buyer shall have received an opinion of Counsel for Seller, dated as of the Closing, addressed to Buyer, with respect to the matters set forth in Section 8.6 hereof.

**8.6 AUTHORIZATION.** All action of Seller necessary to authorize the execution, delivery and performance of this Purchase Agreement and the consummation of the transactions contemplated hereby shall have been duly and validly taken.

**8.7 LITIGATION.** No action, suit or proceeding shall be pending or threatened before or by any court or governmental agency to restrain, modify or prevent the carrying out of the transactions contemplated hereby or to seek damages or a discovery order in connection with such transactions and which has or may have a material adverse effect on the business, operations, property, prospects, condition (financial or otherwise), assets or liabilities of either Seller or Buyer.

**8.8 INSTRUMENTS OF TRANSFER.** Buyer shall have furnished to Seller for execution and Seller shall have delivered to Buyer appropriate instruments of transfer, conveyance, sale and assignment in respect of the Purchased Assets, consisting of bills of sale, assignments, certificates of title (in the case of motor vehicles), confirmation of notices sent to third parties holding any Purchased Assets, and such other good and sufficient instruments of conveyance and transfer (including, without limitation, any consents thereto by third parties necessary to make the same valid and effective), in such form and containing such terms and provisions as Buyer may reasonably request, as shall be necessary to vest in Buyer all right, title and interest in and to the Purchased Assets free and clear of any and all Liens whatsoever other than the Permitted Liens.

**8.9 LEGAL EXISTENCE AND GOOD STANDING.** Seller shall have delivered to Buyer (a) a recently dated certificate of status of Seller, issued by the Secretary of State for the California and (b) a recently dated certificate of Seller's qualification to do business issued by the secretary of state of each of the jurisdictions listed on Schedule 3.1.

**8.10 NO MATERIAL ADVERSE CHANGE.** No Material Adverse Change shall have occurred since the date hereof and be continuing.

**8.11 DUE DILIGENCE.** Buyer shall have completed the Due Diligence Review and the results thereof shall be entirely satisfactory to the Buyer in its sole and absolute

discretion, provided that Buyer must notify Seller, on or before the later of (i) the 30<sup>th</sup> day after the delivery to Buyer of the Base Financial Statements, or (ii) the 10<sup>th</sup> day after the delivery to the Buyer of notice from Seller that it has delivered to Buyer the Schedules to this Purchase Agreement, of any dissatisfaction that Buyer has with the Due Diligence Review failing which this condition shall be deemed waived; provided that in the event that Buyer does not believe that Seller has delivered to Buyer sufficient information in order to complete the Due Diligence Review on or before such date, Buyer may instead notify Seller of such and of the information it believes it has not received, whereupon such 30 day period shall be extended for an additional 15 days and Seller shall use all reasonable efforts to deliver such information to Buyer as promptly as practicable within such 15-day period.

**8.12 SELLER WORKING CAPITAL.** The Seller Working Capital at Closing shall equal at least the amounts shown for the applicable periods on Schedule 8.12. The satisfaction of this condition shall be evidenced by a statement prepared by the Seller and delivered to Buyer at Closing (the "Closing Statement") setting forth the Seller Working Capital as of the Closing Date. The Closing Statement shall be certified by Seller's president and chief accounting officer and prepared in reasonable detail and in accordance with GAAP. Notwithstanding the foregoing, the Closing Statement may omit footnotes and related disclosures normally included in audited balance sheets prepared in accordance with GAAP and shall include only such items from Seller Working Capital as are set forth in the definition of Seller Working Capital.

**8.13 AGREEMENT WITH ROBERT YARBOROUGH.** Buyer and Robert Yarborough shall have entered into a mutually acceptable agreement prior to Closing, which agreement shall have been approved in writing by Seller.

#### **ARTICLE 9 - CONDITIONS OF SELLER'S AND THE STOCKHOLDERS' OBLIGATIONS.**

The obligations of Seller to consummate the transactions contemplated by this Purchase Agreement and the Related Agreements are subject, at the option of Seller, to the fulfillment on or prior to the Closing of the following conditions, any one or more of which may be waived by them:

**9.1 REPRESENTATIONS AND COVENANTS.** The representations and warranties of Buyer contained in this Purchase Agreement and the Related Agreements shall be true on and as of the Closing. Buyer shall have performed and complied with all covenants and agreements required by this Purchase Agreement and the Related Agreements to be performed or complied with by it on or prior to the Closing.

**9.2 GOVERNMENTAL PERMITS AND APPROVALS.** All permits and approvals from any Governmental Agency required for the lawful consummation of the transactions contemplated by this Purchase Agreement and the Related Agreements shall have been obtained.



9.3 **EMPLOYMENT AGREEMENTS.** At the Closing, the Buyer will enter into the Employment Agreements with each of Robert Sockolov, William Sockolov, Stephen Sockolov and John Soares.

9.4 **OPINION OF COUNSEL FOR BUYER.** Seller and the Stockholders shall have received an opinion of counsel for Buyer, dated as of the Closing, addressed to Seller, with respect to the matters set forth in Section 9.5 hereof.

9.5 **AUTHORIZATION.** All corporate actions of Buyer necessary to authorize the execution, delivery and performance of this Purchase Agreement and the Related Agreements and the consummation of the transactions contemplated hereby shall have been duly and validly taken.

9.6 **LITIGATION.** No action, suit or proceeding shall be pending or threatened before or by any court or governmental agency restrain, modify or prevent the carrying out of the transactions contemplated hereby or to seek damages or a discovery order in connection with such transactions, or which has or may have, in the reasonable opinion of Seller, a material adverse effect on the business, operations, property, prospects, condition (financial or otherwise), assets or liabilities of either Seller or Buyer.

9.7 **PURCHASE PRICE.** Buyer shall have delivered the Cash Purchase Price to the Seller.

9.8 **AGREEMENT WITH ROBERT YARBOROUGH.** Buyer and Robert Yarborough shall have entered into a mutually acceptable agreement prior to Closing, which agreement shall have been approved in writing by Seller.

## **ARTICLE 10 - POST-CLOSING EVENTS**

### **10.1 SELLER WORKING CAPITAL REVIEW.**

(a) Within 90 days after the Closing Date, Buyer shall deliver to Seller an adjusted Closing Statement (the "Adjusted Closing Statement"). In preparing the Adjusted Closing Statement, Buyer shall determine Seller Working Capital based upon GAAP consistent with the principles applied in the preparation of the audited balance sheet of Seller as at the Closing Date. The Adjusted Closing Statement shall be accompanied by such documentation as Buyer believes supports such proposed adjustments to the calculation of Seller Working Capital as of the Closing Date. If Seller proposes no adjustments to the Closing Statement, the Closing Statement shall be deemed to be final, conclusive and binding upon the parties. Notwithstanding the foregoing, the Adjusted Closing Statement may omit footnotes and related disclosures normally included in audited balance sheets prepared in accordance with GAAP and shall include such items from Seller Working Capital as are set forth in the definition of Seller Working Capital (including a deduction for distributions to cover s-corp Taxes for the operating income of the Seller for the period prior to the Closing but not including any Taxes due with respect to the Purchase Price). At Closing, Seller shall estimate in good faith the amount of such s-corp distributions (based on the highest applicable marginal rate) and shall provide Buyer with a calculation of such estimate and shall deduct the amount thereof from the Purchased Assets and place it in escrow with Seller's attorney's MacInnis, Donner & Koplowitz in their client's funds

account. Seller's tax accounting firm, Eichstaedt & Devereaux, LLP, shall calculate the actual amount to be distributed to pay such s-corp Taxes in the ordinary course following the Closing which calculation shall be binding on the parties hereto provided it is reasonable and in good faith. If the estimated amount placed into escrow was too high, the amount of such excess shall be paid to the Buyer following the making of such distribution and if the amount thereof was too low the Buyer shall promptly remit the difference to the Seller.

(b) Within 30 days after its receipt of the Adjusted Closing Statement, Seller shall notify Buyer in writing whether it accepts or disputes the accuracy of the Adjusted Closing Statement. If Seller accepts the Adjusted Closing Statement or fails to notify Buyer in writing of any dispute with respect thereto within such 30-day period, the Adjusted Closing Statement shall be deemed to be final, conclusive and binding on Seller and Buyer (the "Final Statement"). If Seller disputes the accuracy of the Adjusted Closing Statement, it shall in such written notice set forth in reasonable detail those items that Seller believes are not fairly presented and the reasons for its opinion. The parties shall then meet and in good faith use their best efforts to try to resolve their disagreements over the disputed items. If the parties resolve their disagreements over the disputed items in accordance with the foregoing procedure, the Closing Statement, with those modifications to which the parties shall have agreed, shall be deemed to be the Final Statement. If the parties have not resolved their disagreements over the disputed items on the Closing Statement within 30 days after Seller's notice of dispute, the parties shall forthwith jointly request an Accounting Arbitrator mutually agreed to by Seller and Buyer to make a binding determination of those disputed items in accordance with this Purchase Agreement. The Accounting Arbitrator will have 30 days from the date of referral to render its decision with respect to the disputed items concerning the Closing Statement, which decision shall be final and binding upon Seller and Buyer and enforceable as an arbitration award pursuant to the Massachusetts Uniform Arbitration Act for Commercial Disputes, Mass. Gem. Laws Ann. ch. 251 or the Federal Arbitration Act. The Closing Statement, with those modifications determined by the Accounting Arbitrator, shall be deemed to be the Final Statement. The fees and expenses of the Accounting Arbitrator engaged pursuant to this Section 2.5.2 shall be borne 50% by Seller and 50% by Buyer.

(c) If the Final Statement indicates that the Seller Working Capital as of the Closing is less than the amount required to be in existence pursuant to Schedule 8.12 as of the Closing Date, then Seller shall be obligated to promptly pay to the Buyer cash in an amount equal to the difference between the amount by which such required amount exceeds the Seller Working Capital set forth in the Final Statement (such net amount, the "Working Capital Shortfall"). In the event that Buyer is not paid the full Working Capital Shortfall within ten (10) calendar days of the date on which the Final Statement is determined, in addition to whatever other remedies it may have, Buyer shall be entitled until such Working Capital Shortfall is paid in full (a) to offset against amounts otherwise due Seller, including, without limitation, amounts due as part of the Contingent Purchase Price. Any payment made to Buyer by the Seller pursuant to this Article 10 shall constitute a reduction in the Purchase Price hereunder.

**10.2 PURCHASE PRICE ALLOCATION.** Buyer and Seller shall use their reasonable best efforts to agree on how the Purchase Price, the Repaid Indebtedness and the Assumed Liabilities shall be allocated among the Purchased Assets.

**ARTICLE 11 - MISCELLANEOUS.**

**11.1 EXPENSES.** Each party shall assume and bear, and shall indemnify and hold harmless the other from and against, any and all expenses, Taxes, costs and fees incurred or assumed by such party arising out of or in connection with the negotiation, preparation or performance of this Purchase Agreement and the Related Agreements and the consummation by Seller of the transactions contemplated hereby (including all expenses, costs, fees and disbursements of such party's attorneys, consultants, investment bankers and other financial advisors, brokers and finders, and accountants), whether or not the transaction contemplated hereby shall be consummated, unless the transaction is not consummated due to the other's material breach of the Purchase Agreement, and if the transaction is consummated Seller shall pay same from the Cash Purchase Price and not from the Seller Working Capital.

**11.2 ARBITRATION.** Except for (i) any dispute, controversy or claim arising out of or relating to the Contingent Purchase Price in Section 2.5.3 hereof (which is to be arbitrated as provided in Section 2.5.3(g) hereof), and (ii) any other dispute, controversy or claim arising out of or relating to this Purchase Agreement or any Related Agreement for which a party shall seek equitable relief, any other dispute, controversy or claim arising out of or relating to this Purchase Agreement including, without limitation, the breach, termination or invalidity thereof, shall be finally settled by arbitration according to the Commercial Rules of the American Arbitration Association. The arbitration shall be conducted in Boston, Massachusetts (except as provided in Section 2.5). The parties, including any assignee of Buyer, hereby agree to irrevocably submit to arbitration in Boston, Massachusetts for all purposes with respect to such arbitration. Such arbitration shall be conducted before a tribunal composed of one or more arbitrators as the parties to such arbitration shall mutually agree. The award or decision made by the arbitrator(s) shall be binding upon the parties to such arbitration; provided, however, the parties hereto waive any claim to any damages in the nature of punitive, exemplary, or statutory damages in excess of compensatory damages, and the arbitrator(s) is/are specifically divested hereby of any power to award damages in the nature of punitive, exemplary or statutory damages in excess of compensatory damages hereunder. Judgment upon any such award or decision may be entered in and enforced by any court of competent jurisdiction. Each party shall bear its own costs of such arbitration except that the prevailing party in the arbitration, as determined by the arbitrator(s), shall recover its reasonable attorneys' fees from the other party.

**11.3 NOTICES.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered by hand, sent by facsimile transmission with confirmation of transmission, sent via a reputable overnight courier service with confirmation of receipt requested, or mailed by registered or certified mail (postage prepaid and return receipt requested) to the parties at the following addresses (or at such address for a party as shall be specified by like notice), and shall be deemed given on the date on which delivered by hand (in the case of facsimile transmission, on the date of transmission as confirmed) or otherwise on the date of receipt as confirmed:

(a) if to Buyer, to:

Casual Male Retail Group, Inc.  
555 Turnpike Street

Canton, Massachusetts 02021  
Facsimile: (781) 828-3221  
Attention: David Levin, President

with a copy to:

Greenberg Traurig, LLP  
One International Place  
Boston, Massachusetts 02110  
Facsimile: (617) 310-6001  
Attention: Jonathan Bell, Esq.

(b) if to the Seller or the Stockholders, to:

Robert L. Sockolov  
Rochester Big & Tall Clothing  
625 Howard Street  
San Francisco, California 94105  
Facsimile: 415-543-0730

and

John Soares  
Rochester Big & Tall Clothing  
P.O. Box 882405  
San Francisco, California 94188-2406  
Facsimile: 415-543-0730

with a copy to:

Conrad Donner, Esq.  
MacInnis, Donner & Koplowitz  
465 California Street, Suite 222  
San Francisco, California 94104  
Facsimile: 415-433-1917

Any party may, by notice given to the other parties in accordance with this Section, designate another address or Person for receipt of notices hereunder.

**11.4 PUBLIC ANNOUNCEMENTS.** Prior to Closing, except for announcements or filings required by law, without the prior consent of the other party, neither party will make or permit any of its Affiliates, directors, officers, employees or agents to make any public disclosure with respect to this Purchase Agreement or the transactions contemplated hereby or, except for information included in any such disclosure which has been disseminated to the public, generally to Seller or Buyer employees or to any third party; provided that Buyer may in its sole discretion file and disclose such matters as necessary to comply with all applicable securities laws and regulations and Nasdaq rules. From and after the Closing, any press release or other public disclosure of information regarding this Purchase Agreement or the transactions

contemplated hereby shall be developed and disclosed solely by Buyer. Notwithstanding the foregoing, the parties have agreed to jointly release a statement to the press concerning the transactions contemplated hereby in the form of Schedule 11.4. Simultaneously with the release thereof, Seller intends to commence notifying its employees of the proposed transaction.

