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

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**FORM 10-K  
ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended February 3, 2007  
(Fiscal 2006)

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)

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

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

**02021**  
(Zip Code)

**(781) 828-9300**  
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

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Title of each class	Name of each exchange on which registered
<b>Common Stock, \$0.01 par value</b>	<b>The NASDAQ Stock Market</b>

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Securities registered pursuant to Section 12(g) of the Act:

**None**  
(Title of Class)

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer  Accelerated filer  Non-accelerated filer

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

As of July 29, 2006, the aggregate market value of the Common Stock held by non-affiliates of the registrant was approximately \$228.3 million, based on the last reported sale price on that date. Shares of Common Stock held by each executive officer and director and by each person who owns 10% or more of the outstanding Common Stock have been excluded on the basis that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily determinative for other purposes.

The registrant had 41,599,169 shares of Common Stock, \$0.01 par value, outstanding as of March 14, 2007.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the Proxy Statement for the 2007 Annual Meeting of Stockholders are incorporated by reference into Part III.

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## PART I.

Certain statements contained in this Annual Report on Form 10-K 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 Annual Report are generally located in the material set forth under the headings “Business” and “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 Annual Report should not be regarded as a representation by us or any other person that the objectives or plans of the Company will be achieved. Numerous factors could cause our actual results to differ materially from such forward-looking statements, including, without limitation, those risks and uncertainties, set forth under Item 1A, *Risk Factors*, which begins on page 15 of this report. Readers are encouraged to carefully review these risks and uncertainties.

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. We disclaim 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.

### **Item 1. Business**

Casual Male Retail Group, Inc. together with our subsidiaries (the “Company”) is the largest specialty retailer of big & tall men’s apparel with retail operations throughout the United States, Canada and London, England. We operate 407 Casual Male XL retail stores, 65 Casual Male XL outlet stores, 12 Casual Male at Sears Canada stores, 24 Rochester Big & Tall stores and a direct to consumer business, which includes a catalog business and e-commerce sites. Unless the context indicates otherwise, all references to “we,” “our,” “ours,” “us” and “the Company” refer to Casual Male Retail Group, Inc. and our consolidated subsidiaries. We refer to our fiscal years ended February 3, 2007, January 28, 2006 and January 29, 2005 as “fiscal 2006”, “fiscal 2005” and “fiscal 2004”, respectively.

### **HISTORY**

Our Company was incorporated in the State of Delaware in 1976 under the name Designs, Inc. Until fiscal 1995, we operated exclusively Levi Strauss & Co. branded apparel mall and outlet stores. In fiscal 1995, we began seeing limited growth opportunities with Levi Strauss & Co. and started to embark on several private label diversification strategies.

While implementing these strategies, but with limited opportunity to expand our mature Levi’s®/Dockers® business, in May 2002 we acquired the Casual Male business from Casual Male Corp. at a bankruptcy court-ordered auction. At the time of the acquisition, Casual Male was the largest retailer of men’s clothing in the big & tall market in the United States. As a result of the acquisition and in view of the significance of it to the growth and future identity of our Company, on August 8, 2002 we changed our name to “Casual Male Retail Group, Inc.”

### **BUSINESS STRATEGY**

When we acquired the Casual Male business we were faced with several challenges. The Casual Male business had significant potential but was underperforming due to, among other things, poor merchandising.

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outdated infrastructure, high overhead costs and lack of marketing focus. Over the past several years, since the acquisition, we have been implementing our strategic turnaround initiatives to improve the overall infrastructure of the business, restructure the merchandise operations, improve the cost structure and increase profitability. These initiatives also included divesting our under-performing and non-core business segments, such as our Levi's®/Dockers® business and Ecco Unltd.® business, and acquiring Rochester Big & Tall Clothing ("Rochester").

With these turnaround initiatives completed, our current and long-term business strategy is to build market share, better utilize our infrastructure and to attain operating margins at better than 10%. The big & tall industry is highly fragmented with a large volume of target customers who we believe are essentially underserved. Our current business strategy is to grow our business by offering a shopping alternative to the full spectrum of these potential target consumers. Through acquisitions, new business formats and new product development, we believe we will be able to cater to all income demographics from the value-oriented customer to the high-end luxury-oriented customer. We will be able to offer our customers merchandise in all lifestyles from casual to business, young to mature, in all sizes XL and up.

### **OUR INDUSTRY**

The NPD Group, a leading marketing information provider, estimates that the men's big & tall apparel market, which includes pants with a waist size 42" and greater, as well as tops sized 1X and greater, generates approximately \$5.5 billion to \$6.0 billion in sales annually. This highly fragmented market represents approximately 13% of the overall men's apparel business. Growth in this segment has been driven by rapidly changing market demographics. In fiscal 2002, 64% of U.S. adults were overweight or obese, up from 56% six years prior. Additionally, in 2004, 49 states classified 15% or more of their total adult population as obese, versus four states in 1991. Moreover, 29 states classified 20% or more of their total adult population as obese. According to the Center for Disease Control, the rate of obesity for the under-30 age group is growing faster than any other segment of the population. These statistics suggest that there is a significant gap between the market share of the big & tall apparel market and the overall percentage of the population classified as obese.

The men's big & tall apparel market is currently served by a variety of retailers, including department stores, mass merchandisers and specialty stores. These stores typically offer a limited assortment of sizes and styles. By offering the widest selection of sizes and styles, we have continued to gain significant market share. We estimate that our current market share is approximately 7.7% and believe that we have the potential to reach 12% and beyond. We believe we can achieve this goal by catering to the broader target market, attracting customers from various income, age and lifestyle segments.

### **OUR BUSINESS**

We are a multi-channel retailer offering high quality apparel for the big & tall male customer. We have two primary brands: Casual Male and Rochester. The Casual Male customer is a consumer of primarily moderately priced branded and private label casual sportswear and dresswear. The Rochester customer is a consumer of fine quality, designer and branded menswear, priced at exceptional value and supported with excellent customer service.

Our strategy is to appeal to all of our customers by providing multiple and convenient ways to shop. Our customers are often destination shoppers when it comes to purchasing apparel for themselves. For customers that are somewhat uncomfortable in a traditional shopping environment, we offer them the opportunity to shop through our catalogs and e-commerce sites.

### **Our Retail Stores**

*Casual Male XL retail stores.* At February 3, 2007, we operated 407 Casual Male XL full-price retail stores, located primarily in strip centers, power centers or stand-alone locations. These stores target the middle-income

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customer seeking good quality at moderate prices. These stores offer a broad selection of basic sportswear, other casual apparel, dress wear, accessories as well as a full collection of our private label collections, *626 Blue*, *Harbor Bay* and *Synrgy*. The average Casual Male XL store is approximately 3,484 square feet and has approximately \$199 in sales per square foot annually.

*Casual Male XL outlet stores.* At February 3, 2007, we operated 65 Casual Male XL outlet stores designed to offer a wide range of casual clothing for the big & tall customer at prices that are generally 20-25% lower than those offered at our retail stores. Much of the merchandise in the outlet stores is offered with the purchasing interests of the value-oriented customer in mind. The merchandise assortments and brands carried in the outlet stores is consistent with the merchandise strategies carried in our direct business, B&T Factory Direct. The average Casual Male XL outlet store is approximately 3,103 square feet and has approximately \$184 in sales per square foot annually.

*Rochester Big & Tall stores.* At February 3, 2007, we operated 24 Rochester Big & Tall stores, located in major cities through the United States and one store in London England. We currently operate 23 Rochester Big & Tall retail stores and one Big & Tall outlet store. The Rochester Big & Tall stores provide the customer with high end merchandise from well-recognized brands. The average Rochester store is approximately 7,684 square feet and has approximately \$341 in sales per square foot annually.

*Casual Male at Sears Canada stores.* At February 3, 2007, we operated 12 Casual Male stores located within Sears Canada stores. The average Sears Canada Casual Male store is approximately 1,171 square feet and has approximately \$92 in sales per square foot annually.

### *Store Expansion.*

We currently have over 500 retail store locations. We believe that there is still a great deal of opportunity for new store growth in areas of the country that we have not yet penetrated. On the Casual Male XL side, we have identified at least 100 potential store locations for long-term growth, and with only 24 Rochester Big & Tall retail stores currently open, there are significant opportunities there as well.

For fiscal 2007, we intend to open 8 new Casual Male XL retail and outlet stores and expect to close 12 existing stores as their respective leases expire. We also plan to open 3 new Rochester Big & Tall retail stores. Because the Rochester Big & Tall retail stores are higher-end, we ideally are looking at urban locations, which means that new store growth may not occur as fast as Casual Male XL stores because urban locations are generally less plentiful and more difficult to obtain. Our average build-out costs for a new 3,400 square foot Casual Male XL store is approximately \$45 per square foot and for a Casual Male XL outlet store it approximates \$35 per square foot. Our Rochester Big & Tall stores usually average 7,600 square feet and build-out costs average approximately \$120 per square foot.

We have also identified approximately 54 of our older Casual Male XL retail stores that are currently in strip locations with high tenant vacancies. Over the next three years, as these leases expire, we plan on relocating these stores to better locations within the same geographical area. During fiscal 2006, we were able to relocate 10 Casual Male XL stores to better locations with higher foot traffic and we immediately saw significant improvements in sales over the prior year. This program will help us achieve our goal of increasing our overall sales per square foot.

### ***Our Direct Businesses***

Our direct businesses are a natural extension of our retail and outlet store operations and extend the reach of our brands by offering an easy way for our customers to shop. An NPD Group study completed in 2005 found that the big & tall customer often crosses channels to find the clothing they need and want. The study found that approximately 33% of big & tall customers shop online for their clothing, as compared to 21% of regular sized

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men. Likewise, the big & tall customer's rate of catalog shopping is nearly double that for men who do not require special sizes.

Our direct businesses continue to show substantial year over year increases which we expect will continue in fiscal 2007. In addition, during fiscal 2006 we made several business and product development initiatives which we believe will further grow our business, by meeting many of our customers' lifestyle needs.

### *Catalogs.*

Our "Casual Male XL" catalogs offer an assortment of merchandise similar to what is available in the stores, but also offers a broader selection of brands, styles and sizes. During fiscal 2006, we issued 30 editions of our Casual Male XL catalogs and circulated a total of 11.0 million catalogs, an increase of 55% from fiscal 2005. In fiscal 2007, we intend to issue 27 editions with a circulation of 12.0 million catalogs, with the intention of pursuing prospecting activity as well as driving multi-channel sales. In Spring 2006, we launched a co-branded Casual Male XL and Sears U.S. catalog, mailing 15 editions with a circulation of 2.3 million, including prospecting circulation. In 2007, we plan on mailing 17 editions with a circulation of 2.2 million. The merchandise assortment in the co-branded Casual Male XL and Sears U.S. catalog is similar to our Casual Male XL catalog.

Our "Rochester Big & Tall" catalog business offers an assortment of clothing that is similar to what can be found in our retail stores, with a broader selection in most cases. Because we currently have only 24 Rochester Big & Tall retail locations, which may not be accessible for many of our Rochester customers, Rochester's catalog business is a significant portion of our overall Rochester business. During fiscal 2006, we issued 16 editions of the Rochester Big & Tall catalog with a circulation of 4.2 million. In 2007, we plan to issue 19 editions of the Rochester Big & Tall catalog with a circulation of 4.7 million.

During Spring 2006, we launched a co-branded section in the Sears Canada catalog. We appeared in 3 editions with a circulation of 12.0 million catalogs. The co-branded catalog section offers an assortment of clothing similar to our Casual Male XL catalogs. We will continue this co-branded offering with similar circulation for 2007.

In Spring 2007, we will be launching a new catalog "B&T Factory Direct" to cater to our value-oriented customers. The catalog will offer an assortment of merchandise similar to the merchandise that is found in our Casual Male XL outlet stores. We plan to mail 7 editions with a circulation of 0.7 million.

In-bound calls and order fulfillment for our U.S. catalogs are currently handled at our distribution center. See "Distribution" below.

### *E-Commerce businesses.*

Our Casual Male XL website, [www.casualmalexl.com](http://www.casualmalexl.com), offers a similar selection of merchandise as is offered in our Casual Male XL catalogs. During fiscal 2006, we re-designed this website to reflect our new Casual XL look and logo. During fiscal 2006, the Casual Male XL website had a sales increase of 59%, which followed a 42% increase in fiscal 2005 and a 57% increase in fiscal 2004.

In our effort to appeal to all income demographics within our industry, in October 2006, we launched a new website, [www.btirect.com](http://www.btirect.com), to appeal to our value-oriented outlet customers. The merchandise available on this website is an expanded selection but similar to the merchandise that can be found in our Casual Male XL outlet stores.

We also offer selected Casual Male merchandise, through our business relationship with Sears Canada and Sears US, on [Sears.com](http://Sears.com) and [Sears.ca](http://Sears.ca), Sears' Canadian website. We continue to view this opportunity as a way to enter and test the international big & tall market with relatively low risk and minimum capital.

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Our Rochester website, [www.rochesterclothing.com](http://www.rochesterclothing.com), offers substantially the same merchandise as offered in our Rochester stores and catalog. In Fall 2006, we re-designed the website to improve the customer's experience. During fiscal 2006, the Rochester website had a sales increase of 45% over the prior year.

As discussed further below under "Merchandise", in May 2006, we purchased Jared M., an apparel company specializing in selling custom clothing to high-profile customers. We maintain an information website at [www.jaredm.com](http://www.jaredm.com).

In October 2006, we acquired SuperSizeWorld, a direct-to-consumer business specializing in the selling of select unique, high quality products which help larger people maintain a more comfortable lifestyle. The types of products sold on our website [www.SuperSizeWorld.com](http://www.SuperSizeWorld.com), include bathroom accessories, health and beauty items, medical products, sports and outdoor accessories, patio furniture, travel accessories and other household items. During fiscal 2007, we plan to re-design this website and change the acquired domain name to [www.LivingXL.com](http://www.LivingXL.com), to more closely reflect our marketing message. We plan to market this business by utilizing our existing customer database as well as new customer prospecting. In addition, we will mail 7 editions of a LivingXL catalog with circulation of 2.5 million.

We also own the domain name [www.bigandtall.com](http://www.bigandtall.com). This site integrates our Casual Male and Rochester websites in an effort to generate additional traffic.

We currently process and fulfill orders from our websites through our distribution center which is located in Canton, Massachusetts. Merchandise is either shipped directly to the customer from our distribution center or dropped shipped to our customer directly from the vendor.

### **MERCHANDISE**

*Casual Male Business.* The Casual Male XL stores and direct businesses offer an extensive selection of quality sportswear, dress clothing and footwear for the big & tall male customer at moderate prices. Over 50% of the Casual Male merchandise is basic or fashion-neutral items, such as jeans, casual slacks, tee-shirts, polo shirts, dress shirts and suit separates. The Casual Male customer is primarily interested in comfort and fit, more so than price. As such, Casual Male's clothing has features specifically designed for our customer, such as waist-relaxer pants, stretch belts, zipper ties, wide band socks, neck-relaxer shirts and clothing with comfort-stretch technology and reinforced stress points. Independent tests have shown that our merchandise is among the highest in quality of all major brands.

We carry several private label lines in our Casual Male XL stores and direct businesses which continue to perform very strongly. Comfort, fit and technology are the driving force behind our *Comfort Zone*<sup>TM</sup> apparel line. The merchandise has exclusive features such as our patented Neck-Relaxer shirt, Waist-Relaxer pants, Jacket-Relaxer suit separates and Dry-Action wicking polo that provide comfort and performance combined with uncompromising style so that big & tall men can find casualwear and dresswear that fits their lifestyle.

*Harbor Bay* was our first proprietary brand and it continues to represent a significant portion of our business specifically of our core basic merchandise. Harbor Bay is a traditional line of clothing which competes with the Dockers<sup>®</sup>, Izod<sup>®</sup> and Cutter & Buck<sup>®</sup> branded products. In fiscal 2007, we plan to launch a new private label line *Oak Hill* which will be a premier line catering to those customers looking for slightly more style and quality in a traditional lifestyle.

Our *626 Blue-Vintage Surplus* ("626 Blue") private label line is targeted toward a younger customer. With the average age of our customer currently being 39 years of age, one of our long-term objectives is to draw a younger customer into our stores. *626 Blue* introduces a younger lifestyle look that caters to a broader market, one influenced by Abercrombie & Fitch and American Eagle. Our *626 Blue* merchandise is comprised of premium washed denim, casual wovens and tee-shirts. This private label line has performed strongly since its release last year and we plan to increase our current product offerings.

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This year we introduced, on a test basis, our *Synrgy* line, a private label product targeting the customer looking for a contemporary look. The merchandise is similar in inspiration to Perry Ellis Portfolio or Calvin Klein's sportswear line. Based on the positive response of this line, we will be doing a full launch in Spring 2007.

We are also building a strong private label program specifically for our Casual Male XL outlet stores and our B&T Factory Direct businesses which will be similar to our lifestyle private label lines found in our retail stores but made at lower costs and sold at lower price points for our value-oriented customers. We currently carry *Canyon Ridge*, which is similar in style to our *Harbor Bay* product line, and *Flex Zone*, which is similar to our *Comfort Zone*<sup>TM</sup>. We will be expanding this offering in 2007 to include *555 Turnpike*, which will be targeted toward our younger customers similar to *636 Blue*, and *Fuse*, a contemporary line similar in style to our *Synrgy* product line.

In addition to our many private label lines, we carry several well-known brands of merchandise including, Polo Ralph Lauren, Nautica, Izod, Nautica Jeans Co., Perry Ellis Portfolio<sup>®</sup>, Geoffrey Beene<sup>®</sup>, Sean John<sup>®</sup>, Sketchers<sup>®</sup>, Levi's<sup>®</sup>, Dockers<sup>®</sup>, Calvin Klein, Reebok<sup>®</sup> and others.

The introduction of these aforementioned private label brands together with the traditional well-known brands enables us to better cater to the various market segments of our overall target market. Our research has shown that we need to appeal to a variety of customers within the big & tall market in our efforts to become the selection of choice among big & tall men.

Our stores are merchandised to showcase entire outfits by lifestyle, including traditional, functional active, young men's, dresswear and contemporary. This format allows us to merchandise key items and seasonal goods in prominent displays, makes coordinating outfits easier for the customer and encourages multi-item purchases. This lifestyle layout also allows us to better manage store space in each market to target local demographics. Stores are clustered to meet the demographic needs of customers by climate and ethnicity. The key item strategy is also fully integrated by lifestyle, allowing us to focus on merchandise presentation and offer our customers a compelling value proposition. By taking advantage of volume purchasing discounts, we are able to promote these key items across the entire chain without sacrificing gross margins.

The Guaranteed-in-Stock Program in our Casual Male XL stores shows our commitment to our customers to maintain an in-stock position on several of our top styles. With our current integrated replenishment system in place, we have been able to improve our in-stock position on core merchandise which in turn has improved our margins. We believe that the ability to manage in-stock positions on key core merchandise such as tee-shirts, polo shirts and jeans is necessary to our success. We now guarantee our customers that for our top 7 styles, representing approximately 20% of our total sales and including our popular *Comfort Zone*<sup>TM</sup> waist relaxer pant, we will have their size in stock or delivered to their home within 5 days or the merchandise is free. Less than 5% of this merchandise was out-of-stock during fiscal 2006 as compared to 30% three years ago.

*Rochester Business.* Our Rochester Big & Tall stores carry a broad selection of quality apparel, at higher price points, from well-known branded manufacturers such as Polo Ralph Lauren, Burberry, Ermenegildo Zegna, Robert Talbott, Tommy Bahama, Axis, and Versace Classic. The Rochester customer is able to find a wide range of apparel from casual activewear to dressy suits. These stores cater to the customer, offering a personal shopper-type experience, with experienced staff that has a strong knowledge of the merchandise and services such as on-site tailoring.

During fiscal 2006, with the support of our direct sourcing program, we introduced two private brands specifically for our Rochester customers. *Rochester 1906*<sup>TM</sup> which is targeted as a classic traditional line offering sportswear, loungewear and dress shirts. *Castagne*<sup>TM</sup> is positioned as a more contemporary sportswear line. Both proprietary private brands feature the highest quality fabrications, details and construction. By the end of fiscal 2007, we believe that up to 20% of Rochester's merchandise assortments will be from our private label merchandise.

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In May 2006, we acquired Jared M., a direct sales apparel company specializing in selling custom clothing to professional athletes and other high-profile clients, almost all of whom are big & tall. We see this acquisition as an ideal extension of our Rochester business. The Jared M. merchandise is designed and manufactured with European inspired fashion trends using the highest quality and finest fabrics. Initially, we plan to open three Jared M. shops within our existing Rochester Big & Tall stores and expand the business to catalog and internet. Also during fiscal 2007, we intend to expand this custom clothing business to include Jared M. and Rochester brands, eventually offering these custom clothing selections in all Rochester stores. At the same time, we plan to expand Jared M.'s direct sales force to further penetrate Jared M.'s existing business. This acquisition fits into our overall long-term strategy to gain market share in the big & tall market.

### **MARKETING AND ADVERTISING**

Our marketing department creates and implements a wide variety of national, regional and local advertising, direct marketing and sales promotion programs. These direct mail and e-mail programs are designed to increase sales and customer awareness of the Casual Male and Rochester brand names. A strong component to the marketing budget is direct mail campaigns to Casual Male and Rochester customer databases. Approximately 70% of all sales were captured in our customer database in fiscal 2006. This allows continuous communication with our customers both for promotional events as well as relationship programs such as the birthday club and new customer programs. We maintain the largest customer database of purchasers of big & tall clothing. In addition, local store marketing activities occur on a regular basis and include store opening events and in-store promotion programs.

During the second quarter of fiscal 2006, we completed our initiative of re-branding all of our full-price Casual Male Big & Tall business to "Casual Male XL" as part of our strategy to remove the stigma associated with "big & tall" so as to appeal to a broader group of our target market, a younger demographic and the smaller and taller market segment of the big & tall market. This re-branding included the re-engineering of the look and feel of our Casual Male brand in all communications, including our store fronts and in-store signage, as well as throughout our catalogs and website.

We utilize a customer relationship management ("CRM") system, installed in fiscal 2005, which allows us to expand our level of communication to our customers, and makes available pertinent customer information at the store level, with the goal of servicing the customer better. With the customer database maintained at the corporate office, our Casual Male business has daily results on its direct marketing efforts and has the ability to respond to business immediately. Our sales associates now have an array of information available about their customers. Through the CRM real-time database, our sales associates are able to access valuable information on each customer's buying patterns, preferences and sizes.

During the third quarter of fiscal 2006, we introduced a customer loyalty program for our Casual Male customers. Under the program, customers will accumulate points based on purchase activity and earn rewards by reaching certain point thresholds. Rewards earned are valid through the stated expiration date, which is approximately five months from the mailing date and can be redeemed for a discount on a future purchase of merchandise. Rewards not redeemed during the five-month redemption period are forfeited. We believe that these efforts can lead to new customers as well as a more loyal customer base.

During this year, we significantly reduced the number of pricing promotions due to their ineffectiveness relative to cost and, instead, we included in our "contact plans" to our customers, through direct mail (although 20% less frequently), more overall branded communications, sharing with our customers the advantages of shopping with us and educating them about the features of our product and the lifestyle merchandise offerings during important seasonal transition periods of the year.

Based on controlled sales tests of outside customer lists in fiscal 2005 and 2006, during prime selling periods in fiscal 2007, we will be mailing to prospective catalog customers not already on our customer database.

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With our internet developments we have attracted new customers and fueled a 33% growth of unique visitors to [www.casualmaleXL.com](http://www.casualmaleXL.com). Search engine optimization included several internal site improvements. Search engine marketing efforts were more systematic keyword bidding, ad placements and a new affiliate partner relationship. Through various new marketing initiatives, we will be targeting new customers in all three channels—retail, catalog and internet.

Advertising and marketing costs for all channels of our businesses represented approximately 6.6% of our total revenue for fiscal 2006. This includes creating and distributing catalogs, retail direct mail pieces and all in-store signage for our 472 Casual Male XL stores and 24 Rochester stores, as well as supporting e-commerce efforts. We anticipate we will continue these marketing strategies for fiscal 2007 with an approximate 5% increase in marketing dollars, but a slight drop as a percentage to sales to 6.5%; in addition, we plan to expend approximately \$4.0 million in incremental marketing expenditures to grow our new businesses. We intend that our marketing efforts will become more effective at connecting with our customers without the unnecessary gross margin expense of costly promotional pricing programs.

### **COMPETITION**

Our business faces competition from a variety of sources, including department stores, other specialty stores, discount and off-price retailers, as well as other retailers that sell big & tall merchandise. While we have successfully competed on the basis of merchandise selection, favorable pricing, customer service and desirable store locations, there can be no assurances that other retailers will not adopt purchasing and marketing concepts similar to ours. In addition, discount retailers with significant buying power, such as Wal-Mart, J.C. Penny and Target, represent a source of competition for us.

The United States men's big & tall apparel market is highly competitive with many national and regional department stores, specialty apparel retailers, single market operators and discount stores offering a broad range of apparel products similar to us. Besides retail competitors, we consider any casual apparel manufacturer operating in outlet malls throughout the United States to be a competitor in the casual apparel market. We believe that we are the only national operator of apparel stores focused on the men's big & tall market, the next largest specialty retailer being Dahle's, which operates 17 stores, primarily in markets where we do not operate stores.

The catalog business has several competitors, including the King Size Catalog (which is owned by Redcats USA, a wholly owned subsidiary of Pinault-Printemps-Redoute, SA of France) and J.C. Penny's Big & Tall Collection catalog.

### **STORE OPERATIONS**

Our field organization is overseen by our Senior Vice President of Sales and is comprised of the following:

#### *Casual Male store operations*

In order to provide management development and guidance to individual store managers, we employ approximately 38 District Managers. The District Managers are divided among five geographical regions, each region consisting of 7 to 9 District Managers depending on the number of stores and their locality to each other. Each District Manager is responsible for hiring and developing store managers at the stores assigned to that manager's area and for the overall operations and profitability of those stores. District Managers report directly to a Vice President of Casual Male Sales.

Each store is staffed with a salaried store manager and hourly assistants and associates. Each store manager also is entitled to receive commissions and bonuses based on achieving certain set operational targets.

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### *Rochester store operations*

The Rochester store operations are divided among three geographical regions which are managed by three Regional Managers reporting to the Vice President of Rochester sales. Each Regional Manager is directly responsible for hiring and developing store managers at the 6 to 11 stores assigned to that manager's area and for the overall operations and profitability of those stores.

Each Rochester store is staffed with a salaried store manager, up to three salaried assistant managers and commission-based salaried associates.

### **GLOBAL SOURCING**

In fiscal 2005, we started developing a direct sourcing program for our private label merchandise. During fiscal 2006, approximately 65% of our merchandise was from our private label product lines, which includes our *626 Blue*, *Comfort Zone™*, *Synrgy* and *Harbor Bay* product lines. With the strong sales results of our private label merchandise, we anticipate increasing this percentage over the next two years, and anticipate that up to 75% of our total private label receipts will be directly sourced internationally. We expect that all channels within both Casual Male and Rochester will benefit from this initiative.

We currently work with Li & Fung (Trading) Limited, who acts as a non-exclusive buying agent for our Company, to assist us in purchasing merchandise in certain foreign countries. The majority of our merchandise is currently sourced from various vendors and factories within Asia as well as the Dominican Republic. We use a select group of vendors and factories that we believe are the most reputable and will maintain our high standards of quality. These vendors typically ship our merchandise to us primarily by boat, which in most cases takes approximately 30 days in transit, depending on the country. The ships unload at the Port of New York where the merchandise is sent to Worcester, Massachusetts where they clear customs and then are trucked to our distribution center.

We require each vendor and factory to adhere to our Code of Conduct, which is designed to ensure that the operations of each of our business partners are conducted in a legal, ethical and responsible manner. Our Code of Conduct requires that each of our business partners operate in compliance with the applicable wage, benefit and working hours and other laws of each of the respective countries in which we do business and forbids the use of practices such as child labor or forced labor. We oversee and manage our compliance program internally. We contract with a third-party compliance audit firm to make periodic visits to the factories that produce our merchandise to monitor compliance, including prequalification for new suppliers. Li & Fung also has their own compliance program which supplements our program.

In an effort to minimize foreign currency risk, all payments to our vendors and buying agent are made in U.S. dollars through the use of letters of credit.

### **DISTRIBUTION**

All of our distribution operations are centralized in our headquarters and distribution center located in Canton, Massachusetts.

We believe that having one centralized distribution facility minimizes the delivered cost of merchandise and maximizes the in-stock position of our stores. We believe that the centralized distribution system enables our stores to maximize selling space by reducing necessary levels of back-room stock carried in each store. In addition, the distribution center provides order fulfillment services for our e-commerce and catalog businesses.

Since 2003, we have partnered with United Parcel Services ("UPS") which has improved our distribution methods and also has reduced our shipping costs as a result of not having to use third party trucking companies. By utilizing UPS, we are able to track all deliveries from the warehouse to our individual stores, including the

status of in-transit shipments. In January 2007, we amended our contract with UPS which extended our contract with them through December 2010.

We utilize the Manhattan Associates' PKMS warehousing application for our distribution center systems, which has significantly streamlined our distribution processes, enhanced our in-transit times, and significantly reduced our distribution costs. In addition, we have slightly altered our distribution strategy as it relates to seasonal merchandise to allow for replenishment of styles at the color and size level which has optimized sales opportunities and minimized our end of season clearance markdowns. This seasonal merchandise distribution strategy requires significantly higher volume of individual piece processing, a more costly distribution method in contrast to carton handling. However, in conjunction with the installation of a more efficient PKMS warehousing application, we have also updated our processes in order to optimize the new system capabilities in areas such as receiving, cross-dock handling, put-away, and picking which will include the use of scanning equipment. Accordingly, in spite of the shift in distribution strategy to include the more costly piece replenishment, our distribution costs have and are expected to decrease as a result of the new systems and the adoption of updated process flows.

Beginning in fiscal 2006, our Rochester business began to benefit as well from these enhanced warehousing systems and new merchandising infrastructure. Prior to our acquisition, the Rochester stores received a significant portion of their merchandise as drop-shipments from various vendors and were only receiving deliveries approximately once a month, resulting in frequent out-of-stock positions and poor inventory management.

During fiscal 2007, we plan to implement new sorting systems for both our retail as well as direct businesses. These sorting systems will not only improve our labor efficiencies but it will also dramatically improve our daily capacity to process and ship merchandise directly benefiting our growing business, particularly our direct-to-consumer businesses.

### **MANAGEMENT INFORMATION SYSTEMS**

Since our acquisition of the Casual Male business in May 2002, one of our primary goals has been to upgrade and enhance legacy systems with best practice applications to enable substantial operating efficiencies. At the time of the acquisition, our Casual Male business operated primarily on an IBM mainframe platform. The mainframe-based system included an internally supported enterprise retail system and a human resource/payroll application. Our then-existing e-commerce/catalog fulfillment infrastructure operated on a Hewlett-Packard environment on software from Ecometry, and the remainder of its business operated on an IBM AS/400 platform. At the time of the acquisition, our financial systems were supported by a client server environment.

Presently, our management information systems consist of a full range of retail merchandising and financial systems which include merchandise planning and reporting, distribution center processing, inventory allocation, sales reporting, and financial processing and reporting. Our system integration project has been completed. Our Casual Male business operates primarily on an IBM AS/400 platform, with the e-commerce/catalog business on the HP environment. We utilize Lawson Financial Systems for all of our financial operations. Our management team now has several tools with which to manage the business on a consolidated level in a more efficient and effective manner. We use the JDA E3 Advanced Replenishment system for the Casual Male business which has improved sales opportunities and control over inventory of basic merchandise. One of the other important achievements of these system upgrades is that we have built into our infrastructure the ability and capacity to process significantly more transactions more efficiently than with the previous processing.

During fiscal 2004, we completed the systems integration work to upgrade our merchandising systems to the JDA Portfolio Solutions, specifically the MMS Merchandise Management System, E3 Advanced Replenishment, Retail Ideas Data Warehouse, and Arthur Merchandise Planning and Advanced Allocation systems. In addition, we also converted our distribution system to Manhattan Associates' PKMS distribution system. To implement

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these initiatives, we spent approximately \$14.0 million since the acquisition, primarily on system enhancement, implementation and maintenance. With the systems fully implemented, we expect to be able to improve sales, better manage inventory levels and streamline operations by:

- Sharing information with vendors through EDI (electronic data interchange);
- Reducing merchandise in-transit times;
- Creating more advanced methods to replenish inventory;
- Improving information databases and data availability;
- Improving methods of inventory management and planning;
- Enhancing distribution productivity and capacity;
- Planning store merchandise assortments; and
- Reducing MIS related corporate overhead.

During fiscal 2005, we completed the next phase of our plan, which included upgrading to a state-of-the-art POS and register system in all of its Casual Male store locations. Currently, all of our stores have POS terminals supplied by IBM. The Casual Male business is supported by a POS business application provided by NSB Group. The POS applications capture daily transaction information by item, color and size. We utilize barcode technology in tracking sales, inventory and pricing information. Communication between our corporate headquarters and all of our stores is facilitated on a daily basis through the use of an electronic mail system. This new system includes a multitude of features including Customer Relationship Management (“CRM”) tools that will enable us to track customer buying habits and provide us with the ability to target customers with specific offers and promotions. In March 2004, we signed a license agreement with NSB Group for its Connected Retailer® Store and Customer Relationship Management Solutions. The rollout of this project to our stores was completed during the summer of 2005 at a cost of approximately \$6.5 million.

During fiscal 2006, we upgraded our E3 Replenishment systems to optimize fill back from vendors and adjustments from seasonal profiles. Our web sites were standardized on a state-of-the-art platform from Art Technology Group. We implemented the e-SPS Product Life Cycle Management system from NGC to support the growth of our direct sourcing initiatives. A customer loyalty program was rolled out in the third quarter for the Casual Male business. To support the marketing area, we implemented the PlanSystem3 environment from Quad-Systems to manage marketing assets, schedule promotions and monitor activities.

Our merchandising management systems are updated daily with all store transactions and provide daily sales, inventory, pricing and merchandise information and management reports to assist us in operating our retail business. Our merchandising system applications also facilitate the placement and tracking of purchase orders and utilize EDI technology. We evaluate this information, together with weekly reports on merchandise statistics, prior to making decisions regarding reorders of fast-selling items and the allocation of merchandise.

When acquired, our Rochester business was being supported by AS/400 applications that were over 20 years old. During the fourth quarter of fiscal 2005, we completed the conversion of our 24 Rochester stores to the existing Casual Male system environment.

For fiscal 2007, the focus of MIS will be adding advanced functionality to our websites, installing piece sorters in the warehouse to improve product through put, rolling out a customer loyalty program for the Rochester business, implementing systems to support made-to-order product and piloting kiosks for expanded product offerings in stores.

We utilize a Microsoft 2000 Server / Windows 2000 Desktop environment running on a local area network to communicate and work-share within our headquarters. We also utilize the services of Ceridian, an outside payroll-processing provider, to prepare, distribute and report our weekly payroll.

**SEASONALITY**

Consistent with the retail industry, our business is seasonal, traditionally generating the largest volume of sales during the Father's Day selling season in June and the Christmas selling season in December. The Casual Male outlet business traditionally generate the largest volume of its sales during the back-to-school selling season in August and the Christmas selling season in December. The majority of our operating income is generated in the fourth quarter as a result of the impact of the Christmas selling season.

**TRADEMARKS/TRADEMARK LICENSE AGREEMENTS**

We own several servicemarks and trademarks relating to our Casual Male business, including, among others, "Casual Male<sup>®</sup>", "Casual Male XL<sup>™</sup>", "B&T Factory Direct<sup>™</sup>", "Rochester Big & Tall<sup>™</sup>", "Harbor Bay<sup>®</sup>", "Oak Hill<sup>™</sup>", "Comfort Zone by Casual Male<sup>™</sup>", "Jared M.<sup>®</sup>", "Synrgy<sup>™</sup>", "Rochester 1906<sup>™</sup>" and "Castagne<sup>™</sup>". We also have a U.S. patent for an extendable collar system, which is marketed as "Neck-Relaxer<sup>®</sup>".

**EMPLOYEES**

As of February 3, 2007, we employed approximately 3,092 associates, of whom 1,748 were full-time personnel. We hire additional temporary employees during the peak Fall and Holiday seasons. None of our employees are represented by any collective bargaining agreement.

**AVAILABLE INFORMATION**

Our corporate website is [www.casualmaleXL.com](http://www.casualmaleXL.com). We make available, free of charge, through our website our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to such reports filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934, as amended, as soon as reasonably practicable after we have electronically filed such material with, or furnished such materials to, the Securities and Exchange Commission. The SEC maintains an internet site that contains reports, proxy and information statements, and other information for issuers that file electronically with the SEC at <http://www.sec.gov>.

**Item 1A. Risk Factors**

The following discussion identifies certain important factors that could affect our financial position, our actual results of operations, and our actions and could cause our financial position, results of operations, and our actions to differ materially from any forward-looking statements made by or on behalf of this Company. Other factors, which are not identified herein, could also have such an effect.

The following risk factors are all of the important factors of which we are aware that could cause actual results, performance or achievements to differ materially from those expressed in any of our forward-looking statements. We operate in a continually changing business environment and new risk factors emerge from time to time. Other unknown or unpredictable factors also could have material adverse effects on our future results, performance or achievements. We cannot assure you that projected results or events will be achieved or will occur.

**Risks Related to Our Company and Our Industry**

***We may not be successful in growing our market share.***

A large part of our growth has resulted from our acquisition of the Casual Male business from Casual Male Corp. in May 2002 and our acquisition of Rochester Big & Tall Clothing in October 2004 and the increased sales volume and profitability provided by these acquisitions. We believe that our current level of stores is sufficient to sustain our business and we are not dependent on adding new stores to increase our sales volume and profitability. However, for us to be successful in the future and maintain growth, we must be able to continue increasing our market share within the big & tall industry. Our growth is dependent on us being successful in attracting new target customers into our stores, catalogs and e-commerce sites. We can not assure you that our strategic plans will be successful in attracting customers and growing our market share.

***Our business is highly competitive, and competitive factors may reduce our revenues and profit margins.***

The United States men's big & tall apparel market is highly competitive with many national and regional department stores, specialty apparel retailers and discount stores offering a broad range of apparel products similar to the products that we sell. Besides retail competitors, we consider any manufacturer of big & tall merchandise operating in outlet malls throughout the United States to be a competitor. It is also possible that another competitor, either a mass merchant or a men's specialty store or specialty apparel catalog, could gain market share in men's big & tall apparel due to more favorable pricing, locations, brand and fashion assortment and size availability. The presence in the marketplace of various fashion trends and the limited availability of shelf space also can affect competition. We may not be able to compete successfully with our competitors in the future and could lose brand recognition and market share. A significant loss of market share would adversely affect our revenues and results of operations.

