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

FORM 10-Q

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

For the Quarterly Period Ended November 1, 2003

Commission File Number 0-15898

CASUAL MALE RETAIL GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware	**04-2623104**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**
555 Turnpike Street, Canton, MA	**02021**
(Address of principal executive offices)	**(Zip Code)**

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

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

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

The number of shares of common stock outstanding as of December 1, 2003 was 35,059,339.

PART I. FINANCIAL INFORMATION
Item 1. Financial Statements.

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

	November 1, 2003 (unaudited)	February 1, 2003
ASSETS		
Current assets:		
Cash and cash equivalents	$ 6,169	$ 4,692
Accounts receivable	4,120	6,989
Inventories	119,891	103,222
Prepaid expenses	6,352	2,700
Total current assets	136,532	117,603
Property and equipment, net of accumulated depreciation and amortization	67,020	64,062
Other assets:		
Goodwill	50,677	50,698
Other intangible assets	30,654	30,729
Other assets	4,276	3,853
Total assets	$ 289,159	$ 266,945
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current portion of long-term debt	$ 3,695	$ 2,940
Accounts payable	47,672	33,902
Accrued expenses and other current liabilities	20,737	24,338
Accrued liabilities for severance and store closings	4,957	6,172
Total current liabilities	77,061	67,352
Long-term liabilities:		
Notes payable	49,474	55,579
Long-term debt, net of current portion	64,555	50,996
Other long-term liabilities	959	933
Total long-term liabilities	114,988	107,508
Total liabilities	192,049	174,860
Minority interest	3,406	1,018
Stockholders' equity:		
Preferred stock, $0.01 par value, 1,000,000 shares authorized, none outstanding at November 1, 2003 and February 1, 2003	—	—
Common stock, $0.01 par value, 75,000,000 shares authorized, 39,219,248 and 38,867,000 shares issued at November 1, 2003 and February 1, 2003, respectively	392	389
Additional paid-in capital	152,862	146,892
Accumulated deficit	(47,404)	(44,104)
Treasury stock at cost, 3,171,930 and 3,119,236 shares at November 1, 2003 and February 1, 2003, respectively	(9,146)	(8,913)
Loan to executive	—	(197)
Accumulated other comprehensive loss	(3,000)	(3,000)
Total stockholders' equity	93,704	91,067
Total liabilities and stockholders' equity	$ 289,159	$ 266,945

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

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

	Three Months Ended		Nine Months Ended	
	11/1/2003	11/2/2002	11/1/2003	11/2/2002
Sales	$ 114,029	$ 119,037	$ 325,529	$ 261,024
Cost of goods sold, including occupancy	73,331	77,378	209,344	174,081
Gross profit	40,698	41,659	116,185	86,943
Expenses:				
Selling, general and administrative	35,700	36,521	103,028	77,278
Provision for impairment of assets, store closings and severance	—	—	—	7,250
Depreciation and amortization	2,405	2,355	6,674	6,417
Total expenses	38,105	38,876	109,702	90,945
Operating income (loss)	2,593	2,783	6,483	(4,002)
Other expenses	425	—	425	—
Interest expense, net	3,135	3,170	8,996	6,229
Loss from continuing operations before minority interest and income taxes	(967)	(387)	(2,938)	(10,231)
Less:				
Minority interest	147	132	55	131
Provision for income taxes	—	—	—	—
Loss from continuing operations	(1,114)	(519)	(2,993)	(10,362)
Income (loss) from discontinued operations	(90)	189	(307)	(4,669)
Net loss	$ (1,204)	$ (330)	$ (3,300)	$ (15,031)
Net income (loss) per share - basic and diluted				
Loss from continuing operations	$ (0.03)	$ (0.02)	$ (0.08)	$ (0.48)
Income (loss) from discontinued operations	(0.00)	0.01	(0.01)	(0.22)
Net loss	$ (0.03)	$ (0.01)	$ (0.09)	$ (0.69)
Weighted average number of common shares outstanding				
- Basic and diluted	35,992	33,984	35,855	21,633

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

CASUAL MALE RETAIL GROUP, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands and unaudited)

	Nine Months Ended	
	November 1, 2003	**November 2, 2002**
Cash flows from operating activities:		
Net loss	$ (3,300)	$ (15,031)
Adjustments to reconcile net loss to net cash used for operating activities:		
Loss from discontinued operations	307	4,669
Depreciation and amortization	6,674	6,417
Provision for store closings, impairment of assets and severance	—	7,250
Accretion of warrants	1,351	895
Issuance of common stock to related party	340	—
Issuance of common stock to Board of Directors	86	72
Minority interest	55	131
Gain on sale or disposal of fixed assets	—	34
Changes in operating assets and liabilities:		
Accounts receivable	2,869	(3,187)
Inventories	(14,425)	(13,643)
Prepaid expenses	(3,652)	(4,026)
Other assets	(615)	(4,793)
Reserve for severance and store closings	(1,215)	—
Accounts payable	13,770	18,095
Accrued expenses and other current liabilities	(3,793)	(8,899)
Net cash used for operating activities	(1,548)	(12,016)
Cash flows from investing activities:		
Acquisition of Casual Male, net of cash acquired	—	(160,814)
Additions to property and equipment	(8,875)	(6,905)
Net cash used for investing activities	(8,875)	(167,719)
Cash flows from financing activities:		
Net (repayments) borrowings under credit facility	(6,105)	52,740
Principal payments on long-term debt	(11,806)	—
Proceeds from issuance of long term debt, net of discount	24,300	40,676
Proceeds from issuance of warrants	4,791	9,589
Proceeds from issuance of Series B preferred stock	—	76,449
Proceeds from issuance of common stock	—	6,000
Payment of equity transaction costs	—	(2,609)
Repurchase of common stock	(36)	—
Issuance of common stock under option program	756	284
Net cash provided by financing activities	11,900	183,129
Net change in cash and cash equivalents	1,477	3,394
Cash and cash equivalents:		
Beginning of the period	4,692	—
End of the period	$ 6,169	$ 3,394

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

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

1. Basis of Presentation

In the opinion of management of Casual Male Retail Group, Inc., a Delaware corporation formerly known as Designs, Inc. (the "Company"), the accompanying unaudited consolidated financial statements contain all adjustments necessary for a fair presentation of the interim financial statements. These financial statements do not include all disclosures associated with annual financial statements and, accordingly, should be read in conjunction with the notes to the Company's audited consolidated financial statements for the fiscal year ended February 1, 2003 (included in the Company's Annual Report on Form 10-K, which was filed with the Securities and Exchange Commission on May 5, 2003).

The interim financial statements contain the results of operations of the Company's Casual Male business, which consists of substantially all of the assets of Casual Male Corp. and certain of its subsidiaries ("Casual Male"), which assets were acquired by the Company on May 14, 2002.