**11.5 AMENDMENT AND WAIVER.** This Purchase Agreement may be amended, and any provision hereof may be waived, only by a written instrument executed by all of the parties hereto. No modification, renewal, extension, waiver or termination of this Purchase Agreement or any of the provisions herein contained shall be binding upon any party unless made in writing and signed by an authorized officer of each party hereto. Failure by any party to insist upon strict compliance with any of the terms, covenants or conditions hereof in a particular instance shall not be deemed a waiver of such terms, covenants or conditions in any other instance. All rights and remedies hereunder are cumulative and are in addition to and not exclusive of any other rights and remedies available, at law, in equity, by agreement or otherwise.

**11.6 ENTIRE AGREEMENT.** This Purchase Agreement and the Related Agreements contain the entire agreement among Seller, the Stockholders and Buyer respecting the subject matter hereof and supersede all prior agreements and understandings between them concerning such subject matter.

**11.7 GOVERNING LAW.** This Purchase Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts without regard to its principles of conflicts of laws.

**11.8 BINDING EFFECT; ASSIGNABILITY.** This Purchase Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Purchase Agreement is not intended to confer upon any Person other than the parties hereto and members of the Buyer Group (and such parties' and members' respective successors and assigns) any rights or remedies hereunder, except as otherwise expressly provided herein. Neither this Purchase Agreement nor any of the rights and obligations of the parties hereunder shall be assigned or delegated, whether by operation of law or otherwise, without the written consent of all parties hereto; provided, however, that the Buyer may assign its rights hereunder to a wholly-owned subsidiary of the Buyer without the consent of the Seller provided that such assignee expressly assumes all of the obligations of Buyer hereunder and under the Related Agreements and that Buyer shall remain jointly and severally liable to Seller for all obligations of such assignee under this Agreement and any of the Related Agreements.

**11.9 COUNTERPARTS.** This Purchase Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

**11.10 SCHEDULES.** The schedules to this Purchase Agreement are a part of this Purchase Agreement as if set forth in full herein. All references herein to Articles, Sections, schedules and Exhibits shall be deemed references to such parts of this Purchase Agreement. The parties acknowledge that the Seller has not yet been able to prepare or complete the Schedules. Seller shall complete the Schedules and may submit amended Schedules on or before

September 30, 2004 and shall deliver same to Buyer for its review. Such Schedules shall thereupon constitute the Schedules to this Agreement. The Seller may thereafter (but prior to the Closing) submit amended Schedules which, if any such amended Schedule discloses a material change or addition from the prior Schedule, shall permit the Buyer to terminate this Agreement pursuant to Section 11.13(d) hereof.

11.11 **VALIDITY.** Any invalid, illegal or unenforceable provision of this Purchase Agreement shall be severable, and after any such severance, all other provisions hereof shall remain in full force and effect.

11.12 **REFERENCES.** The headings in this Purchase Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Purchase Agreement. The terms defined in this Purchase Agreement refer to the plural as well as the singular, unless the context otherwise requires. The words "herein" and "hereof" and other words of similar import refer to this Purchase Agreement as a whole and not to any particular part of this Purchase Agreement. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". Unless the context in which used herein otherwise clearly requires, "or" has the inclusive meaning represented by the phrase "and/or".

11.13 **TERMINATION.** This Purchase Agreement may be terminated or the transactions contemplated hereby may be abandoned at any time prior to the Closing Date:

(a) by the mutual written consent of Buyer, the Principal Shareholders and Seller; or

(b) by either Seller or Buyer if any Governmental Agency shall have issued an order, decree or ruling or taken any other action which permanently restrains, enjoins or otherwise prohibits the Transactions and such order, decree, ruling or other action shall have become final and non-appealable; or

(c) by either Seller or Buyer if the transactions contemplated hereby shall not have been consummated by December 31, 2004 (the "End Date"), which End Date may be extended by a mutual written agreement between Buyer, Seller and the Principal Shareholders; provided, however, that the right to terminate this Purchase Agreement pursuant to this Section 11.13 (c) shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Closing to occur on or before such date and such action or failure to act constitutes a material breach of this Purchase Agreement; or

(d) by Buyer at any time if the results of the Due Diligence Review shall in any way be unsatisfactory to Buyer in its sole and absolute discretion; or

(e) by Buyer, upon a material breach of any representation, warranty, covenant or agreement on the part of the Seller set forth in this Purchase Agreement; or

(f) by the Seller upon a material breach of any representation, warranty, covenant or agreement on the part of Buyer set forth in this Purchase Agreement.

**11.14 EFFECT OF TERMINATION.** In the event of the termination of this Purchase Agreement or abandonment of the transactions contemplated hereby by either Seller, the Principal Shareholders or Buyer pursuant to the terms of this Purchase Agreement, written notice thereof shall forthwith be given to the non-terminating party or parties specifying the provision hereof pursuant to which such termination of this Purchase Agreement or abandonment of such transactions is made. In the event of the termination of this Purchase Agreement pursuant to the provisions of Section 11.13, this Purchase Agreement shall become void and have no effect, without any liability to any Person in respect hereof or of the transactions contemplated hereby on the part of any party hereto, or any of its directors, officers, employees, agents, consultants, representatives, advisers, shareholders or Affiliates, except as specified in Section 11.1 and except for any liability resulting from such party's breach of this Purchase Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement under seal as of the day and year first above written.

**Buyer:**

CASUAL MALE RETAIL GROUP, INC.

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

Name:

Title:

**Seller:**

ROCHESTER BIG AND TALL CLOTHING, INC.

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

Name:

Title:

**COMMITMENT OF PRINCIPAL SHAREHOLDERS**

By executing this Agreement in the space provided below, each Principal Shareholder is agreeing with the Buyer that he will use his best efforts to cause the transactions contemplated by the foregoing Purchase Agreement to be consummated and will vote all shares of the Seller owned or controlled by him in favor of the transaction at any meeting or consent in lieu thereof of the shareholders of the Seller.

\_\_\_\_\_  
Robert L. Sockolov

\_\_\_\_\_  
Steven J. Sockolov

\_\_\_\_\_  
William J. Sockolov

\_\_\_\_\_  
John R. Soares



ASSET PURCHASE AGREEMENT

by and among

CASUAL MALE RETAIL GROUP, INC.,

DESIGNS JV, LLC

DESIGNS OUTLET, LLC

DESIGNS APPAREL, INC.

and

HUB HOLDING CORP.

Dated as of November 24, 2004

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of November 24, 2004, by and among (i) Casual Male Retail Group, Inc., a Delaware corporation, Designs JV, LLC, a Delaware limited liability company, Designs Outlet, LLC, a Delaware limited liability company, and Designs Apparel, Inc., a Delaware corporation (collectively referred to herein as "Seller") and (ii) Hub Holding Corp., a Delaware corporation ("Buyer"). Seller and Buyer are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties."

WHEREAS, Seller has operated a business under the names "Levi's Outlets by Designs" and "Docker's Outlet by Designs" that Seller has been in the process of liquidating; and

WHEREAS, Seller is willing to sell, and Buyer wishes to purchase, 32 of the store locations that remain in existence, the assets that Seller uses exclusively for the operation of such store locations, and such other assets as are set forth in Section 2.1 hereof (as currently operated by Seller, the "Business"); and

WHEREAS, Seller is not selling any assets that it uses in connection with its other businesses; and

WHEREAS, the Parties desire to make certain representations, warranties, covenants and agreements.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, mutual covenants, agreements and understandings contained herein and intending to be legally bound, the Parties hereto hereby agree as follows:

### ARTICLE I

#### CERTAIN DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, the following terms have the meanings set forth below:

"Affiliate" of any particular Person means any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and such "control" will be presumed if any Person owns 10% or more of the voting capital stock or other ownership interests, directly or indirectly, of any other Person.

"Business Employees" means all of Seller's employees as of the Closing Date, including all active employees and any other employees, including employees inactive as of the Closing Date for any reason (including as a result of layoff, leave of absence, disability, illness or injury).

"Buyer Parties" means Buyer and its Affiliates and their respective members, shareholders, officers, directors, managers, employees, agents, representatives, successors and assigns.

“Casual Male Companies” means (i) Designs Securities Corporation, a Massachusetts corporation, Casual Male CANADA, Inc., an entity organized under the laws of Ontario, Canada, Capture, LLC, a Virginia limited liability company, DesiCand, Inc., a Delaware corporation, CBDNH, Inc., a New Hampshire corporation, Casual Male Store, LLC, a Delaware limited liability company, Casual Male Retail Store, LLC, a Delaware limited liability company, Casual Male Direct, LLC, a Delaware limited liability company, LP Innovations, Inc., a Nevada corporation, Securex LLC, a Delaware limited liability company, Casual Male RBT, LLC, a Delaware limited liability company, Casual Male RBT (U.K.), LLC, a Delaware limited liability company, Designs Canton Holdings, Inc., a Delaware corporation, Designs Canton Property Corp., a Delaware corporation, and Desiko Holding, LLC, a Delaware limited liability company and (ii) other than Seller, each Subsidiary of the Persons listed in clause (i) above.

“Code” means the Internal Revenue Code of 1986, as amended, and any reference to any particular Code section shall be interpreted to include any revision of or successor to that section regardless of how numbered or classified.

“Confidential Information” means all information of a confidential or proprietary nature (whether or not specifically labeled or identified as “confidential”), in any form or medium, that relates to the business, products, services and/or research and/or development of the Business and/or its respective suppliers, distributors, customers, independent contractors and/or other business relations. Confidential Information includes, but is not limited to, the following: (i) internal business information (including historical and projected financial information and budgets and information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, suppliers, distributors, customers, independent contractors or other business relations and their confidential information; (iii) trade secrets, know-how, compilations of data and analyses, techniques, systems, formulae, recipes, research, records, reports, manuals, documentation, models, data and data bases relating thereto; (iv) inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable); and (v) other Proprietary Rights.

“Designated Employee Payments” means seventy percent (70%) of the amount owed by Seller to the “Merchandising Professionals” listed on Schedule I to the Transition Services Agreement for performance incentives, severance payments and vacation earned during fiscal year 2005.

“Designs” means the Business and the business operated by Seller with the assets exclusively related to the retail locations set forth on the Excluded Designs Leased Property Schedule.

“Earn-Out Amount” means thirty percent (30%) of the amount equal to (i) the store level earnings for the Business before interest, taxes, depreciation and amortization (such amount being commonly referred to as “four wall EBITDA”) calculated in the manner set forth on the attached Earn-Out Schedule for the period from the Closing Date through January 31, 2005, less (ii) two percent (2%) of the sales of the Business for the period from the Closing Date through January 31, 2005; provided, however, in no case shall the Earn-Out Amount exceed \$500,000.

“Employee Bonuses” means incentive bonuses or other incentive payments to store managers and any assistant store managers on account of or relating to any retail stores shrink results.

“Environmental Laws” means all federal, state, local and foreign statutes, regulations, and ordinances, all judicial and administrative orders and determinations and all common law concerning worker health and safety, and pollution or protection of the environment, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.).

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

“ERISA Affiliate” means any entity that, together with Seller, is treated as a single employer under Section 414 of the Code.

“GAAP” means Unites Stated generally accepted accounting principles, as in effect from time to time.

“Indebtedness” means (i) any indebtedness for borrowed money, (ii) any indebtedness evidenced by any note, bond, debenture or other debt security, (iii) any liabilities or obligations for the deferred purchase price of property or services with respect to which Seller is liable, contingently or otherwise, as obligor or otherwise (other than account payables set forth on the attached Accrued Liabilities and Assumed Payables Schedule), (iv) any commitment by which Seller assures a creditor against loss (including contingent reimbursement obligations with respect to letters of credit), (v) any indebtedness guaranteed in any manner by Seller (including guarantees in the form of an agreement to repurchase or reimburse), (vi) any liabilities or obligations under capitalized leases with respect to which Seller is liable, contingently or otherwise, as obligor, guarantor or otherwise, or with respect to which obligations Seller assures a creditor against loss, (vii) any indebtedness or liabilities secured by a Lien (other than Permitted Liens arising by operation of law) on Seller’s assets, (viii) any amounts owed by Seller to any Person under any noncompetition or consulting arrangements, (ix) any amounts owed to Affiliates of Seller, (including intercompany trade and accounts payable), and (x) all “cut” but uncashed checks issued by Seller that are outstanding as of the Closing Date.

“Knowledge” and terms of similar import mean with respect to Seller, the actual knowledge of David Levin, Dennis Hemreich, Brian Sheehan, Joe Cornely, Paul Wally Sprague and Matt Clark, after making reasonable inquiry and all facts of which such Persons in the reasonably prudent exercise of their duties should be aware.

“Lien” or “Liens” means any lien (statutory or otherwise), hypothecation, encumbrance, claim, liability, security interest, interest, mortgage, pledge, restriction, charge, instrument, license, preference, priority, security agreement, easement, covenant, encroachment, option, right of recovery, Tax (including foreign, federal, state and local Tax), order of any governmental authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, (iii) any claim based on any theory that Buyer is a successor, transferee or continuation of Seller or the Business, and (iv) any leasehold interest, license or other right, in favor of a third party or Seller, to use any portion of the Purchased Assets), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

“Loss” means any loss, liability, demand, claim, action, cause of action, cost, damage, diminution in value, deficiency, Tax, penalty, fine or expense, whether or not arising out of third party claims (including interest, penalties, reasonable attorneys’ fees and expenses and all amounts paid in investigation, defense or settlement of any of the foregoing and the enforcement of any rights hereunder).

“Net Inventory” means an amount equal to the value (at cost) determined on a basis consistent with Seller’s prior practices of finished goods inventory and packaging materials (provided that if the value of the packaging materials exceeds \$10,000, then such value shall be deemed to be \$10,000) included in the Purchased Assets, net of a reserve established on a basis consistent with Seller’s past practices for inventory “shrink.”

“Ordinary Course of Business” means the ordinary course of business, consistent with past practice, including with regard to nature, frequency and magnitude.

“Person” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity or governmental entity (whether federal, state, county, city or otherwise and including any instrumentality, division, agency or department thereof).

“Puerto Rico Taxes” means any other liability and obligation of Seller for Taxes (including the liability or obligation of Seller set forth on the attached Liabilities Schedule) for any period owed to any governmental or regulatory authority located in Puerto Rico (whether or not such obligation or liability has been accrued on Seller’s financial statements, disclosed to Buyer, or set forth on any Schedule attached hereto, including the Liabilities Schedule or Accrued Liabilities and Assumed Payables Schedule).

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, limited liability company, association or other business entity, either (A) a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof, or (B) such Person is a general partner, managing member or managing director of such partnership, limited liability company, association or other entity.

“Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property (including general and special real estate taxes and assessments, special service area charges, tax increment financing, charges, payments in lieu of taxes and similar charges and assessments), windfall profits, environmental (including tax under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, foreign or domestic withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, governmental fee, governmental assessment or governmental charge of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner including any interest, penalties or additions to Tax or additional amounts with respect to the foregoing whether disputed or not.

“Tax Returns” means returns, declarations, reports, claims for refund, information returns or other documents (including any related or supporting schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of Taxes of any party or the administration of any laws, regulations or administrative requirements relating to any Taxes.

“Treasury Regulations” means the United States Treasury Regulations promulgated under the Code, and any reference to any particular Treasury Regulation section shall be interpreted to include any final or temporary revision of or successor to that section regardless of how numbered or classified.