***We may be unable to successfully predict fashion trends and customer preferences.***

Customer tastes and fashion trends are volatile and tend to change rapidly. Our success depends in large part upon our ability to effectively predict and respond to changing fashion tastes and consumer demands and to translate market trends to appropriate saleable product offerings. If we are unable to successfully predict or respond to changing styles or trends and misjudge the market for products or any new product lines, our sales will be lower and we may be faced with a substantial amount of unsold inventory or missed opportunities. In response, we may be forced to rely on additional markdowns or promotional sales to dispose of excess, slow-moving inventory, which would decrease our revenues and margins. In addition, the failure to satisfy consumer demand could have serious longer-term consequences, such as an adverse impact on our brand value and the loss of market share to our competitors.

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***Our marketing programs and success in maintaining and building our brand awareness are critical to achieving successful market share growth within the big & tall industry.***

Our success in increasing our market share in the big & tall apparel business is largely dependent on maintaining our favorable brand recognition and effectively marketing our merchandise to all of our target customers in several diverse market segments. In order to grow our brand recognition and our market share, we depend on the successful development of our brands through several means including advertising events, direct mail marketing, e-commerce and catalog marketing and customer prospecting. Our business is directly impacted by the success of these efforts and those of our vendors. Future advertising efforts by us, our vendors or our other licensors may be costly and may not result in increased market share or revenues.

***Our success significantly depends on our key personnel and our ability to attract and retain additional personnel.***

Our future success is dependent on the personal efforts, performance and abilities of our key management which includes our executive officers as well as several significant members of our senior management. For example, the loss of the services of David Levin, our President and Chief Executive Officer, or Dennis Hernreich, our Chief Operating Officer and Chief Financial Officer, each of whom is an integral part of our daily operations and are primary decision makers in all our important operating matters, could significantly impact our business until adequate replacements can be identified and put in place. The loss of any of our senior management may result in a loss of organizational focus, poor operating execution, an inability to identify and execute potential strategic initiatives, an impairment in our ability to identify new store locations, and an inability to consummate possible acquisitions.

These adverse results could, among other things, reduce potential revenues, prevent us from diversifying our product lines and geographic concentrations, and expose us to downturns in our markets. The competition is intense for the type of highly skilled individuals with relevant industry experience that we require and we may not be able to attract and retain new employees of the caliber needed to achieve our objectives.

***The loss of, or disruption in, our centralized distribution center could negatively impact our business and operations.***

All merchandise for our stores is received into our centralized distribution center in Canton, Massachusetts, where the inventory is then processed, sorted and shipped to our stores. We depend in large part on the orderly operation of this receiving and distribution process, which depends, in turn, on adherence to shipping schedules and effective management of the distribution center. Although we believe that our receiving and distribution process is efficient and well positioned to support our strategic plans, we cannot assure you that events beyond our control, such as disruptions in operations due to fire or other catastrophic events, employee matters or shipping problems, would not result in delays in the delivery of merchandise to our stores.

With all of our management information systems centralized in our corporate headquarters, any disruption or destruction of our system infrastructure would materially affect our business. This type of disaster is mitigated by our offsite stores and disaster recovery plans, but we would still incur business interruption which could impact our business for several weeks.

Although we maintain business interruption and property insurance, we cannot assure you that our insurance will be sufficient, or that insurance proceeds will be timely paid to us, in the event our distribution center is shut down for any reason or if we incur higher costs and longer lead times in connection with a distribution at our distribution center.

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***Our business may be negatively impacted and we may be liable if third parties misappropriate proprietary information of our customers and breach our security systems.***

Any security breach could expose us to risks of loss, litigation and liability and could adversely affect our operations. If third parties are able to penetrate our network security or otherwise misappropriate the personal information or credit card information of our customers or if third parties gain unauthorized and improper access to such information, we could be subject to liability. This liability could include claims for unauthorized purchases with credit card information, impersonation or other similar fraud claims. They could also include claims for other misuses of personal information, including unauthorized marketing purposes. These claims could result in litigation. Liability for misappropriation of this information could be significant. Further, if a third party were to use this proprietary customer information in order to compete with us, it could have a material adverse impact on our business and could result in litigation.

Over the past several months we have been working toward becoming Payment Card Industry (“PCI”) compliant and expect to become compliant by September 2007. We believe that this is a necessary and required step toward ensuring that our security systems are protected.

***We are dependent on third parties for the manufacture of the merchandise we sell.***

We do not own or operate any manufacturing facilities and are therefore entirely dependent on third parties for the manufacture of the merchandise we sell. Without adequate supplies of merchandise to sell to our customers in the merchandise styles and fashions demanded by our particular customer base, sales would decrease materially and our business would suffer. Furthermore, approximately 70% of our merchandise is branded merchandise made specifically for Casual Male and our customers. In the event that manufacturers are unable or unwilling to ship products to us in a timely manner or continue to manufacture products for us, we would have to rely on other current manufacturing sources or identify and qualify new manufacturers. We might not be able to identify or qualify such manufacturers for existing or new products in a timely manner and such manufacturers might not allocate sufficient capacity to us in order to meet our requirements. Our inability to secure adequate and timely supplies of private label merchandise would negatively impact proper inventory levels, sales and gross margin rates, and ultimately our results of operations.

In addition, even if our current manufacturers continue to manufacture our products, they may not maintain adequate controls with respect to product specifications and quality and may not continue to produce products that are consistent with our standards. If we are forced to rely on products of inferior quality, then our brand recognition and customer satisfaction would likely suffer. These manufacturers may also increase the cost to us of the products we purchase from them.

***If our suppliers increase our costs, our margins may be adversely affected.***

Should we experience significant unanticipated demand, we will be required to significantly expand our access to manufacturing, both from current and new manufacturing sources. If such additional manufacturing capacity is not available on terms as favorable as those obtained from current sources, then our revenues or margins, or both, will suffer.

In addition, a significant portion of our merchandise is directly imported from other countries, and U.S. domestic suppliers who source their goods from other countries supply most of our remaining merchandise. In the event that commercial transportation is curtailed or substantially delayed, we may not be able to maintain adequate inventory levels of important merchandise levels on a consistent basis, which would negatively impact our sales and potentially erode the confidence of our customer base, leading to further loss of sales and an adverse impact on our results of operations.

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In extreme circumstances, it may be necessary to close less productive stores so as to consolidate important merchandise categories into our most productive stores, which would severely impact our results of operations and cash flow.

### ***Our business may be adversely affected by economic and foreign issues abroad.***

Over the past year, we have been working toward developing a global sourcing program to support our growing proprietary branded merchandise. Economic and civil unrest in areas of the world where we source such merchandise, as well as shipping and dockage issues could adversely impact the availability and cost of such merchandise. Political instability, the financial instability of our suppliers, merchandise quality issues, trade restrictions, tariffs, currency exchange rates, transport capacity and costs, inflation and other factors relating to foreign trade are beyond our control. In the event of disruptions or delays in deliveries due to economic or political conditions in foreign countries, such disruptions or delays could adversely affect our results of operations unless and until alternative supply arrangements could be made. These and other issues affecting our suppliers could adversely affect our business and financial performance.

### ***The loss of any of our key trademarks or licenses could adversely affect demand for our products.***

We own and use a number of trademarks and operate under several trademark license agreements. We believe that these trademarks have significant value and are instrumental in our ability to create and sustain demand for and to market our products. We cannot assure you that these trademarks and licensing agreements will remain in effect and enforceable or that any license agreements, upon expiration, can be renewed on acceptable terms or at all. In addition, any future disputes concerning these trademarks and licenses may cause us to incur significant litigation costs or force us to suspend use of the disputed trademarks.

### ***Our business is seasonal and is affected by general economic conditions.***

Like most other retail businesses, our business is seasonal. Historically, over 30% of our net sales have been made and approximately 70% or more of our operating income has been generated during November, December and January. Like other retail businesses, our operations may be negatively affected by local, regional or national economic conditions, such as levels of disposable consumer income, consumer debt, interest rates and consumer confidence. Any economic downturn might cause consumers to reduce their spending, which could negatively affect our sales. A sustained economic downturn would likely have an adverse affect on our results of operations.

### ***We face greater challenges in managing several brands in multiple channels of distribution.***

Several retailers have had problems executing a corporate strategy aimed at operating multiple brands in multiple channels. We have expertise in the outlet channel of distribution, but our acquisition of Casual Male caused us to conduct operations in the specialty store and internet channels of distribution. We are now also responsible for all aspects of brand management with respect to the Casual Male brand and the Rochester brand, including advertising and promotion, and the servicing and merchandising of private label merchandise. Under our current operating model, this function is mostly the responsibility of the branded manufacturer. If the managing of multiple brands within multiple channels is poorly executed, we will not achieve our expected level of profitability, and could ultimately be compelled to eliminate the multiple brand strategy so that the organization may focus on a single brand strategy.

### ***Acts of terrorism or a catastrophic event could negatively impact our operating results and financial condition.***

Unforeseen events, including war, terrorism and other international conflicts, public health issues, and natural disasters such as earthquakes, hurricanes or other adverse weather and climate conditions, whether occurring in the U.S. or abroad, could disrupt our operations, or the operations of our vendors and other suppliers, or result in political or economic instability.

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The continued threat of terrorism and heightened security measures in response to an act of terrorism may disrupt commerce and undermine consumer confidence which could negatively impact our sales by causing consumer spending to decline. Furthermore, an act of terrorism or war, or the threat thereof, could negatively impact our business by interfering with our ability to obtain merchandise from vendors or substitute suppliers at similar costs in a timely manner.

### **Risks Related to Our Corporate Structure and Stock**

***Our stock price has been and may continue to be extremely volatile due to many factors.***

The market price of our common stock has fluctuated in the past and may increase or decrease rapidly in the future depending on news announcements and changes in general market conditions. Between January 31, 2003 and March 23, 2007, the closing price of our common stock ranged from a low of \$1.95 per share to a high of \$15.10 per share. The following factors, among others, may cause significant fluctuations in our stock price:

- news announcements regarding quarterly or annual results of operations;
- monthly comparable store sales;
- acquisitions;
- competitive developments;
- litigation affecting us; or
- market views as to the prospects of the retail industry generally.

***We cannot assure our stockholders that our stock repurchase program will result in a positive return of capital to our stockholders and stock repurchases could increase the volatility of the price of our common stock.***

On December 4, 2006, our board of directors authorized a stock repurchase program to repurchase up to \$75 million of our common stock during calendar year 2007 through open market and privately negotiated transactions pursuant to Rule 10b-18 of the Securities Exchange Act of 1934, as amended. The stock repurchase program will expire on December 31, 2007 and may be terminated earlier at any time without prior notice. We may also from time to time adopt one or more 10b5-1 Plans to effect stock repurchases under this program.

Any repurchases pursuant to our stock repurchase program could affect our stock price and add volatility. There can be no assurance that the repurchases will be made at the best possible price. The existence of a stock repurchase program could also cause our stock price to be higher than it would be in the absence of such a program and could potentially reduce the market liquidity for our stock.

There can be no assurance that stock repurchases will create value for stockholders because the market price of the stock may decline significantly below the levels at which we repurchased shares of stock. Our stock purchase program is intended to deliver stockholder value over the long-term, but short-term stock price fluctuations can reduce the program's effectiveness.

***Rights of our stockholders may be negatively affected if we issue any of the shares of preferred stock which our Board of Directors has authorized for issuance.***

We have available for issuance 1,000,000 shares of preferred stock, par value \$0.01 per share. Our Board of Directors is authorized to issue any or all of this preferred stock, in one or more series, without any further action on the part of stockholders. The rights of our stockholders may be negatively affected if we issue a series of preferred stock in the future that has preference over our common stock with respect to the payment of dividends or distribution upon our liquidation, dissolution or winding up.

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*State laws and our certificate of incorporation may inhibit potential acquisition bids that could be beneficial to our stockholders.*

We are subject to certain provisions of Delaware law, which could also delay or make more difficult a merger, tender offer or proxy contest involving us. In particular, Section 203 of the Delaware General Corporation Law prohibits a Delaware corporation from engaging in certain business combinations with any interested stockholder for a period of three years unless specific conditions are met. In addition, certain provisions of Delaware law could have the effect of delaying, deferring or preventing a change in control of us, including, without limitation, discouraging a proxy contest or making more difficult the acquisition of a substantial block of our common stock. The provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

Our corporate offices and distribution center are located at 555 Turnpike Street in Canton, Massachusetts. The property consists of a 755,992 gross square foot building located on approximately 27.3 acres in Canton, MA. We owned the property until January 30, 2006, at which time we entered into a sale-leaseback transaction with Spirit Finance Corporation, a third-party real estate investment trust (“Spirit”). In connection with the transaction, we sold our headquarters and distribution center property to Spirit for \$57.0 million. At the closing on February 1, 2006, we then entered into a twenty-year lease agreement with a wholly-owned subsidiary of Spirit whereby we agreed to lease the property back for an annual rent of \$4.6 million. In the first quarter of fiscal 2006, we realized a gain of approximately \$29.3 million on the sale of this property, which has been deferred and is being amortized over the initial 20 years of the related lease agreement. Accordingly, our annual rent of \$4.6 million will be offset by \$1.5 million related to the amortization of this deferred gain.

As of February 3, 2007, we operated 407 Casual Male XL retail stores, 65 Casual Male XL outlet stores, and 24 Rochester Big & Tall stores. All of these stores are leased by us directly from owners of several different types of centers, including life-style centers, shopping centers, free standing buildings, outlet centers and downtown locations. The store leases are generally five years in length and contain renewal options extending their terms to between 5 and 10 years. Following this discussion is a listing by state of all store locations open at February 3, 2007.

Sites for store expansion are selected on the basis of several factors intended to maximize the exposure of each store our target customers. These factors include the demographic profile of the area in which the site is located, the types of stores and other retailers in the area, the location of the store within the center and the attractiveness of the store layout. We also utilize financial models to project the profitability of each location using assumptions such as the center’s sales per square foot averages, estimated occupancy costs and return on investment requirements. We believe that our selection of locations enables our stores to attract customers from the general shopping traffic and to generate our own customers from surrounding areas.

See also “Management’s Discussion and Analysis of Financial Condition and Results of Operation—Liquidity and Capital Resources—Capital Expenditures.”

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Store locations by State at February 3, 2007

*Casual Male XL Retail and Casual Male XL Outlet stores (Outlets denoted by an asterisk)*

*Alabama*  
Foley\*  
Hoover  
Huntsville  
Mobile  
Montgomery

*Arizona*  
Chandler  
Mesa  
Phoenix (3)  
Tempe\*  
Tucson (2)

*Arkansas*  
Ft. Smith  
Jonesboro  
Little Rock

*California*  
Bakersfield  
Camarillo\*  
Commerce  
Culver City  
Daly City  
Downey  
Dublin  
El Cajon  
Emeryville  
Escondido  
Folsom\*  
Fremont  
Fresno  
Fullerton  
Gilroy\*  
Glendale  
Lake Elsinore\*  
Lake Forest  
Lakewood  
Long Beach  
Los Altos  
Los Angeles  
Modesto  
Northridge  
Ontario\*  
Orange  
Oxnard  
Palmdale  
Palm Desert  
Pasadena  
Pleasant Hill  
Riverside  
Roseville  
Sacramento (2)  
Salinas  
San Bernardino  
San Diego  
San Francisco

*California, cont.*  
San Jose (2)  
San Leandro  
Santa Ana  
Santa Rosa  
Stockton  
Temecula  
Tracy\*  
Upland  
Vacaville\*  
Valencia  
Victorville  
West Covina

*Colorado*  
Colorado Springs  
Glendale  
Littleton  
Lone Tree  
Loveland\*  
Westminster

*Connecticut*  
Danbury  
East Haven  
Groton  
Hamden  
Manchester  
Milford  
Waterbury  
West Hartford  
Westbrook\*  
Wethersfield

*Delaware*  
Dover  
Rehoboth Beach\*  
Wilmington

*Florida*  
Altamonte Springs  
Boca Raton  
Boynton Beach  
Brandon

Daytona Beach  
Fort Lauderdale  
Ft. Myers  
Gainesville  
Hialeah  
Jacksonville  
Lakeland  
Largo  
Lauderdale Lakes  
Miami  
No. Miami Beach  
Ocala  
Orange Park  
Orlando (3)

***Florida, cont.***

Pembroke Pines  
Pensacola  
Sarasota  
St. Augustine\*  
Stuart  
Tampa (1)  
Vero Beach\*  
West Palm Beach

***Georgia***

Alpharetta  
Augusta  
Calhoun\*  
Commerce\*  
Duluth  
Kennesaw  
Lake Park\*  
Morrow  
Savannah  
Smyrna  
Stone Mountain

***Illinois***

Bloomington  
Bloomington  
Champaign  
Chicago (3)  
Evergreen Park  
Fairview Heights  
Gurnee\*  
Harwood Heights  
Hodgkins  
Hometown  
Joliet  
Lansing  
Matteson  
Melrose Park  
Naperville  
Niles  
North Riverside  
Oakbrook Terrace  
Orland Park  
Peoria  
Rockford  
Schaumburg  
Skokie  
Springfield  
St. Charles  
Vernon Hills

***Indiana***

Edinburgh\*  
Evansville  
Fort Wayne  
Greenwood  
Indianapolis (3)  
Lafayette

***Indiana, cont.***

Merrillville  
Michigan City\*  
Mishawaka  
Muncie

***Iowa***

Clive  
Davenport  
Marion  
Williamsburg\*

***Kansas***

Olathe\*  
Overland Park  
Topeka  
Wichita

***Kentucky***

Bowling Green  
Florence  
Lexington  
Louisville (2)

***Louisiana***

Baton Rouge  
Bossier City\*  
Gonzales\*  
Lafayette  
Metairie

***Maine***

Kittery\*  
South Portland

***Maryland***

Annapolis  
Columbia  
District Heights  
E. Baltimore  
Frederick  
Glen Burnie

Greenbelt  
Hagerstown\*  
Largo  
Towson  
Rockville  
Waldorf

*Massachusetts*

Boston  
Burlington  
Dedham  
Framingham  
Hanover  
Hyannis  
Medford  
North Attleboro  
North Dartmouth

*Massachusetts, cont.*

Saugus  
Shrewsbury  
Tyngsboro  
West Springfield  
Wrentham\*

*Michigan*

Allen Park  
Ann Arbor  
Battle Creek  
Birch Run\*  
Dearborn  
Flint  
Grand Rapids  
Howell\*  
Lansing  
Madison Heights  
Novi (Detroit)  
Portage  
Redford Township  
Roseville  
Saginaw  
Southfield  
Southgate  
Sterling Heights  
Warren  
Waterford  
Westland

*Minnesota*

Albertville\*  
Blaine  
Burnsville  
Duluth  
Maplewood  
Richfield  
Roseville  
West St. Paul  
Woodbury

*Mississippi*

Jackson  
Gulfport\*

*Missouri*

Chesterfield  
Columbia  
Independence  
Kansas City  
Richmond Heights  
St. Ana  
St. Louis  
St. Peters  
Springfield  
Branson\*  
Osage Beach\*

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### *Casual Male XL Retail and Casual Male XL Outlet Stores, continued*

Lincoln Omaha (3)	<i>Nebraska</i>
Salem Manchester Tilton*	<i>New Hampshire</i>
Bloomfield Cherry Hill Deptford E. Brunswick East Rutherford Eatontown Hazlet Jackson* Lawrenceville Linden May's Landing Menlo Park Palmyra Paramus Secaucus Somerville Succasunna Tom's River Totowa Union West Berlin	<i>New Jersey</i>
Henderson Las Vegas (2) Laughlin* Reno	<i>Nevada</i>
Albuquerque (2)	<i>New Mexico</i>
Albany Bayshore L.I. Bronx (2) Brooklyn (3) Carle Place Centereach Cheektowaga Elmhurst Greenburgh Irondequoit Johnson City Lake George* Massapequa Nanuet New York Niagara Falls* Northport Patchogue Poughkeepsie Riverhead*	<i>New York</i>
Rochester Staten Island Syracuse Tonawanda Valley Stream Victor Waterloo* Yonkers	<i>New York, cont.</i>
Asheville Burlington* Charlotte Fayetteville Greensboro Greenville Pineville Raleigh Smithfield* Wilmington Winston-Salem	<i>North Carolina</i>
Fargo	<i>North Dakota</i>
Akron Boardman Canton Cincinnati Columbus (5)* Fairlawn Jeffersonville* Mansfield Mentor Miamisburg (2) Niles North Olmsted North Randall Springdale Toledo Trotwood	<i>Ohio</i>

Oklahoma City (2)  
Tulsa

**Oklahoma**

Beaverton  
Eugene  
Lincoln City\*  
Portland  
Salem

**Oregon**

Altoona  
Erie  
Gettysburg\*  
Greensburg  
Grove City\*  
Harrisburg

**Pennsylvania**

King Of Prussia  
Lancaster\*  
Langhorne  
Monroeville  
Philadelphia (4)\*  
Pittsburgh (2)  
Scranton  
Springfield  
Tannersville  
West Mifflin  
Whitehall  
Wilkes Barre  
Willow Grove  
Wyomissing  
York

**Pennsylvania, cont.**

Warwick

**Rhode Island**

Charleston  
Columbia (2)\*  
Florence  
Gaffney\*  
Greenville  
Myrtle Beach\*  
N. Charleston

**South Carolina**

Sioux Falls

**South Dakota**

Antioch  
Chattanooga  
Knoxville  
Lakeland\*  
Madison  
Memphis (2)  
Pigeon Forge\*

**Tennessee**

Allen\*  
Amarillo  
Arlington  
Austin  
Conroe\*  
Corpus Christi  
Dallas (2)  
El Paso  
Fort Worth  
Hillsboro\*  
Houston (6)  
Humble  
Hurst  
Irving  
Laredo  
Lewisville  
Lubbock  
Mercedes  
Mesquite  
Midland

**Texas**

Pasadena  
Plano  
Round Rock  
San Antonio (3)  
San Marcos\*  
Selma  
Shenandoah  
Sunset Valley  
Tyler  
Waco  
Webster

**Texas, cont.**

S. Burlington

**Vermont**

Alexandria  
Charlottesville  
Fairfax  
Fredericksburg  
Hampton  
Manassas  
Norfolk  
Richmond (2)

**Virginia**

Roanoke  
Sterling  
Virginia Beach  
Woodbridge\*  
Williamsburg

**Virginia, cont.**

**Washington**

Auburn\*  
Bellevue  
Lynnwood  
Spokane  
Tacoma  
Tukwila

*Wisconsin*

Brookfield  
Brown Deer  
Grand Chute  
Green Bay  
Greenfield  
Johnson Creek\*  
Madison  
Mosinee\*  
Pleasant Prairie

*West Virginia*

South Charleston

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**Rochester Big & Tall Stores**

Phoenix, AR  
Beverly Hills, CA  
Costa Mesa, CA  
Fresno, CA  
Sacramento, CA  
San Francisco (1), CA  
San Jose, CA  
Walnut Creek, CA  
Las Vegas, NV  
Dallas, TX  
Houston, TX

**Southwest**

Aventura, FL  
Atlanta, GA  
Boca Raton, FL  
Washington D.C.

**Southeast**

Boston, MA  
Central Valley, NY\*  
Chicago, IL  
Manhasset, NY  
Natick, MA  
New York, NY  
Seattle, WA  
Southfield, MI

**North**

London, England

**International**

**Sears Canada Stores**

Calgary—Downtown  
Calgary—14<sup>th</sup> Ave  
Calgary—South Centre  
Edmonton—Kingsway  
Edmonton—Southgate

**Alberta**

Kitchener  
Windsor  
Pickering  
London  
Toronto  
Etobicoke  
Scarborough

**Ontario**

**Item 3. Legal Proceedings**

We have filed suit against a competitor and a former employee and his company alleging breach of contract, misappropriation of confidential business information and other business torts, including violations of the Computer Fraud and Abuse Act. This suit is pending in Massachusetts Federal District Court and is expected to be tried in June 2007. The defendants have recently filed counterclaims in this suit that we believe are without merit. We believe that we have sustained substantial damages as a result of the defendants' actions. We intend to prosecute these claims vigorously at trial. We have also recently filed a separate suit in Massachusetts Federal Court against certain of the same defendants, as well as a former supplier and competitor, alleging similar misconduct. That suit is in its preliminary stages.

We are subject to various legal proceedings and claims that may arise in the ordinary course of business. We believe that the resolution of these matters will not have an adverse impact on our results of operations or our financial position.

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

No matters were submitted to a vote of our security holders during the fourth quarter of fiscal 2006.

**PART II.**

**Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

Our common stock is listed for trading on the NASDAQ Global Market under the symbol “CMRG.”

The following table sets forth, for the periods indicated, the high and low per share sales prices for the common stock, as reported on the Nasdaq consolidated reporting system.

<u>Fiscal Year Ended January 28, 2006</u>	<u>High</u>	<u>Low</u>
First Quarter	\$ 7.65	\$ 5.18
Second Quarter	7.95	6.03
Third Quarter	7.51	5.24
Fourth Quarter	7.36	5.53
<u>Fiscal Year Ended February 3, 2007</u>	<u>High</u>	<u>Low</u>
First Quarter	\$10.15	\$ 7.05
Second Quarter	11.20	9.24
Third Quarter	14.98	10.76
Fourth Quarter	15.10	11.93

As of March 15, 2007, based upon data provided by independent shareholder communication services and the transfer agent for our common stock, there were approximately 248 holders of record of our common stock. The number of holders does not include individuals or entities who beneficially own shares but whose shares are held of record by a broker or clearing agent, but does include each such broker or clearing agency as one record holder.

We have not paid and do not anticipate paying cash dividends on our common stock. In addition, financial covenants in our loan agreement may restrict dividend payments. For a description of these financial covenants see Note C to the Notes to the Consolidated Financial Statements.

**Issuer Purchases of Equity Securities**

The following is a summary of our share repurchase activity for the three months ended February 3, 2007:

<u>Fiscal Period</u>	<u>(a) Total Number of Shares Purchased(2)</u>	<u>(b) Average Price Paid per Share</u>	<u>(c) Total Number of Shares Purchased as Part of Publicly Announced Plan(1)</u>	<u>(d) Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plans or Programs(1)</u>
October 29, 2006 to November 25, 2006	—	—	—	\$ 16,858,112
November 26, 2006 to December 30, 2006	—	—	—	\$ 75,000,000
December 31, 2006 to February 3, 2007	164,387	\$ 12.57	164,387	\$ 72,934,346

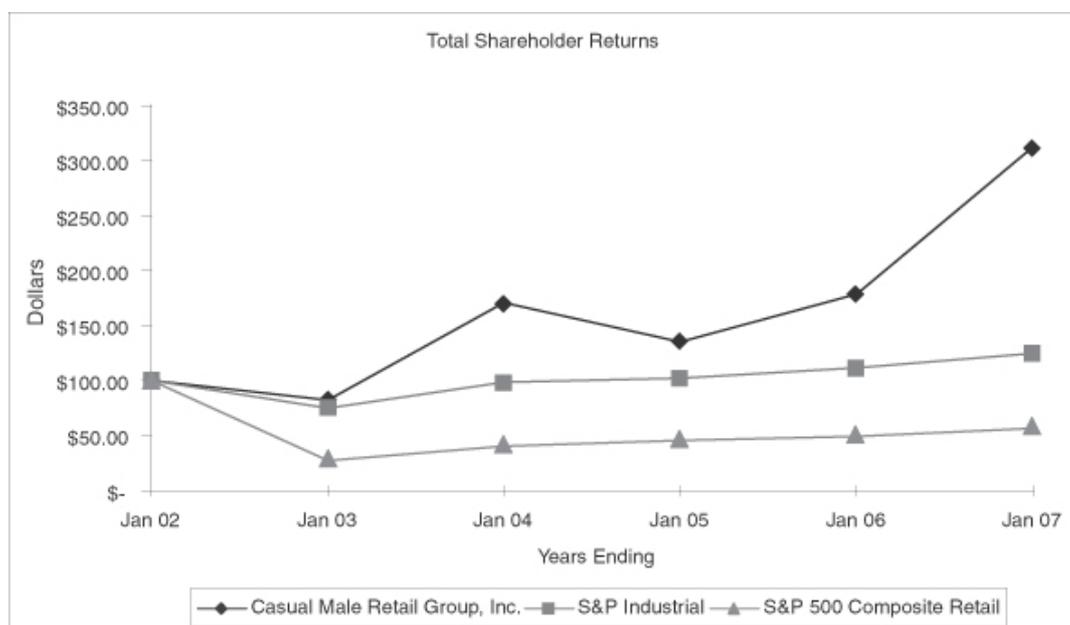
- (1) On December 18, 2006, we publicly announced a \$75 million stock repurchase program, which replaced our existing \$30 million stock repurchase program that was currently in place. The program will expire on December 31, 2007 but may be terminated earlier at any time without prior notice.
- (2) Share repurchases under the program were made pursuant to open-market purchases. On January 30, 2007, we adopted a 10b5-1 Plan to repurchase up to 3 million shares, or \$35 million, whichever occurs first, at specified market prices. The 10b5-1 Plan expires April 3, 2007.

Subsequent to year end, we have repurchased an additional 2.6 million shares for an aggregate cost of \$33.0 million. We used borrowings from our Credit Facility to fund this stock repurchase program. As of March 27, 2006, we have repurchased 2.8 million shares under our \$75.0 million stock repurchase program and have \$40.0 million remaining for the balance of fiscal 2007.

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**Stock Performance Graph**

The following Performance Graph compares our cumulative stockholder return with that of a broad market index (Standard & Poor’s Industrials Index) and one published industry index (Standard & Poor’s 500—Composite Retail Index) for each of the most recent five years ended January 31. The cumulative stockholder return for shares of our common stock (“CMRG”) and each of the indices is calculated assuming that \$100 was invested on January 31, 2002. We paid no cash dividends during the periods shown. The performance of the indices is shown on a total return (dividends reinvested) basis. The graph lines merely connect January 31 of each year and do not reflect fluctuations between those dates. In addition there is a chart of the annual percentage return of our common stock, the S & P Industrial and Composite Retail 500.



**Annual Return Percentage**

Company/Index	Years Ending				
	Jan 03	Jan 04	Jan 05	Jan 06	Jan 07
CMRG	(17.75)	107.60	(20.94)	32.41	74.55
S&P INDUSTRIALS	(25.23)	32.13	3.43	9.29	11.94
COMPOSITE RETAIL—500	(72.84)	48.35	13.96	7.84	13.97

**Indexed Returns**

Company/Index	Base Period	Jan 03	Jan 04	Jan 05	Jan 06	Jan 07
	Jan 02					
CMRG	100	82.25	170.75	135.00	178.75	312.00
S&P INDUSTRIALS	100	74.77	98.78	102.17	111.67	125.00
COMPOSITE RETAIL—500	100	27.16	40.29	45.91	49.51	56.43

The performance graph above shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liability of that section. This graph will not be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

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**Item 6. Selected Financial Data**

	Fiscal Years Ended (1),(2)				
	February 3, 2007 (Fiscal 2006)	January 28, 2006 (Fiscal 2005)	January 29, 2005 (Fiscal 2004) (3)	January 31, 2004 (Fiscal 2003) (3)	February 1, 2003 (Fiscal 2002) (3)
(In millions, except per share, weighted average shares and operating data)					
<b>INCOME STATEMENT DATA:</b>					
Sales	\$ 467.5	\$ 421.4	\$ 365.0	\$ 339.3	\$ 247.6
Gross profit, net of occupancy costs	212.6	182.2	150.4	140.2	104.8
Selling, general and administrative	170.9	151.9	132.5	115.6	80.3
Provision for impairment of assets, store closings and severance	1.2	—	—	—	5.1
Depreciation and amortization	15.1	12.7	9.9	7.5	6.1
Operating income	25.4	17.6	8.0	17.1	13.3(9)
Other income (expense), net	1.1(4)	(1.0)(6)	0.3(7)	(14.1)(8)	—
Interest expense, net	(5.5)	(8.6)	(8.0)	(11.2)	(9.1)
Income (loss) from continuing operations before minority interest and taxes	21.0	8.0	0.3	(8.2)	4.2
Less: minority interest	—	—	(0.7)	0.3	0.2
Provision (benefit) for income taxes	(21.6)(5)	(2.8)(5)	—	—	8.0(9)
Income (loss) from continuing operations	\$ 42.6	\$ 10.8	\$ 1.0	\$ (8.5)	\$ (4.0)
Income (loss) from discontinued operations	—	—	0.5(7)	(3.6)(8)	(34.8)(9)
Net income (loss)	<u>\$ 42.6</u>	<u>\$ 10.8</u>	<u>\$ 1.5</u>	<u>\$ (12.1)</u>	<u>\$ (38.8)</u>
Income (loss) per share from continuing operations—basic	\$ 1.21	\$ 0.31	\$ 0.03	\$ (0.24)	\$ (0.16)
Income (loss) per share from continuing operations—diluted	\$ 0.98	\$ 0.30	\$ 0.03	\$ (0.24)	\$ (0.16)
<b>Net income (loss) per share—basic</b>	<b>\$ 1.21</b>	<b>\$ 0.31</b>	<b>\$ 0.04</b>	<b>\$ (0.34)</b>	<b>\$ (1.54)</b>
<b>Net income (loss) per share—diluted</b>	<b>\$ 0.98</b>	<b>\$ 0.30</b>	<b>\$ 0.04</b>	<b>\$ (0.34)</b>	<b>\$ (1.54)</b>
Weighted average shares outstanding:					
for net income (loss) per share—basic	35,276	34,306	34,511	35,702	25,117
for net income(loss) per share—diluted	46,457	35,860	36,733	35,702	25,117
<b>BALANCE SHEET DATA:</b>					
Working capital	\$ 66.8	\$ 33.3	\$ 22.2	\$ 48.4	\$ (4.0)
Inventories	114.5	91.5	79.9	98.7	103.2
Property and equipment, net	59.1	51.3	74.7	68.3	64.1
Total assets	320.4	283.8	267.8	272.7	266.9
Long term debt	— (10)	95.4	117.8	122.4	51.0
Stockholders' equity	218.0(10)	89.2	77.0	80.8	91.1
<b>OPERATING DATA:</b>					
Net sales per square foot	\$ 211	\$ 195	\$ 171	\$ 179	\$ 183
Number of stores open at fiscal year end	508	518	527	560	556

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- (1) Our fiscal year is a 52 or 53 week period ending on the Saturday closest to January 31. The fiscal year ending February 3, 2007 included 53 weeks.
- (2) The results for fiscal 2004 include the effect, since October 30, 2004, of the acquisition of Rochester Big & Tall Clothing. The results for fiscal 2002 include the effect, since May 14, 2002, of the acquisition of Casual Male Corporation and certain of its subsidiaries.
- (3) In fiscal 2004, we completed the closure of our Levi's®/Dockers® business through the sale of 32 stores and the closure of the remaining 26 stores. In accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," we have shown the results of our Levi's®/Dockers® business for all periods as discontinued operations. Accordingly, certain prior-year amounts on the Income Statement Data have been reclassified to discontinued operations to conform to the current-year presentation.
- (4) The results for fiscal 2006 include other income of \$1.1 million related to our initial gain on the sale of LP Innovations, Inc. in the amount of \$1.5 million. This gain was offset slightly by approximately \$0.4 million of unrelated non-operating expenses primarily related to legal costs. See Note H to the Notes to the Consolidated Financial Statements for further details.
- (5) In the fourth quarter of fiscal 2006, we reversed \$31.0 million of our deferred tax valuation allowance of which \$30.5 million was recognized as an income tax benefit and \$0.5 million was recorded as an adjustment to additional paid-in capital. The income tax benefit of \$30.5 million was partially offset by \$8.9 million in tax provisions. In the fourth quarter of fiscal 2005, we recognized an income tax benefit of \$2.8 million associated with the partial reversal of \$3.1 million of our valuation allowance. This benefit was partially offset by \$0.3 million in tax provisions. For a discussion of the valuation allowance reversals, see Note D to the Notes to the Consolidated Financial Statements.
- (6) The results for fiscal 2005 include other expenses of \$1.0 million related to a \$1.2 million prepayment penalty associated with the early repayment of our mortgage on our corporate headquarters offset partially by income of \$0.2 million of bond discount, net of the write-off of deferred financing costs, recognized on the early prepayment of \$5.3 million of our convertible notes due 2024.
- (7) The results for fiscal 2004 include other income of \$0.3 million related to the \$3.1 million gain on our sale of our 50.5% interest in the Ecko Unltd.® stores to Ecko.Complex, LLC, offset partially by approximately \$1.9 million of costs incurred in the second quarter of fiscal 2004 related to our prepayment of our 12% Senior Subordinated Notes, due 2010, in addition to a write-off of approximately \$0.9 million related to previously incurred costs associated with our intended spin-off of our subsidiary LP Innovations, Inc. which was postponed in fiscal 2004. Discontinued operations for fiscal 2004 include a gain of \$1.2 million recognized from the sale of our 32 Levi's®/Dockers® outlet stores and reversal of approximately \$2.5 million of restructuring reserves associated with these stores.
- (8) The results for fiscal 2003 include a charge of approximately \$14.1 million, primarily related to the write-off of costs and prepayment penalties incurred in connection with our prepayment of our long-term debt. Included in discontinued operations for fiscal 2003 is the reversal of \$646,000 of restructuring liabilities related to excess reserves established for landlord settlements.
- (9) The results for fiscal 2002 include \$33.3 million in charges taken in the second and fourth quarters of fiscal 2002 related to the downsizing of the Levi's®/Dockers® business, the integration of Casual Male and the exiting of our Candies® outlet store business. Of the \$33.3 million in charges, approximately \$28.2 million is included as part of discontinued operations. As a result of the restructuring and its impact on our operating profitability, results for fiscal 2002 also included a non-cash charge of \$8.0 million to further reduce the carrying value of certain deferred tax assets.
- (10) During the fourth quarter of fiscal 2006, in connection with our notice of redemption of our convertible notes, all note-holders converted their \$94.8 million of convertible notes into approximately 8.9 million shares of common stock.

**Selected 5 Year Financial Data for the Big & Tall Apparel Business**

The following table provides historical financial information for the Big & Tall Apparel Business for the past five fiscal years, and includes the operating results from our Casual Male business and since October 29, 2004, the operating results of Rochester. Information for our Casual Male business prior to May 14, 2002 is according to the financial records of Casual Male Corp., the predecessor company.