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

Certain amounts for the three and nine months ended November 2, 2002 have been reclassified to conform to the presentation for the three and nine months ended November 1, 2003. These adjustments relate to the reclassification for discontinued operations in accordance with the provisions of Statement of Financial Accounting Standards ("SFAS") No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* ("SFAS 144"). For further discussion regarding discontinued operations, see Note 6 below.

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

2. Casual Male Acquisition

On May 14, 2002, pursuant to an asset purchase agreement entered into as of May 2, 2002, the Company completed the acquisition of substantially all of the assets of Casual Male for a purchase price of approximately $170 million, plus the assumption of certain operating liabilities.

Below are the operating results from continuing operations, exclusive of discontinued operations, for the three and nine months ended November 1, 2003 compared to the actual results for the three months ended November 2, 2002 and the pro forma results for the nine months ended November 2, 2002, assuming that the Casual Male acquisition had occurred on February 3, 2002:

For the three months ended: *(unaudited, dollars in millions)*	November 1, 2003			November 2, 2002		
	Actual Casual Male business	Actual Other Branded Apparel businesses [1]	Actual Combined Company	Actual Casual Male business [2]	Actual Other Branded Apparel businesses [1]	Actual Combined Company
Sales	$ 73.0	$ 41.0	$ 114.0	$ 74.7	$ 44.3	$ 119.0
Gross margin, net of occupancy	30.1	10.6	40.7	31.2	10.4	41.6
Gross margin rate	*41.2%*	*25.9%*	*35.7%*	*41.8%*	*23.5%*	*35.0%*
Selling, general and administrative expenses	26.7	9.0	35.7	27.4	9.1	36.5
Depreciation and amortization	1.7	0.7	2.4	1.4	0.9	2.3
Operating income	$ 1.7	$ 0.9	$ 2.6	$ 2.4	$ 0.4	$ 2.8

For the nine months ended: *(unaudited, dollars in millions)*	November 1, 2003			November 2, 2002		
	Actual Casual Male business	Actual Other Branded Apparel businesses [1]	Actual Combined Company	Pro forma Casual Male business [2]	Actual Other Branded Apparel businesses [1]	Pro forma Combined Company
Sales	$ 224.7	$ 100.8	$ 325.5	$ 234.4	$ 112.9	$ 347.3
Gross margin, net of occupancy	92.5	23.7	116.2	99.2	24.9	124.1
Gross margin rate	*41.2%*	*23.5%*	*35.7%*	*42.3%*	*22.1%*	*35.7%*
Selling, general and administrative expenses	79.2	23.8	103.0	88.1	25.5	113.6
Provision for impairment of assets, store closings and severance	—	—	—	—	7.3	7.3
Depreciation and amortization	4.9	1.8	6.7	5.7	3.4	9.1
Operating income (loss)	$ 8.4	$ (1.9)	$ 6.5	$ 5.4	$ (11.3)	$ (5.9)

(1) Other Branded Apparel businesses includes the operations of the Company's Levi's®/Dockers® business and Ecko Unltd.® outlet stores. The operating loss from continuing operations for the nine months ended November 2, 2002, exclusive of results of closed stores which have been shown as discontinued operations, include a provision for impairment of assets, store closings and severance of $7.3 million, which were part of the total $11.1 million in charges recorded by the Company in the second quarter of fiscal 2003 and which are more fully discussed in Note 5. The remaining $3.8 million of the charge related to the closed stores and is included in the net loss from discontinued operations.

(2) Pro forma results of the Casual Male business have been adjusted to eliminate the results of operations for closed store locations, which were not acquired by the Company.

The pro forma results have been prepared based on available information, using assumptions that the Company's management believes are reasonable. Such pro forma results do not purport to represent the actual results of operations that would have occurred if the Casual Male acquisition had occurred on February 3, 2002. The above results are also not necessarily indicative of the results that may be achieved in the future.

3. Debt

Notes Payable-Credit Facility

The Company has a credit facility (as amended from time to time, the "Credit Facility") with Fleet Retail Finance, Inc. ("Fleet"), which was most recently amended on November 3, 2003 in connection with the Company's issuance of its 12% senior subordinated notes due 2010, which is discussed further below. Such amendment reduced the total commitment under the Credit Facility from $120.0 million to $90.0 million, with a $20.0 million carve-out for standby and documentary letters of credit. In addition, the amendment lowered the Company's interest costs under the Credit Facility by approximately 50 basis points depending on its levels of excess availability and increased the Company's advance rates for borrowings based on seasonality. The Company's ability to borrow under the Credit Facility is determined using an availability formula based on eligible assets. The term of the Credit Facility was extended by the amendment and will expire May 14, 2006. The Company is subject to prepayment penalties through May 14, 2005.

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 is also subject to a financial covenant requiring minimum levels of EBITDA if certain minimum excess availability levels are not met. The Company was in compliance with all debt covenants under the Credit Facility at November 1, 2003.

At November 1, 2003, the Company had outstanding borrowings of approximately $49.5 million under the Credit Facility. Outstanding standby letters of credit were $775,000, and outstanding documentary letters of credit were approximately $80,598 at November 1, 2003. Average borrowings outstanding under the Credit Facility during the first nine months of fiscal 2004 were approximately $57.1 million, resulting in a corresponding average unused availability of approximately $16.3 million. At November 1, 2003, the unused availability was approximately $29.5 million. Availability under the Credit Facility increased to approximately $60 million as a result of the November 3, 2003 amendment and as a result of approximately $32.1 million in payments by the Company against borrowings outstanding under the Credit Facility.

Other Long-Term Debt

Components of other long-term debt at November 1, 2003 are as follows:

	(in thousands)
Term loan	$ 5,562
12% senior subordinated notes due 2007	17,235
5% senior subordinated notes due 2007	9,625
12% senior subordinated notes due 2010	24,882
Mortgage note	10,946
Total long-term debt	68,250
Less: current portion of long-term debt	(3,695)
Long-term debt, less current portion	$ 64,555

During the third quarter of fiscal 2004, the Company made prepayments of principal totaling approximately $10.0 million on its term loan with Back Bay Capital. In connection with these prepayments, the Company incurred early termination costs of approximately $225,000 and an additional $200,000 of costs related to the write-off of unamortized commitment fees. In accordance with SFAS No. 145, *Rescission of FASB Statements No. 4, 44, and 64 Amendment of FASB Statement 13, and Technical Corrections*, such costs have been reflected as part of other expenses in the consolidated results of operations for three and nine months ended November 1, 2003. The Company prepaid the remaining principal of $5.6 million on November 5, 2003, subsequent to the end of the third quarter of fiscal 2004.