“Warehouse” means the property located at 555 Turnpike Street, Canton, MA.

1.2 Certain Definitions. Each of the following terms has the meaning ascribed to such term in the Article or Section set forth opposite such term:

<u>Term</u>	<u>Article/Section</u>
Accounting Firm	2.3(c)
Agreement	Preamble
Applicable Rate	2.3(c)
Assumed Contracts	2.1(a)(iv)
Assumed Liabilities	2.2(a)
Business	Recitals
Buyer	Preamble
Cash Portion	2.3(a)
Closing	2.4(a)
Closing Date	2.4(a)
Closing Inventory Calculation	2.3(c)
Critical Representations	6.1(b)
Employee Bonuses	2.2(b)(vi)
Estimated Cash Portion	2.3(c)
Excluded Assets	2.1(b)
Excluded Liabilities	2.2(b)
Final Cash Portion	2.3(c)
Indemnitee	6.2(d)
Indemnitor	6.2(d)
Inventory	2.1(a)(iii)
Latest Balance Sheet	4.4(a)
Leased Real Property	4.9(b)
Leases	4.9(b)
Notice of Disagreement	2.3(c)
Party/Parties	Preamble
Permitted Liens	4.10(a)
Proprietary Rights	2.1(a)(iv)
Purchase Price	2.3(a)
Purchased Assets	2.1(a)
Purchased Stores	2.1(a)
Register Cash	2.1(a)(i)
Restricted Persons	6.9(d)
Restrictive Covenants	6.9(d)
Seller	Preamble
Seller Employee Benefit Plan	4.17(a)
Third-Party Approvals	3.1(d)
Transferred Employees	6.3
Transition Services Agreement	3.1(i)



PURCHASE AND SALE OF PURCHASED ASSETS2.1 Basic Transaction.

(a) Purchased Assets. On the terms and subject to the conditions set forth in this Agreement, Buyer shall purchase from Seller, and Seller shall sell, convey, assign, transfer and deliver to Buyer on the Closing Date, all of Seller's assets and properties located at the retail locations set forth on the Leased Real Property Schedule (the "Purchased Stores"), all of Seller's inventories of goods, packaging materials and supplies to be sold at the Purchased Stores whether located at the Purchased Stores, the Warehouse or in transit to or from the Purchased Stores or the Warehouse and all other assets, properties, rights, titles and interests of every kind and nature owned, licensed or leased by Seller, including goodwill and other intangible assets of Seller, and exclusively used in the business Seller operates under the names "Levi's Outlets by Designs" and "Dockers Outlet by Designs" (the "Purchased Assets"), free and clear of all Liens (other than Permitted Liens), including the following:

(i) "register cash" at the Purchased Stores in an amount as is necessary to open the Purchased Stores on the day after the Closing Date, determined by reference to the historical practices of the Business, which in any event shall not be less than \$1,000 in each of the Business' stores ("Register Cash");

(ii) all promotional allowances and vendor rebates and similar items arising from the operation of the Business;

(iii) all finished goods inventories, raw materials, packaging materials, work in process, consigned goods and finished goods (including warehoused inventories and inventories covered by purchase orders) of the Business, wherever located (including the Warehouse), including consignment inventory and inventory on order for or in transit to or from Seller (collectively, the "Inventory");

(iv) all of Seller's right, title and interest in the following that are owned by, issued to, licensed to or used by Seller and are a part of Designs, along with all of Seller's interest in income, royalties, damages and payments accrued, due or payable as of the Closing Date or thereafter (including damages and payments for past, present or future infringements or misappropriations thereof, the right to sue and recover for past infringements or misappropriations thereof and any and all corresponding rights that, now or hereafter, may be secured throughout the world): patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice) and any reissue, continuation, continuation-in-part, division, extension or reexamination thereof; trademarks, trade names, service marks and trade dress (including any and all rights in the "Designs" name), together with all goodwill associated therewith, and all translations, adaptations, derivations and combinations of the foregoing (and all logos related to the foregoing); copyrights and copyrighted works; Internet domain names; and all registrations, applications and renewals for any of the foregoing; trade secrets and other Confidential Information, including ideas, know-how, related processes and techniques, research and development information, drawings, specifications, designs, plans, proposals and technical data and manuals; computer software (including data and related documentation); and all other intangible properties and rights relating to the Business; in each case including the items set forth on the attached Proprietary Rights Schedule (collectively, the "Proprietary Rights");

(v) all agreements, contracts, or other binding arrangements of Seller identified on the attached Assumed Contracts Schedule (collectively, the “Assumed Contracts”);

(vi) all leasehold improvements located at the properties set forth on the Leased Real Property Schedule, and all machinery, equipment (including all vehicles, testing equipment and office equipment), fixtures, trade fixtures, computers and related software, and furniture located at the properties set forth on the Leased Real Property Schedule;

(vii) all office supplies, production supplies and other supplies, spare parts, other miscellaneous supplies and other tangible property of any kind exclusively used in the Business and located at the properties set forth on the Leased Real Property Schedule or in the Warehouse;

(viii) all prepayments and prepaid expenses, employee advances and security deposits that are a part of the Business or, other than insurance premiums or contributions to Seller’s benefit plans (including its 401(k) plan), which relate to the Transferred Employees;

(ix) all claims, refunds, credits, causes of action, choices in action, rights of recovery and rights of set-off of any kind relating to the Purchased Assets or arising from the operation of the Business;

(x) the right to receive and retain mail and other communications relating to the Purchased Assets or the operation of the Business except to the extent the same relate to Excluded Assets in which case Seller shall promptly furnish a copy (or if oral, a detailed description) of such mail or other communication to Buyer;

(xi) all lists, records and other information pertaining to accounts and referral sources exclusively of Designs; all lists, records and other information pertaining to suppliers and customers exclusively of Designs; and all drawings, reports, studies, plans, books, ledgers, files and business and accounting records of every kind exclusively relating to Designs (including all financial, business, sales and marketing plans and information); in each case whether evidenced in writing, electronic data, computer software or otherwise, and in each case subject to Buyer’s commitment to retain such records and information for a period of not less than seven years and, at Seller’s reasonable request based on its business needs and except in the case where such lists, records or other information could be used to compete with Buyer or Buyer’s Affiliates, to provide Seller with access thereto and the opportunity to make copies thereof from time to time for reasonable purposes;

(xii) all advertising, marketing and promotional materials, all archival materials and all other printed or written materials relating to Designs;

(xiii) to the extent that the same relate to the Business, all permits, licenses, certifications, authorizations, approvals and similar rights from all permitting, licensing, accrediting and certifying agencies (including all of the foregoing listed or described on the attached Permits Schedule, and the rights to all data and records held by such agencies;

(xiv) all goodwill of Designs as a going concern and all other intangible property of Designs;

(xv) all proceeds under insurance policies and rights of recovery relating to the Purchased Assets or assets that would be Purchased Assets but for damage or destruction to such asset; and

(xvi) all other properties, assets and rights owned by Seller as of the Closing Date, or in which Seller has an interest, which are used exclusively in Designs and which are not otherwise Excluded Assets.

(b) Excluded Assets. Notwithstanding the foregoing, the following properties, assets and rights (the "Excluded Assets") are expressly excluded from the purchase and sale contemplated hereby and, as such, are not included in the Purchased Assets:

(i) except for Register Cash, all cash and cash equivalents of Seller;

(ii) all of Seller's interest in assets, properties, rights, titles and interests which are not used in, useful for or otherwise associated with the Business, including assets, properties, rights, titles and interests of Seller's businesses other than Designs and all inventory and other assets of Seller located at the retail locations set forth on the attached Excluded Designs Leased Property Schedule and all inventory of finished goods and supplies located at the Warehouse and specifically designated on the attached Excluded Assets Schedule for shipment to such retail locations or in transit to or from such retail locations;

(iii) all accounts receivable owed to Seller or Seller's Affiliates;

(iv) all stock and other ownership interests in Seller;

(v) Seller's corporate charter, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books and blank stock certificates and other documents relating solely to the organization, maintenance and existence of Seller as a corporation (provided that Buyer shall be entitled to receive a copy of all such documentation as of the Closing);

(vi) claims for and rights to receive Tax refunds relating to the Business with respect to taxable periods (or portions thereof) ending on or prior to the Closing Date, and Tax Returns relating to the Business with respect to taxable periods (or portions thereof) ending on or prior to the Closing Date, and any notes, worksheets, files or documents relating thereto; and

(vii) the Purchase Price and all other rights of Seller under or pursuant to this Agreement and the Schedules attached hereto and any other agreements entered into by Seller pursuant to this Agreement.

## 2.2 Assumption of Liabilities.

(a) Assumed Liabilities. Subject to the conditions set forth in this Agreement, in addition to the Purchase Price and as additional consideration for the Purchased Assets, as of the Closing, Buyer shall assume only the following debts, liabilities and obligations of Seller to the extent relating to the Business (collectively, the "Assumed Liabilities"):

(i) all of Seller's accounts payable and accrued liabilities which are current and incurred in the Ordinary Course of Business and existing as of the Closing Date, excluding Employee Bonuses relating to periods prior to November 21, 2004 but including, without limitation, Designated Employee Payments (provided Buyer's obligations with respect to Designated Employee Payments shall not exceed \$66,345.73 and Buyer shall only be liable for Designated Employee Payments to the extent that Seller pays the remaining obligation of the amount owed by Seller to the "Merchandising Professionals" listed on Schedule I to the Transition Services Agreement for performance incentives,

severance payments and vacation earned during fiscal year 2005) and Seller's obligations for accrued vacation, sick time and holiday pay to the extent the same exist as of the Closing Date, it being understood and agreed that Seller maintains a "take or lose it" policy with respect to accruals for vacation, sick time and holiday pay with an annual termination date of January 31, 2005 and that Buyer will be reimbursing Seller under the Transition Services Agreement for the remaining expenses thereof through such date;

(ii) Seller's obligations under the Assumed Contracts relating to the ongoing Business other than liabilities for product liability or infringement claims with respect to products or services sold prior to the Closing (regardless of whether any consent to the assignment of such Assumed Contracts is obtained but only to the extent such Assumed Contracts are assigned to Buyer or Buyer otherwise receives the rights and benefits of such Assumed Contracts pursuant to Section 2.7 below, and specifically excluding any liability or obligation relating to or arising out of such Assumed Contracts as a result of (A) any breach of such Assumed Contracts occurring on or prior to the Closing Date, (B) any violation of law, breach of warranty, tort or infringement occurring on or prior to the Closing Date; or (C) any charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand);

(iii) the cost to Seller incurred in the Ordinary Course of Business prior to Closing and after the Closing of accepting returns of merchandise from customers of the Business with respect to goods sold by the Business on or before the Closing Date; and

(iv) Seller's obligations under outstanding merchandise purchase orders which relate solely to the Business and which were incurred in the Ordinary Course of Business set forth on the Purchase Orders Schedule.

(b) Liabilities Not Assumed. Notwithstanding anything to the contrary in this Agreement, Buyer shall not assume or in any way become liable for any of Seller's debts, liabilities or obligations of any nature whatsoever (other than the Assumed Liabilities), whether accrued, absolute, contingent or otherwise, whether known or unknown, whether due or to become due, whether related to the Business or the Purchased Assets and whether disclosed on the Schedules attached hereto, and regardless of when or by whom asserted, including clauses (i) through (xiv) below (collectively referred to herein as the "Excluded Liabilities"):

(i) any of Seller's liabilities or obligations under this Agreement, the Schedules attached hereto and any other agreements entered into by Seller in connection with the transactions contemplated by this Agreement;

(ii) any of Seller's liabilities or obligations for expenses, fees or Taxes incident to or arising out of the negotiation, preparation, approval or authorization of this Agreement or the consummation (or preparation for the consummation) of the transactions contemplated hereby (including all attorneys' and accountants' fees, brokerage fees and transfer Taxes), except for the portion of the transfer Taxes to be paid by Buyer pursuant to Section 6.7 hereof;

(iii) except as set forth on the Accrued Liabilities and Assumed Payables Schedule, any liability or obligation of Seller for Taxes for any period, except for the portion of transfer Taxes to be paid by Buyer pursuant to Section 6.7 hereof, including the Puerto Rico Taxes;

(iv) any liability or obligation under or with respect to any Seller Employee Benefit Plan or any other employee benefit plan, program, policy or arrangement presently or formerly maintained or contributed to by Seller or its ERISA Affiliates, or with respect to which Seller or any such ERISA Affiliate has any liability;

(v) any liability or obligation with respect to any products or services that were marketed or sold prior to the Closing, including product liability, infringement claims and any related claims and litigation arising prior to, on or after the Closing Date;

(vi) except as set forth on the Accrued Liabilities and Assumed Payables Schedule, any of Seller's liabilities or obligations of any kind to any Business Employees or former employee of Seller, including any liabilities or obligations arising prior to the Closing with respect to the exempt or non-exempt status of any Business Employee or Employee Bonuses (whether or not such liability or obligation has been accrued on Seller's financial statements, disclosed to Buyer, or set forth on any Schedule attached hereto including the Accrued Liabilities and Assumed Payables Schedule);

(vii) any liability or obligation relating to workers' compensation claims which were filed or presented on or before the Closing Date or which are filed or presented after the Closing Date but relate to claims and/or injuries first arising on or before the Closing Date;

(viii) any of Seller's liabilities or obligations (A) arising by reason of any violation or alleged violation of any federal, state, local or foreign law or any requirement of any governmental authority, (B) arising by reason of any breach or alleged breach by Seller of any agreement, contract, lease, license, commitment, instrument, judgment, order or decree, or (C) arising under any Environmental Laws;

(ix) any of Seller's liabilities or obligations relating to any legal action, proceeding or claim arising out of or in connection with Seller's conduct of the Business or any other conduct of Seller, Seller's officers, directors, employees, consultants, agents or advisors on or prior to the Closing Date;

(x) any of Seller's liabilities or obligations for Indebtedness;

(xi) any liabilities or obligations in respect of any of the Excluded Assets (including under any contracts, leases, commitments or understandings related thereto);

(xii) any of Seller's liabilities or obligations which Buyer may become liable for as a result of or in connection with the failure by Buyer or Seller to comply with any bulk sales or bulk transfers laws or as a result of any "defacto merger" or "successor-in-interest" theories of liability;

(xiii) any of Seller's liabilities or obligations with respect to amounts disputed by Seller and not paid to the landlords of the properties listed on the attached Leased Real Property Schedule; and

(xiv) any other liabilities or obligations of Seller not expressly assumed by Buyer pursuant to Section 2.2(a) above.

For purposes of this Section 2.2(b), "Seller" shall be deemed to include all Affiliates of Seller and any predecessors to Seller and any Person with respect to which Seller is a successor-in-interest (including by operation of law, merger, liquidation, consolidation, assignment, assumption or otherwise). Seller hereby acknowledges that it is retaining the Excluded Liabilities, and Seller shall pay, discharge and perform all such liabilities and obligations promptly when due.

### 2.3 Purchase Price

(a) Purchase Price. The aggregate purchase price (the "Purchase Price") for the Purchased Assets shall be (i) an amount equal to seventy-five percent (75%) of Net Inventory (the "Cash Portion"), plus (but only if the Closing occurs prior to November 25, 2004) (ii) the Earn-Out Amount.