	Fiscal Years Ended				February 1, 2003 (Fiscal 2002) (1)
	February 3, 2007 (Fiscal 2006)	January 28, 2006 (Fiscal 2005)	January 29, 2005 (Fiscal 2004)	January 31, 2004 (Fiscal 2003)	
	(in millions, except store count)				
<b>OPERATING INCOME:</b>					
Sales	\$ 467.5	\$ 421.4	\$ 352.4	\$ 319.2	\$ 329.2
Gross profit, net of occupancy costs	212.6	182.2	146.5	132.5	140.1
Selling, general and administrative	170.9	151.9	127.9	109.3	116.0
Provision for employment contract terminations	1.2	—	—	—	—
Depreciation and amortization	15.1	12.7	9.2	6.7	8.5
Operating income	<u>\$ 25.4</u>	<u>\$ 17.6</u>	<u>\$ 9.4</u>	<u>\$ 16.5</u>	<u>\$ 15.6</u>
Store count	508	518	527	481	467

(1) In August 2001, Casual Male Corp. initiated a store-closing plan in conjunction with its bankruptcy proceedings. We have excluded the operating results, if any, of these store closings for Fiscal 2002.

**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations**

**FORWARD LOOKING STATEMENTS**

As noted above, this Annual Report on Form 10-K, including, without limitation, this Item 7, contains "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995. Actual results or developments could differ materially from those projected in such statements as a result of numerous factors, including, without limitation those risks and uncertainties set forth in Item 1A, *Risk Factors* which you are encouraged to read. The following discussion and analysis of our financial condition and results of operations should be read in light of those risks and uncertainties and in conjunction with our accompanying Consolidated Financial Statements and Notes thereto.

**EXECUTIVE OVERVIEW**

**Summary**

Our objective since acquiring the Casual Male business in fiscal 2002 has been to become the premier retailer in the big & tall industry by (1) improving upon operating efficiencies with lower operating costs and replacement of Casual Male's antiquated systemic infrastructure, (2) updating Casual Male's merchandise assortments with a balanced mix of branded and private label merchandise addressing the wardrobe needs of its niche consumer base, and (3) divesting our other non-core businesses to enable strategic focus towards the our core business. We have also been able to expand our core business through certain strategic acquisitions, such as Rochester Big & Tall Clothing in fiscal 2004 and Jared M. in fiscal 2006.

With our system enhancements complete, we are now able to market our merchandise to a variety of target customer market segments, both geographically by store and by lifestyle. We are able to identify, through statistical clustering, our key customer groups, their demographics and their purchasing habits. Just as important, we are better able to service our customer's size requirements throughout the chain, either by being in-stock of the sizes in demand at the store level, or providing to our customers the sizes required from our direct fulfillment center. With access to this type of information, we have been able to improve upon our merchandising strategies and inventory management, resulting in continued sales growth and margin improvements. We have posted 13 quarters of consecutive comparable store sales increases and continue to see substantial growth in our catalog and e-commerce business.

For fiscal 2006, our operating income increased by approximately 45% over the prior year as a result of strong comparable sales and continued improvement in our gross margin rates. Over the course of the prior two years, our operating income has grown from \$8.0 million to \$25.4 million, representing an improvement of 320 basis points in operating margin. During the same two year period, our gross margins have improved by 430 basis points. Fiscal 2006 operating income increased 1.2 percentage points to 5.4% of sales, continuing towards our previously stated goal of achieving a 10% operating margin. The primary factors contributing to our operating margin improvements are:

- effective merchandising strategies resulting in meaningful comparable sales increases;
- with the strength of merchandise assortment, our marketing strategies have been changed from a promotional cadence to brand imaging, resulting in significantly less retail markdowns and improved gross margins; and
- our private label direct sourcing program has further improved gross margins.

Over the past year, we have been focused on driving our operating margin performance while also striving to achieve our long-term goal of growing our market share of the big & tall market. We believe that market share growth will not only be gained from existing brands and products, but also in improving our existing brands, creating new brands directed toward certain market segments, and offering other products appropriate for our target market. During fiscal 2006, there were several events and activities that we undertook which are intended

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to benefit our growth in fiscal 2007 and beyond. These initiatives are described below under “Brand and Product Extensions” and “Realignment of Rochester Merchandising and Store Operation Functions.” As a result of the activities stemming from our efforts to form brand and product extensions for our existing businesses, integrate all Rochester functions with those of Casual Male, and otherwise position us for forecasted growth from these businesses and our core Casual Male business, we incurred approximately \$6.9 million in incremental selling, general and administrative expenses (“SG&A”) expenses during fiscal 2006, including \$1.2 million in employment contract termination costs.

We intend to grow market share by:

- continuing to improve upon offering relevant, meaningful lifestyle product assortments to our customers;
- improving upon our methodology of planning and allocating appropriate assortments to each store, considering the demographics and lifestyle tendencies of each store; and
- further expanding upon the product offerings to our customers through extensions of product assortments and through the creation of new brands tailored to the particular market segment demographics of our target market.

In these ways, we expect to continue to produce gains in market share and, accordingly, sales volume increases, maintain and slightly improve upon our gross margins, and slow the SG&A expense growth incurred in fiscal 2006, resulting in our expectations to show healthy operating margin growth with increases in our cash flow. Based on our profitability in fiscal 2006, our expectations that profitability and free cash flow will improve further, and a virtually debt-free balance sheet at year end, we intend to repurchase \$75 million of our common stock during fiscal 2007.

The following is a brief summary of some of the events and transactions that took place this past fiscal year toward these long-term goals and business strategies:

### ***Financing Transactions***

From a financial perspective, we successfully completed several transactions this past fiscal year which have significantly benefited our balance sheet and positioned us for increased average liquidity and added flexibility for our cash flow needs. During the first quarter of fiscal 2006, we entered into a sale-leaseback transaction of our corporate headquarters. See Note N to the Notes to the Consolidated Financial Statements for a complete description of this transaction, but in summary the net proceeds from the sale were approximately \$55.9 million which we used primarily to reduce outstanding bank debt. As part of this transaction, we realized a gain of approximately \$29.3 million on the sale of this property, which is being deferred and amortized over the initial 20 years of the related lease agreement. Accordingly, our annual rent of \$4.6 million will be offset by \$1.5 million related to the amortization of this deferred gain.

In the fourth quarter of fiscal 2006, in conjunction with our announcements to redeem all of our outstanding 5% senior subordinated convertible notes due 2024 (“Convertible Notes”), substantially all of our convertible note holders converted their notes into shares of our common stock. See Note C to the Notes to the Consolidated Financial Statements. As a result of these two transactions, we were essentially debt-free at February 3, 2007.

### ***Re-Branding Initiative***

One of our largest initiatives this year was the completion of the re-branding for all of our Casual Male Big & Tall retail and outlet stores to “Casual Male XL”. Our objective was to remove the stigma associated with the words “big & tall” so as to appeal to a broader group of our target market, a younger demographic and the smaller and taller segment of the big & tall market. This re-branding included the re-design of our websites, catalogs, store fronts, in-store signage and all forms of customer communications. We believe that this

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re-branding initiative had a direct impact on our positive comparable sales increases during fiscal 2006. As a result of the re-branding we have been able to attract an extended customer group whom previously had not shopped with us. The average age of our customer decreased from 48.5 years of age to 47 years of age in fiscal 2006 and we have seen increases in sales among the smaller and taller size range of the big & tall market.

### ***Loyalty Program Launch***

During the third quarter of fiscal 2006, we introduced a customer loyalty program for our Casual Male customers. Under the program, customers will accumulate points based on purchase activity and earn rewards by reaching certain point thresholds. Rewards earned are valid through the stated expiration date, which is approximately five months from the mailing date and can be redeemed for a discount on a future purchase of merchandise. Rewards not redeemed during the five-month redemption period are forfeited. We believe that these efforts can lead to new customers as well as a more loyal customer base.

### ***Brand and Product Extensions***

While we were producing an overall comparable sales increase of 9.0% from our retail and direct channels in the Casual Male and Rochester businesses, we also commenced activities to establish a new brand and offer product extensions to our existing brands in fiscal 2007 and beyond.

#### *B&T Factory Direct*

During fiscal 2006, we began to reposition our merchandise strategy for our Casual Male XL outlet stores by building a strong private label program with similar lifestyle assortments found in our retail stores but made at lower costs and sold at lower price points for our value-oriented customers. We currently carry *Canyon Ridge*, which is similar in style to our *Harbor Bay* product line, and *Flex Zone*, which is similar to our *Comfort Zone*<sup>TM</sup>. We will be expanding this offering in 2007 to include *555 Turnpike*, which will be targeted toward our younger customers similar to *636 Blue*, and *Fuse*, a contemporary line similar in style to our *Synrgy* product line.

Also, to support the multi-channel opportunities of this new brand, we commenced a direct business in Fall 2006 by starting a new website, [www.btirect.com](http://www.btirect.com). We plan to expand this new brand by starting a catalog in fiscal 2007 and increasing our marketing efforts to grow this business.

#### *Jared M*

In May 2006, we acquired Jared M., an apparel company which specializes in selling custom clothing to professional athletes and other high-profile clients, almost all of whom are big & tall. We paid a purchase price of approximately \$2.6 million, plus assumed liabilities. There is a potential payment over a two-year period of an additional \$1.0 million, which is subject to an earn-out provision. See Note K of the Notes to the Consolidated Financial Statements for a complete description of the acquisition.

We see this acquisition as a future growth opportunity for our Rochester business to expand upon the custom clothing business and develop a direct sales capability to cater to a very discriminating and select customer base. Custom clothing is a growing category in the menswear business and Rochester's current offerings are limited. Up until the Jared M. acquisition, Rochester had no direct sales capability. We currently plan to open three Jared M. shops within our existing Rochester Big & Tall stores during fiscal 2007 and expand the business to the Rochester direct businesses.

#### *LivingXL*

In October 2006, we acquired Supersize World, a direct-to-consumer business specializing in the selling of select unique, high quality products which help larger people maintain a more comfortable lifestyle. The types of

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products sold by Supersize World, at its website [www.supersizeworld.com](http://www.supersizeworld.com), include bathroom accessories, health and beauty items, medical products, sports and outdoor accessories, patio furniture, travel accessories and other household items. We paid \$400,000 for the business, and retained the principals of Supersize World under a one year consulting agreement for \$190,000. See Note K of the Notes to the Consolidated Financial Statements for a complete description of the acquisition.

During fiscal 2007, we will be updating the website and changing its name to [www.LivingXL.com](http://www.LivingXL.com). This business will provide a broad array of various products that we believe will benefit our existing customers. By utilizing our current database to market to millions of potential customers through the internet and catalog channels we see an opportunity to further increase our sales without a significant need of capital investment.

### ***Realignment of Rochester Merchandising and Store Operation Functions***

Early in the fourth quarter of fiscal 2006, we realigned the Rochester merchandising and store operation functions so that all Rochester strategies and day-to-day operations were managed from our corporate headquarters in Canton, MA. Prior to this realignment, much of Rochester's merchandising and store operations were being coordinated and managed from our Rochester offices in San Francisco, CA. By integrating all affairs of Rochester under our corporate staff, we believe that the Rochester business will benefit with better coordinated strategies and an integrated staff to implement such strategies to support the growth plans of Rochester.

In connection with integrating Rochester, we eliminated much of the corporate staff located in San Francisco, CA, added well-trained experienced store supervisory management personnel, and integrated the merchant and planning functions of Rochester with those of Casual Male. Additional merchandising and planning staff were hired to absorb the integration without impacting the Casual Male business.

### ***SEGMENT REPORTING***

Since the Casual Male acquisition in May 2002 through the end of fiscal 2004, we operated our business under two reportable store segments: (i) the Big & Tall Apparel business and (ii) Other Branded Apparel businesses. However, with the completion of the closure of our Levi's®/Dockers® business and the sale of our Ecko Unltd.® joint venture interest, we completely exited all operations of our Other Branded Apparel business by the end of fiscal 2004. Beginning in fiscal 2005, we began reporting our operations as one reportable segment, Big & Tall Men's Apparel, which consists of our two operating segments—Casual Male and Rochester. We consider our operating segments to be similar in terms of economic characteristic, production processes and operations, and have therefore aggregated them into a single reporting 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"), fiscal 2004 includes the results of operations for our closed Levi's®/Dockers® stores as discontinued operations. The discontinued operations of these stores include related write-downs for the impairment of assets and costs to liquidate inventory.

### ***RESULTS OF OPERATIONS***

The following discussion includes the results of operations for our Big & Tall Apparel business which is comprised of our Casual Male business and, since October 30, 2004, our Rochester business, as well as our catalog and e-commerce businesses. Our fiscal year is a 52- or 53-week period ending on the Saturday closest to January 31. The fiscal year ended February 3, 2007 covered 53 weeks. Comparable sales for fiscal 2006 were based upon a 52-week comparison to fiscal 2005. Sales and operating income for the additional 53rd week in fiscal 2006 approximated \$6.7 million and \$1.0 million, respectively.

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Comparable sales for all periods include our retail stores that have been open for at least one full fiscal year together with our e-commerce and catalog sales. Stores that have been remodeled, expanded or re-located during the period are also included in our determination of comparable sales. We include our direct businesses as part of our calculation of comparable sales since we are a multi-channel retailer, offering our customers convenient alternatives for their shopping. The method of calculating comparable sales varies across the retail industry and, as a result, our calculation of comparable sales is not necessarily comparable to similarly titled measures reported by other companies. It also includes the Rochester stores, since the date of acquisition of October 30, 2004, against their respective same store base for each of the prior years as if we owned the stores since February 1, 2004.

### *SALES.*

Sales for the 53 weeks in fiscal 2006 increased 10.9% to \$467.5 million as compared to \$421.4 million for the 52 weeks in fiscal 2005. This \$46.1 million increase was primarily due to an increase of 9.0%, or \$37.4 million, in comparable sales. The additional 53rd week in fiscal 2006 generated sales of approximately \$6.7 million.

The comparable sale increase of \$37.4 million was driven by increases among all channels, with the Casual Male retail store operations representing almost 49% of this increase. Our improved merchandise assortments and overall improved product offerings, coupled with our re-branding efforts, are the primary reasons for these increases. We also experienced significant growth again this year in our direct businesses, which contributed 48% to this comparable sale increase. In addition to our improvements in merchandising, this growth has resulted from our internet sales, increased catalog circulation efforts, customer prospecting as well as our new co-branded Sears-Casual Male catalog. We focused our efforts on growing our direct business during fiscal 2006, with an increase in catalog circulation of over 45%, along with increased marketing support for internet marketing activities. Overall, marketing expenditure support increased in our direct business by 40% over the prior year, while marketing expenses for our retail channel dropped by 20% for an overall 8% increase in marketing support for fiscal 2006.

Sales for fiscal 2005 were \$421.4 million as compared to \$365.0 million in fiscal 2004. The majority of the increase related to the Big & Tall Apparel business which had an increase of \$69.0 million, which was partially offset by a decrease of \$12.6 million as a result of the divested Ecko Unltd.<sup>®</sup> stores in July 2004. The increase in the Big & Tall Apparel business of \$69.0 million was primarily due to an increase of \$54.9 million in sales from our Rochester business due to a full year of revenue in fiscal 2005. The Rochester stores were acquired in October 2004 and therefore did not have a full year of revenue in fiscal 2004. Included in sales for fiscal 2005 is income of \$1.2 million related to our initial recognition of gift card breakage. Gift card breakage is income recognized for a portion of non-redeemed gift cards sold by us for which a liability was recorded in prior periods but where the likelihood of redemption by the customer is remote. Also contributing to our sales growth in fiscal 2005 was a total company comparable store sale increase of 4.6%. Our e-commerce and catalog businesses performed strongly during fiscal 2005, representing a combined increase of 18% as compared to the prior year.

Over the past few fiscal years, we have introduced several new private label lines, catering to our many different target customers, which have contributed strongly to both our sales and margins in fiscal 2006 and fiscal 2005. As we continue to develop a strong global sourcing business to support our private label business, we expect our penetration of private label merchandise to increase to approximately 70% of our mix.

With the benefit of our recently upgraded merchandising systems we have been able to better manage our in-stock positions and allocations throughout the chain on a micro level, responding to each store's specific merchandise needs. We believe that we will continue to improve upon our level of execution in providing timely and appropriate lifestyle assortments to all our stores, and therefore, maintain our comparable sales increases. However, our sales trends could be negatively impacted by non-controllable factors such as competitive forces, reaction to our strategies and macro-economic events and trends.

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### *GROSS MARGIN.*

Gross margin rate for fiscal 2006 was 45.5% as compared to 43.3% for fiscal 2005 and 41.2% for fiscal 2004. The increase in fiscal 2006 was due to a 120 basis point increase in merchandise margins and a 100 basis point improvement in occupancy costs, primarily attributable to the leveraging of sales. We continued to see improvements in our gross margin rate during fiscal 2006 principally due to our improved initial margins from our direct sourcing initiatives, as well as strong inventory management which resulted in less markdowns and promotional activities.

The increase in fiscal 2005 of 210 basis points was due primarily to a 180 basis point increase in merchandise margins and a 40 basis point increase from the elimination of our Other Branded Apparel businesses that existed in fiscal 2004 which had lower gross margins. These increases were offset slightly by a 10 basis point increase in occupancy costs. The 180 basis point percentage point increase in merchandise margins for fiscal 2005 was primarily the result of our enhanced inventory management of our core basic merchandise versus our fashion merchandise. By maintaining in-stock positions on our core merchandise, we have been able to improve initial margins and reduce our levels of markdowns and clearance inventory.

We believe that further gross margin improvements will be achieved in fiscal 2007 as we continue to execute our merchandising and marketing strategies, and build upon our direct sourcing activities to lower our merchandise purchase costs. However, our gross margin improvement trends can be negatively impacted if we poorly execute our merchandising strategies which could result in undesirable merchandise assortments that need to be liquidated at clearance prices, or if competition intensifies in our markets which would also result in higher level of price discounting to reduce unplanned inventory levels.

### *SELLING, GENERAL AND ADMINISTRATIVE EXPENSES.*

SG&A as a percentage of sales for fiscal 2006, 2005 and 2004 were 36.6%, 36.1% and 36.3%, respectively.

SG&A expenses in fiscal 2006 increased \$19.0 million, or 12.5% as compared to fiscal 2005. Approximately \$3.0 million of this increase was directly attributable to the additional 53<sup>rd</sup> week in fiscal 2006. The remaining increase in fiscal 2006 in SG&A expenses of \$16.0 million as compared to fiscal 2005 is due to (i) an increase in sales volume-related costs, (ii) expenses related to new businesses and (iii) corporate expense increases.

- During fiscal 2006, our sales volume, excluding the 53<sup>rd</sup> week, increased by approximately \$39.4 million, or 9.3%. In support of such growth, SG&A expenses related to sales volume growth, such as store payroll, costs to service the added customer traffic in the stores, costs associated with completing transactions such as customer bag supplies and credit card fees and marketing expenses for catalog circulation increases and TV media costs to prospect new customers, increased by approximately \$3.0 million.
- We embarked on further growing our business by either creating new brands, or offering product extensions that appeal to a broader market. In this endeavor, we acquired the Jared M. business, a custom clothing business, started B&T Factory Direct, a value oriented men's big & tall apparel business and acquired [www.SuperSizeWorld.com](http://www.SuperSizeWorld.com), a household products business catering to the big & tall. Cumulatively, we expended approximately \$6.0 million in additional SG&A expenses to support these activities.
- New SG&A expense categories were expended during fiscal 2006, including (a) \$3.6 million related to the new corporate lease created with the sale-leaseback transaction consummated in February 2006, (b) performance bonuses and stock option expense totaling approximately \$3.0 million, and (c) incremental legal fees of approximately \$0.5 million related primarily to the lawsuit associated with protecting proprietary intangibles and contract rights related to our Rochester direct business.

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SG&A expenses for fiscal 2005 as compared to fiscal 2004 increased on a dollar-basis, but SG&A expenses as a percentage of sales decreased as we continued to manage our expense base. The majority of the increase in SG&A dollars can be attributed to the annualized expenses for Rochester, because fiscal 2004 only included Rochester expenses from October 29, 2004 forward. As mentioned above, SG&A expenses for fiscal 2005 include a benefit of \$1.0 million related to the class action settlement with Visa/Mastercard for past overcharges and other accrual benefits. SG&A expenses for fiscal 2004 included a net benefit of \$0.8 million from the reversal of certain accrued liabilities as a result of revised estimates, which was partially offset by accruals associated with outstanding legal actions.

Tantamount to our strategy of improving profitability and growing operating margins is maintaining a firm control on the growth of our SG&A expenses. Although, we believe that we can limit SG&A growth rates, except for certain programs to support our growth activities, unanticipated cost increases by our suppliers, or unanticipated costs that are necessary to support our overall activities could negatively impact our growth in profitability.

### *PROVISION FOR EMPLOYMENT CONTRACT TERMINATION*

In the third quarter of fiscal 2006, we decided to terminate certain employment agreements with Rochester management as part of our plan to integrate the remaining San Francisco-based Rochester operations into our headquarters in Canton, MA. In connection with this decision to terminate these agreements, we incurred a charge of \$1.2 million in the third quarter of fiscal 2006 to accrue our remaining obligations pursuant to these employees' employment agreements. At February 3, 2007, \$1.2 million of the reserve remains outstanding.

### *DEPRECIATION AND AMORTIZATION.*

Depreciation and amortization expense was \$15.1 million for fiscal 2006, \$12.7 million for fiscal 2005 and \$9.9 million for fiscal 2004. The increase in depreciation and amortization for fiscal 2006 is directly attributable to the capital expenditures associated with improving our infrastructure as well as new store growth, our re-branding efforts and remodeling of some of our older locations. These increases were partially offset by a decrease of \$0.8 million of annual depreciation on our building and land improvements as a result of the sale-leaseback. The increase in fiscal 2005 as compared to fiscal 2004 is due to the capital investments noted above as well as a full year of depreciation for our Rochester business.

### *OPERATING INCOME.*

For fiscal 2006, operating income was \$25.4 million as compared to \$17.6 million in fiscal 2005 and \$8.0 million in fiscal 2004. Operating income for fiscal 2004 includes an operating loss of \$1.4 million related to our divested Ecko Unltd.® business.

The increase of 44.7% in operating income for fiscal 2006 is the result of our strong comparable sales growth and improved merchandise margins. This increase was partially offset by increased SG&A expenses, as discussed above, related to incremental expenses associated with the initial start-up of new businesses, such as Jared M. and direct businesses.

We have previously stated that we have a short-term goal of increasing our operating margins to the 10% level, reaching 5.4% in fiscal 2006, 4.2% in fiscal 2005 and 2.2% in fiscal 2004. Our ability to reach this goal of a 10% operating margin is dependent upon a number of factors, including:

- Continuing to improve upon our market share and show comparative sales increases,
- Continuing to execute our merchandising strategies with minimal degrees of error,
- No significant changes in the competitive environment and favorable macro-economic trends,
- Continuing to improve upon our gross margins by executing our merchandising strategies, and
- Maintaining disciplines over our growth in SG&A levels.

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### *OTHER INCOME (EXPENSE)*

*Fiscal 2006.* During the first quarter of fiscal 2006, we sold our loss prevention subsidiary, LP Innovations, Inc. (“LPI”) for a purchase price of \$5.2 million. We recognized an initial gain on the sale of LPI in the amount of \$1.5 million which was recorded as other income for fiscal 2006. The gain of \$1.5 million was offset slightly by approximately \$0.4 million of unrelated non-operating expenses, primarily related to legal costs. See Note L for a full description of the terms of the sale. See Note H for a full description of the non-operating expenses.

*Fiscal 2005.* During the fourth quarter of fiscal 2005, we prepaid our outstanding mortgage note. In connection with the prepayment, we incurred a penalty of \$1.2 million associated with the early retirement of the note. In addition, during the fourth quarter of fiscal 2005, we repurchased \$5.3 million of our outstanding Convertible Notes and, as a result, recognized a gain of \$0.4 million related to the associated discount on the notes. This gain of \$0.4 million was partially offset by the write-off of \$0.2 million of deferred financing costs associated with the notes.

*Fiscal 2004.* In the second quarter of fiscal 2004, we completed the repayment of approximately \$7.8 million of our 12% senior subordinated notes due 2010. In connection with the prepayment, we incurred approximately \$1.9 million of expense associated with the prepayment penalties and the write-off of the unamortized value associated with warrants issued in connection with the debt. In addition, we also wrote off approximately \$0.9 million of expenses due to the postponed spin-off of LPI. These costs were offset by a gain recognized in the second quarter of fiscal 2004 of \$3.1 million associated with the sale of our Ecko Unltd.<sup>®</sup> joint venture interest to Ecko.Complex, LLC.

### *INTEREST EXPENSE, NET*

Net interest expense was \$5.5 million in fiscal 2006 compared to \$8.6 million in fiscal 2005 and \$8.0 million in fiscal 2004. The decrease in interest expense during fiscal 2006 was primarily attributable to the reduction in our long-term debt. As discussed previously, we used the proceeds from our sale-leaseback transaction to reduce our borrowings under our credit facility and prepay a portion of our long-term debt. See “Liquidity and Capital Resources” for more discussion regarding our current debt obligations and future liquidity needs. Fiscal 2005 interest expense increased as compared to fiscal 2004 primarily due to slightly higher average borrowings under our revolver as well as increased interest rates.

As a result of the conversion of our Convertible Notes and the elimination of our long-term debt, as discussed below under “Liquidity and Capital Resources”, we expect interest expense will decrease by approximately \$2.0–\$2.5 million for fiscal 2007 due to lower average debt levels as well as a more favorable borrowing rate under our amended credit facility.

### *DISCONTINUED OPERATIONS*

The following table summarizes for fiscal 2004 the results of operations for our Levi’s<sup>®</sup>/Dockers<sup>®</sup> outlet stores which we completely exited in fiscal 2004.

	<u>Fiscal 2004(1)</u> <u>(in millions)</u>
Sales	\$ 71.1
Gross margin	12.7
Selling, general and administrative expenses	14.2
Provision (reversal) for impairment of assets, store closings and severance	(2.5)
Depreciation and amortization	1.7
	<u>(0.7)</u>
Other income	1.2
Income from discontinued operations	<u>\$ 0.5</u>

- (1) Fiscal 2004 includes a gain of \$1.2 million that we recognized in connection with the sale of 32 of our Levi's®/Dockers® outlet stores in the fourth quarter. Results also include income of \$2.5 million recognized in the second and fourth quarters as a result of the reversal of excess restructuring reserves.

*INCOME TAXES*

Pursuant to accounting rules, realization of our deferred tax assets, which relate principally to federal net operating loss carryforwards which expire from 2018 through 2024, is dependent on generating sufficient taxable income in the near term. In fiscal years 2001 and 2002, we established a full valuation allowance against our deferred tax assets due to the uncertainty at that time of generating future taxable income, based on our historical losses in those years. Since that time, we have transformed our Company, through acquisitions and divestures, from an operator of Levi's®/Dockers® outlet stores to the market leader of men's big & tall apparel. Since we acquired Casual Male in fiscal 2002, our big & tall business has been profitable from an operating perspective.

During the fourth quarter of fiscal 2005, we determined that it was more likely than not that we would be able to realize the benefits of a portion of our deferred tax assets. As discussed above, subsequent to year end, we entered into a sale-leaseback transaction which resulted in a gain on the sale of our corporate headquarters, net of transaction costs, of approximately \$29.3 million. For tax purposes in fiscal 2006, we will be able to utilize our existing NOL's to offset this gain. For book purposes, we deferred the gain and will recognize only \$1.5 million annually over the initial term of the respective lease agreement. As a result, for fiscal 2005, we reversed \$3.1 million of our deferred tax valuation allowance and recorded a benefit to income tax expense.

Throughout fiscal 2006, we reviewed the realizability of the remaining deferred tax assets and, in the fourth quarter, determined that it was more likely than not that we would be able to realize substantially all of the remaining deferred tax assets. In reaching this determination, we considered the positive evidence of thirteen consecutive quarters of positive comparable store sales, our continued improvement in operating income over the past five years, our expectations regarding the generation of future taxable income, and our current market position and expected growth of our industry. Due to the seasonality of our business, achievement of the fourth quarter earnings was a critical factor in our determination of the reversal.

Accordingly, for fiscal 2006, we reversed \$31.0 million of the deferred tax valuation allowance and recorded a benefit to income tax expense of \$30.5 million. The remaining \$0.5 million of the reversal was credited to additional paid-in capital as it related to prior deferred tax assets associated with stock options. At February 3, 2007, the Company has a valuation allowance of \$1.3 million for losses associated with its Canada operations and certain state net operating losses, the benefit of which may not be recognized due to short carryforward periods.

As of February 3, 2007, we have net operating loss carryforwards of \$57.0 million for federal income tax purposes and approximately \$44.0 million for state income tax purposes that are available to offset future taxable income, subject to certain annual usage limitations, through fiscal year 2025. As a result of the Casual Male acquisition and the issuance of additional equity in fiscal 2002, the utilization of approximately \$24.7 million of the \$53.8 million in federal net operating losses are subject to an annual limitation of approximately \$4.8 million per year. Additionally, we have alternative minimum tax credit carryforwards of \$2.2 million, which are available to further reduce income taxes over an indefinite period.

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### NET INCOME

	<u>Fiscal 2006(1)</u>	<u>Fiscal 2005(2)</u> (in millions)	<u>Fiscal 2004(3)</u>
Operating income(loss):			
Big & Tall Apparel business	\$ 25.4	\$ 17.6	\$ 9.4
Other Branded Apparel businesses	—	—	(1.4)
Total operating income	25.4	17.6	8.0
Other income (expense)	1.1	(1.0)	0.3
Interest expense	(5.5)	(8.6)	(8.0)
Minority interest	—	—	0.7
Benefit for income taxes	21.6	2.8	—
Income from discontinued operations	—	—	0.5
Net income	<u>\$ 42.6</u>	<u>\$ 10.8</u>	<u>\$ 1.5</u>

- (1) Results for fiscal 2006 include other income (expense) of \$1.1 million related to the initial gain on the sale of LPI of \$1.5 million offset partially by \$0.4 million of unrelated non-operating expenses primarily related to legal costs. Fiscal 2006 also include a charge of \$1.2 million related to the costs incurred for the early termination of certain employment contracts. In addition, as a result of our continued improvement in profitability, during the fourth quarter of fiscal 2006, we reversed \$31.0 million of our valuation allowance against our deferred tax assets of which \$30.5 million was recognized as an income tax benefit for fiscal 2006. This amount was offset by approximately \$8.9 of income tax provisions.
- (2) Results for fiscal 2005 include other income (expense) of \$1.0 million related to a \$1.2 million prepayment charge associated with the prepayment of our mortgage note, \$0.4 million of income associated with the repurchase of approximately \$5.3 million of our Convertible Notes and an associated write-off of \$0.2 million of deferred financing costs. In addition, during the fourth quarter of fiscal 2005, we reversed approximately \$3.1 million of our deferred tax asset-valuation allowance. This benefit was offset slightly by approximately \$0.3 million of income tax provision.
- (3) Results for fiscal 2004 include other income (expense) of \$0.3 million related to the gain on the sale of our joint venture interest in Ecko of \$3.1 million, offset partially by approximately \$1.9 million of expense related to the prepayment of long term debt and write-offs of approximately \$0.9 million of offering costs associated with the postponed spin-off of our subsidiary LPI. Discontinued operations include a gain on the sale of our Levi's®/Dockers® stores of approximately \$1.2 million and \$2.5 million of income recognized as a result of reversals of excess restructuring reserves due to such sale.

### SEASONALITY

A comparison of sales in each quarter of the past three fiscal years is presented below. The amounts shown are not necessarily indicative of actual trends, because such amounts also reflect the addition of new stores and the remodeling and closing of others during these periods. Consistent with the retail apparel industry, our business is seasonal. Our business traditionally generates the largest volume of its sales during the Father's Day selling season in June and the Christmas selling season in December. The majority of our operating income is generated in the fourth quarter as a result of the impact of the Christmas selling season. A comparison of quarterly sales, gross profit, net income per share for the past two fiscal years is presented in Note P of the Notes to the Consolidated Financial Statements.

	<u>Fiscal 2006</u>		<u>Fiscal 2005</u>		<u>Fiscal 2004(1)</u>	
	(in millions, except percentages)					
First quarter	\$ 102.9	22.0%	\$ 97.3	23.1%	\$ 84.2	23.1%
Second quarter	111.8	23.9%	100.6	23.9%	88.1	24.1%
Third quarter	106.8	22.9%	93.8	22.2%	74.6	20.4%
Fourth quarter	146.0	31.2%	129.7	30.8%	118.1	32.4%
	<u>\$ 467.5</u>	<u>100.0%</u>	<u>\$ 421.4</u>	<u>100.0%</u>	<u>\$ 365.0</u>	<u>100.0%</u>

(1) Fiscal 2004 sales results include, since October 30, 2004, the sales of the Rochester stores which approximated \$21.0 million.

### **LIQUIDITY AND CAPITAL RESOURCES**

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

The following table sets forth financial data regarding our liquidity position at the end of the past three fiscal years:

	Fiscal Years		
	2006	2005	2004
	(in millions, except ratios)		
Cash provided by operations	\$ 12.1	\$ 16.8	\$ 13.4
Working capital	66.8	33.3	22.2
Current ratio	1.9:1	1.3:1	1.3:1

The decrease in cash flow provided by operations in fiscal 2006 of \$4.7 million from fiscal 2005 was primarily due to the timing of working capital payments, such as inventory purchases, prepaid rent and advertising. Cash flow from operations, before changes in working capital accounts, increased primarily as a result of improved profitability as compared to fiscal 2005. Cash flow provided by operations in fiscal 2005 increased from fiscal 2004 as a result of improved profitability and the timing of other working capital payments.

With the net proceeds from our sale-leaseback transaction of approximately \$55.9 million, we repaid in full our term loan for \$5.6 million and our borrowings under our credit facility, which at the time of repayment were higher as a result of the repayment of our mortgage and the repurchase of \$5.3 million of our Convertible Notes during the fourth quarter of fiscal 2005.

During the fourth quarter of fiscal 2006, on December 18, 2006 and January 8, 2007, we provided notices to the note-holders of our Convertible Notes that we would be redeeming our Convertible Notes of which \$94.8 million were then outstanding. By the end of business on January 26, 2007, substantially all of the note-holders had elected to convert their notes into approximately 8.9 million shares of common stock, resulting in us redeeming only \$9,000 of the Convertible Notes for cash.

Our debt financing costs, which were incurred in connection with the issuance of the Convertible Notes, were being amortized to interest expense on a straight-line basis over the contractual term of the notes. Upon conversion, the remaining unamortized balance of the deferred financing costs of \$3.6 million was reclassified to additional paid-in capital.

#### **Credit Facility**

On December 28, 2006, in connection with our first announcement to redeem \$40 million principal amount of our Convertible Notes, we amended our credit facility with Bank of America, N.A. by executing the Fifth Amended and Restated Loan and Security Agreement (the "Credit Facility"). The amended Credit Facility will

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permit us to, among other things, repurchase, redeem or acquire our common stock (and permitted us to repurchase our Convertible Notes) provided that our Total Facility Usage Ratio, as defined in the Credit Facility, does not exceed 80% immediately after the transaction or over the respective following twelve months.

The Credit Facility provides for a total commitment of \$110 million comprised of (i) a \$100 million revolving credit facility which includes a sublimit of \$20 million for commercial and standby letter of credits and a sublimit of up to \$15 million for SwingLine Loans and (ii) a \$10 million "Last Out" revolving credit facility, which will be subordinate to the \$100 million revolving credit facility. If at any time our Excess Availability Ratio, as defined in the Credit Facility, is less than 50%, our borrowings must first be made from the "Last Out" revolving credit facility before borrowing from the \$100 million revolving credit facility. Borrowings under the Credit Facility bear interest at variable rates based on Bank of America's prime rate or the London Interbank Offering Rate ("LIBOR") and vary depending on our levels of excess availability. As a result of this amendment, our interest costs under the \$100 million revolving credit facility were reduced by approximately 75 basis points depending on our level of excess availability. The maturity date of the Credit Facility is October 29, 2008.

At February 3, 2007, we had borrowings outstanding under the Credit Facility of \$8.5 million and outstanding standby letters of credit of \$4.3 million and documentary letters of credit of \$3.2 million. Average borrowings outstanding under this facility during fiscal 2006 were approximately \$7.5 million, resulting in an average unused excess availability of approximately \$68.0 million. Our ability to borrow under the Credit Facility is determined using an availability formula based on eligible assets, with increased advance rates based on seasonality.

### ***Stock Repurchase Programs***

During the second quarter of fiscal 2006, pursuant to our Board-approved \$30 million stock repurchase program, we repurchased 1.3 million shares of our common stock for an aggregate cost, including broker commissions, of \$13.1 million, resulting in an average price of \$9.74 per share.

On December 4, 2006, in connection with our decision to redeem a then portion of our Convertible Notes, our Board of Directors approved a \$75.0 million stock repurchase program, replacing the existing \$30.0 million stock repurchase program that was currently in place. Under this stock repurchase program, we were authorized to repurchase up to \$75 million of our common stock during the remainder of fiscal 2006 and fiscal 2007 through open market and privately negotiated transactions pursuant to Rule 10b-18 of the Exchange Act. The stock repurchase program expires on December 31, 2007 but may be terminated earlier at any time without prior notice. As permitted by the program, we adopted a 10b5-1 Plan effective January 30, 2007, which will expire on April 3, 2007, to repurchase up to 3 million shares, or \$35.0 million, whichever occurs first, at specified market prices. Through February 3, 2007, we repurchased approximately 164,400 shares for an aggregate price of \$2.1 million.

Subsequent to year end, we have repurchased an additional 2.6 million shares for an aggregate cost of \$33.0 million. We used borrowings from our Credit Facility to fund this stock repurchase program. As of March 27, 2007, we have repurchased 2.8 million shares under our \$75.0 million stock repurchase program and have \$40.0 million remaining for the balance of fiscal 2007. As a result of these stock repurchases, at March 27, 2007 our borrowings under our Credit Facility were \$46.6 million with an unused availability was \$44.9 million.

### ***INVENTORY***

At February 3, 2007, total inventories were \$114.5 million as compared to \$91.5 million at January 28, 2006. The increase in inventory of \$23.0 million is principally due to an increase of approximately \$15.0 million of added inventories in our Rochester stores and direct businesses to strengthen our basic inventory levels, introduce our private label product and support warehouse distribution levels to fill back store sales. The remaining increase in inventory of approximately \$8.0 million was in our Casual Male business where we have increased our carrying levels of merchandise to support our increased sales volume from our direct businesses as well as maintaining a sufficient in-stock position in our core merchandise.

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During the second quarter of fiscal 2006, we changed our inventory valuation method from lower of cost or market, on a FIFO basis, using the retail method to lower of cost or market, on a weighted-average cost basis, using the cost method. The effect of this change in accounting principle was not material at January 29, 2006, April 29, 2006 and July 29, 2006.

### OFF-BALANCE SHEET ARRANGEMENTS

We have no off balance sheet arrangements as defined by 303(a)(4) of Regulation S-K.