Through the end of the third quarter of fiscal 2004, the Company issued through private placements approximately $29.6 million principal amount of 12% senior subordinated notes due 2010. A description of related party participation in these private placements is included in Note 10. Together with these notes, which in most cases were issued net of any commission for an aggregate purchase price equal to 98.4% of the aggregate principal amount, the Company also issued, through such private placements, detachable warrants to purchase approximately 1.18 million shares of Common Stock at exercise prices ranging from $4.76 to $7.32 per share. Such exercise prices represent the average of the closing prices of the Company's Common Stock on the Nasdaq National Market for the period of 30 trading days ending prior to each of the respective issue dates. The assigned value of $4.8 million for such warrants has been reflected as a component of stockholders' equity and is being amortized over the seven-year life of the notes as additional interest expense. Accordingly, at November 1, 2003 the carrying value of $24.9 million is net of the unamortized assigned value for such warrants of $4.7 million. The net proceeds from the issuance of the 12% senior subordinated notes due 2010 were used to reduce borrowings outstanding under the Credit Facility and to prepay approximately $10.0 million of the Company's term loan with Back Bay Capital, as discussed above.

Subsequent to the end of the third quarter of fiscal 2004, the Company prepaid in full $24.5 million principal amount of its 12% senior subordinated notes due 2007 and prepaid or had commitments to prepay through the end of fiscal 2004 approximately $21.8 million of the approximately $29.6 million 12% senior subordinated notes due 2010.

4. Equity

Earnings Per Share

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

	Three months ended		Nine months ended	
	11/1/03	11/2/02	11/1/03	11/2/02
(in thousands)				
Basic weighted average common shares outstanding	35,992	33,984	35,855	21,633
Stock options, excluding the effect of anti-dilutive options and warrants totaling 1,786 shares and 1,095 shares for the three and nine months ended November 1, 2003 and 1,036 shares and 1,075 shares for the three and nine months ended November 2, 2002, respectively	—	—	—	—
Diluted weighted average common shares outstanding	35,992	33,984	35,855	21,633

The following potential common stock equivalents were excluded from the computation of diluted earnings per share, in each case, because the exercise price of such options and warrants was greater than the average market price per share of Common Stock for the periods reported:

	Three months ended		Nine months ended	
	11/1/03	11/2/02	11/1/03	11/2/02
(in thousands)				
Stock Options	46	1,140	302	193
Warrants	1,176	1,676	2,017	1,176

As more fully discussed in Note 11, on November 12, 2003, the Company repurchased 1,000,000 shares of Common Stock at a cost of $7.9 million.

Stock-Based Compensation

In December 2002, the Financial Accounting Standards Board issued SFAS No. 148, *Accounting for Stock-Based Compensation-Transition and Disclosure* ("SFAS 148"), an amendment of SFAS No. 123, *Accounting for Stock-Based Compensation* ("SFAS 123"). SFAS 148 provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. Additionally, SFAS 148 also amends the disclosure requirements of SFAS 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The transition guidance and annual disclosure provisions are effective for financial statements issued for fiscal years ending after December 15, 2002. The interim disclosure provisions are effective for financial reports containing financial statements for interim periods beginning after December 15, 2002. Accordingly, the Company adopted the interim disclosure provisions of SFAS 148 in the first quarter of fiscal 2004.

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

	Three months ended		Nine months ended	
	11/1/03	11/2/02	11/1/03	11/2/02
(In thousands, except per share amounts)				
Net loss - as reported	$(1,204)	$ (330)	$(3,300)	$(15,031)
Net loss - pro forma	$(1,493)	$ (475)	$(4,134)	$(15,488)
Loss per share - diluted as reported	$ (0.03)	$(0.01)	$ (0.09)	$ (0.69)
Loss per share - diluted pro forma	$ (0.04)	$(0.01)	$ (0.12)	$ (0.72)

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

The fair value of each option grant is estimated on the date of grant using the Black-Scholes Option Pricing Model with the following weighted-average assumptions used for grants for the three and nine months ended November 1, 2003 and November 2, 2002:

	November 1, 2003	November 2, 2002
Expected volatility	65.0%	89.6%
Risk-free interest rate	2.7%	2.7%
Expected life	4.5 yrs.	4.5 yrs.
Dividend rate	—	—

The weighted-average fair value of options granted in the first nine months of fiscal 2004 and fiscal 2003 was $4.84 and $3.93, respectively.

5. Restructuring, Store Closing and Impairment of Assets

During the second quarter of fiscal 2003, the Company recorded charges totaling $11.1 million related to the Company's restructuring of its Levi's®/Dockers® business and the integration of the Casual Male operations. Of the total $11.1 million in restructuring charges, $7.3 million relates to stores which are still open and therefore is reflected as part of the operating loss from continuing operations for the nine months ended November 2, 2002. The remaining $3.8 million relates to stores that the Company has closed and therefore is included in discontinued operations for the nine months ended November 2, 2002.

In the fourth quarter of fiscal 2003, the Company recorded an additional charge totaling $30.2 million related to its decision to further downsize its Levi's®/Dockers® business and to transfer its Candies® outlet stores to Candies, Inc. Of the total $41.3 million in restructuring charges incurred in fiscal 2003: (i) $7.8 million related to the Company's fiscal 2003 discontinued operations, which included the closing of 20 Levi's®/Dockers® stores and the exiting of its Candies® outlet stores, both of which were completed in fiscal 2003; (ii) $21.9 million related to the future closing of the remaining Levi's®/Dockers® stores; (iii) $3.6 million related to the integration plan to combine the operations of Casual Male with those of the Company; and (iv) $8.0 million related to the impairment of certain tax assets. Through the end of the third quarter of fiscal 2004, the Company had closed 22 Levi's®/Dockers® stores and had transferred its Candies® outlet business to Candies, Inc.

At November 1, 2003, the remaining reserve for Levi's®/Dockers® store closings was $10.3 million. The reserve consisted of inventory reserves of $5.3 million, which have been netted against "Inventories" on the Consolidated Balance Sheet, and accruals for landlord settlements and other costs of $5.0 million, which are shown as "Accrued liabilities for severance and store closings" on the Consolidated Balance Sheet. Below is a table showing the changes in the components of the reserves from February 1, 2003 to November 1, 2003:

(in millions)	Balance at February 1, 2003	Net Provisions	Charges/ Write-offs	Balance at November 1, 2003
Inventory reserves	$ 11.1	—	$ (5.8)	$ 5.3
Accrued liabilities for severance and store closings	6.2	—	(1.2)	5.0
Total reserves	$ 17.3	—	$ (7.0)	$ 10.3

6. Discontinued Operations

In accordance with the provisions of SFAS 144, the Company's discontinued operations reflect the operating results for stores which have been closed as part of the Company's plan to exit its Levi's®/Dockers® business and Candies® outlet business. The results for the first nine months of fiscal 2003 have been reclassified to show the results of operations for the Company's 22 closed Levi's®/Dockers® outlet stores and the Candies® outlet store business as discontinued operations. Included in the results of discontinued operations for the nine months ended November 2, 2002 is $3.8 million of the total $11.1 million in restructuring charges recorded in the second quarter of fiscal 2003. Of that $3.8 million, $3.1 million is reflected as inventory liquidation costs of the closed stores and is included in cost of goods sold in the table below. Also, due to the consolidated tax position of the Company, no tax benefit or provision was realized on discontinued operations for either fiscal 2004 or fiscal 2003.