(b) Estimated Cash Portion. At the Closing, Buyer shall pay to Seller in the manner described in Section 2.4(b) below an amount (the "Estimated Cash Portion") equal to the Cash Portion as estimated in good faith by Buyer.

(c) Purchase Price Adjustment.

(i) Prior to the Closing, Buyer shall engage Regis Corporation to conduct a physical count of Net Inventory at the Closing. Absent manifest error on the part of Regis Corporation, Seller and Buyer shall be bound, and shall not dispute, the results of the physical inventory conducted by Regis Corporation. Within 30 days after the Closing, Seller shall deliver to Buyer a certificate setting forth the Net Inventory (the "Closing Inventory Calculation") and the Cash Portion calculated therefrom (the "Final Cash Portion"). Seller shall give Buyer reasonable access to Seller's books and records and shall cooperate with Buyer in connection with Buyer's review of the Closing Inventory Calculation. Following Buyer's receipt of the Closing Inventory Calculation and until the Net Inventory and the resulting Cash Portion is finally determined pursuant to this Section 2.3(c), Buyer and its representatives and agents shall be permitted to review Seller's books and records related to Seller's preparation of the Closing Inventory Calculation. The Closing Inventory Calculation shall become final and binding upon the parties thirty (30) days following Buyer's receipt thereof, unless Buyer gives written notice of its disagreement ("Notice of Disagreement") to Seller prior to such date. Any Notice of Disagreement shall specify in reasonable detail the nature and dollar amount of any disagreement so asserted. If a timely Notice of Disagreement is received by Seller, then the Closing Inventory Calculation (as revised in accordance with clause (x) or (y) below) shall become final and binding upon the parties on the earliest of (x) the date the parties hereto resolve in writing any differences they have with respect to the matters specified in the Notice of Disagreement or (y) the date all matters in dispute are finally resolved in writing by PricewaterhouseCoopers LLP (the "Accounting Firm"). During the thirty (30) days following delivery of a Notice of Disagreement, Buyer and Seller shall seek in good faith to resolve in writing any differences which they may have with respect to the matters specified in the Notice of Disagreement. During such period, Buyer shall be permitted to review Seller's working papers relating to the Notice of Disagreement. At the end of such 30-day period, Buyer and Seller shall submit to the Accounting Firm for review and resolution of all matters (but only such matters) which remain in dispute, and the Accounting Firm shall make a final determination of the Net Inventory and the resulting Cash Portion in accordance with the guidelines and procedures set forth in this Agreement. Buyer and Seller will cooperate with the Accounting Firm during the term of its engagement. The Accounting Firm's determination of the Net Inventory and the resulting Cash Portion shall be based solely on written presentations submitted by Buyer and Seller which are in accordance with the guidelines and procedures set forth in this Agreement (i.e., not on the basis of an independent review). The Accounting Firm shall consider only the disputed matters that were included in the Notice of Disagreement and the Accounting Firm may not assign a value to any item in dispute greater than the greatest value assigned by Buyer, on the one hand, or Seller, on the other hand, or less than the smallest value for such item assigned by Buyer, on the one hand, or Seller, on the other hand. The Closing Inventory Calculation shall become final and binding on the Parties on the date the Accounting Firm delivers its final resolution in writing to the Parties (which the Accounting Firm shall be instructed to deliver not more than forty-five (45) days following submission of such disputed matters). The fees and expenses of the Accounting Firm shall be allocated based upon the percentage which the portion of the contested amount not awarded to each Party bears to the amount actually contested by such Party in the written presentation to the Accounting Firm. For example, if Buyer submits a Notice of Disagreement for \$1,000, and if Seller contests only \$500 of the amount claimed by Buyer, and if the Accounting Firm ultimately resolves the dispute by awarding Seller \$200 of the \$500 contested, then the costs and expenses of the Accounting Firm will be allocated 40% (i.e., 200/500) to Buyer and 60% (i.e., 300/500) to Seller.

(ii) If the Estimated Cash Portion is greater than the Final Cash Portion, Seller shall, and if the Final Cash Portion is greater than the Estimated Cash Portion, Buyer shall, within three business days after the Closing Inventory Calculation becomes final and binding on the Parties, make payment by wire transfer to Buyer or Seller, as the case may be, in immediately available funds of the amount of such difference, together with interest thereon at a rate per annum equal to the prime rate of interest announced from time to time in The Wall Street Journal (the “Applicable Rate”), calculated on the basis of the actual number of days elapsed over 365, from the Closing Date to the date of payment.

#### 2.4 Closing Transactions.

(a) Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois, at 10:00 a.m., local time, on the date hereof, or at such other place as is mutually agreeable to the parties (the date on which the Closing takes place is referred to herein as the “Closing Date”) and the Closing shall be deemed effective as of the opening of business on the Closing Date.

(b) Deliveries. Subject to the conditions set forth in this Agreement, at the Closing:

(i) Buyer shall deliver to Seller the Estimated Cash Portion by wire transfer of immediately available funds to an account designated by Seller to Buyer not less than two (2) business days prior to the Closing Date.

(ii) Seller shall convey all of the Purchased Assets to Buyer and shall deliver to Buyer such appropriately executed instruments of sale, transfer, assignment, conveyance and delivery, warranty deeds, warranty assignments and assumption of leases, bills of sale, assignments and assumptions, intellectual property assignments or other intellectual property conveyance documents, certificates of title, vehicle titles, transfer tax declarations and all other instruments of conveyance which are necessary or desirable to effect transfer to Buyer of good and marketable title to the Purchased Assets (free and clear of all Liens, other than Permitted Liens), including documents acceptable for recordation in the United States Patent and Trademark Office, the United States Copyright Office and any other similar domestic or foreign office, department or agency (it being understood that all of the foregoing shall be satisfactory in form and substance to Buyer and its counsel);

(iii) Buyer shall assume the Assumed Liabilities by delivery of an appropriate instrument to Seller;

(iv) Seller shall deliver to Buyer (A) a certificate signed by an officer of Seller, dated the date of the Closing, stating that the conditions specified in subsections (a), (b), (c), 3.1(d), (e), (f) and 3.1(g) of Section 3.1 below have been satisfied as of the Closing; (B) copies of all Third-Party Approvals and governmental and regulatory consents and approvals obtained by Seller; (C) all books, records and other materials related to or used in the Business; (D) certified copies of resolutions of Seller’s board of directors authorizing and approving the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby; and (E) such other documents or instruments as are required to be delivered at the Closing pursuant to the terms hereof or that Buyer reasonably requests prior to the Closing Date to effect the transactions contemplated hereby; and

(v) Buyer shall deliver to Seller (A) a certificate signed by an officer of Buyer, dated the date of the Closing, stating that the conditions specified in subsections 3.2(a), (b) and (c)

of Section 3.2 below have been satisfied, (B) certified copies of resolutions of Buyer's board of directors authorizing and approving the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and (C) such other documents or instruments as are required to be delivered at the Closing pursuant to the terms hereof or that Seller reasonably requests prior to the Closing Date to effect the transactions contemplated hereby.

2.5 Earn-Out. If the Closing occurs prior to November 25, 2004, promptly after the determination thereof, Buyer shall pay to Seller the Earn-Out Amount.

2.6 Allocation of the Purchase Price. The Purchase Price, the Assumed Liabilities and other relevant items shall be allocated among the Purchased Assets in accordance with their fair market values as determined by Buyer and reasonably acceptable to Seller. Buyer shall deliver a schedule setting forth the fair market value of the assets and such allocation within one-hundred twenty (120) days after the Closing Date. Buyer and Seller shall file any Tax Returns and any other governmental filings on a basis consistent with such allocation of fair market value and in accordance with Section 1060 of the Code. Buyer and Seller shall exchange drafts of any information returns required by Section 1060 of the Code, and any similar state statute that is applicable, at least thirty (30) days prior to filing such returns and shall discuss in good faith any modification suggested by the receiving party.

2.7 Nonassignable Contracts. Notwithstanding anything to the contrary herein, to the extent that the assignment hereunder by Seller to Buyer of any Assumed Contract is not permitted or is not permitted without the consent of any other party to such Assumed Contract, this Agreement shall not be deemed to constitute an assignment of any such Assumed Contract if such consent is not given or if such assignment otherwise would constitute a breach of, or cause a loss of contractual benefits under, any such Assumed Contract. Seller shall advise Buyer in writing at least two (2) business days prior to the Closing with respect to any Assumed Contract which Seller knows or has substantial reason to believe will or may not be subject to assignment to Buyer hereunder at the Closing. Without in any way limiting Seller's obligation to obtain all consents and waivers necessary for the sale, transfer, assignment and delivery of the Assumed Contracts and the Purchased Assets to Buyer hereunder, if any such consent is not obtained or if such assignment is not permitted irrespective of consent and if the Closing shall occur, Seller and Buyer shall cooperate with each other following the Closing Date and enter into any reasonable arrangement (which arrangement shall provide that Buyer shall be responsible for the performance of all obligations under such Assumed Contracts) designed to provide Buyer with the rights and benefits (subject to the obligations) under any such Assumed Contract, including enforcement for the benefit of Buyer of any and all rights of Seller against any other party arising out of any breach or cancellation of any such Assumed Contract by such other party and, if requested by Buyer, acting as an agent on behalf of Buyer or as Buyer shall otherwise reasonably require. Notwithstanding anything in this Section 2.7 to the contrary, Buyer agrees and acknowledges that Seller does not guarantee the receipt of any consent necessary to assign any Assumed Contract, and shall not be liable to Buyer for the failure to receive any such consent.

### ARTICLE III

#### CONDITIONS TO CLOSING

3.1 Conditions to Buyer's Obligation. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction of the following conditions as of the Closing:

(a) The representations and warranties made by Seller in this Agreement and in any certificate delivered by Seller pursuant hereto shall be true and correct as of the date hereof and the Closing Date;



(b) Seller shall have performed and complied with the obligations and covenants required by this Agreement to be performed or complied with by Seller on or prior to the Closing Date;

(c) Seller shall have obtained releases of all Liens of whatever nature relating to the Purchased Assets (other than the Permitted Liens);

(d) Seller shall have received or obtained all third party consents and approvals that are necessary for the consummation of the transactions contemplated hereby or that are required in order to prevent a breach of or default under, a termination or modification of, or acceleration of the terms of, any Assumed Contract (including the consent of Levi Strauss & Co. but excluding the consent of the landlords for the Leased Real Property) (collectively, the "Third-Party Approvals"), in each case on terms reasonably satisfactory to Buyer;

(e) Buyer and Seller shall have received or obtained all governmental and regulatory consents and approvals that are necessary for the consummation of the transactions contemplated hereby and Buyer's operation of the Business following the Closing, in each case on terms satisfactory to Buyer;

(f) Since September 30, 2004, there shall have been no material adverse change or development in the financial condition, operating results, assets, operations, employee relations or customer or supplier relations of the Business taken as a whole;

(g) No suit, action or other proceeding, or injunction, order, decree or judgment relating thereto, shall be threatened or pending before any court or governmental or regulatory official, body or authority in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the transactions contemplated hereby, or that could have a material adverse effect on the business, financial condition, operating results or assets of the Business taken as a whole or adversely affect the right of Buyer or its Affiliates to own, operate or control all or any portion of the Purchased Assets or the Business, and no investigation that could result in any such suit, action or proceeding shall be pending or threatened;

(h) Seller shall have delivered to Buyer non-foreign Person affidavits as of the Closing Date, and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the Code stating that Seller is not a "foreign person" as defined in Code Section 1445;

(i) Seller and Buyer shall have entered into a transition services agreement in form and substance of Exhibit A attached hereto (the "Transition Services Agreement"); and

(j) Seller shall have entered into a collateral access agreement or similar agreement with the lenders to Buyer or any of its permitted assignees pursuant to Section 7.3(b), in form and substance reasonably acceptable to such lender and Seller.

All proceedings to be taken by Seller in connection with the consummation of the transactions contemplated hereby and all certificates, instruments and other documents required to effect the transactions contemplated hereby reasonably requested by Buyer shall be reasonably satisfactory in form and substance to Buyer. Any conditions specified in this Section 3.1 may be waived only in writing by Buyer and specifying in reasonable detail the provision being waived.

3.2 Conditions to Seller's Obligations. The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction of the following conditions as of the Closing:

(a) The representations and warranties made by Buyer in this Agreement and in any certificate delivered by Buyer pursuant hereto shall be true and correct as of the date hereof and the Closing Date;

(b) Buyer shall have performed and complied with the obligations and covenants required by this Agreement to be performed or complied with by Buyer on or prior to the Closing Date;

(c) Buyer and Seller shall have received or obtained all governmental and regulatory consents and approvals that are necessary for the consummation of the transactions contemplated hereby; and

(d) No suit, action or other proceeding, or injunction, order, decree or judgment relating thereto, shall be threatened or pending before any court or governmental or regulatory official, body or authority in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the transactions contemplated hereby, and no investigation that could result in any such suit, action or proceeding shall be pending or threatened.

All proceedings to be taken by Buyer in connection with the consummation of the transactions contemplated hereby and all documents required to be delivered by Buyer to effect the transactions contemplated hereby reasonably requested by Seller shall be reasonably satisfactory in form and substance to Seller. Any condition specified in this Section 3.2 may be waived only in writing by Seller and specifying in reasonable detail the provision being waived.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Buyer to enter into this Agreement and consummate the transactions contemplated hereby, Seller hereby represents and warrants to Buyer that:

4.1 Organization and Corporate Power. Seller is a corporation, limited liability company or other entity duly organized, validly existing and in good standing under the laws of the State listed on Organizational and Corporate Power Schedule opposite to its name. Seller, with respect to the Business, has obtained and currently maintains all qualifications to do business as a foreign corporation in all other jurisdictions in which the character of Seller's properties or the nature of Seller's activities require it to be so qualified, other than any such qualifications for which the failure to obtain or maintain would not have a material adverse effect on the Business taken as a whole. Seller has all requisite power and authority and all authorizations, licenses and permits necessary to own and operate the Business and to conduct the Business as now conducted and as presently proposed to be conducted.

4.2 Authorization; No Breach. The execution, delivery and performance of this Agreement and the other agreements contemplated hereby to be executed and delivered by Seller and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite corporate action on the part of Seller, and no other corporate proceedings on the part of Seller are necessary to authorize the execution, delivery or performance of this Agreement or the other agreements contemplated hereby. This Agreement and the other agreements contemplated hereby to be

executed and delivered by Seller constitute valid and binding obligations of Seller, enforceable in accordance with their respective terms. Except as set forth on the attached Restrictions Schedule, the execution, delivery and performance of this Agreement and the other agreements contemplated hereby to be executed and delivered by Seller and the consummation of the transactions contemplated hereby and thereby does not and shall not (i) conflict with or result in any breach of any of the provisions of, (ii) constitute a default under, (iii) result in a violation of, (iv) give any third party the right to terminate or to accelerate any obligation under, (v) result in the creation of any Lien or encumbrance of any kind upon any of the Purchased Assets, or (vi) require any authorization, consent, approval, exemption or other action by or notice to or filing with any court or other governmental or regulatory body or authority, under the provisions of Seller's certificate of incorporation or bylaws or any indenture, mortgage, lease, loan agreement, license, contract, understanding, commitment or other agreement or instrument to which Seller is bound or affected, or any law, statute, rule or regulation to which Seller is subject. Without limiting the generality of the foregoing, except for Buyer pursuant hereto, there are no agreements, options, commitments or rights with, of or to any Person to purchase or otherwise acquire any of the Purchased Assets or any interests therein, except those entered into in the Ordinary Course of Business for the sale of Inventory.