### CONTRACTUAL OBLIGATIONS

The following table summarizes our contractual obligations at February 3, 2007, and the effect such obligations are expected to have on our liquidity and cash flows in future periods:

Contractual Obligations	Payments due by period				
	Total	Less than 1 year	1-3 years (in millions)	3-5 years	More than 5 years
Operating Leases(1)	\$297.4	\$ 47.7	\$79.4	\$53.0	\$ 117.3
Long-Term Debt Obligations(2)	0.7	0.7	—	—	—
Non-merchandise Purchase Obligations(3)	1.2	0.5	0.7	—	—
Total Commitments(4)	<u>\$299.3</u>	<u>\$ 48.9</u>	<u>\$80.1</u>	<u>\$53.0</u>	<u>\$ 117.3</u>

- (1) Includes amounts due on our 20-year lease agreement for our corporate headquarters which we entered into as part of the sale-leaseback transaction discussed previously, operating leases for all of our current store locations and certain equipment and auto leases.
- (2) Includes our remaining principal balance on our 5% senior subordinated notes due 2007 and the corresponding estimated interest costs.
- (3) Non-merchandise Purchase Obligations include an on-going consulting agreement with Jewelcor Management, Inc., pursuant to which we are obligated to pay \$527,000 annually through May 1, 2009. See Note H—"Related Parties" to the Notes to the Consolidated Financial Statements for a full description of this agreement.
- (4) This table excludes Merchandise Purchase Obligations, which represent our outstanding obligations pursuant to open purchase orders. At February 3, 2007, we had approximately \$107.9 million in open purchase orders. We estimate that approximately 73% of these purchase orders may be considered non-cancelable.

### CAPITAL EXPENDITURES

Below is a summary of store openings, closings and remodels from January 28, 2006 to February 3, 2007 and related square footage:

Number of Stores:	Casual Male	Rochester	Total stores
At January 28, 2006	494	24	518
New outlet stores	2	—	2
New retail stores	6	2	8
Closed stores	(18)	(2)	(20)
At February 3, 2007	484	24	508
2007 Relocations	11	—	—
Square footage (in thousands)			
at February 3, 2007	1,668	184	1,852
at January 28, 2006	1,693	174	1,867

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During fiscal 2006, we incurred approximately \$22.7 million in capital expenditures. Approximately \$7.6 million of these costs related to the re-branding initiatives in all of our Casual Male retail and outlet stores and direct businesses to “Casual Male XL”. The remainder of our capital expenditures related to store capital for new stores as well as remodels and relocations, with the rest for system enhancements, distribution and corporate facilities.

Capital expenditures for fiscal 2007 are expected to be approximately \$19.0 million, of which \$7.8 million relates to store capital related to new stores, remodels and relocations. The budget also includes approximately \$9.0 million for system enhancements and a new sortation system for our distribution center. The remainder of the budget relates to other miscellaneous store and corporate level expenditures. Included in store expansion are funds to relocate approximately 10 of our existing Casual Male XL retail stores at an estimated \$100,000 to \$120,000 for each location.

For fiscal 2007, we intend to open three new Casual Male XL retail stores, five Casual Male XL outlet stores, three Rochester Big & Tall retail stores and three Jared M. shops within existing Rochester stores. We also expect to close 12 existing Casual Male XL retail and outlets stores as their respective leases expire.

### *CRITICAL ACCOUNTING POLICIES*

Our financial statements are based on the application of significant accounting policies, many of which require our management to make significant estimates and assumptions (see Note A to the Notes to the Consolidated Financial Statements). We believe that the following items involve some of the more critical judgments in the application of accounting policies that currently affect our financial condition and results of operations.

#### *Stock-Based Compensation*

As of January 29, 2006, we adopted SFAS 123R using the modified prospective method, which requires measurement of compensation cost for all stock awards at fair value on date of grant and recognition of compensation over the service period for awards expected to vest. The fair value of stock options is determined using the Black-Scholes valuation model, which is consistent with our valuation techniques previously utilized for options in footnote disclosures required under SFAS 123, as amended by SFAS 148, and requires the input of highly subjective assumptions. These assumptions include estimating the length of time employees will retain their vested stock options before exercising them (the “expected term”), the estimated volatility of our common stock price over the expected term and the number of options that will ultimately not complete their vesting requirements (“forfeitures”). Changes in these subjective assumptions can materially affect the estimate of fair value of stock-based compensation and, consequently, the related amount recognized as an expense on the consolidated statements of operations. As required under the accounting rules, we review our valuation assumptions at each grant date and, as a result, we are likely to change our valuation assumptions used to value employee stock-based awards granted in future periods. The values derived from using the Black-Scholes model are recognized as expense over the service period, net of estimated forfeitures. Actual results, and future changes in estimates, may differ substantially from these current estimates. Prior periods have not been restated to incorporate the stock-based compensation charge. For fiscal 2006, we recognized total compensation expense of \$777,000.

#### *Inventory*

During the second quarter of fiscal 2006, we changed our inventory valuation method. Previously, inventory was principally valued at the lower of cost or market on a first in, first out (“FIFO”) basis, under the retail inventory method. Inventory for our catalog and e-commerce businesses were accounted for using the average cost method, which approximated the retail method. Commencing in second quarter of fiscal 2006, all inventories have been valued at the lower of cost or market, using a weighted-average cost method. We believe

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that the weighted-average cost method is preferable as compared to the retail inventory method because it provides much greater precision in the costing of sales and inventory, which enables us to better manage our margins, control our promotions and value our inventory. Because the weighted-average cost values inventory based on actual quantities of specific SKUs on hand valued at an average purchase cost for a particular SKU rather than an estimate of an average cost complement for a pool of inventory, the average cost method increases the accuracy of reporting the value of inventory and improves the matching of costs with revenue. Further, it is consistent with the practices of many other retailers. In addition, since implementation of the new inventory system, our operations have been managed based on data provided from the perpetual inventory system. By valuing inventory based on the perpetual records, our financial reporting is aligned with operations. Furthermore, the perpetual inventory provides SKU level/store level shrink measures to allow for more accurate estimates of shrink reserves for periodic reporting.

The revaluation of inventory using the weighted-average cost method approximated our inventory valuation under the previous FIFO retail method at January 29, 2006, April 29, 2006 and July 29, 2006; accordingly, the impact of the change was not material to the financial statements for the fiscal year ended February 3, 2007. Due to system conversions that were completed at the end of fiscal 2005, we were able to generate SKU-level cost detail for all locations. Prior to such conversions, we could not determine the impact of the change to the weighted-average cost method and therefore could not retroactively apply the change to prior year periods presented.

*Impairment of Long-Lived Assets.* We review our long-lived assets for impairment when indicators of impairment are present and the undiscounted cash flow estimated to be generated by those assets is less than the assets' carrying amount. We evaluate our long-lived assets for impairment at a store level for all our retail locations. If actual market conditions are less favorable than management's projections, future write-offs may be necessary.

*Goodwill and Intangibles.* In connection with our acquisitions, we have goodwill and intangibles totaling approximately \$96.2 million at February 3, 2007. In accordance with Statement of Financial Accounting Standards ("SFAS") No. 142, *Goodwill and Other Intangible Assets* ("SFAS No. 142"), we evaluate goodwill and intangible assets with indefinite-lives at least annually for impairment by analyzing the estimated fair value based on the present value of discounted cash flows compared to the net book value. We evaluate goodwill, based on two separate operating segments, our Casual Male business and our Rochester business, by comparing the current carrying value of goodwill with the fair value of the net assets of the operating segments. We will write off the amount of any goodwill or intangible in excess of its fair value.

*Deferred Taxes.* We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. We have considered estimated future taxable income and ongoing tax planning strategies in assessing the amount needed for the valuation allowance. At February 3, 2007, our net deferred tax assets were \$28.3 million. During the fourth quarter of fiscal 2006, we determined that it is more likely than not that we will be able to realize the benefits of substantially all of our deferred tax assets. In reaching this determination, we considered the positive evidence of thirteen consecutive quarters of comparable sales, our continued improvement in operating income over the past five years, our expectations regarding the generation of future taxable income, and our current market position and expected growth of our industry. Also, as discussed above, during the first quarter of fiscal 2006 we entered into a sale-leaseback transaction which resulted in a gain on the sale of our corporate headquarters of approximately \$29.3 million. For tax purposes in fiscal 2006, we will be able to utilize our existing NOL's to offset this gain. For book purposes, we deferred the gain and will recognize only \$1.5 million annually over the initial term of the respective lease agreement. Accordingly, during the fourth quarter of fiscal 2006, we reversed \$31.0 million of our valuation allowance and recognized an income tax benefit for \$30.5 million. The remaining \$0.5 million of the reversal was credited to additional paid-in capital. The \$30.5 million income tax benefit was partially offset by an income tax provision on current earnings of \$8.9 million.

*RECENT ACCOUNTING PRONOUNCEMENTS*

In July 2006, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes—an interpretation of FASB Statement No. 109 (“FIN 48”), which clarifies the accounting for uncertainty in tax positions. This Interpretation requires that we recognize in our financial statements the impact of a tax position, if that position is more likely than not of being sustained on audit, based on the technical merits of the position. The provisions of FIN 48 are effective as of the beginning of fiscal 2007, with the cumulative effect of the change in accounting principle recorded as an adjustment to opening retained earnings. We are in the process of determining the effect, if any, the adoption of FIN 48 will have on our financial statements.

In September 2006, the FASB issued FASB Statement No. 158, “Employers’ Accounting for Defined Benefit Pension and Other Postretirement Plans” (an amendment of FASB Statements No. 87, 88, 106, and 132R) (“FAS 158”), which requires an employer to: (a) recognize in its statement of financial position an asset for a plan’s over-funded status or a liability for a plan’s under-funded status; (b) measure a plan’s assets and its obligations that determine its funded status as of the end of the employer’s fiscal year (with limited exceptions); and (c) recognize changes in the funded status of a defined benefit postretirement plan in the year in which the changes occur. We adopted FAS 158 in fiscal 2006 and accordingly will be required to report changes in our funded status in comprehensive income on our Statement of Stockholders’ Equity. The adoption of FAS 158 did not have a material effect on our financial position at February 3, 2007.

In September 2006, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 108 (“SAB 108”). SAB 108 addresses the process and diversity in practice of quantifying financial statement misstatements resulting in the potential build up of improper amounts on the balance sheet. We adopted the provisions of SAB 108 in fiscal 2006. The adoption of SAB 108 did not have a material impact on our consolidated financial statements.

In September 2006, the FASB issued FASB No.157, Fair Value Measurements (“FAS 157”). The purpose of FAS 157 is to define fair value, establish a framework for measuring fair value and enhance disclosures about fair value measurements. The measurement and disclosure requirements are effective beginning in the first quarter of fiscal 2008. We are currently assessing whether adoption of SFAS No. 157 will have an impact on our financial statements.

*EFFECTS OF INFLATION*

Although our operations are influenced by general economic trends, we do not believe that inflation has had a material effect on the results of our operations in the last three fiscal years.

**Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

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

*Interest Rates*

We utilize cash from operations and from our Credit Facility to fund our working capital needs. Our Credit Facility is not used for trading or speculative purposes. In addition, we have available letters of credit as sources of financing for its working capital requirements. Borrowings under the Credit Facility, which expires October 29, 2008, bear interest at variable rates based on Bank of America's prime rate or the London Interbank Offering Rate ("LIBOR"). At February 3, 2007, all of our borrowings were prime based borrowings at 8.25%. Based upon a sensitivity analysis as of February 3, 2007, assuming average outstanding borrowing during fiscal 2006 of \$7.5 million, a 50 basis point increase in interest rates would have resulted in a potential increase in interest expense of approximately \$38,000.

*Foreign Currency*

Our Sears Canada store locations conduct business in Canadian dollars and our Rochester Big & Tall store located in London, England conducts business in British pounds. If the value of the Canadian dollar or the British pound 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 in U.S. dollars may decline. As of February 3, 2007, sales from our Sears Canada stores and our London Rochester Big & Tall store were immaterial to consolidated sales. As such, we believe that movement in foreign currency exchange rates will not have a material adverse affect on our financial position or results of operations.

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**Item 8. Financial Statements and Supplementary Data**

**CASUAL MALE RETAIL GROUP, INC.  
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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Stockholders  
Casual Male Retail Group, Inc.

We have audited the accompanying consolidated balance sheets of Casual Male Retail Group, Inc. as of February 3, 2007 and January 28, 2006, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the three years in the period ended February 3, 2007. Our audits also included the financial statement schedule listed in the Index at Item 15(a)(2). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Casual Male Retail Group, Inc. at February 3, 2007 and January 28, 2006, and the consolidated results of their operations and their cash flows for each of the three years in the period ended February 3, 2007, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the financial statement schedule referred to above, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Casual Male Retail Group, Inc.'s internal control over financial reporting as of February 3, 2007, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 28, 2007 expressed an unqualified opinion thereon.

As discussed in Note A to the consolidated financial statements, effective January 29, 2006, the Company adopted Statement of Financial Accounting Standards No. 123(R), *Share-Based Payment*.

As discussed in Note I to the consolidated financial statements, effective for the fiscal year ended February 3, 2007, the Company adopted Statement of Financial Accounting Standards No. 158, *Employers' Accounting for Defined Benefit Pension and Other Post-Retirement Plans—An amendment of FASB Statement Nos. 87, 88, 106 and 132(R)*.

/s/ ERNST & YOUNG LLP

Boston, Massachusetts  
March 28, 2007

**CASUAL MALE RETAIL GROUP, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
**February 3, 2007 and January 28, 2006**

	February 3, 2007 (Fiscal 2006)	January 28, 2006 (Fiscal 2005)
(In thousands, except share data)		
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 5,325	\$ 5,568
Accounts receivable	3,833	4,963
Assets held for sale (Note B)	—	26,629
Inventories	114,535	91,546
Deferred income taxes	6,897	—
Prepaid expenses and other current assets	11,133	3,253
Total current assets	141,723	131,959
Property and equipment, net of accumulated depreciation and amortization	59,063	51,273
Other assets:		
Goodwill	60,636	53,861
Other intangible assets	35,534	35,757
Deferred income taxes	21,384	3,071
Other assets	2,096	7,910
Total assets	\$ 320,436	\$ 283,831
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ 688	\$ 9,063
Current portion of deferred gain on sale-leaseback	1,465	—
Accounts payable	35,368	28,195
Income taxes payable	614	318
Accrued expenses and other current liabilities	28,278	23,719
Notes payable	8,529	37,387
Total current liabilities	74,942	98,682
Long-term liabilities:		
Long-term debt, net of current portion	—	95,437
Deferred gain on sale-leaseback, net of current portion	26,378	—
Other long-term liabilities	1,070	555
Total long-term liabilities	27,448	95,992
Commitments and contingencies (Note E)		
Stockholders' equity:		
Preferred stock, \$0.01 par value, 1,000,000 shares authorized, none issued	—	—
Common stock, \$0.01 par value, 75,000,000 shares authorized, 50,860,322 and 39,635,937 shares issued at February 3, 2007 and January 28, 2006, respectively	509	396
Additional paid-in capital	258,334	156,177
Treasury stock at cost, 6,686,029 shares at February 3, 2007 and 5,171,930 shares at January 28, 2006	(38,570)	(23,362)
Accumulated deficit	(1,249)	(43,881)
Accumulated other comprehensive loss	(978)	(173)
Total stockholders' equity	218,046	89,157
Total liabilities and stockholders' equity	\$ 320,436	\$ 283,831

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

## CASUAL MALE RETAIL GROUP, INC.

## CONSOLIDATED STATEMENTS OF OPERATIONS

For the fiscal years ended February 3, 2007, January 28, 2006 and January 29, 2005

	February 3, 2007 (Fiscal 2006)	January 28, 2006 (Fiscal 2005)	January 29, 2005 (Fiscal 2004)
	(In thousands, except share data)		
Sales	\$ 467,512	\$ 421,383	\$ 365,047
Cost of goods sold including occupancy costs	254,938	239,203	214,607
Gross profit	212,574	182,180	150,440
Expenses:			
Selling, general and administrative	170,896	151,890	132,554
Provision for employment contract termination	1,200	—	—
Depreciation and amortization	15,084	12,737	9,858
Total expenses	187,180	164,627	142,412
Operating income	25,394	17,553	8,028
Other income (expense), net	1,112	(969)	308
Interest expense, net	(5,466)	(8,553)	(8,064)
Income from continuing operations before minority interest and income taxes	21,040	8,031	272
Minority interest	—	—	(701)
Benefit for income taxes	(21,592)	(2,729)	—
Income from continuing operations	42,632	10,760	973
Income from discontinued operations	—	—	551
Net income	\$ 42,632	\$ 10,760	\$ 1,524
Net income per share—basic			
Income from continuing operations	\$ 1.21	\$ 0.31	\$ 0.03
Income from discontinued operations	\$ 0.00	\$ 0.00	\$ 0.01
Net income	\$ 1.21	\$ 0.31	\$ 0.04
Net income per share— diluted			
Income from continuing operations	\$ 0.98	\$ 0.30	\$ 0.03
Income from discontinued operations	\$ 0.00	\$ 0.00	\$ 0.01
Net income	\$ 0.98	\$ 0.30	\$ 0.04
Weighted-average number of common shares outstanding:			
Basic	35,276	34,306	34,511
Diluted	46,457	35,860	36,733

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

**CASUAL MALE RETAIL GROUP, INC.**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**  
**For the fiscal years ended February 3, 2007, January 28, 2006 and January 29, 2005**

	Common Stock		Additional Paid-in Capital	Treasury Stock		Accumulated Deficit	Accumulated other comprehensive income (loss)	Total
	Shares	Amounts		Shares	Amounts			
	(In thousands)							
Balance at January 31, 2004	39,246	\$ 392	\$ 153,650	(4,172)	\$ (17,036)	\$ (56,165)	\$ —	\$ 80,841
Repurchase of common stock				(1,000)	(6,326)			(6,326)
Exercises under option program	131	2	639					641
Exercises of warrants	6	—	30					30
Acceleration of stock options			68					68
Board of Directors compensation	16	—	105					105
Issuance of options to related party for professional services			201					201
Accumulated other comprehensive income- foreign currency							(120)	(120)
Net income						1,524		1,524
Total comprehensive income								1,404
Balance at January 29, 2005	39,399	\$ 394	\$ 154,693	(5,172)	\$ (23,362)	\$ (54,641)	\$ (120)	\$ 76,964
Exercises under option program	120	1	458					459
Exercises of warrants	105	1	547					548
Acceleration of stock options			202					202
Board of Directors compensation	12	—	76					76
Issuance of options to related party for professional services			201					201
Accumulated other comprehensive income- foreign currency							(53)	(53)
Net income						10,760		10,760
Total comprehensive income								10,707
Balance at January 28, 2006	39,636	\$ 396	\$ 156,177	(5,172)	\$ (23,362)	\$ (43,881)	\$ (173)	\$ 89,157
Repurchase of common stock				(1,514)	(15,208)			(15,208)
Conversion of subordinated convertible notes due 2024	8,896	90	91,285					91,375
Exercises under option program	1,133	11	5,810					5,821
Exercises of warrants	1,185	12	3,456					3,468
Stock option compensation expense			777					777
Board of Directors compensation	10	—	106					106
Valuation allowance reversal attribute to stock options			522					522
Issuance of options to related party for professional services			201					201
Accumulated other comprehensive income:								
Foreign currency							306	306
Cumulative adjustment to adopt FAS 158, net of taxes of \$0.7 million							(1,111)	(1,111)
Net income						42,632		42,632
Total comprehensive income								41,827
Balance at February 3, 2007	50,860	\$ 509	\$ 258,334	(6,686)	\$ (38,570)	\$ (1,249)	\$ (978)	\$218,046

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

**CASUAL MALE RETAIL GROUP, INC.**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

**For the fiscal years ended February 3, 2007, January 28, 2006 and January 29, 2005**

	<u>Fiscal 2006</u>	<u>Fiscal 2005</u> (In thousands)	<u>Fiscal 2004</u>
<b>Cash flows from operating activities:</b>			
Net income	\$ 42,632	\$ 10,760	\$ 1,524
<b>Adjustments to reconcile net income to net cash provided by operating activities:</b>			
Loss from discontinued operations	—	—	3,223
Provision for employment contract terminations	1,200	—	—
Depreciation and amortization	15,084	12,737	9,858
Accretion of warrants	—	—	103
Non-cash interest costs associated with debt conversions	208	—	—
Other non-cash expenses, principally related to debt redemption costs	—	969	2,832
Provision (reversal) of impairment of assets, store closings and severance	—	—	(2,538)
Gain on sale of businesses	(1,483)	—	(4,376)
Minority interest	—	—	(701)
Deferred taxes	(23,963)	(3,071)	—
Loss from disposal of property and equipment	363	488	353
Stock option compensation	777	—	—
Issuance of common stock to Board of Directors	106	248	105
Issuance of common stock to related party	201	—	—
Issuance of common stock for professional services	—	201	201
<b>Changes in operating assets and liabilities, net of effect of businesses acquired:</b>			
Accounts receivable	255	(581)	1,270
Inventories	(22,620)	(11,688)	13,271
Prepaid expenses and other current assets	(7,901)	1,687	33
Other assets	(475)	(374)	(354)
Accounts payable	7,263	1,077	(3,414)
Amortization of deferred gain on sale leaseback	(1,465)	—	—
Accrued liabilities for severance, store closings and impairment charges	(30)	—	(407)
Income taxes	296	342	—
Accrued expenses and other liabilities	1,639	4,037	(7,550)
<b>Net cash provided by operating activities</b>	<b>12,087</b>	<b>16,832</b>	<b>13,433</b>
<b>Cash flows from investing activities:</b>			
Additions to property and equipment, net	(22,676)	(15,656)	(20,637)
Net proceeds from sale-leaseback of corporate headquarters	55,937	—	—
Proceeds from disposal of property and equipment	—	—	206
Proceeds from sale of businesses	2,570	—	21,160
Payment of earn-out provision for Rochester acquisition	(1,333)	—	—
Acquisitions, net of cash acquired	(2,980)	—	(19,066)
<b>Net cash provided by (used for) investing activities</b>	<b>31,518</b>	<b>(15,656)</b>	<b>(18,337)</b>
<b>Cash flows from financing activities:</b>			
Net borrowings (repayments) under credit facility	(28,858)	18,076	15,688
Proceeds from the issuance of long-term debt, net of commissions and offering costs	—	—	7,500
Principal payments on long-term debt	(9,071)	(5,403)	(3,032)
Prepayment of long-term debt	—	(14,243)	(7,800)
Proceeds from the issuance of warrants	3,468	548	—
Net payment of premiums associated with prepayment of long-term debt	—	(806)	(313)
Repurchase of common stock	(15,208)	—	(6,326)
Stock compensation and issuance of stock options under option program	5,821	489	739
<b>Net cash (used for) provided by financing activities</b>	<b>(43,848)</b>	<b>(1,339)</b>	<b>6,456</b>
<b>Net (decrease) increase in cash and cash equivalents</b>	<b>(243)</b>	<b>(163)</b>	<b>1,552</b>
<b>Cash and cash equivalents:</b>			
Beginning of the year	5,568	5,731	4,179
End of the year	<u>\$ 5,325</u>	<u>\$ 5,568</u>	<u>\$ 5,731</u>
<b>Supplemental non-cash disclosures:</b>			
Conversion of 5% convertible nNotes to common stock (Note C)	\$ 91,375	\$ —	\$ —
Deferred gain on sale-leaseback (Note N)	\$ 29,308	\$ —	\$ —

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

**CASUAL MALE RETAIL GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**February 3, 2007**

**A. Summary of Significant Accounting Policies**

***Nature of Business***

Casual Male Retail Group, Inc. ("Company") is the largest specialty retailer of big & tall men's apparel. At February 3, 2007, the Company operated 472 Casual Male XL retail and outlet stores located throughout the United States, 12 Casual Male at Sears Canada in-store locations and 24 Rochester Big & Tall stores located in major U.S. cities with one store in London, England. The Company also operates a direct business which includes its e-commerce sites and catalog operations.

***Basis of Presentation***

The consolidated financial statements include the accounts of the Company and its subsidiaries. All significant intercompany accounts, transactions and profits are eliminated. The results for fiscal 2004 include the effect, since October 30, 2004, of the Company's acquisition of Rochester Big & Tall Clothing ("Rochester").

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent liabilities as of the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from estimates.

***Fiscal Year***

The Company's fiscal year is a 52-week or 53-week period ending on the Saturday closest to January 31. Fiscal years 2006, 2005 and 2004 ended on February 3, 2007, January 28, 2006 and January 29, 2005, respectively. Fiscal 2006 was a 53-week period. Fiscal 2005 and 2004 were 52-week periods.

***Cash and Cash Equivalents***

Short-term investments, which have a maturity of ninety days or less when acquired, are considered cash equivalents.

***Fair Value of Financial Instruments***

Statement of Financial Accounting Standards ("SFAS") No. 107, *Disclosure About Fair Value of Financial Instruments*, requires disclosure of the fair value of certain financial instruments. The carrying amounts for the Company's long-term debt approximate fair value as the interest rates and terms are substantially similar to those that could be obtained currently for similar instruments. The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable, accrued expenses and short-term borrowings approximate fair value because of the short maturity of these instruments.

***Inventories***

During the second quarter of fiscal 2006, the Company changed its inventory valuation method. Previously, inventory was principally valued at the lower of cost or market on a first in, first out ("FIFO") basis, under the retail inventory method. Inventory for the Company's catalog and e-commerce businesses were accounted for

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using the average cost method, which approximated the retail method. Commencing in the second quarter of fiscal 2006, all inventories have been valued at the lower of cost or market, using a weighted-average cost method. The Company believes that the weighted-average cost method is preferable as compared to the retail inventory method because it provides much greater precision in the costing of sales and inventory, which enables the Company to better manage its margins, control its promotions and value its inventory. Because the weighted-average cost method values inventory based on actual quantities of specific SKUs on hand valued at an average purchase cost for a particular SKU rather than an estimate of an average cost complement for a pool of inventory, the average cost method increases the accuracy of reporting the value of inventory and improves the matching of costs with revenue. Further, it is consistent with the practices of many other retailers. In addition, since implementation of the new inventory system, the Company's operations have been managed based on data provided from the perpetual inventory system. By valuing inventory based on the perpetual records, financial reporting of the Company is aligned with operations. Furthermore, the perpetual inventory provides SKU level/store level shrink measures to allow for more accurate estimates of shrink reserves for periodic reporting.

The revaluation of inventory using the weighted-average cost method approximated the Company's inventory valuation under the previous FIFO retail method at January 29, 2006, April 29, 2006 and July 29, 2006; accordingly, the impact of the change was not material to the financial statements for fiscal 2006. Due to system conversions that were completed at the end of fiscal 2005, the Company was able to generate SKU-level cost detail for all locations. Prior to such conversions, the Company could not determine the impact of the change to the weighted-average cost method and therefore could not retroactively apply the change to prior year periods presented.

### **Property and Equipment**

Property and equipment are stated at cost. Major additions and improvements are capitalized while repairs and maintenance are charged to expense as incurred. Upon retirement or other disposition, the cost and related depreciation of the assets are removed from the accounts and the resulting gain or loss, if any, is reflected in income. Depreciation is computed on the straight-line method over the assets' estimated useful lives as follows:

Furniture and fixtures	Five to ten years
Equipment	Five to ten years
Leasehold improvements	Lesser of useful lives or related lease term
Hardware and software	Three to seven years

### **Goodwill and Intangibles**

SFAS No. 141, *Business Combinations*, requires that all business combinations be accounted for under the purchase method. The statement further requires separate recognition of intangible assets that meet one of two criteria set forth in the statement. Under SFAS No. 142, *Goodwill and Other Intangible Assets* goodwill and intangible assets with indefinite lives are no longer amortized but are tested at least annually for impairment. Separable intangible assets with defined lives will continue to be amortized over their useful lives.

Below is a table showing the changes in the carrying value of the Company's goodwill and intangible assets from January 28, 2006 to February 3, 2007:

	<u>January 28, 2006</u>	<u>Additions</u>	<u>Amortization</u>	<u>February 3, 2007</u>
			(in thousands)	
Goodwill	\$ 53,861	\$ 6,775(1)	\$ —	\$ 60,636
Trademarks	33,200	—	—	33,200
Other intangibles	2,557	104(2)	(327)	2,334

- (1) During fiscal 2006, the Company accrued \$4.0 million relating to the earn-out provisions from the Company's Rochester acquisition in fiscal 2004. Based on the results of operations for fiscal 2005, during

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the first quarter of fiscal 2006, the Company paid \$1.3 million of this earn-out. At February 3, 2007, the remaining earn-out accrual is \$2.7 million which will be paid out according to the terms of the asset purchase agreement. In connection with the acquisition of Jared M. in the second quarter of fiscal 2006, the Company recorded goodwill of \$2.5 million. During the third quarter of fiscal 2006, the Company recorded \$0.3 million of goodwill in connection with its acquisition of SuperSize World. See Acquisitions, Note K.

(2) Other intangibles include the addition of \$104,000 related to the SuperSize World acquisition and purchase of customer lists.

At least annually, the Company evaluates goodwill, based on two separate operating segments, its Casual Male business and its Rochester business, by comparing the current carrying value of goodwill with the fair value of the net assets of the Company. The goodwill assigned to each operating segment represents the initial purchase price allocation to goodwill as a result of their respective acquisitions. The Company also performs an impairment analysis and records an impairment charge for any intangible assets with a carrying value in excess of its fair value. The Company will write off the amount of any goodwill or intangible in excess of its fair value. Other intangibles, which include customer lists and non-compete agreements, are the only intangible assets with defined lives, which range from 3 to 16 years based on each asset's estimated economic useful life. Accumulated amortization was \$975,958 at February 3, 2007 and \$649,376 at January 28, 2006.

Amortization expense for other intangible assets for the next five fiscal years is as follows:

<u>Fiscal Year</u>	<u>(in thousands)</u>
2007	\$ 327
2008	\$ 301
2009	\$ 301
2010	\$ 301
2011	\$ 301

### ***Pre-opening Costs***

In accordance with Statement of Position 98-5, "Reporting on the Costs of Start-Up Activities," the Company expenses all pre-opening costs for its stores as incurred.

### ***Advertising Costs***

The Company expenses in-store advertising costs as incurred. Direct response advertising costs, which consist of catalog production and postage costs, are deferred and amortized over the period of expected direct marketing revenues, which is less than one year. Direct response costs which were deferred at February 3, 2007 and January 28, 2006 were \$2.0 million and \$904,725, respectively. Advertising expense, which is included in selling, general and administrative expenses, was \$30.9 million, \$28.6 million and \$25.5 million for fiscal 2006, 2005 and 2004, respectively.

### ***Revenue Recognition***

Revenue from the Company's retail store operation is recorded upon purchase of merchandise by customers, net of an allowance for sales returns and allowances. Revenue from the Company's catalog and e-commerce operations is recognized at the time a customer order is shipped.

### ***Gift Cards***

In October 2002 the Company launched its gift card program. Revenue from gift cards and store merchandise credits is recognized at the time of redemption. Gift card breakage is income recognized due to the non-redemption of a portion of gift cards sold by the Company for which a liability was recorded in prior

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periods. The Company has determined, based on historical redemption patterns, that approximately 7% to 8% of the gift cards will not be redeemed. Revenue for fiscal 2006 and fiscal 2005 includes income of \$0.8 million and \$1.2 million, respectively, related to gift card breakage. Gift card breakage is amortized by the Company over the expected redemption period for such gift cards, based on historical trends.

### ***Customer Loyalty Program***

During the third quarter of fiscal 2006, the Company introduced a customer loyalty program for its Casual Male customers. Under the program, customers accumulate points based on purchase activity and earn rewards by reaching certain point thresholds. Rewards earned are valid through the stated expiration date, which is approximately five months from the mailing date and can be redeemed for a discount on a future purchase of merchandise. Rewards not redeemed during the five-month redemption period are forfeited.

The estimate of the costs associated with the loyalty program requires the Company to make assumptions related to customer purchasing levels and redemption rates. A current liability is recorded with an offsetting reduction to revenue as the reward is earned equal to the estimated value of the anticipated redemptions.

### ***Foreign Currency Translation***

The Company operates 12 Casual Male stores located within Sears Canada retail stores and one Rochester Big & Tall Clothing store located in London, England. 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.

### ***Shipping and Handling Costs***

Shipping and handling costs are included in cost of sales for all periods presented.

### ***Income Taxes***

Deferred income taxes are provided to recognize the effect of temporary differences between tax and financial statement reporting. Such taxes are provided for using enacted tax rates expected to be in place when such temporary differences are realized. A valuation allowance is recorded to reduce deferred tax assets if it is determined that it is more likely than not that the full deferred tax asset would not be realized. If it is subsequently determined that a deferred tax asset will more likely than not be realized, a credit to earnings is recorded to reduce the allowance.

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### *Net Income Per Share*

SFAS No. 128, *Earnings per Share*, requires the computation of basic and diluted earnings per share. Basic earnings per share are computed by dividing net income 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 warrants using the treasury stock method and convertible notes using the “if-converted” method. The “if-converted” method assumes conversion of the convertible notes if the impact of the conversion is more dilutive to earnings after considering the impact of reversing interest expense and increasing the common stock outstanding. The following table provides a reconciliation of the number of shares outstanding for basic and diluted earnings per share:

	Fiscal Years Ended		
	February 3, 2007	January 28, 2006 (in thousands)	January 29, 2005
<b>Net Income:</b>			
Net Income—Basic	\$ 42,632	\$ 10,760	\$ 1,524
Add back interest costs, tax effected, assuming Conversion of convertible notes(1)	2,769	—	—
Net income—Diluted	\$ 45,401	\$ 10,760	\$ 1,524
<b>Weighted Average Shares Outstanding:</b>			
Basic weighted-average common shares outstanding	35,276	34,306	34,511
Stock options and warrants	2,542	1,554	2,222
Shares issued upon conversion of convertible notes at 10.65 per share	8,639	—	—
Diluted weighted-average shares outstanding	46,457	35,860	36,733

- (1) Shares issuable upon the conversion of the convertible notes of 9.4 million for fiscal 2005 and fiscal 2004 were excluded from the calculation of diluted earnings per share because they were anti-dilutive to earnings using the “if-converted” method.

The following potential common stock equivalents were excluded from the computation of diluted earnings per share in each year 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 or the impact of FAS 123R primarily related to unearned compensation. Convertible notes for fiscal 2005 and fiscal 2004 were also excluded as discussed above in note 1 to the table:

	Fiscal Years Ended		
	February 3, 2007	January 28, 2006 (in thousands)	January 29, 2005
Options	735	1,430	687
Warrants	—	1,888	1,812
Convertible notes at \$10.65/share	—	8,897	9,390
Ranges of exercise prices of such options, warrants and convertible notes	\$ 9.27 –\$11.15	\$ 6.66 –\$10.65	\$ 6.83 to \$10.65

### *Stock-based Compensation*

Effective January 29, 2006, the Company adopted Statement of Financial Accounting Standards No. 123 (revised 2004), “Share-Based Payment” (“SFAS 123R”), using the modified prospective method which requires measurement of compensation cost for all stock awards at fair value on date of grant and recognition of compensation over the service period for awards expected to vest. The fair value of stock options is determined using the Black-Scholes valuation model, which is consistent with the Company’s valuation techniques previously utilized for options in footnote disclosures required under SFAS 123, “Accounting for Stock-Based Compensation” (“SFAS 123”), as amended by SFAS 148 “Accounting for Stock-Based Compensation—Transition and

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Disclosure” (“SFAS 148”), and requires the input of subjective assumptions. These assumptions include estimating the length of time employees will retain their vested stock options before exercising them (the “expected term”), the estimated volatility of the Company’s common stock price over the expected term and the number of options that will ultimately not complete their vesting requirements (“forfeitures”). As required under the accounting rules, the Company reviews its valuation assumptions at each grant date and, as a result, is likely to change its valuation assumptions used to value employee stock-based awards granted in future periods. The values derived from using the Black-Scholes model are recognized as expense over the vesting period, net of estimated forfeitures. The estimation of stock awards that will ultimately vest requires significant judgment. Actual results, and future changes in estimates, may differ from the Company’s current estimates. Prior periods have not been restated to incorporate the stock-based compensation charge.

For fiscal 2006, the Company recognized total compensation expense of \$777,000, or approximately \$470,000 after tax. The total compensation cost related to non-vested awards not yet recognized is approximately \$2.3 million which will be expensed over a weighted average remaining life of 27.0 months.

Prior to January 29, 2006, the Company’s share-based payments to its employees and directors were accounted for in accordance with Accounting Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees” (“APB 25”) and related interpretations. Under this method, no compensation expense was recognized as long as the exercise price equaled or exceeded the market price of the underlying stock on the date of the grant. The Company elected the disclosure-only alternative permitted under SFAS No. 123, for fixed stock-based awards to employees.

Prior to the adoption of SFAS 123R, on January 27, 2006, the Company’s Board of Directors approved the accelerated vesting of 965,000 outstanding and unvested options held by directors, officers and employees under our 1992 Plan. As a result of the acceleration, these options to acquire 965,000 shares of the Company’s common stock, which otherwise would have vested from time to time over the following three years, became immediately exercisable. This action was taken to eliminate, to the extent permitted, the transition expense that the Company otherwise would incur in connection with the adoption of SFAS No. 123R. Under the accounting guidance of APB Opinion No. 25, the accelerated vesting resulted in a charge for stock-based compensation of approximately \$30,000, which was recognized in the fourth quarter of fiscal 2005. Additionally, the Company’s pro forma disclosure for fiscal 2005 and fiscal 2004 include the effect of these accelerations, as calculated under SFAS No. 123 rules, of \$2.9 million and \$6.1 million, respectively.

### *Fair Value Disclosures- Prior to SFAS 123R adoption*

For fiscal 2005 and fiscal 2004, had compensation costs for the Company’s grants for stock-based compensation been determined consistent with SFAS No. 123, the Company’s net income and net income per share would have been as indicated below:

	Fiscal Years Ended	
	January 28, 2006	January 29, 2005
	(in thousands, except per share amounts)	
Net income—as reported	\$ 10,760	\$ 1,524
Reversal of acceleration charge under APB 25	30	70
Compensation expense	(821)	(2,558)
Charge for acceleration of options using fair value	(2,863)	(6,082)
Net income—pro forma	7,106	(7,046)
Net income per share—basic as reported	\$ 0.31	\$ 0.04
Net income per share—basic pro-forma	\$ 0.21	\$ (0.21)
Net income per share—diluted as reported	\$ 0.30	\$ 0.04
Net income per share—diluted pro-forma	\$ 0.20	\$ (0.21)

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### *Valuation Assumptions for Stock Options*

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 in fiscal 2006, 2005 and 2004:

	Fiscal Years Ended		
	February 3, 2007	January 28, 2006	January 29, 2005
Expected volatility	45.0%	65.0%	65.0%
Risk-free interest rate	4.48%–5.02%	3.88%–4.48%	2.69%–3.71%
Expected life	3.0-4.5	4.5	4.5
Dividend rate	—	—	—
Weighted average fair value of options granted	\$3.82	\$3.76	\$3.96

Expected volatilities are based on historical volatilities of the Company's common stock; the expected life represents the weighted average period of time that options granted are expected to be outstanding giving consideration to vesting schedules and historical exercise patterns; and the risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant for periods corresponding with the expected life of the option.