Below is a summary of the results of operations for these closed stores for the three and nine months ended November 1, 2003 and November 2, 2002:

	For the three months ended		For the nine months ended	
(in thousands)	11/1/03	11/2/02	11/1/03	11/2/02
Sales	$ —	$6,191	$1,094	$16,336
Cost of goods sold	53	4,778	1,209	16,345
Gross profit, net of occupancy	(53)	1,413	(115)	(9)
Selling, general and administrative expenses	37	1,281	192	3,654
Provision for impairment of assets, store Closings and severance	—	—	—	735
Depreciation and amortization	—	(57)	—	271
Operating income (loss)	(90)	189	(307)	(4,669)
Income tax provision	—	—	—	—
Income (loss) from discontinued operations	$ (90)	$ 189	$ (307)	$ (4,669)

7. Income Taxes

In the fourth quarter of fiscal 2003, as a result of the net loss incurred by the Company and the potential that the Company's remaining net deferred tax assets may not be realizable, the Company recorded a non-cash charge of approximately $8.0 million, fully reserving the Company's deferred tax assets at February 1, 2003.

At November 1, 2003, the Company had total gross deferred tax assets of approximately $35.8 million, which are fully reserved. These tax assets principally relate to federal net operating loss carryforwards that expire from 2017 through 2023. The ability to reduce the Company's corresponding valuation allowance of $35.8 million in the future is dependent upon the Company's ability to achieve sustained taxable income, which would allow for the utilization of the deferred tax assets.

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

8. Minority Interest

Since March 2002, the Company has operated a joint venture with Ecko Complex, LLC ("Ecko") under which the Company, a 50.5% partner, owns and manages retail outlet stores bearing the name Ecko Unltd.® and featuring Ecko® brand merchandise. Ecko, a 49.5% partner, contributes to the joint venture the use of its trademark and the merchandise requirements, at cost, of the retail outlet stores. The Company contributes all real estate and operating requirements of the retail outlet stores, including, but not limited to, the real estate leases, payroll needs and advertising. Each partner shares in the operating profits of the joint venture, after each partner has received reimbursements for its cost contributions. Under the terms of the agreement, the Company must maintain a prescribed store opening schedule and open 75 stores over a six-year period in order to maintain the joint venture's exclusivity. At certain times during the term of the agreement, the Company may exercise a put option to sell its share of the retail joint venture, and Ecko has an option to acquire the Company's share of the retail joint venture at a price based on the performance of the retail outlet stores. As of November 1, 2003, the Company had opened a total of 21 Ecko Unltd.® outlet stores pursuant to its joint venture arrangement.

For financial reporting purposes, the joint venture's assets, liabilities, and results of operations are consolidated with those of the Company, and Ecko's 49.5% ownership in the joint venture is included in the Company's consolidated financial statements as a minority interest. For the three and nine months ended November 1, 2003, the joint venture had sales of approximately $6.7 million and $12.4 million, respectively. For the nine months ended November 1, 2003, Ecko contributed approximately $6.8 million of merchandise to the joint venture and had an equity investment at November 1, 2003 of approximately $3.4 million. The Company's equity investment in the joint venture at November 1, 2003 was approximately $3.4 million.

9. Segment Information

Since the Casual Male acquisition in May 2002, the Company has operated its business under two reportable segments: (i) the Casual Male business and (ii) the Other Branded Apparel businesses.

Casual Male business: This segment includes the Company's 415 Casual Male Big & Tall retail stores, its 65 Casual Male Big & Tall outlet stores, and its Casual Male catalog and e-commerce businesses.

Other Branded Apparel businesses: This segment includes the Company's remaining 80 Levi's®/Dockers® outlet stores, 23 of which are in liquidation and expected to close by the end of fiscal 2004, and its 21 Ecko Unltd.® outlet stores. As discussed in Note 5, the Company is in the process of exiting its Levi's®/Dockers® outlet business.

The accounting policies of the reportable segments are consistent with the consolidated financial statements of the Company. The Company evaluates individual store profitability in terms of a store's "Operating Income", which is defined by the Company as gross margin less occupancy costs, direct selling costs and an allocation of indirect selling costs. Below are the results of operations on a segment basis for the three and nine months ended November 1, 2003 and November 2, 2002, respectively.

	For the three months ended November 1, 2003			*For the three months ended November 2, 2002*		
(in millions)	**Casual Male business**	**Other Branded Apparel businesses**	**Total**	**Casual Male business**	**Other Branded Apparel businesses**	**Total**
Statement of Operations:						
Sales	$ 73.0	$ 41.0	$ 114.0	$ 74.7	$ 44.3	$ 119.0
Gross margin	30.1	10.6	40.7	31.2	10.4	41.6
Selling, general and administrative	26.7	9.0	35.7	27.4	9.1	36.5
Depreciation and amortization	1.7	0.7	2.4	1.4	0.9	2.3
Operating income	$ 1.7	$ 0.9	$ 2.6	$ 2.4	$ 0.4	$ 2.8
Reconciliation to net loss:						
Other expenses			0.4			—
Interest expense, net			3.1			3.2
Minority interest			0.2			0.1
Income tax provision			—			—
Loss from continuing operations			(1.1)			(0.5)
(Loss) income from discontinued operations			(0.1)			0.2
Net loss			$ (1.2)			$ (0.3)

	For the nine months ended November 1, 2003			For the nine months ended November 2, 2002		
	Casual Male business	Other Branded Apparel businesses	Total	Casual Male business	Other Branded Apparel businesses	Total
Statement of Operations:						
Sales	$ 224.7	$ 100.8	$ 325.5	$ 148.1	$ 112.9	$ 261.0
Gross margin	92.5	23.7	116.2	62.1	24.9	87.0
Selling, general and administrative	79.2	23.8	103.0	51.8	25.5	77.3
Provision for store closing, impairment of assets and severance	—	—	—	—	7.3	7.3
Depreciation and amortization	4.9	1.8	6.7	3.0	3.4	6.4
Operating income (loss)	$ 8.4	$ (1.9)	$ 6.5	$ 7.3	$ (11.3)	$ (4.0)
Reconciliation to net loss):						
Other expenses			$ 0.4			$ —
Interest expense, net			9.0			6.2
Minority interest			0.1			0.1
Income tax provision			—			—
Loss from continuing operations			(3.0)			(10.3)
Loss from discontinued operations			(0.3)			(4.7)
Net loss			$ (3.3)			$ (15.0)
Balance Sheet:						
Inventories	$ 82.7	$ 37.2	$ 119.9	$ 78.3	$ 65.6	$ 143.9
Fixed assets	59.5	7.5	67.0	45.9	15.1	61.0
Goodwill and other intangible assets	81.3	—	81.3	81.4	—	81.4
Trade accounts payable	33.1	14.6	47.7	29.4	13.5	42.9
Capital expenditures	6.0	2.9	8.9	1.9	5.0	6.9

10. Related Party Transactions

Loan to Executive

In June 2000, the Company extended a loan to David A. Levin, its President and Chief Executive Officer, in the amount of $196,875 in order for Mr. Levin to acquire from the Company 150,000 newly issued shares of the Company's Common Stock at the closing price of the Common Stock on the day of the loan. The Company and Mr. Levin entered into a secured promissory note, whereby Mr. Levin agreed to pay to the Company the principal sum of $196,875 plus interest due and payable on June 26, 2003. The promissory note provided for interest at a rate of 6.53% per annum and was secured by the 150,000 acquired shares of the Company's Common Stock.