4.3 Subsidiaries. Except as set forth on the Subsidiaries Schedule, Seller does not have any Subsidiaries. Except as set forth on the attached Subsidiaries Schedule or as will be used by Seller to provide services to the Business pursuant to the Transition Services Agreement, none of the Casual Male Companies has any material properties, assets, rights, titles or interests (of any kind or nature) or business function which is used in the operation of the Business as currently conducted or has been conducted within the last year. The Parties hereto acknowledge and understand that Seller will be providing transition services to Buyer for the period provided for under the Transition Services Agreement and that following such period Buyer will assume the full management of the Business with its own system and services.

4.4 Financial Statements. Attached hereto as the Financial Statements Schedule are the following financial statements:

(a) the unaudited balance sheet of Designs as of October 31, 2004, and the related statements of income and cash flows (or the equivalent) for the nine-month period then ended;

(b) the unaudited balance sheet of Designs as of January 31, 2004, and the related statements of income and cash flows (or the equivalent) for the fiscal years then ended; and

(c) the unaudited balance sheet of the Business as of the Closing Date (the "Latest Balance Sheet");

(d) the unaudited balance sheet of the Business as of October 31, 2004, and the related statements of profits and loss (or the equivalent) for the nine-month period then ended; and,

(e) the unaudited balance sheet of the Business as of January 31, 2004, and the related statements of profits and loss (or the equivalent) for the fiscal years then ended.

Each of the foregoing financial statements (including in all cases the notes thereto) is accurate and complete in all material respects, is consistent with the books and records of Seller (which, in turn, are accurate and complete in all material respects), is consistent with past practices, presents fairly in all material respects the financial condition of Designs or the Business, as applicable, as of the respective dates thereof, and, with respect to Designs, the operating results, and with respect to the Business, the store-level profit and loss statements showing the "four-wall" profits of each retail location set forth on

the attached Leased Real Property Schedule for the periods covered thereby and except as set forth on the Financial Statements Schedule, has been prepared in accordance with GAAP, consistently applied, subject to the absence of footnote disclosures, changes resulting from normal year-end adjustments for recurring accruals, and adjustments for impairment of intangible and fixed assets, adjustments for impairment of intangible and fixed assets, and adjustments required under GAAP in connection with the preparation of consolidated financial statements (none of which would, alone or in the aggregate, be materially adverse to the financial condition, operating results, assets or operations of the Business taken as a whole).

4.5 Absence of Undisclosed Liabilities. Except as set forth on the attached Liabilities Schedule, Seller has and will have no material obligations or liabilities (whether accrued, absolute, contingent, unliquidated or otherwise, whether due or to become due and regardless of when or by whom asserted) relating to Designs or the Business at or as of the Closing Date or arising out of transactions entered into at or prior to the Closing Date, or any action or inaction at or prior to the Closing Date, or to the Knowledge of Seller, any state of facts existing at or prior to the Closing Date, including Taxes with respect to or based upon periods, transactions or events occurring on or before the Closing Date, except (i) obligations under contracts or commitments described on the attached Contracts Schedule or under contracts and commitments entered into in the Ordinary Course of Business which, because of the dollar thresholds set forth in Section 4.12 below, are not required pursuant to Section 4.12 below to be described on the attached Contracts Schedule (but not liabilities for breaches of any such contracts or commitments occurring on or prior to the Closing Date), (ii) liabilities reflected on the liability side of the Latest Balance Sheet, (iii) liabilities and obligations which have arisen after the date of the Latest Balance Sheet in the Ordinary Course of Business (none of which is a liability for breach of contract, breach of warranty, tort, infringement, claim or lawsuit) and (iv) other liabilities and obligations to the extent expressly disclosed in this Agreement or the Schedules attached hereto.

4.6 Accounts Payable. The Accrued Liabilities and Assumed Payables Schedule sets forth a list of all accounts payable of Seller which relate to Designs or the Business together with the name of each payee, the date each such payment is due, and the nature of the transaction in which it was incurred, which are current and incurred in the Ordinary Course of Business.

4.7 No Material Adverse Change. Since September 30, 2004, there has been no material adverse change or development in the business, condition (financial or otherwise), operating results, employee relations, customer relations, supplier relations, assets or operations of the Business taken as a whole. Since September 30, 2004, Seller has conducted Designs and the Business only in the Ordinary Course of Business (including the cutting of checks).

4.8 Absence of Certain Developments. Except as set forth on the attached Developments Schedule, since September 30, 2004, Seller has not with respect to Designs, the Business, the Purchased Assets, and the Assumed Liabilities:

(a) paid trade or account payables other than in the Ordinary Course of Business or, delayed or postponed the payment of any trade or accounts payable or commissions or any other liability or litigation or agreed or negotiated with any party to extend the payment date of any trade or accounts payable or commission or any other liability or obligation or accelerated the collection of (or discounted) any accounts or notes receivable (whether billed or unbilled) or any deferred revenue or taken any actions or omitted to take any actions with the intent or the purpose of increasing the Net Inventory or the accounts payable as of the Closing;

(b) delayed cutting any checks;

(c) except in connection with the physical count of Net Inventory conducted by Regis Corporation on or about the Closing Date, altered its methods of allocating inventory and other assets between its retail locations and/or the Warehouse, other than in the Ordinary Course of Business, otherwise moved or transferred its inventory and other assets between its retail locations and/or the Warehouse;

(d) paid any obligation or liability (other than in the Ordinary Course of Business);

(e) sold, leased, assigned or transferred any of its tangible assets (including the Purchased Assets), except in the Ordinary Course of Business, or canceled without fair consideration any debts or claims owing to or held by it;

(f) sold, assigned, licensed, sublicensed, transferred or encumbered any Proprietary Rights or other intangible assets, disclosed any proprietary Confidential Information to any Person (other than Buyer and Buyer's representatives, agents, attorneys and accountants), or abandoned or permitted to lapse any of the Proprietary Rights;

(g) made or granted any bonus or any wage or salary increase to any employee or group of employees (except as required by pre-existing contracts or, in the case of non-officer employees, consistent with past practice), or made or granted any increase in any employee benefit plan or arrangement, or amended or terminated any existing employee benefit plan or arrangement or adopted any new employee benefit plan or arrangement;

(h) incurred any Indebtedness or incurred or become subject to any material liability, except current liabilities incurred in the Ordinary Course of Business and liabilities under contracts entered into in the Ordinary Course of Business;

(i) suffered any extraordinary Losses or waived any rights of material value, whether or not in the Ordinary Course of Business;

(j) suffered any damage, destruction or casualty loss to its tangible assets (including the Purchased Assets) in excess of \$25,000, whether or not covered by insurance;

(k) made any capital expenditures or commitments therefore that aggregate in excess of \$50,000;

(l) made any change in any method of accounting or accounting policies, other than those required by generally accepted accounting principles which have been disclosed in writing to Buyer;

(m) engaged in any activity that has or would reasonably be expected to have the effect of accelerating to pre-Closing periods sales that otherwise would be expected to occur in post-Closing periods

(n) instituted or permitted any material change in the conduct of Designs or the Business, or any change in its method of purchase, sale, lease, management, marketing, promotion or operation;

(o) entered into, amended or terminated any material contract or any government license or permit or taken any other action or entered into any other transaction other than in the Ordinary Course of Business; or

(p) entered into any other material transaction, whether or not in the Ordinary Course of Business, or materially changed any business practice.

#### 4.9 Leased Real Property.

(a) Except as set forth on the Leased Real Property Schedule and the Excluded Designs Leased Property Schedule, neither Seller nor any of its Affiliates owns or leases any real property used or occupied by, or necessary for the conduct of, Designs or the Business.

(b) The Leased Real Property Schedule sets forth the names of the lessee, the address of any parcel of real property leased by Seller or used in the Business (collectively, the "Leased Real Property"), and a list of all the leases, subleases, amendments, extensions, renewals, guaranties, licenses, concessions and other agreements (whether written or oral) (collectively, "Leases") for each such Leased Real Property. Seller has delivered to Buyer a true and complete copy of each such Lease document, and in the case of any oral Lease, a written summary of the material terms of such Lease. Except as set forth on the attached Leased Real Property Schedule, with respect to each of the Leases:

(i) such Lease is legal, valid, binding, enforceable and in full force and effect;

(ii) the transactions contemplated by this Agreement do not require the consent of any other party to such Lease, will not result in a breach of or default under such Lease, and will not otherwise cause such Lease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing;

(iii) Seller's possession and quiet enjoyment of the Leased Real Property under such Lease has not been disturbed and there any no disputes with respect to such Leases;

(iv) neither Seller nor any other party to the Lease is in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, could reasonably be expected to constitute such a breach or default, or permit the termination, modification or acceleration of rent under such Lease;

(v) no security deposit or portion thereof deposited with respect to such Lease has been applied in respect of a breach or default under such Lease which has not been redeposited in full;

(vi) Seller does not owe any brokerage commissions or finder's fee with respect to such Lease;

(vii) the other party to such Lease is not an Affiliate of, and otherwise does not have any economic interest in, Seller;

(viii) Seller has not collaterally assigned or granted any other security interest in such Lease or any interest therein; and

(ix) there are no liens or encumbrances on the estate or interest created by such Lease.

(c) There are no amounts disputed by Seller and not paid to the landlords of the properties listed on the attached Leased Real Property Schedule.

#### 4.10 Assets.

(a) Seller owns good and valid title to all of the Purchased Assets, free and clear of all Liens and other restrictions of whatever nature, except for (i) Liens described on the attached Encumbrances Schedule, (ii) Liens for current property taxes not yet due and payable, and (iii) other imperfections of title, restrictions or encumbrances, if any, which imperfections, restrictions or encumbrances do not, individually or in the aggregate, materially impair the continued use and operation of the Purchased Assets to which they relate and do not affect the merchantability of the title to the Purchased Assets to which they relate (items (ii) and (iii) above are collectively referred to herein as the "Permitted Liens").

(b) Except as disclosed on the attached Assets Schedule and for assets that will be used by Seller to provide the services to Buyer set forth in the Transition Services Agreement (which assets are used by both Designs and Sellers' other businesses), the Purchased Assets include all of the assets, whether tangible or intangible, real or personal, that are necessary for the conduct of the Business as currently conducted by Seller and, to the Knowledge of Seller, as currently contemplated to be conducted by Seller.

(c) To the Knowledge of Seller, the attached Capital Expenditures Schedule sets forth all necessary repairs, and reasonable estimates of the costs of such repairs, to the Purchased Assets in order for the Purchased Assets to be usable in the Ordinary Course of Business.

(d) The attached Capital Expenditures Schedule sets forth in reasonable detail (i) Seller's capital expenditure budget (in both dollar amounts and classifications of expenditures) with respect to the Business for the fiscal years ending January 31, 2005 and 2006, and (ii) the actual capital expenditures made by Seller (in both dollar amounts and classifications of expenditures) during the fiscal year ending January 31, 2005 with respect to the Business.

4.11 Tax Matters. Except as set forth on the attached Tax Schedule: (a) Seller has timely filed all federal, state, local and foreign income, information and other Tax Returns which are required to be filed; (b) all such returns are true, complete and accurate in all material respects and such filings accurately reflect the Tax liabilities of Seller; (c) all Taxes, assessments and other governmental charges imposed upon Seller with respect to the Business, or upon any of the assets, income or franchises of Seller relating to the Business, have been timely paid or, if not yet payable, will be timely paid; (d) Seller is not currently the beneficiary of any extension of time within which to file any Tax Return with respect to the Business or its activities, properties or employees; (e) Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party with respect to Designs or the Business or their activities, properties or employees, and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed; (f) Seller is not a party to any Tax allocation or sharing agreement; (g) Seller (y) has not been a member of an "Affiliated Group" (as defined in Section 1504 of the Code) filing a consolidated federal income tax return and (z) does not have any liability for the Taxes of any Person (other than Seller) under Reg. § 1.1502-6 (or similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise; and (h) there are no material disputes and no actual or proposed Tax deficiencies, assessments or adjustments with respect to Designs or the Business or any assets or operations of Seller with respect to the Business. The attached Tax Schedule contains a list of states, territories and jurisdictions (whether foreign or domestic) in which Seller is required to file Tax Returns with respect to the Business or its assets, property or employees.

#### 4.12 Contracts and Commitments.

(a) Except as set forth on the attached Assumed Contracts Schedule or the attached Contracts Schedule, as does not relate to Designs or the Business, or for contracts (other than for contracts or agreements described in clauses (i) and (ii) below) pursuant to which Buyer will receive benefits pursuant to the Transition Services Agreement (which contracts relate to both Designs and Sellers' other businesses), none of Seller or the Casual Male Companies is a party to any oral or written:

(i) contract with any labor union or any bonus, pension, profit sharing, retirement or any other form of deferred compensation plan or any stock purchase, stock option or similar plan or practice, whether formal or informal, or any severance agreement or arrangement;

(ii) management agreement, contract for the employment of any officer, partner, individual employee or other person on a full-time, part-time or consulting basis or providing for the payment of any cash or other compensation or benefits upon the sale of the Business or prohibiting competition or the disclosure of trade secrets or Confidential Information;

(iii) agreement or indenture relating to Indebtedness or placing a Lien on any of Seller's assets or letter of credit arrangements;

(iv) agreements with respect to the lending or investing of funds;

(v) license or royalty agreements;

(vi) nondisclosure or confidentiality agreements;

(vii) lease or agreement under which Seller is lessee of or holds or operates any property, real or personal, owned by any other party for which the annual rental exceeds \$25,000;

(viii) lease or agreement under which Seller is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by Seller;

(ix) broker, distributor, vendor, customer or maintenance agreements;

(x) other contract or group of related contracts with the same party continuing over a period of more than six months from the date or dates thereof, not terminable by Seller upon thirty (30) days' or less notice without penalty or involving more than \$25,000;

(xi) contract which prohibits Seller from freely engaging in business anywhere in the world;

(xii) contract relating to the marketing, sale, advertising or promotion of its products;

(xiii) franchise or agency agreements;

(xiv) contract with any officer, director, employee, shareholder, or Affiliate of Seller or any individual related by marriage or adoption to any such individual or any entity in which any such Person owns any beneficial interest;

(xv) warranty agreement with respect to products sold or indemnity agreement with any supplier to the Business under which Seller is obligated to indemnify such supplier against product warranty or infringement or similar claims;



(xvi) agreements relating to ownership of or investments in any business or enterprise, including investments in joint ventures and minority equity investments;

(xvii) power of attorney executed by or on behalf of Seller;

(xviii) material contracts and licenses (including all inbound licenses) to which Seller is a party with respect to any Proprietary Rights; or

(xix) other agreement material to the Business, whether or not entered into in the Ordinary Course of Business.