### *Impairment of Long-Lived Assets*

The Company reviews its long-lived assets for events or changes in circumstances that might indicate the carrying amount of the assets may not be recoverable. The Company assesses the recoverability of the assets by determining whether the carrying value of such assets over their respective remaining lives can be recovered through projected undiscounted future cash flows. The amount of impairment, if any, is measured based on projected discounted future cash flows using a discount rate reflecting the Company's average cost of funds. The recorded impairment for fiscal 2005 was immaterial. No impairment charges were recorded in fiscal 2006 and fiscal 2004.

## **B. Property and Equipment**

Property and equipment consisted of the following at the dates indicated:

	February 3, 2007	January 28, 2006
	(in thousands)	
Furniture and fixtures	\$ 36,919	\$ 29,232
Equipment	5,698	3,770
Leasehold improvements	20,611	17,288
Building, land and building improvements(1)	—	—
Hardware and software	29,376	24,879
Construction in progress	2,504	631
	95,108	75,800
Less accumulated depreciation	36,045	24,527
Total property and equipment	\$ 59,063	\$ 51,273

- (1) At January 28, 2006, due to the sale-leaseback transaction which occurred in the first quarter of fiscal 2006, the net book value of the Company's "Building, land and building improvements" of \$26.6 million was reclassified to Assets Held for Sale on the Consolidated Balance Sheet. See Note N for a complete discussion of the sale-leaseback transaction.

Depreciation expense related to continuing operations for fiscal 2006, 2005 and 2004 was \$14.4 million, \$11.7 million and \$8.8 million, respectively. Fiscal 2004 excludes depreciation expense recorded in discontinued operations of \$1.7 million.

**C. Debt Obligations*****Credit Agreement with Bank of America Retail Group, Inc.***

On December 28, 2006, the Company amended its credit facility with Bank of America, N.A. by executing the Fifth Amended and Restated Loan and Security Agreement (the "Credit Facility"). The amended Credit Facility permits the Company to, among other things, repurchase, redeem or acquire its common stock (and permitted the Company to repurchase its Convertible Notes) provided that its Total Facility Usage Ratio, as defined in the Credit Facility, does not exceed 80% immediately after the transaction or over the respective following twelve months.

The Credit Facility provides for a total commitment of \$110 million comprised of (i) a \$100 million revolving credit facility which includes a sublimit of \$20 million for commercial and standby letter of credits and a sublimit of up to \$15 million for SwingLine Loans and (ii) a \$10 million "Last Out" revolving credit facility, which will be subordinate to the \$100 million revolving credit facility. If at any time our Excess Availability Ratio, as defined in the Credit Facility, is less than 50%, the Company's borrowings must first be made from the "Last Out" revolving credit facility before borrowing from the \$100 million revolving credit facility. Borrowings under the Credit Facility bear interest at variable rates based on Bank of America's prime rate or the London Interbank Offering Rate ("LIBOR") and vary depending on our levels of excess availability. As a result of this amendment, the Company's interest costs under the \$100 million revolving credit facility were reduced by approximately 75 basis points depending on our level of excess availability. The maturity date of the Credit Facility is October 29, 2008.

The Company's obligations under the Credit Facility are secured by a lien on all of its assets. The 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 was in compliance with all debt covenants under the Credit Facility at February 3, 2007.

At February 3, 2007, the Company had borrowings outstanding under the Credit Facility of \$8.5 million and outstanding standby letters of credit of \$4.3 million and documentary letters of credit of \$3.2 million. Average borrowings outstanding under this facility during fiscal 2006 were approximately \$7.5 million, resulting in an average unused excess availability of approximately \$68.0 million. The Company's ability to borrow under the Credit Facility is determined using an availability formula based on eligible assets, with increased advance rates based on seasonality.

The fair value of amounts outstanding under the Credit Facility approximates the carrying value at February 3, 2007 and January 28, 2006. 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 February 3, 2007, the prime-based borrowings interest rate was 8.25% and the Company had no outstanding LIBOR contracts.

***Long-Term Debt***

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

	<u>February 3, 2007</u>	<u>January 28, 2006</u>
5% convertible senior subordinated notes due 2024	\$ —	\$ 94,750
5% senior subordinated notes due 2007	688	4,125
Term loan	—	5,625
Total long-term debt	<u>688</u>	<u>104,500</u>
Less: current portion of long-term debt	<u>(688)</u>	<u>(9,063)</u>
Long-term debt, less current portion	<u>\$ —</u>	<u>\$ 95,437</u>

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### *5% convertible senior subordinated notes due 2024*

In fiscal 2003, the Company sold \$100 million principal amount of convertible senior subordinated notes due 2024 (the "Convertible Notes"). The Convertible Notes were sold in a private transaction to qualified institutional buyers (as such term is defined in Rule 144A under the Securities Act of 1933, as amended). The Convertible Notes, which bore interest at a rate of 5% per year, payable semi-annually, were convertible into the Company's common stock at a conversion price of \$10.65 per share and constituted general unsecured obligations of the Company, subordinate to all existing and future designated senior indebtedness.

Each Convertible Note holder had the right to require the Company to redeem the Convertible Notes for cash or delivery of shares of the Company's common stock, at the Company's option, on January 1, 2009, 2014 or 2019. The purchase price payable for each Convertible Note would have been equal to 100% of its principal amount plus accrued and unpaid interest and additional interest, if any, to, but excluding, the repurchase date. In addition, on or after January 6, 2007, the Company had the option to redeem the Convertible Notes, in whole or in part, at the redemption price, which is 100% of the principal amount plus accrued and unpaid interest and additional interest, if any, to, but excluding the redemption date.

During the fourth quarter of fiscal 2005, the Company repurchased \$5.3 million of the Convertible Notes and recognized a gain on the notes of \$0.4 million. This gain was offset partially by \$0.2 million associated with the write-off of deferred financing costs on such notes. The net gain of \$0.2 million is included in the Company's results of operations as part of "Other income (expense)" for fiscal 2005.

During the fourth quarter of fiscal 2006, on December 18, 2006 and January 8, 2007, the Company provided notices to the holders of the Convertible Notes of the Company's intention to redeem its Convertible Notes, of which \$94.8 million were then outstanding. By the end of business of January 26, 2007, substantially all of the note-holders had elected to convert their convertible notes into approximately 8.9 million shares of common stock, resulting in the Company redeeming only \$9,000 of the Convertible Notes for cash.

The Company's debt financing costs, which were incurred in connection with the issuance of the Convertible Notes, were being amortized to interest expense on a straight-line basis over the contractual term of the notes. Upon conversion, the remaining unamortized balance of deferred financing costs of \$3.6 million as of the conversion date, was reclassified to additional paid-in capital.

### *5% senior subordinated notes due 2007*

At February 3, 2007, the Company has \$687,500 principal amount of its 5% senior subordinated notes due 2007 outstanding. These notes were issued in May 2002 through a private placement with the Kellwood Company, with whom the Company also has a product sourcing agreement. The final quarterly payment is due April 29, 2007. Accrued interest is payable quarterly.

### *Term loan*

On October 29, 2004, the Company entered into a 3-year term loan for \$7.5 million with Bank of America Retail Group, LLC, the proceeds of which were used for the Rochester Acquisition. The loan required 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 accrued interest at the prevailing LIBOR rate plus 5% per annum. During the first quarter of fiscal 2006, the Company prepaid in full the remaining balance of \$5.6 million.

### *Prepayment costs-Fiscal 2004*

In fiscal 2004, the Company incurred a charge of \$1.9 million as a result of the prepayment of its remaining \$7.8 million of 12% senior subordinated notes due 2010. This prepayment charge is reflected in the Company's results of operations as "Other income (expense)" for fiscal 2004.

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### *Long-term debt maturities*

As discussed above, the Company's has one remaining scheduled maturity of \$687,500, which is payable during the first quarter of fiscal 2007. The Company has no other long-term debt obligations at February 3, 2007.

The Company paid interest and fees on all the above described debt obligations totaling \$6.1 million, \$9.6 million and \$9.5 million for fiscal 2006, fiscal 2005 and 2004, respectively.

### **D. Income Taxes**

The Company accounts for income taxes in accordance with SFAS No. 109, *Accounting for Income Taxes*. Under SFAS No. 109, deferred tax assets and liabilities are recognized based on temporary differences between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect in the years in which the differences are expected to reverse. SFAS No. 109 requires current recognition of net deferred tax assets to the extent that it is more likely than not that such net assets will be realized. To the extent that the Company believes that its net deferred tax assets will not be realized, a valuation allowance must be recorded against those assets.

As of February 3, 2007, the Company has net operating loss carryforwards of \$57.0 million for federal income tax purposes and approximately \$44.0 million for state income tax purposes that are available to offset future taxable income, subject to certain annual usage limitations, through fiscal year 2024. As a result of the Casual Male acquisition and the issuance of additional equity in fiscal 2002, the utilization of approximately \$24.7 million of the \$53.8 million in federal net operating losses are subject to an annual limitation of approximately \$4.8 million per year. Additionally, the Company has alternative minimum tax credit carryforwards of \$2.2 million, which are available to further reduce income taxes over an indefinite period.

Realization of the Company's deferred tax assets, which relate principally to federal net operating loss carryforwards, which expire from 2018 through 2024, is dependent on generating sufficient taxable income in the near term. In fiscal years 2001 and 2002, the Company established a full valuation allowance against its deferred tax assets due to the uncertainty at that time of generating future taxable income, based on its historical losses in those years. Since that time, the Company has transformed itself, through acquisitions and divestures, from an operator of Levi's®/Dockers® outlet stores to the market leader of men's big & tall apparel. Since the Company acquired Casual Male in fiscal 2002, its big & tall business has been profitable from an operating perspective. Further, with the acquisition of Rochester Big & Tall Clothing in October 2004, which was immediately accretive to the Company's business, the Company has gained another market tier of the industry now attracting the higher end target customers.

During the fourth quarter of fiscal 2005, the Company determined that it was more likely than not that it would be able to realize the benefits of a portion of its deferred tax assets. In reaching this determination, the Company considered the positive evidence of significant improvement in pre-tax income and other factors. As a result, for fiscal 2005, the Company reversed \$3.1 million of its deferred tax valuation allowance and recorded a benefit to income tax expense.

Throughout fiscal 2006, the Company reviewed the realizability of the remaining deferred tax assets and in the fourth quarter determined that it was more likely than not that the Company would be able to realize substantially all of its deferred tax assets. In reaching this determination, the Company considered the positive evidence of thirteen consecutive quarters of positive comparable store sales, its continued improvement in pre-tax income over the past five years, its expectations regarding the generation of future taxable income, and its current market position and expected growth of the big & tall industry.

Accordingly, in fiscal 2006, the Company reversed \$31.0 million of the deferred tax valuation allowance and recorded an income tax benefit of \$30.5 million. The remaining \$0.5 million of the reversal was credited to additional paid-in capital as it related to previous benefits realized in connection with stock options. The income

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tax benefit of \$30.5 million was partially offset by \$8.9 million of income tax provisions of current year earnings. Fiscal 2005 included a net benefit of \$2.7 million, which consisted of a benefit of \$3.1 million for the reversal of a portion of the valuation allowance offset by \$342,000 of taxes related to foreign taxes and income tax audit adjustments. No provision for income taxes was recorded in fiscal 2004. At February 3, 2007, the Company has a valuation allowance of \$1.3 million for losses associated with its Canada operations and certain state net operating losses, the benefit of which may not be recognized due to short carryforward periods.

The components of the net deferred tax assets as of February 3, 2007 and January 28, 2006 are as follows (in thousands):

	<u>February 3, 2007</u>	<u>January 28, 2006</u>
<b>Deferred tax assets—current:</b>		
Inventory reserves	\$ 4,460	\$ 3,711
Gain on sale-leaseback	579	—
Accrued expenses	1,858	1,836
<b>Net deferred tax assets—current</b>	<u>6,897</u>	<u>5,547</u>
<b>Deferred tax assets—noncurrent:</b>		
Gain on sale-leaseback	10,419	—
Gain on sale of LPI	876	—
Lease accruals	1,796	1,327
Net operating loss carryforward	21,430	40,617
Foreign tax credit carryforward	84	66
Amounts included in accumulated other comprehensive loss	725	—
Alternative minimum tax credit Carryforward	2,237	1,413
Subtotal	37,567	43,423
<b>Deferred tax liabilities—noncurrent</b>		
Excess of tax over book depreciation/amortization	(1,971)	(2,804)
Tax-deductible goodwill	(12,924)	(10,784)
Subtotal	<u>(14,895)</u>	<u>(13,588)</u>
<b>Net deferred tax asset—noncurrent</b>	<u>22,672</u>	<u>29,835</u>
<b>Total deferred tax assets</b>	<u>29,569</u>	<u>35,372</u>
<b>Valuation allowance</b>	<u>(1,288)</u>	<u>(32,311)</u>
<b>Net deferred tax assets</b>	<u>\$ 28,281</u>	<u>\$ 3,071</u>

The provision (benefit) for income taxes consists of the following:

	<u>February 3, 2007</u>	<u>Fiscal Years Ended</u> <u>January 28, 2006</u> <u>(in thousands)</u>	<u>January 29, 2005</u>
<b>Current:</b>			
Federal and state	\$ 2,263	\$ 276	\$ —
Foreign	108	66	—
	<u>2,371</u>	<u>342</u>	<u>—</u>
<b>Deferred:</b>			
Federal and state	(23,963)	(3,071)	—
Foreign	—	—	—
	<u>(23,963)</u>	<u>(3,071)</u>	<u>—</u>
<b>Total provision</b>	<u>\$ (21,592)</u>	<u>\$ (2,729)</u>	<u>—</u>

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The following is a reconciliation between the statutory and effective income tax rates in dollars:

	<b>Fiscal Years Ended</b>		
	<b>February 3, 2007</b>	<b>January 28, 2006</b>	<b>January 29, 2005</b>
Federal income tax at the statutory rate	\$ 7,364	\$ 2,731	\$ 567
State income and other taxes, net of federal tax benefit	1,165	—	—
Permanent items	86	59	42
Change in valuation allowance	(30,501)	(6,108)	(1,278)
Other, net	294	589	669
Provision for income tax	<u>\$ (21,592)</u>	<u>\$ (2,729)</u>	<u>\$ —</u>

The Company made tax payments of \$2.2 million, \$471,000 and \$388,000 for fiscal years 2006, 2005 and 2004, respectively.

### **E. Commitments and Contingencies**

At February 3, 2007, the Company was obligated under operating leases covering store and office space, automobiles and certain equipment for future minimum rentals as follows:

<b>Fiscal Year</b>	<b>Total</b>
	<b>(in thousands)</b>
2007	\$ 47,688
2008	43,157
2009	36,227
2010	28,920
2011	24,048
Thereafter	117,385
	<u>\$ 297,425</u>

In addition to future minimum rental payments, many of the store leases include provisions for common area maintenance, mall charges, escalation clauses and additional rents based on a percentage of store sales above designated levels.

During the first quarter of fiscal 2006, on February 1, 2006 the Company entered into a twenty-year lease agreement with a subsidiary of Spirit Finance Corp. ("Spirit"), as part of a sale-leaseback which is fully discussed in Note N, whereby the Company agreed to lease the property it sold to Spirit back for an annual rent of \$4.6 million. In the first quarter of fiscal 2006, the Company realized a gain of approximately \$29.3 million on the sale of this property, which will be deferred and amortized over the initial 20 years of the related lease agreement. At the end of the initial term, the Company will have the opportunity to extend the Lease Agreement for six additional successive periods of five years. In addition, on February 1, 2011, the fifth anniversary of the Lease Agreement, and for every fifth anniversary thereafter, the base rent will be subject to a rent increase not to exceed the lesser of 7% or a percentage based on changes in the Consumer Price Index. Accordingly, the Company's annual rent of \$4.6 million will be offset each lease year by \$1.5 million related to the amortization of this deferred gain. This lease commitment, excluding the impact of the gain, is included in the above table of expected future minimum rentals obligations.

Amounts charged to operations for all occupancy costs, automobile and leased equipment expense were \$50.8 million, \$46.9 million and \$52.1 million for fiscal 2006, fiscal 2005 and fiscal 2004, respectively.

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### *Licensing and Endorsement Agreement with George Foreman*

Through December 2006, the Company had a License Agreement and Endorsement Agreement (the “Foreman Agreements”) with George Foreman Productions, Inc. pursuant to which George Foreman would act as the Company’s spokesperson. Further, the Company had the right to use Mr. Foreman’s name, image and likeness in connection with its big & tall merchandise. The initial term of the Foreman Agreements was through December 31, 2006. Pursuant to the Foreman Agreements, as amended, as compensation for Mr. Foreman’s services and the exclusive rights to his name, image and likeness for apparel clothing and certain accessories, Mr. Foreman would receive \$1.5 million over the initial term of the Endorsement Agreement and would receive a royalty payment on all merchandise manufactured under the George Foreman product lines, subject to a guaranteed minimum payment of \$4.0 million over the initial term. The Company also had a license agreement with George Foreman for the right to sell shoes and footwear under the George Foreman name. Mr. Foreman will receive a royalty payment on all footwear manufactured under the George Foreman name, subject to a guaranteed minimum of \$275,000 over the initial term.

During the second quarter of fiscal 2006, the Company notified George Foreman Productions, Inc. that it would not be exercising its option to extend its License Agreement, Endorsement Agreement and Footwear Agreement when the initial terms expired on December 31, 2006. At February 3, 2007, the Company has satisfied its guaranteed minimums pursuant to the agreements.

### *Other*

The Company has filed suit against a competitor and a former employee and his company alleging breach of contract, misappropriation of confidential business information and other business torts, including violations of the Computer Fraud and Abuse Act. This suit is pending in Massachusetts Federal District Court and is expected to be tried in June of 2007. The defendants have recently filed counterclaims in this suit that the Company believes are without merit. The Company believes that it has sustained substantial damages as a result of the defendants’ actions. The Company intends to prosecute these claims vigorously at trial. The Company has also recently filed a separate suit in Massachusetts Federal Court against certain of the same defendants, as well as a former supplier and competitor, alleging similar misconduct. That suit is in its preliminary stages.

The Company is subject to various legal proceedings and claims that arise in the ordinary course of business. Management believes that the resolution of these matters will not have an adverse impact on the results of operations or the financial position of the Company.

## **F. Equity**

### *Issuance of Warrants*

The following table summarizes the activity of the Company’s outstanding warrants for fiscal 2006:

	<u>Number of Shares</u>	<u>Weighted- average Exercise price per Option</u>	<u>Weighted- average Remaining Contractual Term</u>	<u>Aggregate Intrinsic Value (in 000’s)</u>
Warrants outstanding at beginning of year	3,272,871	\$ 5.79		
Warrants issued	—	—		
Warrants canceled	—	—		
Warrants exercised	(1,185,459)	2.93		
Warrants outstanding at end of year	2,087,412	\$ 7.41	2.0 years	\$ 10,577
Vested and expected to vest at end of year	2,087,412	\$ 7.41	2.0 years	\$ 10,577
Warrants exercisable at end of year	2,087,412	\$ 7.41	2.0 years	\$ 10,577

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The total intrinsic value of warrants exercised was \$8.2 million, \$16,000 and \$20,000 for fiscal 2006, fiscal 2005 and fiscal 2004, respectively.

### **Warrants Outstanding and Exercisable at February 3, 2007**

<u>Range of Exercise Prices</u>	<u>Number Outstanding</u>	<u>Remaining Contractual Life</u>	<u>Weighted Average Exercise Price</u>	<u>Number Exercisable</u>
\$4.76 to \$6.45	352,000	3.9 years	\$ 5.04	352,000
6.46 to 8.50	1,735,412	1.7 years	7.89	1,735,412
\$4.76 to \$8.50	<u>2,087,412</u>		<u>\$ 7.41</u>	<u>2,087,412</u>

In fiscal 2002, as part of a private placement of 12% senior subordinated notes due 2007, which the Company fully redeemed in fiscal 2003, the Company issued warrants to purchase 1,715,000 shares of common stock at an exercise price of \$0.01 per share and additional warrants to purchase 1,176,471 shares of common stock at an exercise price of \$8.50 per share. The Company assigned a value, based on the Black-Scholes model, of \$9.6 million for these warrants. The value of the warrants was reflected as a component of stockholders' equity as a discount on the notes and was initially amortized over the term of the corresponding debt, which was five years. In November 2003, the Company prepaid in full the principal amount due on the 12% senior subordinated notes and accordingly the unamortized value of these warrants of \$7.3 million was written off and was included in "Other income (expense)" on the Consolidated Statement of Operations for fiscal 2003.

In fiscal 2003, as part of the private placement of the Company's 12% senior subordinated notes due 2010, the Company issued warrants to purchase 1,182,400 shares of common stock at exercise prices ranging from \$4.76 per share to \$7.32 per share. Such exercise prices represent the average of the closing prices on the Company's common stock on Nasdaq for the period of 30 trading days ending prior to each of the respective issue dates. The assigned Black-Scholes value of \$5.6 million for such warrants was reflected as a component of stockholders' equity to be amortized over the seven-year life of the notes as additional interest expense. In the fourth quarter of fiscal 2003 and the second quarter of fiscal 2004, the Company prepaid the notes, which resulted in the acceleration and write-off of the related unamortized value of the warrants of approximately \$4.1 million in fiscal 2003 and \$1.9 million in fiscal 2004. The \$1.9 million is in "Other income (expense)" on the Consolidated Statement of Operations for fiscal 2004.

### **Stock Repurchase Programs**

During the second quarter of fiscal 2006, pursuant to a \$30.0 million stock repurchase program approved by the Company's Board of Directors, the Company repurchased 1.3 million shares of common stock for an aggregate cost, including broker commissions, of \$13.1 million, resulting in an average price of \$9.74 per share.

On December 4, 2006, in connection with the Company's decision to redeem a then portion of its Convertible Notes, the Company's Board of Directors approved a \$75.0 million stock repurchase program, replacing the existing \$30 million stock repurchase program that was currently in place. Under this stock repurchase program, the Company was authorized to repurchase up to \$75 million of its common stock during the remainder of fiscal 2006 and fiscal 2007 through open market and privately negotiated transactions pursuant to Rule 10b-18 of the Exchange Act. The stock repurchase program expires on December 31, 2007 but may be terminated earlier at any time without prior notice. As permitted by the program, the Company adopted a 10b5-1 Plan effective January 30, 2007, which will expire on April 3, 2007, to repurchase up to 3 million shares, or \$35.0 million whichever occurs first, at specified market prices. Through February 3, 2007, the Company repurchased approximately 164,400 shares for an aggregate price of \$2.1 million.

At February 3, 2007, the Company has a total of 6.7 million shares of repurchased stock at an aggregate cost of \$38.6 million which is reported by the Company as treasury stock and is reflected as a reduction in stockholders' equity.

**G. Stock Options**

Through July 31, 2006, the Company had one share-based compensation plan, the 1992 Stock Incentive Plan, as amended most recently on August 7, 2003 (the "1992 Plan"). Under the terms of the 1992 Plan, up to 6,930,000 shares of common stock were issuable in the form of "incentive stock options" (as defined in Section 422 of the Internal Revenue Code of 1986, as amended), options which are not "incentive stock options," conditioned stock awards, unrestricted stock awards and performance share awards.

At the Company's 2006 Annual Meeting of Stockholders held on July 31, 2006, the Company's stockholders approved the adoption of the 2006 Incentive Compensation Plan (the "2006 Plan"). As a result of such approval, no further grants will be made under the 1992 Plan. The terms of the 2006 Plan provide for grants of stock options, stock appreciation rights, or SARs, restricted stock, deferred stock, other stock-related awards and performance awards that may be settled in cash, stock or other property.

Under the terms of the 2006 Plan, 2,500,000 shares of common stock are available for the granting of awards; provided, however, that the maximum number of shares available for the granting of awards other than stock options and SARs cannot exceed 1,250,000 shares.

Both the 1992 Plan and the 2006 Plan are administered by the Compensation Committee, all of the members of which are non-employee directors who qualify as independent under the listing standards of the Nasdaq Global Market. The Compensation Committee makes all determinations with respect to amounts and conditions covering awards under both plans. Options are not granted at a price less than fair value on the date of the grant. Options granted to employees and executives typically vest over three years and options granted to non-employee directors vest over two years. Options expire ten years from the date of grant.

In the fourth quarter of fiscal 2005, the Company's Board of Directors approved the accelerated vesting of 965,000 outstanding and unvested options held at that time by directors, officers and employees under the 1992 Plan. As a result of the acceleration, these options to acquire 965,000 shares of common stock, which otherwise would have vested from time to time over the following three years, became immediately exercisable.

Previously, during the fourth quarter of fiscal 2004, the Company's Board of Directors had approved the accelerated vesting of all outstanding and unvested options held at that time by directors, officers and employees. As a result of that acceleration, options to acquire 1,903,252 shares of common stock, which otherwise would have vested from time to time through fiscal 2007, became immediately exercisable.

See "Stock-Based Compensation" in Note A above for a complete discussion of the accelerations and their financial impact.

**Stock Option Activity-2006 Plan**

The following table summarizes stock option activity under the 2006 Plan for fiscal 2006:

	Number of Shares	Weighted- average Exercise price per Option	Weighted- average Remaining Contractual Term	Aggregate Intrinsic Value (in 000's)
Outstanding at beginning of year	—	—		
Options granted	115,000	\$ 11.15		
Options canceled	—	—		
Options exercised	—	—		
Outstanding at end of year	115,000	\$ 11.15	9.4 years	\$ 153
Vested and expected to vest at end of year	115,000	\$ 11.15	9.4 years	\$ 153
Options exercisable at end of year	38,336	\$ 11.15	9.4 years	\$ 51

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Excluded from the above table are 1,928 unrestricted shares which were issued from the 2006 Plan to non-employee directors as payment for director fees totaling \$26,800 during fiscal 2006.

### *Stock Option Activity-1992 Plan*

The following table summarizes stock option activity under the 1992 Plan for fiscal 2006:

	Number of Shares	Weighted- average Exercise price per Option	Weighted- average Remaining Contractual Term	Aggregate Intrinsic Value (in 000's)
Outstanding at beginning of year	4,241,997	\$ 5.80		
Options granted	670,000	9.13		
Options canceled	(18,500)	10.09		
Options exercised	(1,099,473)	5.58		
Outstanding at end of year	<u>3,794,024</u>	<u>\$ 6.43</u>	7.1 years	\$ 22,951
Vested and expected to vest at end of year	3,792,024	\$ 6.43	7.1 years	\$ 22,940
Options exercisable at end of year	3,130,692	\$ 5.85	6.6 years	\$ 20,744

Excluded from the above table are 8,182 unrestricted shares which were issued from the 1992 Plan to non-employee directors as payment for director fees totaling \$79,000 during fiscal 2006. The total intrinsic value of options exercised was \$5.3 million, \$0.4 million and \$0.6 million for fiscal 2006, 2005 and 2004, respectively.

The following table summarizes information about stock options outstanding under the 1992 Plan at February 3, 2007:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding	Remaining Contractual Life	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$1.16 to \$2.15	235,625	3.3 years	\$ 1.45	235,625	\$ 1.45
2.16 to 4.30	175,583	4.8 years	3.46	175,583	3.46
4.31 to 6.45	1,592,016	6.6 years	5.38	1,592,016	5.38
6.46 to 8.60	884,500	8.2 years	7.04	841,168	7.03
8.61 to 10.30	906,300	8.6 years	9.56	286,300	10.14
<u>\$1.16 to \$10.30</u>	<u>3,794,024</u>	<u>7.1 years</u>	<u>\$ 6.43</u>	<u>3,130,692</u>	<u>\$ 5.85</u>

### *Options granted outside of the Company's 1992 Plan and 2006 Plan*

Below is a summary of options granted outside of the Company's 1992 Plan and 2006 Plan. These outstanding options represent options which have been granted to consultants of the Company prior to August 2003 and options granted to its executives in excess of the 1992 Plan's annual maximum grant which was 500,000 as of August 7, 2003.

	Number of Shares	Weighted- average Exercise price per Option	Weighted- average Remaining Contractual Term	Aggregate Intrinsic Value (in 000's)
Outstanding at beginning of year	1,140,000	\$ 3.21		
Options granted	—	—		
Options canceled	—	—		
Options exercised	(127,186)	4.99		
Outstanding at end of year	<u>1,012,814</u>	<u>\$ 2.99</u>	4.4 years	\$ 9,613
Vested and expected to vest at end of year	1,012,814	\$ 2.99	4.4 years	\$ 9,613
Options exercisable at end of year	1,012,814	\$ 2.99	4.4 years	\$ 9,613

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The total intrinsic value of options exercised outside of the Company's 1992 Plan and 2006 Plan for fiscal 2006 was \$0.8 million. There were no such exercises during fiscal 2005 and fiscal 2004.

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding	Remaining Contractual Life	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$1.19 to \$2.15	252,814	3.1 years	\$ 1.22	252,814	\$ 1.22
2.15 to 4.30	710,000	4.9 years	3.48	710,000	3.48
4.30 to 5.01	50,000	4.4 years	5.01	50,000	5.01
<u>\$1.19 to \$ 5.01</u>	<u>1,012,814</u>	<u>4.4 years</u>	<u>\$ 2.99</u>	<u>1,012,814</u>	<u>\$ 2.99</u>

### **Long-Term Performance Share Bonus Plan**

In fiscal 2005, the Company adopted a Long-Term Performance Share Bonus Plan pursuant to which certain key members of senior management are eligible to participate. Pursuant to the plan, if the Company achieves certain operating income targets by the end of fiscal 2007, each participant in the plan will be entitled to receive restricted shares of the Company's common stock, valued at 75% to 120%, depending of the target level achieved, of the participant's cumulative salary during the incentive period of fiscal 2005-2007 (discounted at a rate of 30%, 70% or 90% depending on the participant's respective tier level). The actual number of restricted shares granted, if any, will be such value divided by the closing price of the Company's common stock on the date of grant. Upon grant, the restricted shares will vest ratably over eighteen months. Assuming a fair market closing price of \$15.00 per share on the date of grant and current salary levels, if the Company were to achieve the operating income targets established in the plan, the Company may be required to issue an estimated 467,000 to 733,000 shares from its 2006 Plan and record total compensation expense ranging from \$7.0 million to \$11.0 million over the service period; however, because the achievement of the targets is not considered probable at this time no compensation expense has been recorded to date.

## **H. RELATED PARTIES**

### ***Seymour Holtzman and Jewelcor Management, Inc.***

Seymour Holtzman, the Chairman of the Board of Directors of the Company, is compensated by the Company both directly (as an executive officer of the Company) and indirectly (as the president and chief executive officer and, together with his wife indirectly, the majority shareholders of Jewelcor Management Inc. ("JMI")). Since October 1999, the Company has had an ongoing consulting agreement with JMI to assist in developing and implementing a strategic plan for the Company and for other related consulting services as may be agreed upon between JMI and the Company. Mr. Holtzman, who became the Company's Chairman of the Board on April 11, 2000, is the beneficial holder of approximately 14.3% of the outstanding common stock of the Company.

The following table summarizes the total compensation Mr. Holtzman has received, directly as an officer of the Company and indirectly through JMI, over the past three fiscal years on a combined basis.

	<u>Fiscal 2006</u>	<u>Fiscal 2005</u>	<u>Fiscal 2004</u>
Combined annual compensation	\$522,243(1)	\$431,000(2)	\$416,000(3)
Combined bonus	—	345,000(4)	150,000(5)
Combined long-term stock-based compensation awards(6)	160,000(7)	160,000(8)	400,000(9)

- (1) For the period February 2006 through April 2006, JMI received a monthly consulting fee of \$34,333, payable in cash. Effective May 1, 2006, the Compensation Committee increased the annual consulting fees payable in cash to JMI to \$527,000, or \$43,916 per month. Mr. Holtzman received an annual salary of \$24,000 as payment for his services as an executive officer of the Company. In addition to this compensation, JMI also receives an annual reimbursement for business expenses in the amount of \$24,000 annually.

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- (2) Compensation includes \$407,000 paid to JMI under its consulting agreement, as amended, and an annual salary of \$24,000 as payment to Mr. Holtzman for his services as an executive officer of the Company.
- (3) JMI received \$392,000 in consulting fees, payable in cash. Mr. Holtzman received an annual salary \$24,000 in fiscal 2004.
- (4) Pursuant to the Company's Executive Incentive Plan for fiscal 2005, on April 16, 2006, JMI received a bonus of \$345,000 for services performed in fiscal 2005.
- (5) On July 15, 2004, JMI received a bonus in the amount of \$150,000 for services performed in fiscal 2003.
- (6) As a result of the Company accelerating substantially all outstanding and unvested stock options held by directors, officers and employees under the Company's 1992 Stock Incentive Plan, all outstanding options held by Mr. Holtzman as of January 28, 2006 were fully vested and exercisable.
- (7) On April 24, 2006, the Compensation Committee granted to Mr. Holtzman a 10-year option to purchase 160,000 shares of the Company's common stock at an exercise price of \$9.27 per share. The option vests ratably over three years.
- (8) On May 9, 2005, the Compensation Committee granted to Mr. Holtzman a 10-year option to purchase 160,000 shares of the Company's common stock at an exercise price of \$6.90 per share.
- (9) On July 15, 2004, the Compensation Committee granted to Mr. Holtzman a 10-year option to purchase 200,000 shares of the Company's common stock at an exercise price of \$6.27 per share. On August 31, 2004, the Compensation Committee granted to Mr. Holtzman a 10-year option to purchase 100,000 shares of the Company's common stock at an exercise price of \$5.89 per share. On August 31, 2004, the Compensation Committee also granted Mr. Holtzman a 10-year option to purchase an additional 100,000 shares of the Company's common stock at an exercise price of \$5.89 per share.

During the first quarter of fiscal 2006, the Company's Board of Directors approved (i) the payment to JMI of approximately \$112,000 as reimbursement of legal incurred by JMI in connection with JMI's successful defense of a Section 16 claim involving the Company's securities and (ii) the payment to JMI of approximately \$50,000 as consideration for the upward adjustment of the exercise price of warrants issued to JMI in connection with the fiscal 2003 private placement of the Company's 12% senior subordinated notes due 2010.

### ***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 Chief Executive Officer 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.

On October 29, 2004, the Company entered into an employment agreement (the "Employment Agreement") with Mr. Sockolov. Under the terms of the Employment Agreement, Mr. Sockolov would serve as the Chief Executive Officer of the Company's Rochester business. During the third quarter of fiscal 2006, the Company decided to terminate certain employment agreements with Rochester management, including its employment agreement with Mr. Sockolov, as part of the Company's plan to integrate its remaining San Francisco-based Rochester operations into its headquarters in Canton, Massachusetts. Mr. Sockolov continues to serve as a director of the Company. See Note O for additional information regarding the costs incurred by the Company in connection with the early termination on these contracts.

### **I. Employee Benefit Plans**

In September 2006, the FASB issued FASB Statement No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans" (an amendment of FASB Statements No. 87, 88, 106, and 132R) ("FAS 158"), which requires an employer to: (a) recognize in its statement of financial position an asset for a plan's over-funded status or a liability for a plan's under-funded status; (b) measure a plan's assets and its obligations that determine its funded status as of the end of the employer's fiscal year (with limited exceptions); and (c) recognize changes in the funded status of a defined benefit postretirement plan in the year in which the

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changes occur. The Company adopted FAS 158 in fiscal 2006 and accordingly is required to report changes in its funded status in comprehensive income on its Statement of Stockholders' Equity. The adoption of FAS 158 did not have a material effect on the Company's financial position at February 3, 2007

The following table summarizes the incremental effect of applying FAS 158 on individual line items in the Company's Consolidated Balance Sheet at February 3, 2007:

	Before Application of Statement 158	Adjustments	After Application of Statement 158
Other assets	\$ 3,932	\$ (1,836)	\$ 2,096
Deferred income taxes—non current	20,659	725	21,384
Total assets	321,547	(1,111)	320,436
Accumulated other comprehensive income (loss), net of tax	133	(1,111)	(978)
Total Stockholders' equity	219,157	(1,111)	218,046

### **Noncontributory Pension Plan**

In connection with the Casual Male acquisition, the Company assumed the assets and liabilities of the Casual Male Noncontributory Pension Plan "Casual Male Corp. Retirement Plan", which was previously known as the J. Baker, Inc. Qualified Plan, (the "Pension Plan"). Casual Male Corp. froze all future benefits under this plan on May 1, 1997.

The following table sets forth the Pension Plan's funded status at February 3, 2007 and January 28, 2006:

	February 3, 2007	January 28, 2006
	(in thousands)	
<b>Change in benefit obligation:</b>		
Balance at beginning of period	\$ 17,895	\$ 19,443
Benefits and expenses paid	(777)	(890)
Service and interest costs	905	1,131
Settlements	(2,437)	(2,463)
Actuarial (gain) loss	(614)	674
Balance at end of year	<u>\$ 14,972</u>	<u>\$ 17,895</u>
<b>Change in fair value of plan assets</b>		
Balance at beginning of period	\$ 18,395	\$ 20,165
Actual return on plan assets	1,174	1,583
Employer contributions	—	—
Settlements	(2,437)	(2,463)
Benefits and expenses paid	(777)	(890)
Balance at end of period	<u>\$ 16,355</u>	<u>\$ 18,395</u>
<b>Reconciliation of Funded Status</b>		
Projected benefit obligation	\$ 14,972	\$ 17,895
Fair value of plan assets	16,355	18,395
Funded Status	1,383	500
Unrecognized actuarial loss	—	2,719
Net amount included in other assets	<u>\$ 1,383</u>	<u>\$ 3,219</u>

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Total plan expense and other amounts recognized in accumulated other comprehensive loss for the year ended February 3, 2007 and January 28, 2006 includes the following components:

	<u>February 3, 2007</u>	<u>January 28, 2006</u>
	(in thousands)	
Interest cost on projected benefit obligation	\$ 906	\$ 1,131
Expected return on plan assets	(1,318)	(1,566)
Unrecognized loss	412	308
Total Plan Expense	<u>\$ —</u>	<u>\$ (127)</u>
Other changes in plan assets and benefit obligations recognized in other comprehensive loss:		
Increase in accumulated other comprehensive loss (before taxes of \$725) to reflect adoption of FAS 158, which consists entirely of net actuarial loss	\$ 1,836	—

Assumptions used to determine the benefit obligations as of February 3, 2007 and January 28, 2006 included a discount rate of 5.75% for both fiscal 2006 and fiscal 2005. Assumptions used to determine the net periodic benefit cost for the years ended February 3, 2007 and January 28, 2006 included a discount rate of 5.75% for both fiscal 2006 and fiscal 2005.