On April 30, 2003, Mr. Levin satisfied his obligations under the promissory note through the delivery to the Company of 52,694 shares of the Company's Common Stock with a fair market value of $233,435, which represented the outstanding principal and interest through April 30, 2003. The Company accounted for the 52,694 shares received from Mr. Levin as treasury stock.

Extension of Jewelcor Management Inc. Consulting Agreement

As of April 28, 2003, the Board of Directors of the Company approved an extension to the Company's consulting agreement with Jewelcor Management Inc. ("JMI") for an additional three-year term commencing on April 29, 2003 and ending on April 28, 2006. The extension of the consulting agreement will automatically renew each year thereafter on its anniversary date for additional one-year terms, unless either party notifies the other at least ninety days prior to the end of the then-current term. Under the consulting agreement, the Company will compensate JMI, annually, through the issuance of non-forfeitable and fully vested shares of the Company's Common Stock with a fair value equal to $276,000 on the date of grant. Accordingly, as payment for services to be rendered under this agreement through April 28, 2004, the Company issued to JMI 70,769 non-forfeitable and fully vested shares of Common Stock. The fair

value of those shares as of April 28, 2003 was $276,000 or $3.90 per share. Seymour Holtzman, the Chairman of the Company's Board of Directors and the beneficial holder of approximately 12% of the Company's outstanding Common Stock (principally held by JMI), is also the President and Chief Executive Officer, and indirectly, with his wife, the primary shareholder of JMI.

Effective May 1, 2003, the Compensation Committee increased the annual compensation to JMI by $50,000, from $276,000 to $326,000. The increase of $50,000 for fiscal 2004 was paid to JMI through the issuance of 12,820 non-forfeitable and fully vested shares of Common Stock. In addition, on July 1, 2003, the Board of Directors of the Company approved a $150,000 bonus to JMI, payable in cash.

Fiscal 2004 Private Placement Debt Issuances

During the second and third quarters of fiscal 2004, the Company issued through private placements approximately $29.6 million principal amount of 12% senior subordinated notes due 2010. Together with these notes, the Company also issued through such private placements detachable warrants to purchase approximately 1.18 million shares of the Company's Common Stock. Certain of such issuances were to existing investors in the Company including:

- $2.0 million of such notes, together with warrants to purchase 60,000 shares of Common Stock at an exercise price of $4.76 per share and warrants to purchase 20,000 shares of Common Stock with an exercise price of $6.83 per share, to JMI;
- $500,000 of such notes, together with warrants to purchase 10,000 shares of Common Stock at an exercise price of $4.76 per share and warrants to purchase 10,000 shares of Common Stock at an exercise price of $6.83 per share, to Marc Holtzman (son of Seymour Holtzman, the Chairman of the Company's Board of Directors);
- $2.5 million of such notes, together with warrants to purchase 100,000 shares of Common Stock at an exercise price of $4.76 per share, to Clark Partners I, L.P. Stephen Duff, a director of the Company, is the Treasurer of Ninth Floor Corporation, the general partner of Clark Partners I, L.P., and is also the Chief Investment Officer of The Clark Estates, Inc.;
- $2.5 million of such notes, together with warrants to purchase 100,000 shares of Common Stock at an exercise price of $4.76 per share, to Baron Asset Fund, an affiliate of Baron Capital Group, Inc., which is the beneficial holder of approximately 8.4% of the outstanding Common Stock of the Company;
- $100,000 of such notes, together with warrants to purchase 4,000 shares of Common Stock at an exercise price of $5.67 per share, to Alan S. Bernikow. Mr. Bernikow is a director of the Company; and,
- $500,000 of such notes, together with warrants to purchase 20,000 shares of Common Stock at an exercise price of $5.88 per share, to the Frank J. Husic Rollover IRA. Mr. Frank J. Husic is a director of the Company.

In addition, certain principal officers of Ecko management and certain of their family members purchased approximately $2.5 million of such notes and received warrants to purchase 100,000 shares of Common Stock at exercise prices ranging from $5.10 to $6.83 per share.

The exercise prices of all warrants was based on the average of the closing prices of the Company's Common Stock on the Nasdaq National Market for the period of 30 trading days ending prior to each of the respective issue dates.

11. Subsequent Events-Prepayment of Term Loan and Issuance of Convertible Subordinated Notes

On November 5, 2003, the Company prepaid the remaining $5.6 million of principal outstanding on its term loan with Back Bay Capital.

Also subsequent to the end of the third quarter of fiscal 2004, the Company completed the sale of $100 million principal amount of convertible senior subordinated notes due 2024 (the "Convertible Notes"). The Convertible Notes were sold in a private transaction, exempt from registration requirements of the Securities Act of 1933. The sale of $85.0 million of the Convertible Notes closed on November 17, 2003, and the remaining $15.0 million of notes, which were sold pursuant to an option exercised by the initial purchaser, closed on November 26, 2003. The Convertible Notes, which bear interest at a rate of 5% per year, are convertible into the Company's Common Stock at a conversion price of $10.65 per share and constitute general unsecured obligations of the Company, subordinate to all existing and future designated senior indebtedness.

The Company anticipates that the net proceeds from the sale of the Convertible Notes will be approximately $95.8 million. In November 2003, subsequent to the end of the third quarter of fiscal 2004, the Company used approximately $24.5 million of the proceeds to prepay in full its 12% senior subordinated notes due 2007 and used $7.9 million of the proceeds to repurchase 1,000,000 shares of Common Stock. The Board of Directors has authorized the Company to use a portion of the remaining proceeds to repurchase an additional 1,000,000 shares of Common Stock in the open market or in negotiated transactions, from time to time, depending on market and other conditions.

Although the Company's 12% senior subordinated notes due 2010 are not redeemable until July 3, 2004, the Company sought early redemption from the respective note holders. As a result, by the end of fiscal 2004, the Company expects to have repaid approximately $21.8 million of the total approximately $29.6 million outstanding. The Company also used approximately $32.1 million of the proceeds to reduce its borrowings under the Credit Facility.

In connection with the early prepayment of the senior subordinated notes due 2007 and 2010 and the prepayment of the remainder of the Back Bay term loan, the Company expects to incur charges during the fourth quarter of fiscal 2004 of approximately $13.2 million related to the prepayment charges and write offs of deferred costs. These costs will be reflected in the Company's results of operations as other expenses for the three and twelve months ending January 31, 2004. Upon redemption of the remaining approximately $7.8 million of 12% senior subordinated notes, which are presently not redeemable until July 3, 2004, the Company expects to incur $1.7 million of additional expenses related to prepayment charges and the write off of remaining deferred costs.