(b) Except as specifically disclosed on the attached Contracts Schedule, (i) Seller, or the Casual Male Companies, as applicable, and the other party thereto have performed all obligations required to be performed by such Person under the contracts or commitments required to be listed on the Contracts Schedule or listed on the Assumed Contracts Schedule and there is no breach of or default under such contract or commitment or any event which, upon giving of notice or lapse of time or both, would constitute a breach or default, (ii) to the Knowledge of Seller, there is no anticipated breach by any party to any contract or commitment required to be listed on the Contracts Schedule or listed on the Assumed Contracts Schedule, (iii) neither Seller nor the Casual Male Companies have assigned, delegated or otherwise transferred to any Person any of its rights, title or interest under any contract or commitment required to be listed on the Contracts Schedule or listed on the Assumed Contracts Schedule, and (iv) each contract and commitment required to be listed on the Contracts Schedule or listed on the Assumed Contracts Schedule is legal, valid, binding, enforceable and in full force and effect, and will continue as such following the consummation of the transactions contemplated hereby (subject to bankruptcy, moratorium and similar laws and subject to the application of specific performance and other equitable principles).

(c) Buyer has heretofore been supplied with a true and correct copy of all written contracts (and a true and correct written description of all oral contracts) which are referred to on the attached Contracts Schedule, together with all amendments, exhibits, attachments, waivers or other changes thereto.

(d) The attached Contracts Schedule sets forth a complete and accurate description of Seller's return policy with respect to merchandise purchased by customers of the Business.

#### 4.13 Proprietary Rights.

(a) The Proprietary Rights comprise all of the intellectual property necessary or desirable for the conduct of the Business as currently conducted by Seller and as currently proposed to be conducted by Seller. Seller owns or has the valid right to use all Proprietary Rights necessary for the operation of the Business as currently conducted and as currently proposed to be conducted. The attached Proprietary Rights Schedule sets forth a complete and correct list of: all patented or registered Proprietary Rights and pending patent applications or other applications for registration of Proprietary Rights owned or used by Seller; all trade names used by Seller with respect to the Business; all licenses or similar agreements or arrangements to which Seller is a party, either as licensee or licensor, for the Proprietary Rights; and all material unregistered trademarks that are either owned by Seller or used by Seller or any Affiliate in the conduct of the Business (pursuant to license agreement or otherwise, in such case identifying the owner and title of the agreement pursuant to which the Proprietary Right is used). Except as set forth in the attached Proprietary Rights Schedule:

(i) Seller owns and possesses exclusively all right, title and interest in, to and under the Proprietary Rights, free and clear of all Liens (other than Permitted Liens), and no claim by any third party contesting the validity, enforceability, use or ownership of any of the Proprietary Rights has been made, is currently outstanding or, to the Knowledge of Seller, is threatened;

(ii) To the extent that any Proprietary Rights have been developed or created by any Person other than Seller, Seller has a written agreement with such Person with respect thereto and Seller has obtained ownership of, and is the exclusive owner of, all such Proprietary Rights by operation of law or by valid assignment of any such rights;

(iii) The loss or expiration of any Proprietary Right owned by, issued to or licensed to Seller or any related group of Proprietary Rights is not and would not be materially adverse to the Business, and no such loss or expiration is pending or, to the Knowledge of Seller, threatened or reasonably foreseeable;

(iv) Seller has not received any notices of, nor is Seller aware of any facts which indicate a likelihood of, any infringement or misappropriation by, or conflict with, any third party with respect to the Proprietary Rights, including any demand or request that Seller license rights from a third party;

(v) Neither the Proprietary Rights nor Seller has infringed, misappropriated or otherwise come into conflict with any rights of any third parties and Seller is not aware of any infringement, misappropriation or conflict which will occur as a result of the continued operation of the Business as currently conducted or as currently proposed to be conducted; and

(b) All Proprietary Rights to be assigned by Seller to Buyer pursuant to the terms and conditions of this Agreement are or shall be properly assigned or licensed to Seller at the time Seller assigns such rights to Buyer. The transactions contemplated by this Agreement shall have no material adverse effect on any of the Proprietary Rights. Seller has taken all necessary and desirable action to protect the Proprietary Rights and shall continue to maintain such rights prior to and as of Closing so as to not adversely affect the validity or enforcement of such Proprietary Rights. To the Knowledge of Seller, the owners of any Proprietary Rights or similar proprietary rights licensed to Seller have taken all reasonably necessary actions to maintain and protect the proprietary rights which are subject to such licenses.

4.14 Litigation. Except as set forth on the attached Litigation Schedule, there are no actions, suits, proceedings, orders or investigations pending or, to the Knowledge of Seller, threatened against or affecting Designs or the Business at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, and, to the Knowledge of Seller, there is no reasonable basis for any of the foregoing. Seller is not subject to or bound by any outstanding orders, judgments or decrees of any court or governmental entity with respect to Designs, the Business, the Purchased Assets, or the Assumed Liabilities.

4.15 Brokerage. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Seller.

#### 4.16 Employees.

(a) Except as set forth on the Litigation Schedule, there are no claims, actions, proceedings or investigations pending or, to the Knowledge of Seller, threatened against Seller with

respect to or by any employee or former employee of the Business and, to the Knowledge of Seller, there are no claims, actions, proceedings or investigations pending or threatened against any employees of the Business. Seller has not experienced any strikes, grievances, claims of unfair labor practices or other collective bargaining disputes. Seller has not engaged in any unfair labor practices. To the Knowledge of Seller, there are no organizational efforts presently made or threatened by or on behalf of any labor union with respect to employees of the Business.

(b) Seller has set forth on the Employee Disclosure Schedule a true, complete and accurate list of each Business Employee employed in the Business and with respect to each such Business Employee as of the date hereof, his or her date(s) of hire by Seller, position and title (if any), current rate of compensation (including bonuses, commissions and incentive compensation, if any), whether such employee is hourly or salaried, whether such employee is exempt or non-exempt, the number of such employee's accrued sick days and vacation days, whether such employee is absent from active employment and, if so, the date such employee became inactive, the reason for such inactive status and, if applicable, the anticipated date of return to active employment.

(c) With respect to this transaction, any notice required under any law has been given, and all bargaining obligations with any employee representative have been, or prior to the Closing will be, satisfied. The WARN Act Schedule sets forth the identities and work places of all persons whose employment was terminated by Seller during the 90-day period prior to the Closing Date.

#### 4.17 Employee Benefit Plans.

(a) The attached Employee Benefits Schedule lists or describes each "employee benefit plan" (as such term is defined in Section 3(3) of ERISA maintained or contributed to by (or required to be maintained or contributed to by) Seller maintains on behalf of any current or former employee of the Business, and each other material plan, arrangement, policy or understanding (whether written or oral) relating to retirement, compensation, deferred compensation, bonus, severance, fringe benefits or any other employee benefits maintained or contributed to by (or required to be maintained or contributed to by) Seller for the benefit of any current or former employee of the Business. Each item listed or required to be listed on the Employee Benefits Schedule is referred to herein as a "Seller Employee Benefit Plan."

(b) No Seller Employee Benefit Plan is (i) a "defined benefit plan" as defined in Section 3(35) of ERISA or any other plan subject to the funding requirements of Section 412 of the Code or Section 302 of Title IV of ERISA that could reasonably be expected to result in any liability with respect to Buyer, (ii) a "multiemployer plan" as defined in Section 3(37) or 4001(a)(3) of ERISA, or (iii) an employee benefit plan, program or arrangement that provides for post-employment medical, life insurance or other welfare-type benefits (other than health continuation coverage required by COBRA).

(c) Each Seller Employee Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code has received a determination letter to that effect from the Internal Revenue Service, and, to the Knowledge of Seller, nothing has occurred since the date of such letter that cannot be cured within the remedial amendment period provided by Section 401(b) of the Code which would prevent any such Seller Employee Benefit Plan from remaining so qualified. Except as set forth and described in reasonable detail on the attached Employee Benefits Schedule or could not reasonably be expected to result in any liability to Buyer, each Seller Employee Benefit Plan and any related trust, insurance contract or fund has been maintained in all material respects in accordance with its respective terms and the terms of any applicable collective bargaining agreements and in compliance with all applicable laws and regulations, including ERISA and the Code.

(d) Except as set forth and described in reasonable detail on the attached Employee Benefits Schedule, none of Seller Employee Benefit Plans obligates Seller to pay any separation, severance, termination or similar benefit solely as a result of any transaction contemplated by this Agreement or solely as a result of a change in control or ownership within the meaning of Section 280G of the Code.

(e) Except as set forth on the attached Employee Benefits Schedule, (i) no asset of Seller that is to be acquired by Buyer, directly or indirectly, pursuant to this Agreement is subject to any Lien under ERISA or the Code; (ii) Seller has not incurred any liability under Title IV of ERISA (other than for contributions not yet due) or to the Pension Benefit Guaranty Corporation (other than for payment of premiums not yet due) with respect to any Seller Employee Benefit Plan; and (iii) there are no pending or threatened actions, suits, investigations or claims with respect to any Seller Employee Benefit Plan (other than routine claims for benefits) which could result in any liability to Buyer (whether direct or indirect), and no facts which could give rise to (or be expected to give rise to) any such actions, suits, investigations or claims to the Knowledge of Seller.

(f) With respect to each Seller Employee Benefit Plan listed on the Employee Benefits Schedule, Seller has furnished to Buyer true and complete copies of (i) the plan documents, summary plan descriptions and summaries of material modifications and other material employee communications, (ii) the most recent determination letter received from the Internal Revenue Service, (iii) the Form 5500 Annual Report (including all schedules and other attachments for the most recent three years), (iv) all related trust agreements, insurance contracts or other funding agreements which implement such plans and (v) all contracts relating to each such plan, including service provider agreements, insurance contracts, investment management agreements and recordkeeping agreements.

4.18 Compliance with Laws; Permits; Certain Operations. Except as set forth on the attached Compliance Schedule:

(a) Seller has in all material respects complied and is in all material respects in compliance with all applicable laws, ordinances, codes, rules, requirements and regulations of foreign, federal, state and local governments and all agencies thereof relating to the operation of Designs and the Business and no written notices have been received by and no claims have been filed against Seller alleging a violation of any such laws, ordinances, codes, rules, requirements or regulations.

(b) Seller holds all permits, licenses, certificates, accreditations or other authorizations of foreign, federal, state and local governmental agencies required for the conduct of the Business, and the attached Permits Schedule sets forth a list of all of such permits, licenses, certificates, accreditations and other authorizations. Seller is in all material respects in compliance with all terms and conditions of any such required permits, licenses, accreditations and authorizations and all such permits, licenses and authorizations may be relied upon by Buyer for lawful operation of the Business on and after the Closing without transfer, reissuance or other governmental action.

4.19 Environmental Matters.

(a) To Seller's Knowledge, Seller is in compliance in all material respects with all Environmental Laws; Seller has not received any written notice, report or other information regarding any material violation of, or liability under Environmental Laws that remains outstanding; neither Seller nor any of its predecessors or Affiliates, has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, released, or exposed any Person to, any substance, or owned or operated any property or facility (and no such property or facility is contaminated by any such substance) in a manner that has given or would give rise to any material liabilities or obligations pursuant to any Environmental Laws.

(b) Seller has furnished to Buyer all environmental audits, reports and other material environmental documents relating to Designs and the Business which are in its possession or under its reasonable control.

4.20 Names and Locations. Except as set forth on the attached Names and Locations Schedule, (i) during the five-year period prior to the execution and delivery of this Agreement, Seller has not used any name or names under which it has invoiced account debtors, maintained records concerning its assets or otherwise conducted business with respect to the Business, other than the exact name under which it has executed this Agreement, and (ii) all of the Purchased Assets are located at the Leased Real Property and the Warehouse.

4.21 Suppliers. Except as set forth on the attached Suppliers Schedule, Seller has not received any written indication, or to Seller's Knowledge, oral indication, from any material supplier of the Business to the effect that, and to Seller's Knowledge, there is no reason to believe that, such supplier will stop, or materially decrease the rate of, supplying materials, products or services to Seller with respect to the Business.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Seller to enter into this Agreement, Buyer hereby represents and warrants to Seller as follows:

5.1 Corporate Organization and Power. Buyer is a corporation duly formed and validly existing under the laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and to perform its obligations hereunder.

5.2 Authorization. The execution, delivery and performance of this Agreement and the other agreements contemplated hereby to be executed and delivered by Buyer and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite corporate action on the part of Buyer, and no other corporate proceedings on the part of Buyer are necessary to authorize the execution, delivery or performance of this Agreement or the other agreements contemplated hereby. This Agreement and the other agreements contemplated hereby to be executed and delivered by Buyer constitute a valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

5.3 Governmental Authorities and Consents. Buyer is not required to submit any notice, report or other filing with any governmental authority in connection with the execution or delivery by it of this Agreement or the consummation of the transactions contemplated hereby and no consent, approval or authorization of any governmental or regulatory authority is required to be obtained by Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

5.4 Brokerage. Except for arrangements for which Buyer shall be solely responsible, there are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Buyer.

5.5 Litigation. There are no actions, suits, proceedings, orders or investigations pending or, to the Buyer's knowledge, threatened against or affecting Buyer at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which would adversely affect Buyer's performance under this Agreement or the consummation of the transactions contemplated hereby.

## ARTICLE VI

### ADDITIONAL AGREEMENTS

6.1 Survival of Representations and Warranties. The representations and warranties in this Agreement and the Schedules attached hereto or in any writing delivered by any party to any of the other parties in connection with this Agreement shall survive the Closing as follows:

(a) the representations and warranties in Section 4.11 (Tax Matters) shall terminate when the applicable statutes of limitations with respect to the liabilities in question expire (giving effect to any extensions or waivers thereof), plus sixty (60) days;

(b) the representations and warranties in Section 4.1 (Organization and Power), the first, second and last sentence of Section 4.2 (Authorization; No Breach), Section 4.10(a) (Assets), Section 4.15 (Brokerage) (collectively, the "Critical Representations"), Section 5.1 (Organization and Power), Section 5.2 (Authorization) and, Section 5.4 (Brokerage) shall not terminate; and

(c) all other representations and warranties in this Agreement and the Schedules attached hereto or in any writing delivered by any party to any other party in connection with this Agreement shall terminate on February 28, 2006;

provided that any representation or warranty in respect of which indemnity may be sought under Section 6.2, and the indemnity with respect thereto, shall survive the time at which it would otherwise terminate pursuant to this Section 6.1 if a claim for indemnification for the inaccuracy or breach or potential inaccuracy or breach thereof giving rise to such right or alleged right of indemnity has been made against the party to whom such indemnity may be sought prior to such time. The representations and warranties in this Agreement and the Schedules attached hereto or in any writing delivered by any party to any other party in connection with this Agreement shall survive for the periods set forth in this Section 6.1 and shall in no event be affected by any investigation, inquiry or examination made for or on behalf of Buyer or Seller, or the knowledge of any of Buyer's or Seller's officers, directors, shareholders, employees or agents or the acceptance by Buyer or Seller of any certificate or opinion hereunder.