The expected long term rate of return for both the benefit obligation and the net periodic benefit cost was assumed to be 8.00% for fiscal 2006 and fiscal 2005. The expected long-term rate of return assumption was developed considering historical and future expectations for returns for each asset class.

### *Estimated Future Benefit Payments*

The estimated future benefits for the next ten fiscal years are as follows:

<u>Fiscal Year</u>	<u>(in thousands)</u>
2007	\$ 570
2008	594
2009	653
2010	679
2011	736
2012-2017	4,550

The Company's target asset allocation for fiscal 2007 and its asset allocation at February 3, 2007 and January 28, 2006 were as follows, by asset category:

<u>Asset category:</u>	<u>Target allocation</u>	<u>Percentage of plan assets at</u>	
	<u>Fiscal 2007</u>	<u>February 3, 2007</u>	<u>January 28, 2006</u>
Equity securities	70.00%	59.46%	40.28%
Debt securities	20.00%	26.83%	47.69%
Insurance contracts	10.00%	13.71%	12.03%
Total	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>

The target policy is set to maximize returns with consideration to the long-term nature of the obligations and maintaining a lower level of overall volatility through the allocation of fixed income. The asset allocation is reviewed throughout the year for adherence to the target policy and is rebalanced periodically towards the target weights.

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### **Supplemental Retirement Plan**

In connection with the Casual Male acquisition, the Company also assumed the liability of the Casual Male Supplemental Retirement Plan (the “Supplemental Plan”).

The following table sets forth the Supplemental Plan’s funded status at February 3, 2007 and January 28, 2006:

	<u>February 3, 2007</u>	<u>January 28, 2006</u>
	(in thousands)	
<b>Change in benefit obligation:</b>		
Balance at beginning of period	\$ 509	\$ 463
Benefits and expenses paid	(17)	(17)
Actuarial loss	19	36
Service and interest costs	29	27
Balance at end of year	<u>\$ 540</u>	<u>\$ 509</u>
<b>Change in fair value of plan assets</b>		
Balance at beginning of period	\$ —	\$ —
Employer contributions	17	17
Benefits and expenses paid	(17)	(17)
Balance at end of year	<u>—</u>	<u>—</u>
Projected benefit obligation	<u>\$ 540</u>	<u>\$ 509</u>
<b>Reconciliation of Funded Status</b>		
Projected benefit obligation	\$ 540	\$ 509
Unrecognized loss	—	(51)
Fair value of plan assets	—	—
Underfunded Status	<u>\$ (540)</u>	<u>\$ (458)</u>

Assumptions used to determine the benefit obligations as of February 3, 2007 and January 28, 2006 included a discount rate of 5.75% for both fiscal 2006 and fiscal 2005. Assumptions used to determine the net periodic benefit cost for the years ended February 3, 2007 and January 28, 2006 included a discount rate of 5.75% for fiscal 2006 and fiscal 2005.

### **Defined Contribution Plan**

The Casual Male 401(k) plan covers all eligible employees who have completed six months of service. Under this plan, the Company may provide matching contributions up to a stipulated percentage of employee contributions. The expenses of the plan are fully funded by the Company; and the matching contribution, if any, is established each year by the Board of Directors. For fiscal 2006, the matching contribution by the Company was set at 50% of contributions by eligible employees up to a maximum of 6% of salary.

The Company recognized \$933,941, \$938,424 and \$782,112 of expense under these plans in fiscal 2006, 2005 and 2004, respectively.

### **Non-Qualified Deferred Compensation Plan**

Effective November 1, 2006, the Company adopted a Non-Qualified Deferred Compensation Plan primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees of the Company (the “Participants”). There is no maximum imposed on compensation deferrals.

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Participants will be 100% vested in all of the amounts they defer as well as in the earnings attributable to each participant's deferred account. The Company has established a Rabbi Trust to provide funding for benefits payable under this plan. As of February 3, 2007, amounts deferred under this plan were not material.

Matching contributions by the Company will not exceed 50% of contributions by eligible employees up to a maximum of 6% of salary under both plans combined.

### **J. Discontinued Operations**

The following table summarizes the results of operations from the Company's discontinued operations for fiscal 2004. Included in discontinued operations are the results of operations for the Company's Levi's®/Dockers® outlet stores. No tax benefit or provision was realized on discontinued operations for that fiscal year.

	<u>Fiscal 2004(1)</u> <u>(in millions)</u>
Sales	\$ 71.1
Gross margin	12.7
Selling, general and administrative expenses	14.2
Reversal of provision for impairment of assets, store closings and severance	(2.5)
Depreciation and amortization	1.7
	<u>(0.7)</u>
Other income	1.2
Income from discontinued operations	<u>\$ 0.5</u>

(1) Fiscal 2004 includes a gain of \$1.2 million that the Company recognized in connection with the sale of 32 of its Levi's®/Dockers® outlet stores in the fourth quarter. Results also include income of \$2.5 million recognized in the second and fourth quarters as a result of the reversal of excess restructuring reserves.

### **K. Acquisitions**

#### *Jared M.*

On May 2, 2006, the Company purchased from JM Leather, Inc., Jared M., an apparel company specializing in selling custom clothing to professional athletes and other high-profile clients, almost all of whom are big & tall. The Company sees this acquisition as a future growth opportunity for its Rochester division. Initially, the Company plans to open three Jared M. shops within the Company's existing Rochester Big & Tall stores and then expand the business to catalog and internet. This acquisition fits into the Company's long-term strategy to gain market share in the big & tall market.

Pursuant to the terms of the asset purchase agreement, the Company paid a purchase price of approximately \$2.6 million, plus assumed liabilities. In addition, the Company is subject to pay an earn-out provision of up to an additional \$1.0 million over the next twelve to twenty-four months if the Jared M. business achieves certain earning levels specified in the agreement. The acquisition was accounted for under the purchase method of accounting, with the purchase price being allocated to the assets acquired based on relative fair values. The purchase price of \$2.6 million resulted in the preliminary allocation of goodwill of \$2.5 million. Pro forma results have not been presented as the acquisition was not deemed to be material.

In accordance with the terms of the agreement, the Company also issued to Jared Margolis, the founder of Jared M. and currently an employee of the Company, an option to acquire 100,000 shares of the Company's common stock at an exercise price of \$9.42 per share. The option will vest ratably over four-years with the first one-fourth vesting on May 2, 2007. The fair value of the option based on the Black-Scholes model was \$413,000 and is being expensed over its respective vesting period. See Note A and Note G for additional information regarding the Company's accounting and valuation assumptions for stock-based compensation.

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### *SuperSizeWorld*

On October 19, 2006, the Company acquired SuperSizeWorld, a direct-to-consumer business specializing in the selling of select unique, high quality products which help larger people maintain a more comfortable lifestyle. The types of products sold by SuperSizeWorld, at its website [www.SuperSizeWorld.com](http://www.SuperSizeWorld.com), include bathroom accessories, health and beauty items, medical products, sports and outdoor accessories, patio furniture, travel accessories and other household items. The Company paid a purchase price of approximately \$400,000. The acquisition was accounted for under the purchase method of accounting, with the purchase price being allocated to the assets based on relative fair values, resulting in the preliminary allocation of goodwill of \$298,000. The Company retained the principals of SuperSizeWorld under a one-year consulting agreement for \$190,000 which is being expensed over the contract period.

## **L. Sale of Divested Businesses**

### ***Sale of LP Innovations, Inc. subsidiary***

On April 25, 2006, the Company sold its loss prevention subsidiary, LP Innovations, Inc. ("LPI"), to a private equity group for a purchase price of \$5.2 million. The Company received \$3.0 million of the purchase price in cash at the closing and received a note for the remaining purchase price of \$2.2 million. The note requires LPI to make quarterly payments to the Company commencing on the first anniversary of the note. The note bears interest at 6.0% annually. Although the note is unsecured, if the principal and any accrued interest on the note are unpaid at any point during the term of the note, the Company has the right to offset amounts owed under the note against its payable to LPI for services rendered pursuant to the loss prevention contract described below. The Company recognized an initial gain on the sale of LPI in the amount of \$1.5 million which is included in other income for fiscal 2006. Due to the uncertainty regarding the collection of the note, the Company has fully reserved the balance of the note on the Consolidated Balance Sheet at February 3, 2007 and will recognize income on the note when realizability becomes assured. Such amounts recognized as income in the future will be disclosed in future filings and will be included in "other income" on the Consolidated Statement of Operations.

As part of the sale, the Company entered into a five-year contract with LPI whereby the Company will continue to use LPI for its loss prevention needs. The Company's current fees to LPI will remain in effect for the first three years of the contract with normal CPI index increases after that.

The Company also entered into an agreement with LPI to provide, for a fee, transitional services to LPI for a period of six months from the date of the sale. These transitional services included enabling LPI to maintain its space at the Company's corporate headquarters and utilize the facilities, as well as support from the Company's human resource and information technology staff.

Since the Company acquired LPI in fiscal 2002, the Company had been in the process of trying to divest LPI with the intention that LPI would become a separate public company. However, due to lower than expected operating results, the Company decided to delay the spin-off; accordingly, in fiscal 2004, the Company wrote off \$962,000 of offering costs. These charges were included in "Other income (expense)" on the Consolidated Statement of Operations for fiscal 2004.

### ***Ecko Unltd.® Joint Venture***

In the third quarter of fiscal 2004, the Company sold to Ecko.Complex, LLC its 50.5% interest in the Ecko Unltd.® joint venture for a purchase price of \$7.0 million. The sale resulted in a gain of approximately \$3.1 million, which was included in the Consolidated Statements of Operations as a component of "Other income (expense)" for fiscal 2004.

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### **Levi's®/Dockers® Business**

During the fourth quarter of fiscal 2004, the Company sold its remaining 32 Levi's®/Dockers® outlet stores to Hub Holding Corp. The sale price was approximately \$12.8 million in cash. In addition, the Company also received \$325,000 as part of an earn-out payment based on the stores' financial performance through fiscal 2004. The Company recognized a gain on the sale of \$1.2 million which was included in discontinued operations for fiscal 2004. In addition, the Company recognized income of approximately \$2.5 million related to the reversal of restructuring reserves no longer needed as a result of the sale. See Note J, "Discontinued Operations" for additional information.

### **M. Segment Information**

Since the Casual Male acquisition in May 2002 through the end of fiscal 2004, the Company operated its business under two reportable store segments: (i) the Big & Tall Apparel business and (ii) Other Branded Apparel businesses. However, with the completion of the closure of its Levi's®/Dockers® business and the sale of its Ecko Unltd.® joint venture interest, the Company completely exited all operations of our Other Branded Apparel business by the end of fiscal 2004. Beginning in fiscal 2005, the Company began reporting its operations as one reportable segment, Big & Tall Men's Apparel, which consists of its two operating segments—Casual Male and Rochester. The Company considers its operating segments to be similar in terms of economic characteristic, production processes and operations, and have therefore aggregated them into a single reporting segment.

For fiscal 2004 the Company's results were reported in the following segments:

*The Big & Tall Apparel business:* This group included the Company's Casual Male Big & Tall retail stores, Casual Male Big & Tall outlet stores, Casual Male at Sears Canada stores, and, from October 2004, its then 22 Rochester Big & Tall stores in addition to its catalog and e-commerce businesses.

*Other Branded Apparel businesses:* This segment included 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. On July 30, 2004, the Company sold its 50.5% interest in the joint venture to Ecko.Complex, LLC. This segment excluded the operating results for the Company's Levi's®/Dockers® business since all operations were reclassified to discontinued operations for fiscal 2004. See Note J for discontinued operations.

The accounting policies of the reportable segments are the same as those described in Note A above. The Company evaluates individual store profitability in terms of a store's "Operating Profit" which is defined by the Company as gross margin less occupancy costs, direct selling costs and an allocation of indirect selling costs.

Below are the results from continuing operations on a segment basis for fiscal 2004:

	<u>Big &amp; Tall Apparel business</u>	<u>Other Branded Apparel business</u> (in thousands)	<u>Total</u>
<b>Statement of Operations:</b>			
Sales	\$ 352,428	\$ 12,619	\$ 365,047
Gross margin	146,537	3,903	150,440
Selling, general and administrative	127,927	4,627	132,554
Depreciation and amortization	9,221	637	9,858
Operating profit	<u>\$ 9,389</u>	<u>\$ (1,361)</u>	<u>\$ 8,028</u>

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### N. Sale-Leaseback of Corporate Headquarters

During the first quarter of fiscal 2006, on January 30, 2006, the Company entered into a sale-leaseback transaction with Spirit. Pursuant to the sale-leaseback transaction, the Company sold to Spirit its rights, title and interest in its headquarters and distribution center property for \$55.9 million, net of approximately \$1.0 million of transaction costs. The property consists of a 755,992 gross square foot building located on approximately 27.3 acres in Canton, MA. The transaction funded and closed on February 1, 2006.

At the closing, the Company entered into a Lease Agreement with SPE, a wholly-owned subsidiary of Spirit (the "Lease Agreement") whereby the Company agreed to lease the property back for an annual rent of \$4.6 million, payable monthly and in advance. The initial period of the Lease Agreement is for 20 years and will expire January 31, 2026 unless an option period is exercised. At that time, the Company will have the opportunity to extend the Lease Agreement for six additional successive periods of five years. In addition, on February 1, 2011, the fifth anniversary of the Lease Agreement, and for every fifth anniversary thereafter, the base rent will be subject to a rent increase not to exceed the lesser of 7% or a percentage based on changes in the Consumer Price Index.

In the first quarter of fiscal 2006, the Company realized a gain of approximately \$29.3 million on the sale of property, net of approximately \$1.0 million of transaction costs. The gain is being deferred and amortized over the initial term of the related lease agreement of 20 years in accordance with SFAS No. 98, *Accounting for Leases*. The annual recognition of the gain is approximately \$1.5 million and will be offset annually against the expected annual rent pursuant to the lease of \$4.6 million.

The Company used the net proceeds from the sale of approximately \$55.9 million to reduce outstanding borrowings under its Credit Facility and to repay in full its term loan.

### O. Provision for Termination of Employment Contracts

In the third quarter of fiscal 2006, the Company decided to terminate certain employment agreements with Rochester management as part of its plan to integrate the remaining San Francisco-based Rochester operations into its headquarters in Canton, Massachusetts. In connection with this decision to terminate these agreements, the Company incurred a charge of \$1.2 million in the third quarter of fiscal 2006 to accrue its remaining obligations pursuant to these employees' employment agreements. At February 3, 2007, \$1.2 million of the reserve was outstanding.

### P. Selected Quarterly Data (Unaudited)

	<u>First Quarter</u>	<u>Second Quarter</u>	<u>Third Quarter</u>	<u>Fourth Quarter</u>	<u>Full Year</u>
	(In Thousands, Except Per Share Data)				
<b>Fiscal Year 2006</b>					
Sales	\$ 102,864	\$ 111,802	\$ 106,851	\$ 145,995	\$ 467,512
Gross margin	45,004	50,623	47,061	69,886	212,574
Operating income	2,395	6,949	155	15,895	25,394
Net income (loss)(1)	1,387	3,401	(844)	38,688	42,632
Earnings per share—basic	\$ 0.04	\$ 0.10	\$ (0.02)	\$ 1.05	\$ 1.21
Earnings per share—diluted(2)	\$ 0.04	\$ 0.09	\$ (0.02)	\$ 0.83	\$ 0.98
<b>Fiscal Year 2005</b>					
Sales	\$ 97,298	\$ 100,620	\$ 93,770	\$ 129,695	\$ 421,383
Gross margin	40,239	43,673	38,585	59,683	182,180
Operating income	99	4,071	(721)	14,104	17,553
Net income (loss)(3)	(1,881)	2,020	(2,835)	13,456	10,760
Earnings (loss) per share—basic	\$ (0.05)	\$ 0.06	\$ (0.08)	\$ 0.39	\$ 0.31
Earnings (loss) per share—diluted(2)	\$ (0.05)	\$ 0.06	\$ (0.08)	\$ 0.33	\$ 0.30

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- (1) Results for the first quarter of fiscal 2006 include other income (expense) of \$1.1 million related to the initial gain on the sale of LPI of \$1.5 million offset partially by \$0.4 million of unrelated non-operating expenses, primarily related to legal costs. Results for the third quarter of fiscal 2006 include a charge of \$1.2 million related to the costs incurred for the early termination of certain employment contracts. Results for the fourth quarter of fiscal 2006 include an income tax benefit of \$30.5 million related to the reversal of the Company's income tax valuation allowance. See Note D- Taxes.
- (2) Diluted earnings per share for the fourth quarter and fiscal year 2006 and the fourth quarter of fiscal 2005 include the impact of the Company's convertible notes. Such notes had an anti-dilutive effect for the first three quarters of fiscal 2006 and the first three quarters and fiscal year 2005.
- (3) Results for fiscal 2005 include a \$1.2 million prepayment penalty associated with the Company's prepayment of its outstanding mortgage note. This expense was partially offset by \$0.4 million of income from the discount realized from the buyback of approximately \$5.3 million of the Company's Convertible Notes and a write-off of \$0.2 million associated with the deferred financing costs on the notes. Results for fiscal 2005 also include a benefit of \$3.1 million related to a partial reversal of the Company's income tax valuation allowance. See Note D.

Consistent with the retail apparel industry, the Company's business is seasonal with the largest volume of its sales generated during the Father's Day selling season in June and the Christmas selling season in December. As a result of the impact of the Christmas selling season, the majority of the Company's operating income is generated in the fourth quarter.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

**Item 9A. Controls and Procedures**

***Management's Conclusions Regarding the Effectiveness of Disclosure Controls and Procedures***

As required by Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), our management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of February 3, 2007. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of February 3, 2007, our disclosure controls and procedures were effective, in that they provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

***Management's Annual Report on Internal Control Over Financial Reporting***

The Company's management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) under the Exchange Act. The Company's internal control over financial reporting is a process designed under the supervision of the Company's Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The Company's internal control over financial reporting includes those policies and procedures that:

- (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the Company's assets;
- (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of the Company's management and directors; and
- (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements.

There are inherent limitations in the effectiveness of any internal control, including the possibility of human error and the circumvention or overriding of controls. Accordingly, even effective internal controls can provide only reasonable assurances with respect to financial statement preparation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the design and effectiveness of the Company's internal control over financial reporting as of February 3, 2007. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework.

Based on management's assessment and those criteria, management determined that the Company maintained effective internal control over financial reporting as of February 3, 2007.

As indicated in its Attestation Report included below, Ernst & Young LLP, the independent registered public accounting firm that audited the financial statements included in this report, has attested to management's assessment regarding the effectiveness of its internal control over financial reporting as of February 3, 2007.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Stockholders of Casual Male Retail Group, Inc.:

We have audited management's assessment, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting, that Casual Male Retail Group, Inc. maintained effective internal control over financial reporting as of February 3, 2007, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Casual Male Retail Group, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that Casual Male Retail Group, Inc. maintained effective internal control over financial reporting as of February 3, 2007, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, Casual Male Retail Group, Inc. maintained, in all material respects, effective internal control over financial reporting as of February 3, 2007, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Casual Male Retail Group, Inc. as of February 3, 2007 and January 28, 2006, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the three years in the period ended February 3, 2007 of Casual Male Retail Group, Inc. and our report dated March 28, 2007 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Boston, Massachusetts  
March 28, 2007

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***Changes in Internal Control Over Financial Reporting***

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended February 3, 2007 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information.**

None.

**PART III.**

Pursuant to Paragraph G(3) of the General Instructions to Form 10-K, the information required by Part III (Items 10, 11, 12, 13 and 14) is being incorporated by reference herein from our definitive proxy statement (or an amendment to this Annual Report on Form 10-K) to be filed with the Securities and Exchange Commission within 120 days of the end of the fiscal year ended February 3, 2007 in connection with our 2007 Annual Meeting of Stockholders.

**Item 10. *Directors, Executive Officers and Corporate Governance***

Information with respect to this item is incorporated by reference from our definitive proxy statement (or amendment to this Annual Report on Form 10-K) to be filed with the Commission within 120 days of the end of the fiscal year ended February 3, 2007.

**Item 11. *Executive Compensation***

Information with respect to this item is incorporated by reference from our definitive proxy statement (or amendment to this Annual Report on Form 10-K) to be filed with the Commission within 120 days of the end of the fiscal year ended February 3, 2007.

**Item 12. *Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

Information with respect to this item is incorporated by reference from our definitive proxy statement (or amendment to this Annual Report on Form 10-K) to be filed with the Commission within 120 days of the end of the fiscal year ended February 3, 2007.

**Item 13. *Certain Relationships and Related Transactions, and Director Independence***

Information with respect to this item is incorporated by reference from our definitive proxy statement (or amendment to this Annual Report on Form 10-K) to be filed with the Commission within 120 days of the end of the fiscal year ended February 3, 2007.

**Item 14. *Principal Accounting Fees and Services***

Information with respect to this item is incorporated by reference from our definitive proxy statement (or amendment to this Annual Report on Form 10-K) to be filed with the Commission within 120 days of the end of the fiscal year ended February 3, 2007.

**PART IV.**

**Item 15. Exhibits, Financial Statement Schedules**

**15(a)(1) Financial Statements**

The list of consolidated financial statements and notes required by this Item 15(a)(1) is set forth in the “Index to Consolidated Financial Statements” on page 45 of this Annual Report.

**15(a)(2) Financial Statement Schedules**

Schedule II “Valuation and Qualifying Accounts” for the three fiscal years ended February 3, 2007, January 28, 2006 and January 29, 2005 is set forth on page 79 of this Annual Report.

All other schedules, other than the schedule listed above, have been omitted because the required information is not applicable or is not present in amounts sufficient to require submission of the schedules, or because the information required is included in the financial statements or notes thereto.

**15(a)(3) Exhibits**

The list of exhibits required by this Item 15(a)(3) is set forth in the “Index to Exhibits” beginning on page 80 of this Annual Report.

**SCHEDULE II**  
**CASUAL MALE RETAIL GROUP, INC.**  
**VALUATION AND QUALIFYING ACCOUNTS**  
**For the Fiscal Years Ended February 3, 2007, January 28, 2006 and January 29, 2005**

<u>Description</u>	<u>Balance at Beginning of Year</u>	<u>Net Provision (Benefit)</u>	<u>Charges/ Write- offs</u>	<u>Balance At End Year</u>
(In thousands)				
Accrued Restructuring Reserves				
Year ended January 29, 2005 (fiscal 2004)	\$ 3,831	\$ (2,538)(1)	\$(1,293)	\$ —
Year ended January 28, 2006 (fiscal 2005)	—	—	—	—
Year ended February 3, 2007 (fiscal 2006)	—	1,200(2)	(30)	1,170

- (1) Represents the reversal of excess reserves for the Company's remaining Levi's®/Dockers® outlet stores that were closed or sold in fiscal 2004.
- (2) Represents a provision recorded in the third quarter of fiscal 2007 related to the early termination of certain employment contracts.

**INDEX TO EXHIBITS**

**Exhibits**

- 3.1 Restated Certificate of Incorporation of the Company, as amended (included as Exhibit 3.1 to Amendment No. 3 of the Company's Registration Statement on Form S-1 (No. 33-13402), and incorporated herein by reference).\*
- 3.2 Certificate of Amendment to Restated Certificate of Incorporation, as amended, dated June 22, 1993 (included as Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q filed on June 18, 1996, and incorporated herein by reference).\*
- 3.3 Certificate of Amendment to Restated Certificate of Incorporation, as amended, dated August 8, 2002 (included as Exhibit 3.3 to the Company's Quarterly Report on Form 10-Q filed on September 17, 2002, and incorporated herein by reference).\*
- 3.4 Certificate of Designations, Preferences and Rights of a Series of Preferred Stock of the Company establishing Series A Junior Participating Cumulative Preferred Stock dated May 1, 1995 (included as Exhibit 3.2 to the Company's Annual Report on Form 10-K filed on May 3, 1996, and incorporated herein by reference).\*
- 3.5 Certificate of Designations, Preferences and Relative, Participating, Optional and Other Special Rights and Qualifications, Limitations and Restrictions of Series B Convertible Preferred Stock dated May 14, 2002 (included as Exhibit 3.1 to the Company's Form 8-K filed on May 23, 2002, and incorporated herein by reference).\*
- 3.6 By-Laws of the Company, as amended (included as Exhibit 3.4 to the Company's Quarterly Report on Form 10-Q filed on December 12, 2000, and incorporated herein by reference).\*
- 4.1 Indenture, dated as of November 18, 2003, between the Company and U.S. Bank National Association, as Trustee (included as Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q filed on December 9, 2003, and incorporated herein by reference).\*
- 10.1 1992 Stock Incentive Plan, as amended (included as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on December 9, 2003, and incorporated herein by reference).\*
- 10.2 Casual Male Retail Group, Inc. 2006 Incentive Compensation Plan (included as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on August 18, 2006, and incorporated herein by reference).\*
- 10.3 Form of Non-Qualified Option Agreement for the Chairman and Executive Officers (included as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on August 18, 2006, and incorporated herein by reference).\*
- 10.4 Form of Incentive Stock Option Agreement for the Chairman and Executive Officers (included as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed on August 18, 2006, and incorporated herein by reference).\*
- 10.5 Form of Non-Qualified Option Agreement for Non-Employee Directors (included as Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed on August 18, 2006, and incorporated herein by reference).\*
- 10.6 Memorandum of Understanding regarding the Casual Male Retail Group, Inc. Non-Qualified Deferred Compensation Plan for certain of the top paid executives effective November 1, 2006.
- 10.7 Fifth Amended and Restated Loan and Security Agreement dated December 28, 2006, by and among Bank of America, N.A., as Administrative Agent and Collateral Agent, the Lenders identified therein, the Company, as Borrowers' Representative, and the Company and CMRG Apparel, LLC (formerly Designs Apparel, Inc.), as Borrowers.

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### Exhibits

- 10.8 Note Agreement, dated as of July 2, 2003, among the Company, certain subsidiaries of the Company, and the Initial Purchasers identified on the signature pages thereto (the “Note Agreement”) (included as Exhibit 10.4 to the Company’s Quarterly Report on Form 10-Q filed on September 16, 2003 and incorporated herein by reference).\*
- 10.9 Form of Warrant issued to the Initial Purchasers under the Note Agreement (included as Exhibit 10.6 to the Company’s Quarterly Report on Form 10-Q filed on September 16, 2003, and incorporated herein by reference).\*
- 10.10 Consulting Agreement dated as of October 28, 1999 between the Company and Jewelcor Management, Inc. (included as Exhibit 10.20 to the Company’s Annual Report on Form 10-K filed on April 28, 2000, and incorporated herein by reference).\*
- 10.11 Extension to Consulting Agreement, dated as of April 28, 2001, between the Company and Jewelcor Management, Inc. (included as Exhibit 10.15 to the Company’s Quarterly Report on Form 10-Q filed on September 18, 2001, and incorporated herein by reference).\*
- 10.12 Extension to Consulting Agreement, dated as of April 28, 2002, between the Company and Jewelcor Management, Inc. (included as Exhibit 10.30 to the Company’s Quarterly Report on Form 10-Q filed on June 18, 2002, and incorporated herein by reference).\*
- 10.13 Extension to Consulting Agreement, dated as of April 29, 2003, between the Company and Jewelcor Management, Inc. (included as Exhibit 10.7 to the Company’s Annual Report on Form 10-K filed on May 5, 2003, and incorporated herein by reference).\*
- 10.14 Amendment to Consulting Agreement, effective as of May 1, 2003, between the Company and Jewelcor Management, Inc. (included as Exhibit 10.1 to the Company’s Quarterly Report on Form 10-Q filed on September 16, 2003, and incorporated herein by reference).\*
- 10.15 Amendment to Consulting Agreement, dated as of August 26, 2004, between the Company and Jewelcor Management, Inc. (included as Exhibit 10.5 to the Company’s Quarterly Report on Form 10-Q filed on December 9, 2004, and incorporated herein by reference).\*
- 10.16 Amendment to Consulting Agreement, effective May 9, 2005, between the Company and Jewelcor Management, Inc. (included as Exhibit 10.1 to the Company’s Current Report on Form 8-K filed June 20, 2005, and incorporated herein by reference).\*
- 10.17 Letter Agreement dated May 26, 2006 between the Company and Jewelcor Management, Inc. (included as Exhibit 10.3 to the Company’s Quarterly Report on Form 10-Q filed on May 30, 2006, and incorporated herein by reference).\*
- 10.18 Employment Agreement dated as of March 31, 2000 between the Company and David A. Levin (included as Exhibit 10.27 to the Company’s Annual Report on Form 10-K filed on April 28, 2000, and incorporated herein by reference).\*
- 10.19 First Amendment to Employment Agreement dated April 10, 2001 between the Company and David A. Levin (included as Exhibit 10.19 to the Company’s Quarterly Report on Form 10-Q filed on June 19, 2001, and incorporated herein by reference).\*
- 10.20 Second Amendment to Employment Agreement dated as of January 10, 2003 between the Company and David A. Levin (included as Exhibit 10.10 to the Company’s Annual Report on Form 10-K filed on May 5, 2003, and incorporated herein by reference).\*
- 10.21 Third Amendment to Employment Agreement, dated as of July 9, 2003, between the Company and David A. Levin (included as Exhibit 10.2 to the Company’s Quarterly Report on Form 10-Q filed on September 16, 2003, and incorporated herein by reference).\*

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- 10.22 Fourth Amendment to Employment Agreement dated as of June 29, 2004 between the Company and David A. Levin (included as Exhibit 10.17 to the Company's Annual Report on Form 10-K filed on April 11, 2005, and incorporated herein by reference).\*
- 10.23 Letter Agreement dated May 26, 2006 between the Company and David A. Levin (included as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on May 30, 2006, and incorporated herein by reference).\*
- 10.24 Employment Agreement dated as of August 14, 2000 between the Company and Dennis R. Hernreich (included as Exhibit 10.30 to the Company's Quarterly Report on Form 10-Q filed on September 12, 2000, and incorporated herein by reference).\*
- 10.25 First Amendment to Employment Agreement dated April 25, 2001 between the Company and Dennis R. Hernreich (included as Exhibit 10.23 to the Company's Quarterly Report on Form 10-Q filed on June 19, 2001, and incorporated herein by reference).\*
- 10.26 Second Amendment to Employment Agreement dated as of January 10, 2003 between the Company and Dennis R. Hernreich (included as Exhibit 10.15 to the Company's Annual Report on Form 10-K filed on May 5, 2003, and incorporated herein by reference).\*
- 10.27 Third Amendment to Employment Agreement, dated as of July 9, 2003, between the Company and Dennis R. Hernreich (included as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed on September 16, 2003, and incorporated herein by reference).\*
- 10.28 Fourth Amendment to Employment Agreement, dated as of June 29, 2004, between the Company and Dennis R. Hernreich (included as Exhibit 10.22 to the Company's Annual Report on Form 10-K filed on April 11, 2005, and incorporated herein by reference).\*
- 10.29 Letter Agreement dated May 26, 2006 between the Company and Dennis R. Hernreich (included as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on May 30, 2006, and incorporated herein by reference).\*
- 10.30 Employment Agreement dated as of July 9, 2003 between the Company and Linda Carlo (included as Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q filed on December 9, 2003, and incorporated herein by reference).\*
- 10.31 First Amendment to Employment Agreement, dated as of June 29, 2004, between the Company and Linda B. Carlo (included as Exhibit 10.24 to the Company's Annual Report on Form 10-K filed on April 11, 2005, and incorporated herein by reference).\*
- 10.32 Second Amendment to Employment Agreement, dated as of August 2, 2006, between the Company and Linda B. Carlo (included as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on August 4, 2006, and incorporated herein by reference).\*
- 10.33 Separation Agreement between the Company and Joseph Cornely dated November 27, 2006.
- 10.34 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).\*
- 10.35 Asset Purchase Agreement entered into as of May 2, 2002, by and among the Company and Casual Male Corp. and certain subsidiaries (included as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 23, 2002, and incorporated herein by reference).\*
- 10.36 Amended and Restated Note Agreement, dated as of April 26, 2002, and amended and restated as of May 14, 2002, among the Company, certain subsidiaries of the Company and the purchasers identified therein (included as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on May 23, 2002, and incorporated herein by reference).\*

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### Exhibits

- 10.37 Form of Warrant to Purchase Shares of Common Stock (aggregating 787,500 shares) (included as Exhibit 10.5 to the Company's Current Report on Form 8-K filed on May 23, 2002, and incorporated herein by reference).\*
- 10.38 Form of Warrant to Purchase Shares of Common Stock (aggregating 927,500 shares) (included as Exhibit 10.6 to the Company's Current Report on Form 8-K filed on May 23, 2002, and incorporated herein by reference).\*
- 10.39 Form of Warrant to Purchase Shares of Common Stock (aggregating 1,176,471 shares) (included as Exhibit 10.7 to the Company's Current Report on Form 8-K filed on May 23, 2002, and incorporated herein by reference).\*
- 10.40 Registration Rights Agreement entered into as of April 26, 2002, by and between the Company and the persons identified therein (included as Exhibit 10.8 to the Company's Current Report on Form 8-K filed on May 23, 2002, and incorporated herein by reference).\*
- 10.41 Purchase Agreement dated November 12, 2003 by and between the Company and Thomas Weisel Partners LLC (included as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed on December 9, 2003, and incorporated herein by reference).\*
- 10.42 Registration Rights Agreement dated November 18, 2003 by and between the Company and Thomas Weisel Partners LLC (included as Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed on December 9, 2003, and incorporated herein by reference).\*
- 10.43 Form of Warrant to Purchase Shares of Common Stock (aggregating 500,000 shares) (included as Exhibit 10.31 to the Company's Quarterly Report on Form 10-Q filed on September 17, 2002, and incorporated herein by reference).\*
- 10.44 Asset Purchase Agreement by and among the Company and Rochester Big & Tall Clothing, Inc., dated as of August 18, 2004 (included as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed on December 9, 2004, and incorporated herein by reference).\*
- 10.45 Contribution Agreement dated January 30, 2006 by and among the Company, Spirit SPE Canton, LLC and Spirit Finance Acquisitions, LLC (included as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 3, 2006, and incorporated herein by reference).\*
- 10.46 Membership Interest Purchase Agreement dated January 30, 2006 by and between the Company and Spirit Finance Acquisitions, LLC (included as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on February 3, 2006, and incorporated herein by reference).\*
- 10.47 Lease Agreement dated February 1, 2006 by and between the Company and Spirit SPE Canton, LLC (included as Exhibit 10.3 to the Company's Current Report on Form 8-K filed on February 3, 2006, and incorporated herein by reference).\*
- 10.48 Buying Agency Agreement effective November 16, 2005 by and between Designs Apparel, Inc. and Li & Fung (included as Exhibit 10.47 to the Company's Annual Report on Form 10-K filed March 31, 2006, and incorporated herein by reference).\*
- 18.1 Preferability Letter from Ernst & Young LLP, Independent Public Accounting Firm (included as Exhibit 18.1 to the Company's Quarterly Report on Form 10Q filed on August 18, 2006, and incorporated herein by reference).\*
- 21.1 Subsidiaries of the Registrant.
- 23.1 Consent of Independent Registered Public Accounting Firm.
- 31.1 Certification of Chief Executive Officer of the Company pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.

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- |      |  |
|------|--|
| 31.2 | Certification of 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. |

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\* Previously filed with the Securities and Exchange Commission.



**MEMORANDUM OF UNDERSTANDING  
CASUAL MALE RETAIL GROUP, INC.  
NON-QUALIFIED DEFERRED COMPENSATION PLAN**

Casual Male Retail Group, Inc. has adopted a nonqualified Deferred Compensation Plan for certain top paid employees. Such Plan, which shall be referred to herein as the "Wraparound Plan" is intended to work in conjunction with the Casual Male Retail Group, Inc. 401(k) Salaried Plan to reduce the administrative problems associated with refunding excess 401(k) contributions to highly compensated employees, and allow such employees to defer a higher percentage of their compensation. The Wraparound Plan shall be operated in good faith compliance with Internal Revenue Code § 409A and the regulations and other guidance, until such time as final regulations are released regarding Code § 409A and a final Wraparound Plan document is prepared based on the following terms and conditions:

**1. Adoption and Effective Date**

- a. Casual Male Retail Group, Inc. adopts a new nonqualified deferred compensation plan (the Wraparound Plan) with an original Effective Date of November 1, 2006
- b. The provisions of Internal Revenue Code § 409A governing the nature and timing of elections, withdrawals, and distributions under the Wraparound Plan shall apply to amounts deferred under the Wraparound Plan.

**2. Employer and Plan Information**

- a. Employer – Casual Male Retail Group, Inc.
- b. EIN 04-2623104
- c. Associated Plan : Casual Male Retail Group, Inc. 401(k) Salaried Plan
- d. Plan Administrator: Casual Male Retail Group, Inc.
- e. The Plan Year is the 12-consecutive month period ending December 31 of each year
- f. The first Plan Year is a short year that begins on the original Effective Date and ends on December 31, 2006.

**3. Eligibility to Participate**

- a. Covered Employment includes only employment with the Employer as a highly compensated employee designated as eligible to participate in the Wraparound Plan by the Plan Administrator.
- b. In order for an Employee to participate in the Wraparound Plan, he or she must be in Covered Employment and must also have met the age and service requirements for participation in the Associated Plan.

#### **4. Employee Deferrals**

- a. Employee Deferrals will be allowed under the Wraparound Plan.
- b. Employee Deferrals for a Plan Year must be made by December 31 of the year prior to the Plan Year in which the services to which the deferrals relate are performed.
- c. By March 15 of the year following the Plan Year in which Employee Deferrals are made to the Wraparound Plan, the Employer will perform or cause to be performed nondiscrimination testing of the Associated Plan to determine the maximum amount that each Participant in the Wraparound Plan may contribute to the Associated Plan with respect to the immediately preceding Plan Year. The Employee Deferrals for each Participant not in excess of that amount is then contributed from the Wraparound Plan to the Associated Plan. The balance of the Employee Deferrals for the applicable Plan Year continue to be deferred under the Wraparound Plan.  

Notwithstanding the foregoing, Employee Deferrals will be allowed with respect to Compensation earned on and after November 1, 2006 and prior to December 31, 2006.
- d. Employee Deferrals will be made by means of payroll reduction, in any whole percentage or whole dollar amount of Compensation. There is no maximum imposed on Employee Deferrals under the Wraparound Plan.
- e. Compensation means earnings required to be reported in the Wages, Tips and Other Compensation box of Form W-2 excluding Employee Pre-Tax Contributions and other Elective Deferrals, and elective contributions that are excluded from income under Code § 125 (cafeteria plan); and reimbursements or other expense allowances, fringe benefits (cash and non cash), moving expenses, deferred compensation and welfare benefits.