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

FORWARD LOOKING STATEMENTS

Certain statements contained in this Quarterly Report on Form 10-Q constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995. In some cases, forward-looking statements can be identified by the use of forward-looking terminology such as "may," "will," "estimate," "intend," "plan," "continue," "believe," "expect" or "anticipate" or the negatives thereof, variations thereon or similar terminology. The forward-looking statements contained in this Quarterly Report are generally located in the material set forth under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations," but may be found in other locations as well. These forward-looking statements generally relate to plans and objectives for future operations and are based upon management's reasonable estimates of future results or trends. The forward-looking statements in this Quarterly Report should not be regarded as a representation by the Company or any other person that the objectives or plans of the Company will be achieved. Numerous factors could cause the Company's actual results to differ materially from such forward-looking statements. The Company encourages readers to refer to the Company's Current Report on Form 8-K, previously filed with the Securities and Exchange Commission on September 17, 2002, which identifies certain risks and uncertainties that may have an impact on future earnings and the direction of the Company.

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

BUSINESS SUMMARY

Casual Male Retail Group, Inc. (formerly known as Designs, Inc.) together with its subsidiaries (the "Company") is the largest specialty apparel retailer of big and tall men's apparel, with a presence throughout the United States and Puerto Rico. The business of the Company, which historically had been the operation of outlet stores selling Levi Strauss & Co. and other well-known branded apparel, changed dramatically during fiscal 2003. On May 14, 2002, the Company completed its acquisition of substantially all of the assets of Casual Male Corp. and certain of its subsidiaries ("Casual Male") for a purchase price of approximately $170 million, plus the assumption of certain operating liabilities.

RESULTS OF OPERATIONS

The following discussion of the Company's results of operations includes the results of the Casual Male business from May 14, 2002, the date of the Casual Male acquisition. Since the acquisition of Casual Male, the Company has defined its business as two reportable business segments: (i) the Casual Male business and (ii) the Other Branded Apparel businesses ("Other Apparel"). The Company's Casual Male business includes its retail and outlet Casual Male Big & Tall stores, and its catalog and e-commerce businesses. Other Apparel includes the Company's Levi's®/Dockers® outlet stores and its Ecko Unltd.® outlet stores.

Because of the significance of the Casual Male business to the Company's consolidated results of operations for the first nine months of fiscal 2004, the Company has included the following table, which highlights operating income/(loss) by business segment and includes pro forma results from operations for the nine months ended November 2, 2002. These pro forma results assume that the Company acquired Casual Male on February 3, 2002. Management believes that this information is necessary in order to provide a complete and balanced discussion of the results of operations for the three and nine months ended November 1, 2003 as compared to the prior year. The following pro forma financial tables were prepared based on available information, using assumptions that the Company's management believes are reasonable. The pro forma results do not purport to represent the actual results of operations that would have occurred if the Casual Male acquisition had occurred on February 3, 2002, and they are not necessarily indicative of the results that may be achieved in the future.

Financial Highlights – Operating income (loss) by business segment (dollars in millions)

	For the three months ended					
	November 1, 2003 (actual)			November 2, 2002 (actual)		
	Casual Male	Other Apparel	Total	Casual Male	Other Apparel	Total
Sales	$ 73.0	$ 41.0	$ 114.0	$ 74.7	$ 44.3	$ 119.0
as a percent of total sales	*64.0%*	*36.0%*		*62.8%*	*37.2%*	
Gross margin	30.1	10.6	40.7	31.2	10.4	41.6
gross margin rate	*41.2%*	*25.9%*	*35.7%*	*41.8%*	*23.5%*	*35.0%*
Selling, general and administrative	26.7	9.0	35.7	27.4	9.1	36.5
as a percentage of sales	*36.6%*	*22.0%*	*31.3%*	*36.7%*	*20.5%*	*30.7%*
Provision for impairment of assets store closing, and severance	—	—	—	—	—	—
Depreciation and amortization	1.7	0.7	2.4	1.4	0.9	2.3
Operating income (loss)	$ 1.7	$ 0.9	$ 2.6	$ 2.4	$ 0.4	$ 2.8

	For the nine months ended								
	November 1, 2003 (actual)			November 2, 2002 (actual)			November 2, 2002 (pro forma)		
	Casual Male	Other Apparel	Total	Casual Male	Other Apparel	Total	Casual Male	Other Apparel	Total
Sales	$ 224.7	$ 100.8	$ 325.5	$ 148.1	$ 112.9	$ 261.0	$ 234.4	$ 112.9	$ 347.3
as a percent of total sales	*69.0%*	*31.0%*		*56.7%*	*43.3%*		*67.5%*	*32.5%*	
Gross margin	92.5	23.7	116.2	62.1	24.9	87.0	99.2	24.9	124.1
gross margin rate	*41.2%*	*23.5%*	*35.7%*	*41.9%*	*22.1%*	*33.3%*	*42.3%*	*22.1%*	*35.7%*
Selling, general and administrative	79.2	23.8	103.0	51.8	25.5	77.3	88.1	25.5	113.6
as a percentage of sales	*35.2%*	*23.6%*	*31.6%*	*35.0%*	*22.6%*	*29.6%*	*37.6%*	*22.6%*	*32.7%*
Provision for impairment of assets store closing, and severance	—	—	—	—	7.3	7.3	—	7.3	7.3
Depreciation and amortization	4.9	1.8	6.7	3.0	3.4	6.4	5.7	3.4	9.1
Operating income (loss)	$ 8.4	$ (1.9)	$ 6.5	$ 7.3	$ (11.3)	$ (4.0)	$ 5.4	$ (11.3)	$ (5.9)

Sales

For the third quarter of fiscal 2004, the Casual Male business had sales of $73.0 million compared to sales for the third quarter of fiscal 2003 of $74.7 million, or a decrease of 2.3%. For the nine months ended November 1, 2003, the Casual Male business had sales of $224.7 million, compared to sales for the nine months ended November 2, 2002, on a pro forma basis, of $234.4 million, or a decrease of 4.1%. Comparable store sales for the Casual Male business decreased 1.1% for the third quarter of fiscal 2004 and, on a pro forma basis, 2.8% for the nine months ended November 1, 2003. Comparable stores are those stores that have been open for at least 13 months. The Company’s

comparable store sales are gradually improving as a result of several of the Company's merchandising initiatives which were directed toward improving sales, such as the expansion of its young men's assortments, extended sizes toward the tall customer, and merchandising of key items.