#### 6.2 General Indemnification.

(a) Indemnification for Benefit of Buyer. Seller shall indemnify Buyer Parties and save and hold each of them harmless against and pay on behalf of or reimburse such Buyer Parties as and when incurred for any Losses which any such Buyer Party may suffer, sustain or become subject to, as a result of, in connection with, relating or incidental to or by virtue of (i) any breach of any representation or warranty of Seller under this Agreement or any of the Schedules attached hereto, or in any of the certificates or other instruments or documents furnished to Buyer by Seller pursuant to this Agreement, (ii) any nonfulfillment or breach of any covenant or agreement by Seller under this Agreement or any of

the Schedules attached hereto, and (iii) any liability or obligation which is an Excluded Liability; provided that Seller shall not have any liability under clause (i) above (other than with respect to the representations and warranties contained in Section 4.11 and the first, second and last sentence of Section 4.2 and other than with respect to any willful breach of any representation or warranty made by Seller in this Agreement) unless the aggregate of all Losses relating thereto for which Seller would, but for this proviso, be liable exceeds on a cumulative basis an amount equal to \$225,000, at which time Seller shall be liable for the full amount of all such Losses from and including the first dollar of any Losses; and Seller's aggregate liability under clause (i) above (other than with respect to the representations and warranties contained in Section 4.6 and the Critical Representations) shall in no event exceed \$7,000,000 (with it being understood, however, that nothing in this Agreement (including this Section 6.2(a)) shall limit or restrict any of Buyer Parties' rights to maintain or recover any amounts in connection with any action or claim based upon fraudulent misrepresentation or deceit or with respect to any willful breach of any representation or warranty made by Seller in this Agreement).

(b) Indemnification for Benefit of Seller. Buyer shall indemnify Seller and hold them harmless against any Losses which Seller may suffer, sustain or become subject to, as the result of, in connection with, relating or incidental to or by virtue of (i) any breach of any representation or warranty of Buyer under this Agreement or any of the Schedules attached hereto, or in any of the certificates or other instruments or documents furnished to Seller by Buyer pursuant to this Agreement, (ii) any nonfulfillment or breach of any covenant or agreement by Buyer under this Agreement or any of the Schedules attached hereto, (iii) any liability or obligation that is an Assumed Obligation or that arises under an Assumed Contract, or (iv) the operation of the Business after the Closing to the extent such operation of the Business after the Closing is not related to a breach by Seller of its obligations under the Transition Services Agreement.

(c) Manner of Payment. Any indemnification of Buyer Parties or Seller pursuant to this Section 6.2 shall be effected by wire transfer of immediately available funds from Seller or Buyer, as the case may be, to an account designated by Buyer or Seller, as the case may be, within ten (10) days after the determination thereof. Any such indemnification payments shall include interest at the Applicable Rate calculated on the basis of the actual number of days elapsed over 365, from the date any such Loss is suffered or sustained to the date of payment. Buyer Parties shall have the right and option (but not the obligation) to recoup all or any portion of any Losses they may suffer (in lieu of seeking any indemnification to which they may be entitled under this Section 6.2) by notifying Seller that Buyer is reducing the amount otherwise payable by Buyer or any of its Affiliates to Seller following the Closing (whether pursuant to this Agreement or otherwise) by the amount of any such Losses or the portion thereof specified by Buyer. All indemnification payments under this Section 6.2 shall be deemed adjustments to the Purchase Price set forth in Section 2.3(a) above.

(d) Defense of Third Party Claims. Any party making a claim for indemnification under this Section 6.2 (an "Indemnitee") shall notify the indemnifying party (an "Indemnitor") of the claim in writing promptly after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against it (if by a third party), describing the claim, the amount thereof (if known and quantifiable), and the basis thereof; provided that the failure to so notify an Indemnitor shall not relieve the Indemnitor of its obligations hereunder except to the extent that (and only to the extent that) such failure shall have caused the damages for which the Indemnitor is obligated to be greater than such damages would have been had the Indemnitee given the Indemnitor prompt notice hereunder. Any Indemnitor shall be entitled to participate in the defense of such action, lawsuit, proceeding, investigation or other claim giving rise to an Indemnitee's claim for indemnification at such Indemnitor's expense, and at its option (subject to the limitations set forth below) shall be entitled to assume the defense thereof by appointing a nationally recognized counsel reasonably acceptable to the Indemnitee to be the lead counsel in connection with such defense; provided further that, prior to the Indemnitor assuming control of such

defense it shall first (i) verify to the Indemnitee in writing that such Indemnitor shall be fully responsible (with no reservation of any rights) for the entirety of all liabilities and obligations relating to such claim for indemnification and that it will provide full indemnification (whether or not otherwise required hereunder) to the Indemnitee with respect to such action, lawsuit, proceeding, investigation or other claim giving rise to such claim for indemnification hereunder and (ii) enter into an agreement with the Indemnitee in form and substance satisfactory to the Indemnitee which agreement unconditionally guarantees the payment and performance of any liability or obligation which may arise with respect to such action, lawsuit, proceeding or investigation; and provided further, that:

(i) the Indemnitee shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose; provided that the fees and expenses of such separate counsel shall be borne by the Indemnitee (other than any fees and expenses of such separate counsel that are incurred prior to the date the Indemnitor effectively assumes control of such defense which, notwithstanding the foregoing, shall be borne by the Indemnitor);

(ii) the Indemnitor shall not be entitled to assume control of such defense and shall pay the fees and expenses of counsel retained by the Indemnitee if (A) the claim for indemnification relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation; (B) the Indemnitee reasonably believes an adverse determination with respect to the action, lawsuit, investigation, proceeding or other claim giving rise to such claim for indemnification would be detrimental to or injure the Indemnitee's reputation or future business prospects; (C) the claim seeks an injunction or equitable relief against the Indemnitee; (D) upon petition by the Indemnitee, the appropriate court rules that the Indemnitor failed or is failing to vigorously prosecute or defend such claim; or (E) the Indemnitee reasonably believes that the Loss relating to such claim for indemnification could exceed the maximum amount that such Indemnitee could then be entitled to recover under the applicable provisions of this Section 6.2(d)(ii); and

(iii) if the Indemnitor shall control the defense of any such claim, the Indemnitor shall obtain the prior written consent of the Indemnitee before entering into any settlement of a claim or ceasing to defend such claim if, pursuant to or as a result of such settlement or cessation, injunctive or other equitable relief will be imposed against the Indemnitee or if such settlement does not expressly and unconditionally release the Indemnitee from all liabilities and obligations with respect to such claim, with prejudice.

(e) Nature of Seller's Obligations. Seller's liability with respect to indemnification obligations under this Agreement shall be joint and several and each Person included in the definition of Seller shall (without duplication) be responsible for the entirety of any Losses that any Buyer Party may suffer.

6.3 Employee Related Matters. As of the Closing Date, Buyer shall offer employment to only those Business Employees employed in the Business as Buyer shall determine in its sole discretion and such offers of employment shall contain terms and conditions of employment that Buyer shall determine in its sole discretion. On the Closing Date, Seller shall take all steps necessary to terminate the employment of each Business Employees employed in the Business who is offered employment by Buyer as set forth in the immediately preceding sentence. The Business Employees who accept Buyer's offer of employment and who become employed by Buyer shall be referred to herein as "Transferred Employees." Nothing in this Agreement shall confer upon any Transferred Employee any right with respect to continued employment with Buyer, nor shall anything herein limit or interfere with Buyer's right to terminate the employment of any Transferred Employee at any time (subject to applicable law), with or without cause or notice, or restrict Buyer in the exercise of independent business judgment in modifying any terms or conditions of employment of the Transferred Employees on and after the Closing Date.



Prior to the Closing Date, Seller take all actions necessary to vest each Business Employee employed in the Business in their benefits under Seller Employee Benefit Plan and shall make all employee and employer contributions to Seller Employee Benefit Plans in which Business Employees currently participate, for all periods of employee service prior to the Closing Date for all Business Employees.

6.4 Expenses. Except as otherwise expressly provided in Section 6.7 below, each Party hereto shall pay all of its own costs and expenses (including attorneys', accountants' and investment bankers' fees and other out-of-pocket expenses) in connection with the negotiation and execution of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby (it being understood by Seller, that Buyer shall pay all of the costs and expenses of its Affiliates incurred in connection with the transactions contemplated hereby). Without limiting the foregoing, each party shall pay its own expenses incurred in connection with its efforts to satisfy the conditions to the other party's obligation to consummate the transactions contemplated hereby.

6.5 Further Transfers; Transition Assistance. Seller shall execute and deliver such further instruments of conveyance and transfer and take such additional action as Buyer may reasonably request to effect, consummate, confirm or evidence the transfer to Buyer of the Purchased Assets, the assumption by Buyer of the Assumed Liabilities and the conduct by Buyer of the Business (including with respect to obtaining and maintaining all licenses, permits, authorizations, accreditations and consents necessary or desirable in connection therewith), and Seller shall execute such documents as may be necessary to assist Buyer in preserving or perfecting its rights in the Purchased Assets and its ability to conduct the Business. Following the Closing, Seller and Buyer agree to cooperate with each other and to provide each other with all information and documentation reasonably necessary to permit the preparation and filing of all federal, state, local and other Tax Returns with respect to the Business; provided that each party shall reimburse the other party for such other party's reasonable out-of-pocket expenses in connection therewith. Seller agrees that subsequent to the Closing they shall refer all customer inquiries with respect to the Business to Buyer.

6.6 Confidentiality. After the Closing, Seller shall maintain as confidential and shall not use or disclose (except as required by law or as authorized in writing by Buyer) any Confidential Information. Seller further agrees to take all appropriate steps (and to cause each of its or his or her Affiliates to take all appropriate steps) to safeguard such Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft. In the event Seller is required by law to disclose any Confidential Information, such party shall promptly notify Buyer in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate with Buyer to preserve the confidentiality of such information consistent with applicable law.

6.7 Sales and Transfer Taxes. All sales, use, excise, value-added, goods and services, transfer, recording, documentary, registration, conveyancing and similar taxes that may be imposed on the sale and transfer of the Purchased Assets (including any stamp, duty or other tax chargeable in respect of any instrument transferring property and any recording fees or expenses payable in connection with the sale and transfer of the Proprietary Rights), together with any and all penalties, interest and additions to tax with respect thereto, shall be paid fifty-percent (50%) by Seller and fifty-percent (50%) by Buyer. Buyer and Seller shall cooperate in timely making all filings, returns, reports and forms as may be required to comply with the provisions of applicable law in connection with the payment of any such taxes described in the immediately preceding sentence. Buyer and Seller shall cooperate in providing each other with appropriate resale exemption certification and other similar tax and fee documentation.

6.8 Confidentiality Agreements. At the Closing, Seller shall assign to Buyer all of its rights under all confidentiality agreements with prospective bidders entered into in connection with the process leading to the sale of the Business. In addition, Seller shall use best efforts to obtain the return or

destruction as promptly as possible of all Confidential Information delivered to prospective buyers, will not release any prospective buyers from their obligations under any such confidentiality agreements. As of the Closing, that certain Confidentiality Agreement, dated as of December 8, 2003, by and between Sun Capital Acquisition Corp. and Seller shall terminate.

6.9 Covenant Not to Compete, Solicit or Hire.

(a) Each entity comprising Seller hereby acknowledges that such Person is familiar with the Business' trade secrets and with other Confidential Information. Each such entity acknowledges and agrees that Buyer and its Affiliates would be irreparably damaged if each such entity were to provide services or to otherwise participate in the business of any Person competing with the Business in a similar business and that any such competition by Seller would result in a significant loss of goodwill by Buyer in respect of the Business. Seller further acknowledges and agrees that the covenants and agreements set forth in this Section 6.9 were a material inducement to Buyer to enter into this Agreement and to perform its obligations hereunder, and that Buyer and its Affiliates would not obtain the benefit of the bargain set forth in this Agreement as specifically negotiated by the parties hereto if Seller breached the provisions of this Section 6.9. Therefore, in further consideration of the amounts to be paid hereunder for the Purchased Assets and the goodwill of the Business sold in connection therewith, each such entity agrees that for a period of five years following the Closing Date such entity shall not, and shall not permit any of such Person's Subsidiaries to, directly or indirectly, either for itself, himself or herself or through any other Person, engage in, participate in, or permit such Person's name to be used by any enterprise engaging in or participating in, the business of selling products (determined as of the date hereof) of Levi Strauss & Co. (including Levi and Docker branded merchandise) in outlet and similar stores; provided, however, that Buyer acknowledges that each such entity and its Subsidiaries shall be free to sell such products in outlet and similar clothing stores so long as the principal or dominant products sold by such stores are not products of Levi Strauss & Co; and further provided that neither the foregoing restrictions nor any other provision of this Agreement shall restrict Seller from continuing to operate the stores on the Excluded Design Leased Property Schedule until it has completed the liquidation thereof but in no event beyond February 1, 2005. For purposes of this Agreement, the term "participate" includes any direct or indirect interest in any enterprise, whether as a stockholder, member, partner, joint venturer, franchisor, franchisee, executive, consultant or otherwise (other than by ownership of less than two percent (2%) of the stock of a publicly held corporation) or rendering any direct or indirect service or assistance to any Person. Seller agrees that this covenant is reasonably designed to protect Buyer's substantial investment and is reasonable with respect to its duration, geographical area and scope.

(b) For so long as Seller has continuing obligations under Section 6.9(a) above, Seller shall not (and Seller shall cause its, his or her Affiliates not to) directly, or indirectly through another Person, (i) induce or attempt to induce (other than by a general solicitation advertisement, posting or similar job solicitation process) any employee of the Business to leave the employ of Buyer or any of its Subsidiaries or Affiliates, or in any way interfere with the relationship between Buyer or any of its Subsidiaries or Affiliates and any such employee, (ii) hire (other than by a general solicitation advertisement, posting or similar job solicitation process) any person who was an employee of Buyer or any of its Subsidiaries or Affiliates in respect of the Business at any time during the six-month period immediately prior to the date on which such hiring would take place (it being conclusively presumed by the Parties so as to avoid disputes under this Section 6.9(b) that any such hiring (other than by a general solicitation advertisement, posting or similar job solicitation process) within such six-month period is in violation of clause (i) above), or (iii) call on, solicit or service any customer, supplier, licensee, licensor or other business relation of the Business in order to induce or attempt to induce such Person to cease doing or decrease their business with Buyer or any of its Subsidiaries or Affiliates in respect of the Business, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and Buyer or any of its Subsidiaries or Affiliates in respect of the Business (including making any negative statements or communications about Buyer or any of its Subsidiaries or Affiliates).

(c) If, at the time of enforcement of any of the provisions of this Section 6.9, a court determines that the restrictions stated herein are unreasonable under the circumstances then existing, then the Parties hereto agree that the maximum period, scope or geographical area reasonable under the circumstances shall be substituted for the stated period, scope or area. The Parties further agree that such court shall be allowed to revise the restrictions contained herein to cover the maximum period, scope or geographical area permitted by law.

(d) If Seller or any of their Affiliates (the "Restricted Persons") breaches, or threatens to commit a breach of, any of the provisions of this Section 6.9 (the "Restrictive Covenants"), Buyer shall have the following rights and remedies, each of which rights and remedies shall be independent of the others and severally enforceable, and each of which is in addition to, and not in lieu of, any other rights and remedies available to Buyer at law or in equity:

(i) The right and remedy to have the Restrictive Covenants specifically enforced by any court of competent jurisdiction, it being agreed that any breach or threatened breach of the Restrictive Covenants would cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer; and

(ii) The right and remedy to require the Restricted Persons to account for and pay over to Buyer any profits, monies, accruals, increments or other benefits derived or received by the Restricted Persons as the result of any transactions constituting a breach of the Restrictive Covenants.