#### **5. Matching Credits**

- a. Matching Credits will be added to each Participant's Account based on the amount of the Participant's Employee Deferrals for the Plan Year and shall be determined annually for each Plan Year by the Employer, in its absolute and sole discretion, and allocated to Participants in proportion to their Employee Deferrals for the Plan Year.
- b. The Employer intends to limit the Matching Credits to no more than 50% of the first six percent (6%) of Compensation deferred, including compensation deferred under the Associate Plan. The Matching Credits for the Wraparound Plan will be offset by matching contributions made to the Associated Plan. The Employer reserves the right to change the Matching Credit Formula, as defined in the Associated Plan.

- c. By March 15 of the year following the Plan Year in which Matching Credits are made to the Wraparound Plan, the Employer will perform or cause to be performed nondiscrimination testing of the Associated Plan to determine the maximum amount of Employer Matching Contributions that may be contributed on behalf of each Participant in the Wraparound Plan to the Associated Plan with respect to the immediately preceding Plan Year. The Employer Matching Credits for each Participant not in excess of that amount is then contributed from the Wraparound Plan to the Associated Plan. The balance of the Employer Matching Credits for the applicable Plan Year continue to be deferred under the Wraparound Plan.
- d. A Participant will receive Matching Credits described above only if he or she is employed by the Employer on the last day of the Plan Year.

**6. Supplemental Credits**

- a. Supplemental Credits, without regard to whether any Employee Deferrals have been made by a Participant for the Plan Year will be allowed under the Wraparound Plan.
- b. Supplemental Credits will be added by the Employer, in its discretion, and credited to the Participant Accounts in proportion to their Compensation (as defined in section 4c. above) for the Plan Year.
- c. A Participant will receive Supplemental Credits described above only if he or she is employed by the Employer on the last day of the Plan Year.
- d. Notwithstanding section 6c., the last-day employment requirement will not apply in any case where a Participant’s employment terminates during the Plan Year due to the Participant’s death, disability, or retirement after normal retirement age.

**7. Vesting and Forfeiture of Benefits**

- a. Matching Credits and/or Supplemental Credits will be Vested according to the following schedule based on Years of Service with the Employer:

<u>Years of Service</u>	<u>Percent Vested</u>
Less than 1 year	0%
At least 1 year but less than 2 years	34%
At least 2 years but less than 3 Years	67%
At least 3 years	100%

- b. Years of Service for purposes of Vesting shall be calculated under the actual hours method.
- c. Special Vesting Rules – Notwithstanding any vesting schedule set forth above, a Participant will become 100% Vested in his or her Account if:
  - i. The Participant’s employment with the Employer is terminated due to death or disability; or

- ii. There is a Change in Control as permitted under Code § 409A.

**8. Payment of Benefits**

- a. Distributions of benefits under the Wraparound Plan may be made on account of Retirement at or after the Participant's Normal Retirement Age; disability, death, termination of employment (i.e., separation from service), a Change in Control of the Employer, or Unforeseeable Emergency.
- b. Distributions of benefits under the Wraparound Plan shall commence on a date chosen by the Participant at the same time he or she chooses the form of payment, but commencing no later than 1 year following the Participant's termination of employment.
- c. Distributions of benefits under the Wraparound Plan shall commence as soon as practicable in a lump sum after the occurrence of a Change in Control.
- d. The forms of distribution of benefits under the Wraparound Plan shall be at the election of the Participant either in,
  - i. A single lump-sum,
  - ii. Installments over a fixed period,
  - iii. Installments of a fixed dollar amount, or
  - iv. A combination of lump sum and installment payments, as elected by the Participant and prescribed by the Plan Administrator.
  - v. No installment payout period exceeding a period of three years may be elected, and no installments of a fixed dollar amount may be elected if it is deemed likely to result in a payment period in excess of the period of years specified above, as determined by the Plan Administrator in its sole discretion.
- e. If a Participant selects a date for the commencement of benefit payments and /or a form of benefits, such selection will be made at the time the Participant first becomes eligible for the Wraparound Plan, and the Participant may later elect a different payment form and date for commencement of payments, subject to the limitations of Code § 409A. Any such new election may not be effective until twelve months after it is filed with the Plan Administrator. In addition, the benefit payment commencement date must be delayed for at least 5 years from the date of the originally elected commencement date.

- f. If a Participant dies before receiving payment of all amounts credited to his Participant Account, any amounts payable to the Participant's Beneficiary will be paid in a lump sum, as soon as practicable after the Participant's death.
- g. A Participant may apply to the Plan Administrator for a cash distribution from the Plan, in the event of an Unforeseeable Emergency. Unforeseeable emergency means a severe financial hardship of the Participant or beneficiary resulting from an illness or accident of the Participant or beneficiary, the participant's spouse or the beneficiary's spouse or the Participant's or beneficiary's dependent ( as defined in Code section 152(a)); loss of the Participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by insurance, for example, not as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or beneficiary
- Distributions because of an unforeseeable emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include amounts necessary to pay any Federal, state or local income taxes or penalties reasonably anticipated to result from the distribution). Determinations of amounts necessary to satisfy the emergency must take into account any additional compensation that is available if the plan provides for cancellation of a deferral election upon a payment due to an unforeseeable emergency.

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**FIFTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

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**BANK OF AMERICA, N.A.  
AS ADMINISTRATIVE AGENT AND  
COLLATERAL AGENT**

---

**LENDERS  
NAMED HEREIN**

---

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

**NATIONAL CITY BUSINESS CREDIT, INC.  
AS DOCUMENTATION AGENT**

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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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**December 28, 2006**

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**FIFTH AMENDED AND RESTATED  
LOAN AND SECURITY AGREEMENT**

**Bank of America, N.A.  
Administrative and Collateral Agent**

December 28, 2006

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

Bank of America, N.A. (in such capacity, the “**Administrative Agent**”), a national banking association with an office at 40 Broad Street, Boston, Massachusetts 02109, as Administrative Agent for the benefit of (i) the Collateral Agent, (ii) the “**Lenders**” who are, at present, those financial institutions identified on the signature pages of this Agreement and any Person who becomes a “Lender” in accordance with the provisions of this Agreement, and (iii) other Secured Parties.

and

Bank of America, N.A. (in such capacity, the “**Collateral Agent**”), a national banking association with an office at 40 Broad Street, Boston, Massachusetts 02109, as Collateral Agent for the benefit of (i) the Administrative Agent, (ii) the Lenders, and (iii) other Secured Parties.

and

The Revolving Credit Lenders;

and

The Last Out Revolving Lenders

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 October 29, 2004, the Borrowers, Fleet Retail Group, Inc. as Administrative Agent and Collateral Agent, Revolving Credit Lenders, and Bank of America, N.A. as Tranche B Lender entered into a Fourth 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 Bank of America, N.A. agreed to make a Tranche B Loan to the Borrowers;

WHEREAS, the Tranche B Loan to Bank of America, N.A. has been paid in full;

WHEREAS, the Borrowers have requested that the Agent and Revolving Credit Lenders amend the Original Agreement in certain respects in order to, among other things, add a new Last Out Revolving Loan, 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, 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 Lenders, as provided in Section 13.1(a).
- (b) From the SuperMajority Lenders to the Administrative Agent, as provided in Section 13.1(b).

**“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).

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

“**Administrative Agent’s Cover**”: Defined in Section 12.3(c)(i).

“**Administrative Agent’s Fee**”: Defined in Section 2.17.

“**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 11.7.

“**Aggregate Availability**” means the aggregate of Availability and Last Out Availability.

“**Aggregate Excess Availability**” means the aggregate of Excess Availability and Last Out Availability.

“**Applicable Inventory Advance Rate**”: means 90%.

“**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:

LEVEL	AVERAGE EXCESS AVAILABILITY		REVOLVING CREDIT LOANS		LAST OUT REVOLVING LOANS	
	Less Than	Equal to Or Greater Than	LIBOR MARGIN	BASE MARGIN	LIBOR MARGIN	BASE MARGIN
I		\$50,000,000	1.00%	0%	2.75%	0.00%
II	\$50,000,000	\$25,000,000	1.25%	0%	2.75%	0.00%
III	\$25,000,000		1.50%	0%	2.75%	0.00%

The Applicable Margin shall be set on the Closing Date based upon the Average Excess Availability for the three (3) months immediately preceding the Closing Date. Thereafter, 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 III (even if the Average Excess Availability requirements for another Level have been met) and interest shall be determined in the manner set forth in Section 2.14(f).

“**Appraised Inventory Liquidation Value**”: The product of (a) the Cost of Eligible Inventory (net of Inventory Reserves) of the Casual Male Companies and RBT, *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.

“**Arrangement Fee**”: shall have the meaning set forth in the Fee Letter.

“**Assignee Lender**”: Defined in Section 16.1.

“**Assigning Lender**”: Defined in Section 16.1.

“**Assignment and Acceptance**”: Defined in Section 16.2.

“**Availability**”: The lesser of (a) or (b) where:

(a) is the result of

(i) The Revolving Credit Commitments

*Minus*

(ii) The aggregate outstanding Revolving Credit Loans and SwingLine Loans

*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.

(b) is the result of

(i) The Borrowing Base

*Minus*

(ii) The aggregate outstanding Revolving Credit Loans and SwingLine Loans

*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.

**“Availability Block”** means ten percent (10%) of the lesser of (a) the Last Out Borrowing Base; or (b) the Total Commitments.

**“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.
- (v) the Availability Block.

**“Average Excess Availability”**: means the average daily Aggregate Excess Availability for the immediately preceding quarter.

**“Bank of America”**: means Bank of America, N.A., a national banking association and its Subsidiaries, Affiliates, branches, and their respective successors with offices at 40 Broad Street, Boston, Massachusetts 02109.

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

**“BAS”**: Is defined in Section 2.15.

**“Base”**: means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate.” The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

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

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

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

**“Borrowing Base Certificate”**: Is defined in Section 5.4.

**“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 December 6, 2006, as updated from time to time by the Borrowers’ Representative pursuant to this Agreement.

**“Canton Lease”**: The lease and related documents entered into by and among Casual Male and Spirit SPE Canton, LLC dated as of February, 2006.

**“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 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 35% 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, 100% of the issued and outstanding capital stock or membership interests of all other Loan Parties.

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

“**Closing Date**”: December 28, 2006.

“**Collateral**”: Defined in Section 8.1.

“**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 Fee**”: Defined in Section 2.16.

“**Concentration Account**”: Defined in Section 7.3.

“**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 up to \$94,749,000.

**"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, and all reasonable out-of-pocket costs incurred by any Agent 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, where such costs and expenses are directly or indirectly related to or in respect of any Agent'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 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. 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**”: 90%

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

“**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 7.1** 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 Lender**”: Defined in Section 12.3(c).

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

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

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

“**Dollar Commitments**”: The Revolving Credit Dollar Commitment and/or Last Out Revolving Credit Dollar Commitment, as applicable.

“**Eligible Assignee**”: With respect to an assignee of a 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 Lender, or any Person to whom a Lender assigns its rights and obligations under this Agreement as part of a programmed assignment and transfer of such Lender’s rights in and to a material portion of such 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 the Cost value of such of the Inventory of the Casual Male Companies and RBT (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), provided, however, in no event shall Inventory in locations outside of the United States be Eligible Inventory unless the Agent has a first priority perfected security interest in such Inventory, has established applicable advance rates and Reserves in connection therewith, and has otherwise determined in its discretion that such Inventory is eligible to be included in the Borrowing Base.

**"Eligible L/C Inventory"**: "Eligible L/C Inventory" will be calculated at 75% of the Cost value of such of the Inventory of the Casual Male Companies and RBT (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).

**"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 18.2(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 10. 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.

**“Excess Availability Ratio”**: At any time, the ratio, expressed as a percentage, of (a) the Excess Availability at such time, to (b) the lesser of (i) the Revolving Credit Commitments at such time or (ii) the Borrowing Base at such time.

**“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”**: The letter dated December 4, 2006 between Borrowers’ Representative and the Administrative Agent as such letter may from time to time be amended.

**“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, 2007” is to the Loan Parties’ fiscal month of June in the calendar year 2006). 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 2007 reference to that year would be to the Loan Parties' "Fiscal 2007").

**"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.

**"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, 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 1.0(b)** annexed hereto individually, and the Persons named on **EXHIBIT 1.0(b)** 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.

**“Incremental Availability”**: The additional amount available to be borrowed by the Borrowers based upon the difference between the Last Out Borrowing Base and the Borrowing Base, as reflected on the most recent Borrowing Base Certificate delivered by the Borrowers to the Administrative Agent pursuant to Section 5.4 hereof, but in no event an amount greater than the Last Out Commitments.

**“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 19.12.

**“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 or six months, and if available to all Lenders, seven or fourteen days or twelve months thereafter, as the Borrowers’ Representative may elect by notice (pursuant to Section 2.7) 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 2.7) 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 2.14(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 October 29, 2004 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”**: Bank of America, N.A. or any of its successors.

**“Last Out Advance Percentage”**: At the relevant time of reference thereto, (a) from the Closing Date through but excluding the first anniversary of the Closing Date, 10%, and (b) on and after the first anniversary of the Closing Date, 5%.

**“Last Out Borrowing Base”**: The sum of the Borrowing Base at such time, plus (ii) the applicable Last Out Advance Percentage multiplied by the Appraised Inventory Liquidation Value.

**“Last Out Commitments”**: The aggregate of each Last Out Revolving Lender’s Last Out Revolving Credit Dollar Commitment which as of the Closing Date are in the aggregate sum of \$10,000,000.00 and as subject to the change in accordance with the provisions of this agreement.

**“Last Out Availability”**: At any time of determination, the amount that Borrowers are entitled to borrow as Last Out Revolving Loans, being the result of (a) the lesser of (i) the Last Out Commitments and (ii) the Incremental Availability minus (b) the outstanding principal balance of all Last Out Revolving Loans then outstanding.

**“Last Out Lenders Fees”**: The Last Out Commitment Fee, Last Out Unused Line 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 Last Out Revolving 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.

**“Last Out Revolving Commitment Percentage”**: The percentage set forth on **EXHIBIT 2.25** hereto as such Last Out Revolving Lender’s percentage of the aggregate Last Out Revolving Commitments of all the Last Out Revolving Lenders.

**“Last Out Revolving Credit Dollar Commitment”** As to each Last Out Revolving Lender, the amount set forth on **EXHIBIT 2.25**, annexed hereto (as such amounts may change in accordance with the provisions of this Agreement).

**“Last Out Revolving Lender”** Each Lender with a Last Out Revolving Credit Dollar Commitment.

**“Last Out Revolving Loans”**: Loans made by Last Out Revolving Lenders under the Credit Facilities.

**“Last Out Revolving Note”**: Defined in Section 2.12.

**“Last Out Unused Line Fee”**: Is defined in Section 2.18.

**“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.

**“Lender”**: Collectively and each individually, each Revolving Credit Lender and each Last Out Revolving Lender.

**“Lenders’ Special Counsel”**: A single counsel selected by Lenders holding more than 51% of the Total Commitments (other than any Loan Commitments held by Delinquent 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.

**“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 Bank of America participates is open for dealings in United States Dollar deposits.

**“Libor Loan”**: Any 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 Bank of America by first-class banks in the London interbank market in which Bank of America 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 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”**: A Revolving Credit Loan or Last Out Revolving Loan.

**“Loan Account”**: Is defined in Section 2.10.

**“Loan Commitment”**: With respect to each Revolving Credit Lender, that respective Revolving Credit Lender’s Revolving Credit Dollar Commitment. With respect to each Last Out Revolving Lender, that respective Last Out Revolving Lender’s Last Out Revolving Credit Dollar Commitment.

**“Loan Documents”**: This Agreement, each instrument and document executed as contemplated by the Original Agreement and by Article 4, 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 Lenders) holding 51% or more of the Total Commitments (other than any Loan Commitments held by Delinquent Lenders).

**“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.

**“Maturity Date”**: October 29, 2008.

**“Moody’s”** means Moody’s Investors Service, Inc. and any successor thereto.

**“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 15.11.

**“Operating Account”**: Defined in Section 7.3.

**“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 19.15, 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.

**“Percentage Commitments”**: The Revolving Credit Commitment Percentage and/or the Last Out Revolving Commitment Percentage as applicable.

**“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”**: A sale or other disposition of the assets of any Loan Party in the ordinary course, so long as the following conditions are satisfied:

(a) The sale, liquidation or other disposition of Inventory at any locations from which a Loan Party determines to cease the conduct of its business, (i) shall be on terms satisfactory to the Administrative Agent and (ii) 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;

(b) 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;

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

(d) 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.

**"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 Credit Facilities.

- (b) 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.
- (c) 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.
- (d) Rochester Indebtedness
- (e) Capital Leases and purchase money Indebtedness secured by Permitted Encumbrances.
- (f) Indebtedness assumed in connection with Permitted Acquisitions pursuant to Section 4.21 (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.
- (g) Intercompany Indebtedness permitted under Section 4.22.
- (h) Indebtedness arising with respect to any Hedge Agreement.
- (i) Indebtedness arising from a guaranty by a Loan Party of the Indebtedness of a Borrower with respect to a Borrower's ordinary course trade payables.
- (j) Indebtedness on account of the Canton Lease.

**“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) Bank of America; or (ii) 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;

(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;

(f) the Term Note made payable by LP Innovations Acquisition Corp. to LP Innovations, Inc. dated as of April 25, 2006 in the original principal amount of \$2,200,000.00, which note is currently held by Canton PL liquidating Corp.; and

(g) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(h) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into;

(i) Investments, classified in accordance with GAAP as current assets of the Loan Parties, in any money market fund, mutual fund, or other investment companies that are registered under the Investment

Company Act of 1940, as amended, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and which invest substantially in one or more of the types of securities described in clauses (a), (b), (c) or (g) above.

**"Permitted Protective OverAdvance"** Is defined in Section 15.3(a).

**"Permitted Repurchase"**: The repurchase, repayment, redemption, or acquisition by the Borrowers of Casual Male's capital stock or the Convertible Notes, provided, that (i) as of the date of such repurchase, repayment, redemption, or acquisition, and immediately after giving effect thereto, there exists no Default; (ii) as of the date of such repurchase, repayment, redemption, or acquisition and immediately after giving effect thereto, the Total Facility Usage Ratio does not exceed 80% as determined by the Agent based upon the most recent Borrowing Base Certificate delivered to the Agent pursuant to Section 5.4 of the Loan Agreement; and (iii) the Borrowers' Representative has delivered to the Agent contemporaneously with the quarterly officers certificate delivered pursuant to Section 5.6 of the Loan Agreement pro forma financial projections on a monthly basis demonstrating immediately after giving effect to all repurchases, repayments, redemptions, or acquisitions, the Total Facility Usage Ratio would not exceed 80% as determined on a pro forma basis over the twelve (12) months next following the month during which the repurchase, repayment, redemption, or acquisition, occurs which projections are in form and substance satisfactory to the Agent and are based on reasonable projections of the financial performance of the Borrowers and are accompanied by a certificate of the Borrowers' Representative's Chief Executive Officer, President or Chief Financial Officer certifying that such projections are accurate and complete, provided, that at any time the actual repurchases, repayments, redemptions, or acquisitions, made during any Fiscal quarter exceed those projected to be made for such Fiscal quarter as set forth in the certificate described in clause (iii) hereof, Borrowers' Representatives shall promptly deliver to the Agent updated monthly pro forma financial projections demonstrating compliance with the requirements set forth in clause (iii) hereof based on the actual repurchases, repayments, redemptions, or acquisitions made together with a certificate of the Borrowers' Representative's Chief Executive Officer, President or Chief Financial Officer certifying the updated projections as accurate and complete.

**"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 8.1 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 Commitments are 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.

**“Register”**: Is defined in Section 16.2(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: 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 Commitments”**: The aggregate of each Revolving Credit Lender’s Revolving Credit Dollar Commitment which as of the Closing Date is \$100,000,000.00.

**“Revolving Credit Dollar Commitment”**: As to each Revolving Credit Lender, the amount set forth on **EXHIBIT 2.25**, annexed hereto (as such amounts may change in accordance with the provisions of this Agreement).

**“Revolving Credit Fees”**: The Revolving Credit Unused Line Fee, Commitment 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 Loans 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 by the Revolving Credit Lenders under the Credit Facilities.

**“Revolving Credit Note”**: Is defined in Section 2.11.

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

**“Revolving Credit Percentage Commitment”**: As to each Revolving Credit Lender, the amount set forth on **EXHIBIT 2.25**, annexed hereto (as such amounts may change in accordance with the provisions of this Agreement).

**“Revolving Credit Unused Line Fee”**: Is defined in Section 2.18

**“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 from time to time with the consent of the Agent.

**“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 Issuer.

**“S&P”** means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto

**“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 Fleet Retail Group, Inc, and the Borrowers, on the other hand, each dated as of May 14, 2002.

**“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 Lenders) holding 66<sup>2</sup>/<sub>3</sub>% or more of the Total Commitments (other than Loan Commitments held by a Delinquent Lender).

**“SuperMajority Revolving Credit Lenders”**: Revolving Credit Lenders (other than Delinquent Lenders) holding 66-2/3% or more of the Revolving Credit Commitments (other than such Loan Commitments held by a Delinquent 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”**: Bank of America, N.A.

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

“**SwingLine Loans**”: Defined in Section 2.9.

“**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.

“**Total Commitments**”: means the aggregate of the Last Out Commitments and the Revolving Credit Commitments.

“**Total Facility Usage**”: At any time, the sum of the Revolving Credit Loans outstanding, the SwingLine Loans outstanding, the aggregate undrawn Stated Amount of all then outstanding L/Cs and the Last Out Revolving Loans outstanding.

“**Total Facility Usage Ratio**”: The ratio, expressed as a percentage, of (a) at any time when any Last Out Revolving Loans are outstanding, (i) the Total Facility Usage at such time, to (ii) the lesser of (A) the Total Commitments at such time, or (B) the Last Out Borrowing Base at such time and (b) at all other times, (i) the Total Revolving Facility Usage at such time, to (ii) the lesser of (A) the Revolving Loan Commitments at such time or (B) the Borrowing Base at such time.

“**Total Revolving Facility Usage**”: At any time, the sum of the Revolving Credit Loans outstanding, the aggregate undrawn Stated Amount of all then outstanding L/Cs and the SwingLine Loans outstanding.

“**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 17.1), 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.

“**Type**”: As to any Loan, its nature as a Base Rate Loan or a LIBOR Rate Loan.

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

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

“Unused Line Fee”: Is defined in Section 2.18.

**ARTICLE 2 - COMMITMENTS AND CREDIT EXTENSIONS:**

**2.1. ESTABLISHMENT OF CREDIT FACILITIES.**

(a) The Lenders hereby establish the revolving line of credit and the last out revolving credit facility (collectively, the “**Credit Facilities**”) in the Borrowers’ favor pursuant to which each 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 Credit Facilities shall be subject to Availability and Last Out Availability, as applicable. The Borrowing Base, Last Out Borrowing Base, Availability and Last Out Availability shall be determined by the Administrative Agent by reference to Borrowing Base Certificates furnished as provided in Section 5.4, 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 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 Lender to provide such loans, advances, and financial accommodations is subject to Section 2.25.

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

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

(ii) 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).

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

(iv) For Permitted Repurchases in accordance with the terms and conditions of 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 12.3(a) (which relates to each Revolving Credit Lender's making amounts available to the Administrative Agent) and to Section 15.3(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 5.4**.

(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 Credit Facilities and/or the monitoring of compliance with the provisions hereof shall not be deemed a determination by the Administrative Agent or any 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 Credit Facilities.

**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 Credit Facilities 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.

(c) Notwithstanding the foregoing, (a) the Borrowers shall not request, and the Revolving Credit Lenders shall not advance, any Revolving Credit Loans (other than (x) SwingLine Loans and (y) Revolving Credit Loans used to reimburse a draw on a Letter of Credit) at any time when (i) the Excess Availability Ratio is less than 50% and (ii) there exists any Last Out Availability and (b) at any time when any Last Out Revolving Loans are outstanding, the Borrowers shall not request, and the Revolving Credit Lenders shall not advance, any additional Revolving Credit Loans unless the Last Out Availability equals zero.

## **2.6. COMMITMENT TO MAKE LAST OUT REVOLVING LOANS.**

Subject to the terms and conditions set forth in this Agreement, each of the Last Out Revolving Lenders agrees to lend to the Borrowers and the Borrowers may borrow, repay (subject to Section 2.13), and reborrow such Last Out Revolving Loans up to a maximum aggregate amount outstanding (after giving effect to all amounts requested) at any one time equal to such Last Out Revolving Lender's Last Out Revolving Credit Dollar Commitment, provided that (in each case, after giving effect to all amounts requested) (a) the Last Out Availability shall not be less than zero, and (b) the Aggregate Availability shall not be less than zero.

(a) The Borrowers shall borrow Last Out Revolving Loans in an amount equal to the Last Out Availability at any time when (a) the Excess Availability Ratio is less than 50% and (b) there exists any Last Out Availability, prior to any additional borrowings of Revolving Credit Loans, SwingLine Loans or the issuance or amendment of an L/C. If at any time when Last Out Revolving Loans are outstanding and Last Out Availability is great than zero, the Borrowers shall borrow additional Last Out Revolving Loans in an amount required so that the Last Out Availability equals zero.

(b) The Last Out Revolving Loans shall be made pro rata in accordance with each Last Out Revolving Lender's Last Out Revolving Commitment Percentage.

## **2.7. LOAN REQUESTS.**

(a) Requests for loans and advances under this Agreement or for the continuance or conversion of an interest rate applicable to a 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 Loan and elect an interest rate and Interest Period to be applicable to that Loan by giving notice to the Administrative Agent by no later than the following:

(i) If such Loan is to be or is to be converted to a Base Margin Loan: By 1:00 PM 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 \$100,000.00.

(ii) If such Loan is to be, or is to be continued as, or converted to, a Libor Loan: By 1:00 PM 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 Loan or for the continuance or conversion of an interest rate applicable to a 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 Loan or for the conversion of a 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 2.20.

(e) The Administrative Agent may rely on any request for a loan or advance, or other financial accommodation under the Agreement 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 this Agreement 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 Borrowers right to request Loans, SwingLine Loans, or L/Cs immediately, in which event, neither the Administrative Agent nor any 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.

## **2.8. MAKING OF LOANS.**

(a) A loan or advance under this Agreement 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 this Agreement (and the Borrowers shall be indebted to the Administrative Agent and the 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 Lenders, in the making of any loan or advance requested under this Agreement.

(ii) Any delay, beyond the reasonable control of the Agents and the 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 this Agreement, 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.

## **2.9. 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 Credit Facilities. 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 Revolving Credit Loan.

(c) The Borrowers' obligation to repay SwingLine Loans shall be evidenced by a Note in the form of **EXHIBIT 2.9**, 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.

## **2.10. 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 Credit Facilities.

(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 Credit Facilities, 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 or Aggregate 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 Credit Facilities 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 Credit Facilities 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 2.13(b). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.10(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.

**2.11. THE REVOLVING CREDIT NOTES.** The Borrowers' obligation to repay Revolving Credit Loans with interest as provided herein, shall be evidenced by notes (each, a "**Revolving Credit Note**") in the form of **EXHIBIT 2.11**, 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.

**2.12. THE LAST OUT REVOLVING NOTES.** The Borrowers' obligation to repay the Last Out Revolving Loans, with interest as provided herein, shall be evidenced by notes (each, a "Last Out Revolving Note") in the form of **EXHIBIT 2.12**, annexed hereto, executed by each Borrower, one payable to each Last Out Revolving Lender. Neither the original nor a copy of any Last Out Revolving 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 Last Out Revolving Note has been lost, mutilated, or destroyed, the Borrowers shall execute a replacement thereof and deliver such replacement to the Administrative Agent.

**2.13. 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 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 2.13(a) and 2.13(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 2.13(e).

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

#### **2.14. INTEREST ON LOANS.**

(a) Each Loan shall bear interest at the Base Margin Rate unless timely notice is given (as provided in Section 2.7) that the subject Loan (or a portion thereof) is, or is to be converted to, a Libor Loan.

(b) Each 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 "Loan".

(d) The Borrowers' Representative shall not select, renew, or convert any interest rate for a Loan such that, in addition to interest at the Base Margin Rate, there are more than seven (7) Libor Rates applicable to the Loans at any one time, provided, that no more than two (2) Libor Rate Loans having an Interest Period of less than one (1) month may be selected by the Borrowers' Representative in any thirty day period.

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

(i) On the applicable Interest Payment Date for that 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 Loans shall bear interest, at the option of the Administrative Agent or at the instruction of the SuperMajority Lenders, at a rate which is the aggregate of the rate applicable to Base Margin Loans *plus* three percent (3%) per annum.

#### **2.15. ARRANGEMENT FEE.**

In consideration of the Agent and Bank of America Securities LLC ("**BAS**") having arranged the Credit Facilities for the Borrowers, there has been earned by BAS and the Borrowers shall pay the "Arrangement Fee" to BAS in the amount and payable as provided in the Fee Letter.

**2.16. FEE.** In consideration of the commitment to make loans and advances to the Borrowers under this Agreement, and to maintain sufficient funds available for such purpose, there has been earned by the Lenders and the Borrowers shall pay the “**Commitment Fee**” (so referred to herein) to the Administrative Agent on behalf of the Lenders in the amount and as payable as provided in the Fee Letter.

**2.17. ADMINISTRATIVE AGENT’S FEE.** In addition to any other fee or expense to be paid by the Borrowers on account of the Credit Facilities, 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.

**2.18. UNUSED LINE FEE.** In addition to any other fee to be paid by the Borrowers on account of the Credit Facilities, the Borrowers shall pay the Administrative Agent (i) the “**Revolving Credit Unused Line Fee**” (so referred to herein) of 0.25% per annum 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 Commitments and the aggregate of the unpaid principal balance of the Revolving Credit Loans and the undrawn Stated Amount of L/C’s outstanding during the relevant period; and (ii) the “**Last Out Unused Line Fee**” (so referred to herein) of 0.375% per annum 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 Last Out Credit Commitments and the aggregate of the unpaid principal balance of the Last Out Revolving Loans outstanding during the relevant period (the Revolving Credit Unused Line Fee and the Last Out Unused Line Fee shall be collectively referred to herein as the “**Unused Line Fee**”). 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.

**2.19. 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.

**2.20. 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 Credit Facilities have not been suspended as provided in Section 2.7(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 make the Revolving Credit Loans (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 2.13(b) hereof.

#### **2.21. 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 2.21(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 2.21(c)(i) or 2.21(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 2.21(c)(i) or 2.21(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.

## **2.22. 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.

### **2.23. 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 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 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 2.23(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 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 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 2.23(a), shall be deemed at the option of the Administrative Agent to not having been given.

#### **2.24. 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 Credit Facilities, 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 Credit Facilities 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 Loan.

(d) The proceeds of each loan and advance provided under the Credit Facilities 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.

## 2.25. LENDERS' COMMITMENTS.

(a) Subject to Section 16.1 (which provides for assignments and assumptions 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 2.25**, annexed hereto.

(b) Subject to Section 16.1 (which provides for assignments and assumptions of commitments), each Last Out Revolving Lender's "**Last Out Revolving Commitment Percentage**", and "**Last Out Revolving Credit Dollar Commitment**" (respectively so referred to herein) is set forth on **EXHIBIT 2.25**, annexed hereto.

(c) 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 Credit Facilities 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.

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

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

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

(f) The Revolving Credit Dollar Commitments, Revolving Credit Commitment Percentages, Last Out Revolving Credit Dollar Commitment, Last Out Revolving Commitment Percentage, and identities of the Lenders (but not the Revolving Credit Commitments or Last Out Commitments) may be changed, from time to time by the reallocation or assignment of Dollar Commitments and Commitment Percentages amongst the Lenders or with other Persons who determine to become a Lender; *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 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.

(g) Upon written notice given the Borrowers' Representative from time to time by the Administrative Agent of any assignment or allocation referenced in Section 2.25(f):

(i) Each Borrower shall execute one or more replacement Notes to reflect such changed Dollar Commitments, Commitment Percentages, and identities and shall deliver such replacement Notes to the Administrative Agent (which promptly thereafter shall deliver to the Borrowers' Representative the Notes so replaced) *provided however*, in the event that a 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 Notes, may issue the Administrative Agent's Certificate confirming the resulting Dollar Commitments and Percentage Commitments.

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

**2.26. 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 - CONDITIONS PRECEDENT:**

As a condition to the effectiveness of this Agreement, the establishment of the Credit Facilities, the making of the first loan under the Credit Facilities, each of the documents respectively described in Sections 3.1 through and including 3.11, (each in form and substance satisfactory to the Administrative Agent) shall have been delivered to the Administrative Agent, and the conditions respectively described in Sections 3.5 through and including 3.11, shall have been satisfied:

**3.1. 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 of State for the Commonwealth of Massachusetts for those Loan Parties required to file to do business in the Commonwealth of Massachusetts.

(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.

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

**3.3. ADDITIONAL DOCUMENTS.** Such additional instruments and documents as the Administrative Agent or its counsel reasonably may require or request.

**3.4. 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.

**3.5. 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.

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

**3.7. 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.

**3.8. No Default.**

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

(b) Except as specifically set forth on **EXHIBIT 3.8(b)**, no default shall have occurred and be continuing under any material contract or other agreement to which any Loan Party is a party.

**3.9. 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) The Administrative Agent 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.

(d) The Administrative Agent shall be satisfied that no materially adverse change in any governmental regulations or policies affecting any Loan Party or Agent shall have occurred.

**3.10. 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 such Loan Party or its businesses or assets.

**3.11. BENEFIT OF CONDITIONS PRECEDENT.** The conditions set forth in this Article 3 are for the sole benefit of each Agent and each Lender and may be waived by the Administrative Agent, 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, or any 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 4 - GENERAL REPRESENTATIONS, COVENANTS AND WARRANTIES:**

To induce each Lender to establish the Credit Facilities contemplated herein and to induce the Lenders to provide loans and advances hereunder (each of which loans shall be deemed to have been made in reliance thereupon), 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.

**4.1. 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.

**4.2. 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 4.2**, 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 4.2**. 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.

#### **4.3. TRADE NAMES.**

(a) **EXHIBIT 4.3**, 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.

#### **4.4. 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 4.4(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.

#### 4.5. 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 4.5**, 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 4.5** except for the following purposes:

(i) To accomplish sales of Inventory in the ordinary course of business or sales permitted by Section 4.14(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 4.14(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.

#### 4.6. 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.

#### 4.7. 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 4.7(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 4.7(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.

#### 4.8. 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 (a) regularly scheduled payments of interest so long as of the date of such payment, and after giving effect thereto, there exists no Default; (b) payment, prepayment and/or retirement of Indebtedness in connection with a Permitted Repurchase.

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, and SuperMajority Lenders.

#### 4.9. INSURANCE.

(a) **EXHIBIT 4.9**, 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 4.9** 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.

**4.10. 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.

**4.11. LEASES. EXHIBIT 4.11**, annexed hereto, is a schedule of all presently effective Capital Leases. Exhibit 4.5 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.

**4.12. 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.

#### 4.13. LABOR RELATIONS.

(a) Except as disclosed on **EXHIBIT 4.13(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 4.13(d)(i).

**4.14. 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.
  - (iv) Permitted Asset Dispositions.

**4.15. 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 4.15(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.

**4.16. NO MARGIN STOCK NOT INVESTMENT COMPANY.**

(a) 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.

(b) No Loan Party or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

**4.17. 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 4.17(a).

**4.18. 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.

**4.19. LITIGATION.** Except as described in **EXHIBIT 4.19**, 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.

**4.20. 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, other than pursuant to a Permitted Repurchase.

(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) Permitted Acquisitions subject to the provisions of Section 4.21,

(iii) Investments in new wholly owned Subsidiaries formed in connection with any such Permitted Acquisition, subject to the provisions of Section 4.21(e).

(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.

**4.21. 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) As of the date of such Permitted Acquisition immediately after giving effect thereto, the Total Facility Usage Ratio does not exceed 80% as determined by the Agent based upon the most recent Borrowing Base Certificate delivered to the Agent pursuant to Section 5.4 of the Loan Agreement;

(c) Together with the notice required by clause (a) of this Section, the Borrowers' Representative has delivered to the Agent pro forma financial projections on a monthly basis demonstrating immediately after giving effect to the Permitted Acquisition, the Total Facility Usage Ratio would not exceed 80% as determined on a pro forma basis over the twelve (12) months next following the month during which the Permitted Acquisition is consummated, which projections are in form and substance satisfactory to the Agent and are based on reasonable projections of the financial performance of the Borrowers and are accompanied by a certificate of the Borrowers' Representative's Chief Executive Officer, President or Chief Financial Officer certifying that such projections are accurate and complete.

(d) No Event of Default then exists or would result from any such Permitted Acquisition.

(e) 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 8.1 hereof and subject to Permitted Encumbrances.

(f) 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.

**4.22. 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 or Designs Apparel, Inc. to Guarantors to finance the purchases by Guarantors of Inventory pursuant to the Amended and Restated 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.

**4.23. 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 that certain License Agreement dated as of May 31, 2004 by and between George Foreman Productions, Inc. and Casual Male as in effect as in the date of this Agreement. 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.

**4.24. 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 4.24.

**4.25. LINE OF BUSINESS.**

(a) Except as provided in Sections 4.20, 4.23 and 4.25(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 4.25(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 4.25(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 4.25(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 4.25(c) on the Consent of the Majority Lenders.

**4.26. 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.

**4.27. 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 4.27 shall be sufficient for filing to perfect the security interests granted herein.

**4.28. 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 4.28(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.

**4.29. 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.

**4.30. 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.

**4.31. 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, provided, however, RBT may directly purchase *de minimus* amounts of Inventory for its own account. 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 5 - FINANCIAL REPORTING AND PERFORMANCE COVENANTS:**

**5.1. 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 5 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.

## **5.2. 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 5.2 as fully as if the Administrative Agent were doing so.

### **5.3. 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 5.1(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 4.14 .

(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).

**5.4. BORROWING BASE CERTIFICATE.** The Borrowers' Representative shall provide the Administrative Agent on the third Business Day of each Fiscal Month as of the close of business the last day of the immediately preceding month, with a Borrowing Base Certificate (in the form of **EXHIBIT 5.4** annexed hereto, as such form may be revised from time to time by the Administrative Agent, the "**Borrowing Base Certificate**"), provided, that at anytime that (i) the Total Facility Usage Ratio is greater than 80%; or (ii) a Default exists, at the election of the Agent such Borrowing Base Certificate shall be delivered weekly by 11:30 a.m. on Wednesday of each week as of the close of business for the immediately preceding week. Such Certificate may be sent to the Administrative Agent by facsimile transmission or by electronic mail, *provided that* the original thereof is forwarded to the Administrative Agent on the date of such transmission.