Other Apparel, exclusive of stores closed as described below under "Discontinued Operations", experienced a 10.7% decrease in sales for the first nine months of fiscal 2004 as compared to the first nine months of fiscal 2003. This decrease was due to the Company's intent to exit its Levi's®/Dockers® outlet stores, which has had a negative impact on sales. Partially offsetting this decrease were the operations of the Company's 21 Ecko Unltd.® outlet stores, which had sales of approximately $6.7 million and $12.4 million for the three and nine months ended November 1, 2003. By comparison, the Company's five Ecko Unltd.® outlet stores that were open at the end of the third quarter of fiscal 2003 had sales of $1.8 million for the nine months ended November 2, 2002.

Gross Profit Margin

For the third quarter of fiscal 2004, the gross margin rate for the Casual Male business, inclusive of occupancy costs, was 41.2%, which was a decrease of 0.6 percentage points as compared to a gross margin rate of 41.8% for the third quarter of fiscal 2003. This decrease was attributable to a 1.1 percentage point increase in occupancy costs as part of normal rent increases, offset by a 0.5 percentage point increase in merchandise margins. For the nine months ended November 1, 2003, the gross margin rate for the Casual Male business of 41.2% decreased 1.1 percentage points, on a pro forma basis, compared to a gross margin rate of 42.3% for the nine months ended November 2, 2002. This decrease was mainly attributable to increased occupancy costs and sales declines.

The gross margin rate for Other Apparel was 25.9% for the third quarter of fiscal 2004 as compared to 23.5% for the third quarter of the prior fiscal year. For the nine months ended November 1, 2003, the gross margin rate for Other Apparel was 23.5% as compared to 22.1% for the nine months ended November 2, 2002.

Selling, General and Administrative Expenses

On a consolidated basis, selling, general and administrative ("SG&A") expenses as a percentage of sales for the third quarter of fiscal 2004 were 31.3% of sales as compared to 30.7% for the third quarter of fiscal 2003. For the nine months ended November 1, 2003, SG&A expenses were 31.6% of sales as compared to 29.6% for the nine months ended November 2, 2002.

For the nine months ended November 1, 2003, the Company reduced SG&A expenses by approximately $10.6 million to $103.0 million as compared to $113.6 million, on a pro forma basis, for the nine months ended November 2, 2002. SG&A expenses for the Casual Male business decreased by $8.9 million to $79.2 million for the nine months ended November 1, 2003 as compared to $88.1 million on a pro forma basis last year. Other Apparel also had a reduction in SG&A expenses of $1.7 million to $23.8 million for the nine months ended November 1, 2003 as compared to $25.5 million for the prior fiscal year.

Depreciation and Amortization

Depreciation and amortization expense for the third quarter of fiscal 2004 was $2.4 million as compared to $2.3 million for the third quarter of fiscal 2003. This increase was primarily the result of new store openings in fiscal 2004. For the nine months ended November 1, 2003, depreciation and amortization was $6.7 million as compared to $6.4 million for the corresponding nine-month period of the prior fiscal year. This increase was due to the addition of approximately $52.9 million in assets from the Casual Male acquisition in May 2002 and was partially offset by a reduction in assets from the Other Apparel segment as a result of store closings and write-down of assets in the second and fourth quarters of fiscal 2003.

Restructuring and Impairment of Assets–Fiscal 2003

During the second quarter of fiscal 2003, the Company recorded charges totaling $11.1 million related to the Company's restructuring of its Levi's®/Dockers® business and the integration of the Casual Male operations. Of the total $11.1 million in restructuring charges, $7.3 million was related to stores which are still open and therefore is reflected as part of the operating loss from continued operations for the nine months ended November 2, 2002. The remaining $3.8 million was related to stores which have closed and therefore is included in discontinued operations for the nine months ended November 2, 2002.

In the fourth quarter of fiscal 2003, the Company recorded additional charges of $30.2 million related to the Company's decision to further downsize its Levi's®/Dockers® business and transfer its Candies® outlet stores to Candies, Inc., resulting in total charges of approximately $41.3 million in fiscal 2003. For more information on these charges, see Note 5 to the Consolidated Financial Statements.

Other Expenses

Included in other expenses for the three and nine months ended November 1, 2003 was $425,000 of expenses related to the Company's early prepayment of $10.0 million of principal of its term loan with Back Bay Capital.

Interest Expense, Net

Net interest expense was $3.1 million for the third quarter of fiscal 2004 as compared to $3.2 million for the third quarter of fiscal 2003. For the nine months ended November 1, 2003, net interest expense was $9.0 million as compared to $6.2 million for the nine months ended November 2, 2002. This increase was due to an increase of approximately $80.2 million in long-term debt and increased borrowings under the Company's credit facility (as amended from time to time, the "Credit Facility") with Fleet Retail Finance, Inc. ("Fleet") in May 2002 to finance the Casual Male acquisition. The Company also assumed a $12.2 million mortgage as part of the acquisition. Included in net interest expense for the nine months ended November 1, 2003 was accretion on stock warrants of $1.4 million as compared to $895,000 for the nine months ended November 2, 2002. This increase in accretion was due to additional warrants, which were issued in connection with the Company's 12% senior subordinated notes due 2010.

Discontinued Operations

In accordance with the provisions of SFAS 144, the Company's discontinued operations reflect the operating results for stores which have been closed as part of the Company's plan to exit its Levi's®/Dockers® business and Candies® outlet business. The results for the first nine months of fiscal 2003 have been reclassified to show the results of operations for the Company's 22 closed Levi's®/Dockers® outlet stores and the Candies® outlet store business as discontinued operations. Included in the results of discontinued operations for the nine months ended November 2, 2002 is $3.8 million of the total $11.1 million in restructuring charges recorded in the second quarter of fiscal 2003. Of that $3.8 million, $3.1 million, which is included in gross profit, reflects inventory liquidation costs of the closed stores. Also, due to the consolidated tax position of the Company, no tax benefit or provision was realized on discontinued operations for either period. For more information on these charges, see Note 6 to the Consolidated Financial Statements.

Income Taxes

In fiscal 2003, as a result of the net loss incurred by the Company and the potential that its remaining net deferred tax assets may not be realizable, the Company recorded a non-cash charge of approximately $8.0 million, fully reserving the Company's deferred tax assets at February 1, 2003.

At November 1, 2003 the Company had total gross deferred tax assets of approximately $35.8 million, which are fully reserved. These tax assets principally relate to federal net operating loss carryforwards that expire from 2017 through 2023. The ability to reduce the Company's corresponding valuation allowance of $35.8 million in the future is dependent upon the Company's ability to achieve sustained taxable income, which would allow for the utilization of the deferred tax assets.

Net Income (Loss)

For the third quarter of fiscal 2004 the Company reported a net loss of $1.2 million or $(0.03) per diluted share, as compared to a net loss of $0.3 million or $(0.01) per diluted share for the third quarter of fiscal 2003. For the nine months ended November 1, 2003, the Company reported a net loss of $3.3 million or $(0.09) per diluted share as compared to a net loss of $15.0 million or $(0.69) per diluted share for the nine months ended November 2, 2002. The results for the nine months ended November 2, 2002 include $11.1 million in charges related to the Company's decision to downsize its Levi's®/Dockers® business and also include certain integration costs.