6.10 Use of Name. Prior to February 1, 2005, Seller shall, and shall cause its Affiliates to, change its name and the names of any Affiliates of Seller to a name bearing no resemblance to "Designs". After February 1, 2005, neither Seller nor its Affiliates shall use a name bearing any resemblance to "Designs" (including "Levi's Outlet by Designs" and "Dockers Outlet by Designs") in the operation of their businesses.

6.11 Leases. Buyer agrees not to enter into any amendment to any Lease with any landlord thereunder that would increase Seller's obligations under such Lease unless and until Seller and its Affiliates have been released from all obligations under such Lease. For avoidance of doubt, Buyer agrees and acknowledges that any amendment that extends the expiration date of a Lease increases Seller's obligations under such Lease; provided, however, that the exercise of any renewal options expressly provided in such Lease shall not constitute an amendment which increases Seller's obligations. Notwithstanding the foregoing but provided that Buyer uses its commercially reasonable efforts to seek to obtain the release of Seller and its Affiliates from all of their obligations under such Leases, Buyer shall have the right to enter into an amendment with CPG Partners, L.P. and Chelsea Orlando Development, L.P. with respect to the Leases for the properties located at the Wrentham Premium Outlets (Unit 720) and the Orlando Premium Outlets (Suite 115), respectively, even if no release is obtained. Following the Closing, Buyer agrees to use its commercially reasonable efforts in connection with any negotiations to obtain the consent of any landlord to the assignment of any Lease or the exercise of any extension pursuant to existing terms and conditions of any Lease thereof to seek to obtain the release of Seller and its Affiliates from all of their obligations under the Lease.

6.12 Fund to Fund Transfer. As soon as reasonably practicable after the Closing Date, Seller will spin-off the account balances of Transferred Employees under Seller's 401(k) plan and shall transfer such spun-off balances (in the form of cash and notes associated with plan loans) to a 401(k) plan sponsored by Buyer or one of its Affiliates. Such transfer shall be in accordance with the requirements of the Code and ERISA. Seller agrees not to place plan loans of such Transferred Employees into default prior to such transfer.

6.13 Puerto Rican Taxes. Seller acknowledges and agrees that it shall pay, or cause any of its Affiliates to pay, the Puerto Rico Taxes to the appropriate Tax authority as soon as reasonably practicable but in no event later than April 30, 2005.

6.14 Bonuses. Seller acknowledges and agrees that it shall pay, or cause any of its Affiliates to pay, the Employee Bonuses on or before January 31, 2005.

6.15 Collections. After the Closing, Seller shall promptly (but in no event later than ten (10) days after receipt thereof) deliver to the Company any cash, checks or other property that it receives in connection with or relating to the operation of the Business following the Closing. After the Closing, Buyer agrees to promptly (but in no event later than ten (10) days after receipt thereof) deliver to Seller any cash, checks or other property that it receives in connection with or relating to the operation of the Business prior to the Closing.

## ARTICLE VII

### MISCELLANEOUS

7.1 Amendment and Waiver. This Agreement may be amended, and any provision of this Agreement may be waived; provided that (i) any such amendment or waiver shall be binding upon Seller only if set forth in a writing executed by Seller and referring specifically to the provision alleged to have been amended or waived, and (ii) any such amendment or waiver shall be binding upon Buyer only if set forth in a writing executed by Buyer and referring specifically to the provision alleged to have been amended or waived. No course of dealing between or among the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement and a waiver of any provision by any Party on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion.

7.2 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, sent by telecopy (with hard copy to follow) or sent by reputable overnight express courier (charges prepaid), or (ii) three days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to Seller and Buyer shall be sent to the addresses indicated below:

Notices to Seller:

Casual Male Retail Group, Inc.  
555 Turnpike Street  
Canton, MA 02021  
Attn: David A. Levin  
Telecopy No. (781) 828-3221

with a copy to:

(which shall not constitute notice to Seller)

Greenberg Traurig, LLP  
One International Place  
Boston, MA 02110  
Attn: Jonathan Bell, Esq.  
Telecopy No. (617) 310-6001

Notices to Buyer:

Hub Holding Corp.  
5200 Town Center Circle, Suite 470  
Boca Raton, FL 33486  
Attn: Marc J. Leder, Rodger R. Krouse  
and C. Deryl Couch  
Telecopy No. (561) 394-0540

with a copy to:

(which shall not constitute notice to Buyer):

Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601  
Attn: Douglas C. Gessner  
Telecopy No. (312) 861-2200

7.3 Assignment.

(a) This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, except that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by Seller without the prior written consent of Buyer, provided that Seller may assign this Agreement, all other agreements, documents and instruments executed and/or delivered in connection herewith, and its rights and obligations hereunder and thereunder in connection with a merger or consolidation involving Seller or in connection with a sale of stock (or other ownership interests) or assets of Seller or other disposition of all or any portion of Seller's operations other than the Business, and provided, further, that no such assignment or delegation shall relieve Seller of its obligations hereunder and thereunder and that any such assignee shall become jointly and severally liable to Buyer hereunder or thereunder by entering into an agreement to such effect for which Buyer shall be a third-party beneficiary. Seller may assign any or all of its rights pursuant to this Agreement, including its rights to indemnification, and all other agreements, documents and instruments executed and/or delivered in connection herewith, to any of its lender(s) as collateral security.

(b) In addition, Buyer may assign in whole or in part its rights and obligations pursuant to this Agreement (including the right to purchase the Purchased Assets and the obligation to assume the Assumed Liabilities) and all other agreements, documents and instruments executed and/or delivered in connection herewith to one or more of its Affiliates, and Buyer may, in its sole discretion, direct Seller to convey the Purchased Assets, in whole or in part, to one or more of its Affiliates, provided that no such assignment or delegation shall relieve Buyer of its obligations hereunder or thereunder and that any such assignee shall become jointly and severally liable to Seller hereunder and thereunder by entering into an agreement to such effect for which Seller shall be a third-party beneficiary. Buyer may assign this Agreement, all other agreements, documents and instruments executed and/or delivered in connection herewith, and its rights and obligations hereunder and thereunder in connection with a merger

or consolidation involving Buyer or in connection with a sale of stock (or other ownership interests) or assets of Buyer or other disposition of all or any portion of the Business; provided that no such assignment or delegation shall relieve Buyer of its obligations hereunder or thereunder and that any such assignee shall become jointly and severally liable to Seller hereunder and thereunder by entering into an agreement to such effect for which Seller shall be a third-party beneficiary. Buyer may assign any or all of its rights pursuant to this Agreement, including its rights to indemnification, and all other agreements, documents and instruments executed and/or delivered in connection herewith to any of its lender(s) as collateral security.

7.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement or the application of any such provision to any person or circumstance shall be held to be prohibited by or invalid, illegal or unenforceable under applicable law in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

7.5 Interpretation. The headings and captions used in this Agreement and the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Schedule or Exhibit attached hereto and not otherwise defined therein shall have the meaning set forth in this Agreement. The use of the word "including" herein shall mean "including without limitation." The Parties hereto intend that each representation, warranty and covenant contained herein shall have independent significance. If any Party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which such Party has not breached shall not detract from or mitigate the fact that such Party is in breach of the first representation, warranty or covenant.

7.6 Entire Agreement. This Agreement and the agreements and documents referred to herein contain the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way.

7.7 Counterparts. This Agreement may be executed in one or more counterparts (including by means of telecopied signature pages), all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Party.

7.8 Governing Law. THE LAW OF THE STATE OF DELAWARE SHALL GOVERN ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND ENFORCEABILITY OF THIS AGREEMENT AND THE SCHEDULES ATTACHED HERETO, AND THE PERFORMANCE OF THE OBLIGATIONS IMPOSED BY THIS AGREEMENT, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW RULES OR PROVISIONS (WHETHER OF THE STATE OF DELAWARE OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF DELAWARE.

7.9 No Strict Construction. Notwithstanding the fact that this Agreement has been drafted and prepared by one of the Parties, Buyer and Seller confirm that they and their respective counsel have

reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties, and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Person.

7.10 Specific Performance. Each of the Parties acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the Parties agrees that the other Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter (subject to the provisions set forth in Section 7.8 above), in addition to any other remedy to which they may be entitled, at law or in equity.

7.11 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein expressed or implied, shall give or be construed to give any Person, other than the Parties hereto and such permitted assigns, any legal or equitable rights hereunder.

7.12 Bulk Transfer Laws. Buyer hereby waives compliance by Seller with the provisions of any so-called bulk transfer laws of any jurisdiction in connection with the sale of the Purchased Assets. Seller agrees to indemnify Buyer against all liability, damage or expense which Buyer may suffer due to the failure to so comply or to provide notice required by any such law.

7.13 Schedules. Nothing in any Schedule attached hereto shall be adequate to disclose an exception to a representation or warranty made in this Agreement unless such Schedule identifies the exception with reasonable particularity and describes the relevant facts in reasonable detail. Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item shall not be adequate to disclose an exception to a representation or warranty made in this Agreement, unless the representation or warranty has to do with the existence of the document or other item itself. No exceptions to any representations or warranties disclosed on one Schedule shall constitute an exception (i) to a representation or warranty unless such representation or warranty calls for exceptions set forth on the Schedules, or (ii) to any other representations or warranties made in this Agreement unless such exception is disclosed as provided herein on each such other applicable Schedule or the applicability of such disclosure is readily apparent as an exception to such other representation or warranty. All Schedules attached hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

7.14 Checks Outstanding. After the Closing, Seller shall cause all "cut" but uncashed checks written by Seller on the Business's behalf prior to the Closing to clear its bank accounts.

\* \* \* \* \*

above. IN WITNESS WHEREOF, the Parties hereto have caused this Asset Purchase Agreement to be duly executed as of the date and year first written

CASUAL MALE RETAIL GROUP, INC.

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

DESIGNS JV, LLC

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

DESIGNS OUTLET, LLC

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

DESIGNS APPAREL, INC.

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

HUB HOLDING CORP.

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_



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## Schedules

Leased Real Property Schedule  
Excluded Designs Leased Property Schedule  
Excluded Assets Schedule  
Earn-Out Schedule  
Proprietary Rights Schedule  
Assumed Contracts Schedule  
Permits Schedule  
Accrued Liabilities and Assumed Payables Schedule  
Purchase Orders Schedule  
Organizational and Corporate Power Schedule  
Restrictions Schedule  
Subsidiaries Schedule  
Financial Statements Schedule  
Liabilities Schedule  
Developments Schedule  
Leased Real Property Schedule  
Encumbrances Schedule  
Assets Schedule  
Capital Expenditures Schedule  
Tax Schedule  
Contracts Schedule  
Litigation Schedule  
Employee Disclosure Schedule  
WARN Act Schedule  
Employee Benefits Schedule  
Compliance Schedule  
Names and Locations Schedule  
Suppliers Schedule  
Disputed Amounts Schedule

**AMENDMENT TO CONSULTING AGREEMENT****August 26, 2004**

WHEREAS, Casual Male Retail Group, Inc., (formerly Designs, Inc., the "Corporation") and Jewelcor Management, Inc. (the "Independent Contractor") entered into a certain Consulting Agreement dated as of April 29, 2000, as amended by Letter Agreement dated April 28, 2001, by Letter Agreement dated as of April 28, 2002, by Amendment to Consulting Agreement dated as of April 29, 2003 and by Amendment to Consulting Agreement dated as of April 26, 2004, (hereinafter referred to as the "Agreement"), and

WHEREAS, Corporation and Independent Contractor wish to amend, modify and/or restate certain terms, provisions, conditions and covenants of the Agreement.

NOW THEREFORE, in consideration of the foregoing, and for and in consideration of the mutual promises and covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Corporation and the Independent Contractor hereby agree to amend the Agreement as follows:

1. Effective as of May 1, 2004, subject to the provisions of Section 4 of the Agreement, the consideration to be furnished to the Independent Contractor by the Corporation for the Services rendered by the Independent Contractor under the Agreement shall consist of (a) annual compensation of \$392,000 payable, at the election of the Independent Contractor, either in cash or in non-forfeitable, fully paid and non-assessable shares of Common Stock of the Corporation, the number of which shares of Common Stock shall be valued as of, and determined by, the last closing price immediately preceding the Commencement Date, and on each anniversary date thereafter, during the term of the Agreement, and (b) \$24,000 payable in monthly installments of \$2,000 per month for the reimbursement of expenses incurred by the Independent Contractor in the rendering of Services under the Agreement.

Section 4 of the Agreement is further amended to add the following provision:

4.5 Bonus

The Independent Contractor is eligible to participate in the Company's Executive Incentive Program, pursuant to which the Independent Contractor may earn a receive a Bonus Award Payout up to \$440,000, if the Company achieves certain specific sales and EBITDA thresholds as described in the Executive Incentive Program. A copy of the Executive

Incentive Program is attached hereto. This Agreement must be in force at the end of the respective fiscal year and at the time the bonus is distributed to be eligible to receive such payout.

The remaining terms of the Agreement shall remain in full force and effect without change. For the avoidance of doubt, the parties hereby agree and acknowledge that the foregoing extension does not change the compensation or other rights or obligations of the parties originally provided in the Agreement with respect to any prior period.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Consulting Agreement as a sealed instrument, in any number of counterpart copies, each of which shall be deemed an original for all purposes, as of the day and year first written above.

THE CORPORATION:  
CASUAL MALE RETAIL GROUP, INC.

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

Name: David Levin  
Title: President and Chief Executive Officer

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

Name: Dennis R. Hernreich  
Title: Executive Vice President, Chief  
Operating Officer, Chief Financial Officer, Treasurer and  
Secretary

INDEPENDENT CONTRACTOR:  
JEWELCOR MANAGEMENT, INC.

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

Name: Seymour Holtzman  
Title: Chief Executive Officer

## CERTIFICATION

I, David A. Levin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Casual Male Retail Group, Inc.;
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(s) 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)) 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) 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
  - c) 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
5. The registrant's other certifying officer(s) 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.

Date: December 9, 2004

/s/ DAVID A. LEVIN

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David A. Levin  
Chief Executive Officer

## CERTIFICATION

I, Dennis R. Hernreich, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Casual Male Retail Group, Inc.;
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(s) 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)) 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) 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
  - c) 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
5. The registrant's other certifying officer(s) 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.

Date: December 9, 2004

/s/ DENNIS R. HERNREICH

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Dennis R. Hernreich  
Chief Financial Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Casual Male Retail Group, Inc. (the "Company") for the period ended October 30, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David A. Levin, Chief Executive Officer of the Company, certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being furnished as an exhibit to the Report pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section. This certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, regardless of any general incorporation language in such filing, except to the extent that the Company specifically incorporates this certification by reference.

Dated: December 9, 2004

/s/ DAVID A. LEVIN

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David A. Levin  
Chief Executive Officer

*A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.*

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Casual Male Retail Group, Inc. (the "Company") for the period ended October 30, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Dennis R. Hernreich, Chief Financial Officer of the Company, certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being furnished as an exhibit to the Report pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section. This certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, regardless of any general incorporation language in such filing, except to the extent that the Company specifically incorporates this certification by reference.

Dated: December 9, 2004

/s/ DENNIS R. HERNREICH

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Dennis R. Hernreich  
Chief Financial Officer

*A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.*