**5.5. MONTHLY REPORTS.** Monthly, within thirty (30) days following the end of each Fiscal month 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 subject month and for the period from the beginning of the Loan Parties' then current Fiscal year through the end of the subject month, with comparative information for the same period of the previous Fiscal year and to the Business Plan or updated forecast, which statement shall include, at a minimum, a balance sheet, income statement, and cash flows.

(b) The officer's compliance certificate described in Section 5.8.

**5.6. 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 subject quarter and 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 and to the Business Plan or updated forecast, which statement shall include, at a minimum, a balance sheet, income statement, and cash flows.

(b) An updated pro forma financial statement for the next twelve month period, reflecting any proposed repurchases, redemptions, or acquisitions of any Capital Stock or the Convertible Notes.

(c) The officer's compliance certificate described in Section 5.8.

**5.7. ANNUAL REPORTS.**

(a) Annually 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 5.

(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).

(d) Annually within thirty (30) days following the end of the Loan Parties' Fiscal year, the Borrowers' Representative shall furnish the Administrative Agent with an updated Business Plan for the current Fiscal year which Business Plan shall include, at a minimum, a balance sheet, income statement, cash flows, and availability model each on a monthly basis for the following twelve (12) month period.

**5.8. 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.

(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.

#### 5.9. INVENTORIES, APPRAISALS, AND AUDITS.

(a) The Administrative Agent 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 two (2) 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, the Administrative Agent may obtain additional appraisals at its own expense, provided, however, following the occurrence of an Event of Default, the Administrative Agent may cause additional such appraisals to be undertaken at the Loan Parties' expense.

(c) The Administrative Agent contemplates conducting two (2) 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, the Administrative Agent may obtain additional commercial finance audits at its own expense, provided, however following the occurrence of an Event of Default, the Administrative Agent may cause additional such commercial finance audits to be undertaken at the Loan Parties' expense.

#### 5.10. ADDITIONAL FINANCIAL INFORMATION.

(a) In addition to all other information required to be provided pursuant to this Article 5, 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.

(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.

## **ARTICLE 6 - Use of Collateral:**

### **6.1. 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.

**6.2. 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.

**6.3. 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 6.3 may be limited or terminated by the Administrative Agent at any time in the Administrative Agent's discretion.

**ARTICLE 7 - Cash Management. Payment of Liabilities:**

**7.1. DEPOSITORY ACCOUNTS.**

(a) Annexed hereto as **EXHIBIT 7.1** 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.

## 7.2. CREDIT CARD RECEIPTS.

(a) Annexed hereto as **EXHIBIT 7.2**, 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 .

## 7.3. 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 Bank of America.
- (ii) The "**Blocked Account**" (so referred to herein): Established by the Borrowers' Representative with Bank of America
- (iii) The "**Operating Account**" (so referred to herein): Established by the Borrowers' Representative with Bank of America.

(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).

## 7.4. 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 7.4, 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.

#### **7.5. 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, provided, that if and so long as the Excess Availability Ratio is greater than 50% for five (5) consecutive Business Days, the Borrowers' Representative may instruct the Administrative Agent to apply such amounts to the outstanding principal balance of the Last Out Revolving Loans, in which case the Administrative Agent shall apply such amounts to the Last Out Revolving Loans until all Last Out Revolving Loans have been repaid in full. 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 7.5:

(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 2:00 PM 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 2:00 PM on that Business Day.

(iii) If notice of a deposit to the Concentration Account (Section 7.5(b)(i)) or payment (Section 7.5(b)(ii)) is not delivered to the Administrative Agent until after 2:00 PM on a Business Day, such deposit or payment shall be deemed to have been made at 9:00 AM 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 7.5(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) one or more L/C's are then outstanding.

then the Administrative Agent may establish a funded reserve of up to 110% of the aggregate of the Stated Amounts of such L/C's. 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.

**7.6. 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 8 - GRANT OF SECURITY INTEREST:**

**8.1. 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 (8.1(a) through 8.1(n)) or otherwise.

(q) All liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing (8.1(a) through 8.1(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.

#### **8.2. 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 9 - Collateral Agent As Attorney-In-Fact:**

**9.1. 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.

**9.2. 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 9.1 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 10 - Events of Default:**

The occurrence of any event described in this Article 10 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.

**10.1. FAILURE TO PAY THE CREDIT FACILITIES.** The failure by any Loan Party to pay when due any principal of, interest on, or fees in respect of, the Credit Facilities.

**10.2. 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 Credit Facilities.

**10.3. 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 10.1 or Section 10.2 hereof, and included in any of the following provisions hereof:

<u>Section</u>	<u>Relates to:</u>
4.2(c)	State of Organization, State Identification Number and Taxpayer Identification Number
4.3(b)	Notice of Name Change
4.5	Location of Collateral
4.7(a)	Title to Assets
4.8	Indebtedness
4.9	Insurance Policies
4.20	Dividends, Investments and Other Entity Actions
4.26	Affiliate Transactions
4.27	Further Assurances
6.1	Use of Inventory Collateral
Article 7	Cash Management (except if the failure to comply is as a result of force majeure or through no fault of the Loan Parties)

**10.4. 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 5, 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	5.4	One Business Day	Three per Fiscal Quarter
Monthly Reports (30 Days)	5.5	Three Business Days	Three in any 12 months

**10.5. 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 10.1, 10.2, 10.3, or 10.4, or of the Borrowers' Representative's receipt of written notice from the Administrative Agent of the breach of any such covenants or Liabilities.

**10.6. 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.

**10.7. 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).

**10.8. 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).

**10.9. UNINSURED CASUALTY LOSS.** The occurrence of any uninsured loss, theft, damage, or destruction of or to any material portion of the Collateral.

**10.10. 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.

**10.11. 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.

**10.12. 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.

**10.13. CHANGE IN CONTROL.** Any Change in Control.

**10.14. 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.

**10.15. 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.

**10.16. 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).

**10.17. PAYMENT OF OTHER INDEBTEDNESS.** The Loan Parties shall prepay or discharge any Indebtedness prior to its maturity date except as expressly permitted hereunder.

**10.18. 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.

**10.19. 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 October 28, 2006.

**ARTICLE 11 - RIGHTS AND REMEDIES UPON DEFAULT:**

**11.1. 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.

**11.2. 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.

### **11.3. 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 11. The Administrative Agent shall apply the proceeds of the Collateral Agent's exercise of its rights and remedies upon default pursuant to this Article 11 in accordance with Sections 13.6 and 13.7.

**11.4. OCCUPATION OF BUSINESS LOCATION.** In connection with the Collateral Agent's exercise of the Collateral Agent's rights under this Article 11, 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 11 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.

**11.5. 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.

**11.6. 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.

**11.7. 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 12 - Loan Fundings and Distributions:**

**12.1. FUNDING PROCEDURES.**

(a) The Agent shall advise each Lender, no later than 2:00 PM on a date on which any Loan (other than a SwingLine Loan) is to be made, that such Loan is to be made and whether the Loan is a Revolving Credit Loan or a Last Out Revolving Loan. 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 Loan shall include the amount of and interest rate applicable to the subject Loan.

(b) Subject to that Lender's Dollar Commitment, each Lender, by no later than the end of business on the day on which the subject Loan is to be made, shall Transfer that Lender's Percentage Commitment of the subject Loan to the Administrative Agent.

**12.2. 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 13.1.

(c) The SwingLine Lender, in separate capacities, may also be one or more Agents or Lenders.

(d) The SwingLine Lender, in its capacity as SwingLine Lender, is not a "Lender" for any of the following purposes:

(i) Except as otherwise specifically provided in the relevant Section, any distribution pursuant to Section 13.7.

(ii) Determination of whether the requisite holders of Loan Commitments have Consented to action requiring such Consent.

**12.3. ADMINISTRATIVE AGENT'S COVERING OF FUNDINGS:**

(a) Each Lender shall make available to the Administrative Agent, as provided herein, that Lender's 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).

(iii) Each Last Out Revolving Loan, up to the maximum amount of that Last Out Lender's Last Out Revolving Credit Dollar Commitment of the Last Out Revolving Loans.

(b) In all circumstances, the Administrative Agent may:

(i) Assume that each Lender, subject to Section 12.3(a), timely shall make available to the Administrative Agent that Lender's Percentage Commitment of each Loan, notice of which is provided pursuant to Section 12.1 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 Lender timely shall pay, and shall make available, to the Administrative Agent all other amounts which that 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 Lender's Percentage Commitment of one or more Loans, or any other amount to be made available hereunder or under any of the other Loan Documents, which amount a Lender (a "**Delinquent 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 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 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 Lender

(iv) The Administrative Agent shall have succeeded to all rights to payment to which the Delinquent 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 Lender is then participating. For purposes of distributions to be made pursuant to Section 12.4(a) (which relates to ordinary course distributions) or Section 13.6 (which relates to distributions of proceeds of a Liquidation) below, amounts shall be deemed distributable to a Delinquent 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 Lender would otherwise have been entitled to a distribution.

(v) Subject to Subsection 12.3(c)(iv) the Delinquent Lender shall be entitled to receive any payments from the Loan Parties to which the Delinquent 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 12.3(c)(ii) above.

(d) A Delinquent Lender shall not be relieved of any obligation of such Delinquent Lender hereunder (all and each of which shall constitute continuing obligations on the part of any Delinquent Lender).

(e) A Delinquent Lender may cure its status as a Delinquent 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 12.3(c)(iv), above) with respect to that Delinquent Lender.

*Plus*

(ii) The aggregate of the amount payable under Subsection 12.3(c)(iii), above (which relates to interest to be paid by that Delinquent 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 Lender.

**12.4. ORDINARY COURSE DISTRIBUTIONS: CREDIT FACILITIES.** (This Section 12.4 applies unless the provisions of Section 13.6 (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 Lender shall settle up on amounts advanced under the Credit Facilities and collected funds received in the Concentration Account.

(b) The Administrative Agent shall distribute to the SwingLine Lender and to each Lender such Person's respective Pro-Rata share of interest payments on the Loans when actually received and collected by the Administrative Agent (excluding the one Business Day for settlement provided for in 7.5(a) which shall be for the account of the Administrative Agent only). For purposes of calculating interest due to a Lender, that Lender shall be entitled to receive interest on the actual amount contributed by that Lender towards the principal balance of the Loans outstanding during the applicable period covered by the interest payment made by the Loan Parties. Any net principal reductions to the 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 Lender, until the Administrative Agent has distributed to that Lender its Pro-Rata share thereof.

(c) The Administrative Agent shall distribute fees paid on account of the Credit Facilities, as follows:

(i) L/C Fee (Section 2.21(a)): Pro-Rata to the Revolving Credit Lenders.

(ii) Revolving Credit Unused Line Fee (Section 2.18): Pro-Rata to the Revolving Credit Lenders.

(iii) Last Out Unused Line Fee (Section 2.16): Pro Rata to the Last Out Revolving Lenders.

(iv) Commitment Fee (Section 2.16): As provided in separate letter agreements with the respective 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 7.5(a), all of which float shall be for the account of the Administrative Agent only.

(ii) The Administrative Agent's Fee (Section 2.17) to be paid by the Loan Parties to the Administrative Agent.

(iii) Fees described in Section 2.21(b) (which relates to fees associated with, among other things, the issuance of L/C's): Retained by the Issuer.

(iv) The Arrangement Fee which shall be retained by BAS.

(e) 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).

(f) Each distribution pursuant to this Section 12.4 is subject to Section 12.3(c), above (which relates to the effect of the failure of any Lender to have Transferred to the Administrative Agent any amount which that Lender is then obligated to so Transfer pursuant to the within Agreement).

## **ARTICLE 13 - Acceleration and Liquidation:**

### **13.1. 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 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.

**13.2. ACCELERATION.** Unless stayed by judicial or statutory process, the Administrative Agent shall Accelerate the Liabilities, within a commercially reasonable time following:

- (a) The Administrative Agent's giving of an Acceleration Notice to the Collateral Agent and the Lenders as provided in Section 13.1(a).
- (b) The Administrative Agent's receipt of an Acceleration Notice from the SuperMajority Lenders, in compliance with Section 13.1(b).

**13.3. 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 Liabilities.

**13.4. 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 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.

**13.5. 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.

### **13.6. 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 13.6(b), in accordance with the relative priorities set forth in Section 13.7.

(d) Each 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.

### **13.7. 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 13.6(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 13.4(a)(i); and then
  - (ii) Second, to pay interest due with respect to all Loans;
  - (iii) Third, to the Revolving Credit Lenders (other than any Delinquent Lender) and Issuer, Pro-Rata, to the unpaid principal balance of Revolving Credit Loans and any amounts owed on account of any L/Cs (including as cash collateral for any undrawn L/Cs) and fees due to the Issuer on account thereof; and then
  - (iv) Fourth, to the Revolving Credit Lenders (other than any Delinquent Lender), Pro-Rata, to Revolving Credit Fees, and then
  - (v) Fifth, to the Last Out Revolving Lenders (other than any Delinquent Lender) Pro-Rata, to the unpaid principal balance of the Last Out Revolving Loans; and then
  - (vi) Sixth, to the Last Out Revolving Lenders (other than any Delinquent Lender) Pro-Rata, the Last Out Lenders Fees; and then
  - (vii) Seventh, to any Delinquent Lenders, Pro-Rata to amounts to which such Lenders otherwise would have been entitled pursuant to Subsections 13.7(b)(iii), through 13.7(b)(vi) and then
  - (viii) Eighth, to Bank of America, or any of its Affiliates providing cash management services to the extent of their exposure thereto; and then
  - (ix) Ninth, to the Secured Parties on account of any Liabilities arising in connection with any Hedge Agreement.

**ARTICLE 14 - THE AGENTS:**

**14.1. APPOINTMENT OF THE AGENTS.**

- (a) Each Lender appoints and designates Bank of America as the “Administrative Agent” hereunder and under the Loan Documents.
- (b) Each Lender appoints and designates Bank of America 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) Reserved.

(e) Wells Fargo Foothill, LLC. has been granted the title of "Syndication Agent", and National City Business Credit, Inc. has been granted the title of "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 Documentation Agent, as the case may be, contemporaneously with its ceasing to be a Revolving Credit Lender.

#### **14.2. 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.

#### **14.3. 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 13.7.

(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 15.5(e)) 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.

**14.4. 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.

**14.5. 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 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.

**14.6. 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.

**14.7. 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.

**14.8. 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 14.5), 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.

**14.9. 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.

**14.10. 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 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. The consent of the Borrowers' Representative otherwise required by this Section 14.10(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 15 - Action By Agents - Consents - Amendments - Waivers:**

**15.1. 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 14.2(b) and 14.2(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>
15.2	Majority Lenders
15.3	SuperMajority Revolving Credit Lenders
15.4	SuperMajority Lenders
15.5	Certain Consent
15.6	Unanimous Consent
15.7	Consent of SwingLine Lender
15.8	Consent of the Agents

(c) The rights granted to the Lenders in those sections referenced in Section 15.1(b) shall not otherwise limit or impair any Agent's exercise of its discretion under the Loan Documents.

**15.2. 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.

**15.3. 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 Credit Facilities 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 15.3(a) is referred to as a **“Permitted Protective OverAdvance”**).

(b) Amendment of the definition of “SuperMajority Revolving Credit Lenders”.

**15.4. ACTIONS REQUIRING CONSENT OR ON DIRECTION OF SUPERMAJORITY LENDERS.**

(a) If any Default has occurred and is continuing, the SuperMajority Lenders may direct the Administrative Agent to suspend the Credit Facilities, whereupon, as long as a Default shall have occurred and be continuing, the only 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) Loans made with Consent of the SuperMajority Lenders.

(b) If an Event of Default has occurred and not been duly waived, the SuperMajority Lenders may:

(i) Give the Administrative Agent an Acceleration Notice in accordance with Section 13.1(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.

(c) The definition of Availability Block shall not be amended in a manner to reduce the amount of the Availability Block without the Consent of the SuperMajority Lenders.

**15.5. ACTION REQUIRING CERTAIN CONSENT.** The following Consent shall be required for the following actions:

<u>ACTION</u>	<u>REQUIRED CONSENT</u>
(a) Increase in the SwingLine Ceiling:	SwingLine Lender and the Majority Lenders.
(b) Any increase in any Lender's Dollar Commitment or Percentage Commitment (other than by reason of the application of Section 15.11 (which deals with NonConsenting Credit Lenders) or Section 16.1 (which deals with assignments and participations)), it being understood that this Section 15.5(b) addresses changes to commitments inter se and not any increase in the Total Commitments.	All Lenders affected thereby other than any Delinquent Lender.
(c) Any forgiveness of all or any portion of any payment Liability.	All Lenders whose payment Liability is being so forgiven (other than any Delinquent Credit Lender, if otherwise applicable).
(d) Any decrease in any interest rate, fee or assessment payable under any of the Loan Documents 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 Lender, if otherwise applicable).
(e) Disgorgement as described in Section 14.3(f).	SuperMajority Lenders.

**15.6. 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", "Last Out Borrowing Base", "Availability" or "Aggregate 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 Credit Facilities as otherwise permitted by this Agreement.

(ii) The foregoing shall not prevent the Administrative Agent, in its administration of the Credit Facilities, 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 the Credit Facilities to an amount which does not exceed a Permitted Protective OverAdvance or, subject to the time limits included in Section 15.3(a) (which places time and frequency limits on Permitted Protective OverAdvances).

(g) Any amendment of this Article 15.

(h) Amendment of any of the following Sections of this Agreement:

(i) 12.4

(ii) 13.6

(iii) 13.7

(i) Amendment of any of the following Definitions:

“Appraised Inventory Liquidation Value”

“Majority Lenders”

“Permitted Protective OverAdvance”

“SuperMajority Lenders”

“Unanimous Consent”

**15.7. 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.

**15.8. 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.

**15.9. 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.

**15.10. 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>
12	Loan Fundings and Distributions
15	The Agents

(b) The Borrowers' Representative's consent to the amendment of those provisions referenced in Section 15.10(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.

**15.11. NONCONSENTING LENDER.**

(a) In the event that a Lender (in this Section 15.11, a "**NonConsenting Lender**") does not provide its Consent to a proposal by the Administrative Agent to take action which requires consent under this Article 15, then one or more Lenders who provided Consent to such action may require the assignment, without recourse and in accordance with the procedures outlined in Section 16.1, 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 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 15.11(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 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 "Lender".

(d) In the event that more than One (1) Lender wishes to require such assignment, the NonConsenting Lender's commitment hereunder shall be divided among such 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 16.2(b) shall be due under such circumstances.

## **ARTICLE 16 - Assignments By Lenders:**

### **16.1. ASSIGNMENTS AND ASSUMPTIONS.**

Except as provided herein, each Lender (in this Section 16.1, an "**Assigning Lender**") may assign to one or more Eligible Assignees (in this Section 16.1, each an "**Assignee 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*:

(a) 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 Assignee Lender having a Dollar Commitment of less than the "minimum hold" amount specified in Section 16.1(c).

(b) Each such assignment shall be of a constant, and not a varying, percentage of all the Assigning Lender's rights and obligations under this Agreement.

(c) Following the effectiveness of such assignment, the Assigning Lender's Dollar Commitment (if not an assignment of all of the Assigning Lender's Commitment) shall not be less than \$5,000,000.00.

(d) 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.

**16.2. ASSIGNMENT PROCEDURES.** (This Section 16.2 describes the procedures to be followed in connection with an assignment effected pursuant to this Article 16 and permitted by Section 16.1).

(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 16.1**, annexed hereto (an “**Assignment and Acceptance**”).

(b) The Assigning Lender shall deliver to the Administrative Agent, with such Assignment and Acceptance, the Note held by the subject Assigning Lender and the Administrative Agent’s processing fee of \$3,000.00, *provided, however*, no such processing fee shall be due where the Assigning 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, Revolving Credit Percentage Commitment of each Lender, Last Out Revolving Commitment Percentage, and the Last Out Commitments. 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.

**16.3. 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 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 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 Percentage Commitment assigned by such Assignment and Acceptance.

(ii) The Assigning Lender shall be released from the Assigning 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 17 - Notices:**

**17.1. 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 Credit Facilities) 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:

Bank of America, N.A.  
40 Broad Street  
Boston, Massachusetts 02109  
Attention: Kathleen Dimock  
Managing Director  
Fax: 617-434-4312

*With a copy to:*

Riemer & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts 02108  
Attention: Kevin J. Simard Esquire  
Fax: 617-880-3456

If to the Borrowers' Representative

And All Loan Parties:

Casual Male Retail Group, Inc.  
555 Turnpike Street  
Canton, Massachusetts 02021  
Attention: Dennis Henreich  
Chief Financial Officer  
Fax: 781-828-3221

With a copy to:

Greenberg Traurig LLP  
One International Place  
Boston, Massachusetts 02110  
Attention: Jonathan Bell, Esquire  
Fax: 617-310-6001

**17.2. 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.

**17.3. WIRE INSTRUCTIONS.** Subject to change in the same manner that a notice address may be changed (as to which, *see* Section 17.1), wire transfers to the Administrative Agent shall be made in accordance with the following wire instructions:

Bank of America, N.A.  
ABA No. 026009593  
Acct Name: Bank of America Retail Group  
Acct No. : 530-39952  
Reference: Casual Male Retail Group

**ARTICLE 18 - Term:**

**18.1. TERMINATION OF CREDIT FACILITIES.** The Credit Facilities shall remain in effect (subject to suspension as provided in Section 2.7(g) hereof) until the Termination Date.

**18.2. 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 Loans and SwingLine Loan).
- (ii) Any then remaining unpaid installments of the Commitment Fees.
- (iii) Any then remaining unpaid installments of the Administrative Agent's Fee.
- (iv) Any payments due on account of the indemnification obligations included in Section 2.13(e).
- (v) Any accrued and unpaid Unused Line Fee.
- (vi) 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 18.2(a)) and arrangements concerning L/C's (Section 18.2(b)), all provisions of this Agreement, other than those included in Article 2 which place any obligation on the Administrative Agent or any Lender to make any loans or advances or to provide any financial accommodations 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 19 - General:**

**19.1. 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.

**19.2. PUBLICITY.** The Agent 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 Agent.

**19.3. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the Borrowers’ Representative, each Loan Party, and their respective representatives, successors, and assigns and shall inure 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.

**19.4. 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.

**19.5. 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.

**19.6. 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.

**19.7. 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 13.6 and 13.7 and any other applicable provisions of this Agreement. The Loan Parties shall remain liable for any deficiency remaining following such application.

**19.8. 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.

**19.9. 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 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 19.9 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 19.9.

**19.10. 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.

**19.11. 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).

**19.12. 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 19.12.

**19.13. 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 19.14 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.

**19.14. 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 19.9 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 2.19 hereof.

**19.15. 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. 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.

**19.16. 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.

**19.17. 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.

**19.18. 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."

**19.19. 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 19.19(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  
**BANK OF AMERICA, N.A.**

By \_\_\_\_\_  
Name: Kathleen A. Dimock  
Title: Managing Director

THE LENDERS:  
**BANK OF AMERICA, N.A.**  
(REVOLVING CREDIT LENDER AND LAST OUT  
REVOLVING LENDER)

By \_\_\_\_\_  
Name: Kathleen A. Dimock  
Title: Managing Director

**NATIONAL CITY BUSINESS CREDIT, INC.**  
(DOCUMENTATION AGENT, REVOLVING CREDIT LENDER AND  
LAST OUT REVOLVING LENDER)

By \_\_\_\_\_  
Name: Kathryn C. Ellero  
Title: Vice President

**WELLS FARGO FOOTHILL, LLC**  
(SYNDICATION AGENT AND REVOLVING CREDIT LENDER)

By \_\_\_\_\_  
Name: Eunnie Kim  
Title: VP

**WELLS FARGO BUSINESS CREDIT INC.**  
(REVOLVING CREDIT LENDER)

By \_\_\_\_\_  
Name: Jeff Giunta  
Title: Relationship Manager

**LASALLE RETAIL FINANCE**, a division of LaSalle  
Business Credit, as Agent for Standard Federal Bank National  
Association  
(REVOLVING CREDIT LENDER AND LAST OUT REVOLVING  
LENDER)

By \_\_\_\_\_  
Name: Roger Malauf  
Title: AVP

**GENERAL ELECTRIC CAPITAL CORPORATION**  
(REVOLVING CREDIT LENDER)

By \_\_\_\_\_  
Name: James R. Persico  
Title: Duly Authorized Signatory

**JPMORGAN CHASE BANK**  
(REVOLVING CREDIT LENDER AND LAST OUT  
REVOLVING LENDER)

By \_\_\_\_\_  
Name: Scott Troy  
Title: Vice President



November 27, 2006

Joseph Cornely  
8 Cumston Street  
Boston, MA 02118

Dear Joseph:

This letter is to set forth the terms of your voluntary resignation from Casual Male Retail Group, Inc. ("CMRG").

1. Your last day of work with CMRG will be January 2, 2007. Your salary and benefits will cease as of that date. On your last day, you will receive payment for any accrued, unused vacation as of January 2, 2007. You will receive, under separate cover, information regarding your right to continue health insurance coverage under the provisions of COBRA.

2. In consideration of the promises made by you in this agreement and in the event you sign this agreement, do not revoke your acceptance within seven (7) days following your execution of this letter and execute the release attached hereto as Exhibit A on or after January 2, 2007:

(a) CMRG agrees to provide you a severance payment, in the amount of \$72,735.60, which represents twelve (12) weeks of pay, to be paid in bi-weekly installments in accordance with the company's regular and customary payroll practices. Applicable state and federal taxes and other employee withholdings will be deducted from the payment. The severance payments will begin on the first payroll date in January 2007, which is at least ten (10) days after the expiration of the revocation period set forth in paragraph 5

(b) CMRG also agrees to provide you with a lump sum payment of \$100,000.00 as a retention incentive to remain in your position through January 2, 2007. This payment, minus applicable state and federal taxes and other employee withholding, will be made on the first CMRG payroll date in January 2007, which is at least ten (10) days after the expiration of the revocation period set forth in paragraph 5;

(c) CMRG agrees to provide employment confirmation. Please direct requests for confirmation to: Walter Sprague, Senior Vice President Human Resources.

(d) You shall return all company property, such as your identification cards, computer equipment, company records, etc. on your last day of active employment; provided, however, that CMRG will not object to you retaining your cell phone account telephone number with you being responsible for all charges incurred after January 2, 2007.

3. In consideration of the payments to be made by CMRG to you as set forth in paragraph two (2) above and the promises contained in this letter, you voluntarily and of your own free will agree to release, forever discharge and hold harmless CMRG, its subsidiaries and affiliates, its present or former officers, directors, trustees, employees, agents or successors or assigns ("CMRG") from any and all claims, demands, rules or regulations, or any other causes of action of whatever nature, whether known or unknown, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, 29 U.S.C. Section 623, et seq., the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, et seq., the Civil Rights Act of 1866, 29 U.S.C. Section 1981, et seq., the Rehabilitation Act of 1973, 29 U.S.C. Section 701, et seq., the Americans With Disabilities Act, the Civil Rights Act of 1991, the Massachusetts Wage and Hour Laws, G.L. c. 151, the Massachusetts Law Against Discrimination, G.L. c. 151B, the Massachusetts Equal Rights Act, G.L. c. 93, the Massachusetts Civil Rights Act, G.L. c.12, the Massachusetts privacy statute, G.L. c. 214, Section 1B, or any other federal, state or local human rights, civil rights, wage-hour, pension or labor laws, rules and/or regulations, public policy, contract or tort laws, or any claim for misrepresentation, defamation or invasion of privacy, or otherwise. You affirm that you have no known workplace injuries or occupational diseases and that you have not been denied any leave under the Family and Medical Leave Act. By signing this letter neither party is indicating an admission of any wrongdoing.

Provided, however, that this section does not, is not intended to, and shall not be interpreted as a release or waiver by you with respect to (a) any claim for vested benefits to which you may be entitled under any retirement and welfare and benefit plans in which you participate; (b) any claims or rights to indemnification and defense arising out of your employment with the Company, whether under law, agreement, Articles of Incorporation, By-laws, Directors and Officers Liability policies, or otherwise; (c) any claims and rights under the terms of or to enforce this Agreement.

4. (a) You agree not do disclose any confidential information regarding CMRG, and all subsidiaries, including but not limited to: the business, the financial condition of the business, strategic plans and initiatives, associates, including names and contact information of associates, locations and performance of stores and any proprietary information regarding the business or operations of CMRG including any and all subsidiaries. You agree not to make disparaging, critical, or otherwise detrimental comments to any person or entity concerning CMRG, it officers, directors, trustees, employees; the services or programs provided or to be provided by CMRG; the business affairs of the financial condition of CMRG; or the circumstances surrounding the employment and/or separation of employment from CMRG. CMRG, its Board of Directors and its senior management agree not to make disparaging, critical, or otherwise detrimental comments to any person or entity concerning you.

(b) You agree not to disclose to anyone, either directly or indirectly, any information whatsoever regarding the existence or substance of this letter, except to your spouse, domestic partner, financial advisor or attorney. This includes, but is not limited to, present or former employees of CMRG and other members of the public. CMRG agrees to consider your suggestions on the form of announcement of your departure although the decision on the form of announcement remains with CMRG.

(c) Nothing in this letter is intended to preclude you from cooperating with any appropriate federal, state or local government agency in any investigation. Further, nothing herein is intended to preclude you from filing a complaint and/or charge with any appropriate federal, state, or local government agency. However, you shall not be entitled to receive any relief, recovery, or monies in connection with any complaint or charge, without regard as to who brought any said complaint or charge.

(d) You agree, subject to your availability and advance written notice, to reasonably cooperate with any reasonable request of CMRG, to the extent possible, to participate in the preparation for, response to, prosecution of and/or defense of any pending, actual or threatened litigation involving CMRG. CMRG agrees to reimburse you for your time, based upon your current annual base compensation converted to an hourly rate of one hundred fifty one dollars and fifty three cents (\$151.53) and all reasonable expenses you incur as a result of this section.

5. For a period of twelve (12) weeks (the "Non Competitive Period") commencing on the termination date, you agree not to directly or indirectly, as owner, partner, joint venturer, stockholder, employee, broker, agent, principle, trustee, corporate officer, director, licensor, or in any capacity whatsoever, engage in, become financially interested in, be employed by, render any consultation or business advice with respect to, or have any connection with any affiliates, in any geographic area in the United States of America and Puerto Rico where, at the time of the termination of your employment hereunder, the business of CMRG and specifically Casual Male XL or any of such subsidiaries and affiliates was being conducted or was proposed to be conducted in any manner whatsoever; provided, however, that you may own any securities of any corporation which is engaged in such business and is publicly owned and traded but in an amount not to exceed at any one time one percent (1%) of any class of stock or securities of such corporation. In addition, you shall not, during the Non-Competitive Period, directly or indirectly, request or cause any suppliers or customers with whom CMRG and specifically Casual Male XL or any of its subsidiaries and affiliates has a business relationship to cancel or terminate any such business relationship with CMRG or subsidiaries or affiliates and specifically Casual Male XL or any of its subsidiaries and affiliates. Finally, you agree that you will not for a period of eighteen (18) months, solicit, hire, interfere with or entice from CMRG or subsidiaries or affiliates and specifically Casual Male XL any employee or former employee of CMRG.

6. You may revoke this separation agreement and release for a period of seven (7) days following your execution of this letter. This letter shall not become effective or enforceable until the revocation period has expired. Any revocation within this period must be submitted, in writing, to CMRG and must state, "I hereby revoke my acceptance of the letter agreement and release." The revocation must be personally delivered to Walter Sprague, Senior

Vice President, Human Resources, or mailed to him at Casual Male Retail Group, Inc 555 Turnpike Street, Canton, Massachusetts 02021 and postmarked within seven (7) days of your execution of this letter. You are advised to consult with an attorney and you acknowledge you have had the opportunity to do so. You will be provided with twenty-one (21) days to consider the meaning and effect of this letter agreement and general release. You agree that any modifications, material or otherwise, made to this agreement and general release do not restart or affect in any manner the original 21-day consideration period.

7. This letter and general release sets forth the complete agreement between the parties and supersedes any and all other agreements and understandings, whether oral or written, including any Severance Compensation Agreement between you and Casual Male Corp. It may not be modified, altered or changed except upon signed written consent of both parties and will be construed and applied in accordance with the laws of Massachusetts. By signing this letter, you acknowledge that it waives any and all claims that you have or could possibly have against CMRG in connection with your employment.

CMRG would like to extend its appreciation to you for your past service, and its sincere hope for success in your future endeavors.

Sincerely,

/s/ Walter E. Sprague

\_\_\_\_\_  
Walter E. Sprague  
Senior Vice President - Human Resources  
Casual Male Retail Group, Inc.

\_\_\_\_\_  
Date

I acknowledge that I have been afforded an opportunity of twenty-one (21) days to consider the terms and conditions of this letter agreement, that I have been given ample opportunity to consult with an attorney or advisor of my choosing, that I have been advised by CMRG to consult with an attorney prior to signing this letter agreement, and that I knowingly and voluntarily agree to and accept the terms outlined in this letter without reservation.

/s/ Joseph Cornely

\_\_\_\_\_  
Joseph Cornely

\_\_\_\_\_  
Date

**GENERAL RELEASE**

In consideration of the promises made in the Letter Agreement and Release dated September 24, 2006, between Casual Mail Retail Group Inc. ("CMRG") and Joseph Cornely, you voluntarily and of your own free will agree to release, forever discharge and hold harmless CMRG, its subsidiaries and affiliates, its present or former officers, directors, trustees, employees, agents or successors or assigns ("CMRG") from any and all claims, demands, rules or regulations, or any other causes of action of whatever nature, whether known or unknown, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, 29 U.S.C. Section 623, et seq., the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, et seq., the Civil Rights Act of 1866, 29 U.S.C. Section 1981, et seq., the Rehabilitation Act of 1973, 29 U.S.C. Section 701, et seq., the Americans With Disabilities Act, the Civil Rights Act of 1991, the Massachusetts Wage and Hour Laws, G.L. c. 151, the Massachusetts Law Against Discrimination, G.L. c. 151B, the Massachusetts Equal Rights Act, G.L. c. 93, the Massachusetts Civil Rights Act, G.L. c.12, the Massachusetts privacy statute, G.L. c. 214, Section 1B, or any other federal, state or local human rights, civil rights, wage-hour, pension or labor laws, rules and/or regulations, public policy, contract or tort laws, or any claim for misrepresentation, defamation or invasion of privacy, or otherwise. You affirm that you have no known workplace injuries or occupational diseases and that you have not been denied any leave under the Family and Medical Leave Act. By signing this letter neither party is indicating an admission of any wrongdoing. Provided, however,, that this section does not, is not intended to, and shall not be interpreted as a release or waiver by you with respect to (a) any claim for vested benefits to which you may be entitled under any retirement and welfare and benefit plans in which you participate; (b) any claims or rights to indemnification and defense arising out of your employment with the Company, whether under law, agreement, Articles of Incorporation, By-laws, Directors and Officers Liability policies, or otherwise; (c) any claims and rights under the terms of or to enforce this Agreement.

You will be afforded twenty one (21) days to consider the meaning and effect of this General Release. You are advised to consult with an attorney. You agree that any modifications, material or otherwise, made to this General Release do not restart or affect in any manner the original twenty-one (21) day consideration period.

You may revoke this General Release for a period of seven (7) calendar days following the day you execute this agreement. Any revocation within this period must be submitted in writing to CMRG and state, "I hereby revoke my acceptance of the letter agreement and release." The revocation must be personally delivered to Walter Sprague, Senior Vice President, Human Resources, or mailed to him at Casual Male Retail Group, Inc 555 Turnpike Street, Canton, Massachusetts 02021 and postmarked within seven (7) days of your execution of this letter. This release shall not become effective or enforceable until the revocation period has expired. If the last day of the revocation period is a Saturday, Sunday or legal holiday in Massachusetts, then the revocation period shall not expire until the next following day which is not a Saturday, Sunday or legal holiday.

\_\_\_\_\_  
Date

/s/ Joseph Cornely  
JOSEPH CORNELY

SUBSIDIARIES OF CASUAL MALE RETAIL GROUP, INC.  
Wholly-owned unless otherwise indicated

<u>Subsidiary:</u>	<u>State of Incorporation:</u>
CMRG Apparel, LLC (f/k/a Designs Apparel, Inc.)	Delaware
Casual Male Store, LLC (f/k/a Designs CMAL Store Inc.)	Delaware
Capture, LLC (a)	Virginia
Casual Male Retail Store, LLC (f/k/a Designs CMAL Retail Store Inc.)	Delaware
Casual Male Direct, LLC (f/k/a Designs CMAL TBD Inc.)	Delaware
Casual Male RBT, LLC	Delaware
Casual Male Jaredm LLC (b)	Delaware
Casual Male RBT (U.K.) (b)	Delaware
Casual Male Canada Inc.	Ontario, Canada
CMXL, LLC (f/k/a CMRG Apparel, LLC) (c)	Delaware
Thing Big Products LLC	Delaware
Canton PL Liquidating Corp. (f/k/a LP Innovations, Inc.)	Nevada
(a) 100% owned by Casual Male Store, LLC (a wholly-owned subsidiary of Casual Male Retail Group, Inc.)	
(b) 100% owned by Casual Male RBT, LLC (a wholly owned subsidiary of Casual Male Retail Group, Inc.)	
(c) Subsidiary is currently inactive.	

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statements (Form S-3 Nos. 333-118966, 333-112598, 333-90742, and 33-53358 and Form S-8 Nos. 333-112561, 333-112218, 333-136890, and 33-52892) of Casual Male Retail Group, Inc. of our reports dated March 28, 2007, with respect to the consolidated financial statements and schedule of Casual Male Retail Group, Inc., Casual Male Retail Group, Inc. management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Casual Male Retail Group, Inc., included in this Annual Report (Form 10-K) for the year ended February 3, 2007.

/s/ Ernst & Young LLP

Boston, Massachusetts  
March 28, 2007

## PRINCIPAL EXECUTIVE OFFICER CERTIFICATION

I, David A. Levin, certify that:

1. I have reviewed this Annual Report on Form 10-K 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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 2, 2007

/s/ DAVID A. LEVIN

David A. Levin

President and Chief Executive Officer

## PRINCIPAL FINANCIAL OFFICER CERTIFICATION

I, Dennis R. Hernreich, certify that:

1. I have reviewed this Annual Report on Form 10-K 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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 2, 2007

/s/ DENNIS R. HERNREICH  
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 Annual Report on Form 10-K of Casual Male Retail Group, Inc. (the "Company") for the period ended February 3, 2007, 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: April 2, 2007

/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 Annual Report on Form 10-K of Casual Male Retail Group, Inc. (the "Company") for the period ended February 3, 2007, 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: April 2, 2007

/s/ DENNIS R. HERNREICH

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.*