Inventory

At November 1, 2003, total inventory equaled $119.9 million compared to $103.2 million at February 1, 2003 and $143.9 million at November 2, 2002. The Company continues to effectively manage its inventory levels despite its sales decreases during the first nine months of fiscal 2004. The Company continues to focus on reducing its inventory levels, and, compared with end of the third quarter last year, inventory levels are down approximately 17%. Inventory at November 1, 2003 is net of approximately $5.3 million in inventory reserves related to the Company's exiting of its Levi's®/Dockers® outlet stores.

SEASONALITY

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

LIQUIDITY AND CAPITAL RESOURCES

The Company's primary cash needs are for working capital (essentially inventory requirements) and capital expenditures. Specifically, the Company's capital expenditure program includes projects for new store openings, downsizing or combining existing stores, and improvements and integration of its systems infrastructure. The Company expects that cash flow from operations, external borrowings and trade credit will enable it to finance its current working capital and expansion requirements.

For the first nine months of fiscal 2004, cash used by operating activities was $1.5 million as compared to cash used for operating activities of $12.0 million for the corresponding period of the prior year. This $10.5 million improvement in cash from operations was primarily due to increased profitability from continuing operations in fiscal 2004.

In addition to cash flow from operations, the Company's other primary source of working capital is the Credit Facility with Fleet. In connection with the Company's issuance of its 12% senior subordinated notes due 2010, which is discussed below, the Credit Facility was amended on November 3, 2003. Such amendment reduced the total commitment under the Credit Facility from $120.0 million to $90.0 million, with a $20.0 million carve-out for standby and documentary letters of credit. In addition, the amendment lowered the Company's interest costs under the Credit Facility depending on its levels of excess availability and increased the Company's advance rates on borrowings based on seasonality. The Company's ability to borrow under the Credit Facility is determined using an availability formula based on eligible assets. The term of the Credit Facility was extended by the amendment and will expire May 14, 2006. The Company is subject to prepayment penalties through May 14, 2005.

At November 1, 2003, the Company had borrowings of approximately $49.5 million outstanding under the Credit Facility and excess availability of $29.5 million. Availability under the Credit Facility subsequent to November 1, 2003 increased to approximately $60 million as a result of the November 3, 2003 amendment and as a result of approximately $32.1 million in payments against borrowings outstanding under the Credit Facility.

During the second and third quarters of fiscal 2004, the Company issued through private placements approximately $29.6 million principal amount of 12% senior subordinated notes due 2010. A description of related party participation in these private placements is included in Note 10 to the Consolidated Financial Statements. Together with these notes, the Company also issued, through such private placements, detachable warrants to purchase approximately 1.18 million shares of Common Stock at exercise prices ranging from $4.76 to $7.32 per share. The net proceeds from the issuance of the notes were used to reduce borrowings outstanding under the Credit Facility and to prepay approximately $10.0 million against the Company's term loan with Back Bay Capital. See Note 3 to the Consolidated Financial Statements for a full discussion of the notes and related warrants.

Subsequent Events-Prepayment of Term Loan and Issuance of $100 million Convertible Senior Subordinated Notes

On November 5, 2003, the Company prepaid the remaining $5.6 million outstanding on its term loan with Back Bay Capital.

Also subsequent to the end of the third quarter of fiscal 2004, the Company completed the sale of $100 million principal amount of convertible senior subordinated notes due 2024 (the “Convertible Notes”). The Convertible Notes, which were sold in a private transaction and were exempt from the registration requirements of the Securities Act of 1933, bear interest at a rate of 5% per year and are convertible into the Company’s Common Stock at a conversion price of $10.65 per share. The Company completed the sale of $85.0 million of the Convertible Notes on November 17, 2003, and the remaining $15.0 million of the Convertible Notes, which were sold pursuant to an option exercised by the initial purchaser, closed on November 26, 2003. The Convertible Notes constitute general unsecured obligations of the Company, subordinate to all existing and future designated senior indebtedness.

The Company anticipates that the net proceeds from the sale of the Convertible Notes will be approximately $95.8 million. Subsequent to the end of the third quarter of fiscal 2004, the Company used approximately $24.5 million of the proceeds to prepay in full its 12% senior subordinated notes due 2007 and used $7.9 million to repurchase 1,000,000 shares of Common Stock. The Board of Directors has authorized the Company to use a portion of the remaining proceeds to repurchase an additional 1,000,000 shares of Common Stock in the open market or in negotiated transactions, from time to time, depending on market and other conditions.

Although the Company’s 12% senior subordinated notes due 2010 are not redeemable until July 3, 2004, the Company sought early redemption. As a result, by the end of fiscal 2004, the Company has committed to repay approximately $21.8 million of the total approximately $29.6 million outstanding. The Company also used approximately $32.1 million of the proceeds to reduce its borrowings under the Credit Facility.

In connection with the early prepayment of the senior subordinated notes due 2007 and 2010 and the prepayment of the remainder of the Back Bay Capital term loan, the Company expects to incur charges during the fourth quarter of fiscal 2004 of approximately $13.2 million related to the prepayment charges and write offs of deferred costs. These costs will be reflected in the Company’s results of operations as other expenses for the three and twelve months ending January 31, 2004. Upon redemption of the remaining $7.8 million of 12% senior subordinated notes, which are presently not redeemable until July 3, 2004, the Company expects to incur $1.7 million of additional expenses related to prepayment charges and the write off of remaining deferred costs.

The issuance of the Convertible Notes improves the liquidity position of the Company by increasing availability under the Credit Facility for working capital needs. In addition, the prepayment of the Company’s existing 12% senior subordinated notes due 2007 and 2010 will reduce the Company’s interest costs. Upon completion of the prepayment of existing obligations, the Company anticipates that its interest costs, including debt issuance costs, will be reduced by approximately $5.0 million on an annualized basis.

In order to understand the impact of the issuance of the Convertible Notes on the capitalization of the Company, the following table below sets forth the pro forma effect of the issuance as if it had occurred on November 1, 2003. The adjustments reflect the (i) receipt of the net proceeds of approximately $95.8 million from the sale of the Convertible Notes, (ii) repurchase by the Company of 1,000,000 shares of the Company’s Common Stock at a price of $7.89 per share, (iii) redemption of the Company’s 12% senior subordinated notes due 2007, (iv) assumed redemption of all of the Company’s 12% senior subordinated notes due 2010, (v) repayment of the remaining $5.6 million of the Back Bay Capital term loan and (vi) repayment of a portion of the amount outstanding under the Credit Facility.

(in thousands)	Capitalization At November 1, 2003 Actual	 As Adjusted
Cash and cash equivalents:	$ 6,169	$ 6,169
Long term liabilities:		
Credit Facility	49,474	23,407
5% convertible senior subordinated notes	—	100,000
Term loan with Back Bay Capital	5,562	—
12% senior subordinated notes 2007	17,235(a)	—
5% senior subordinated notes 2007	9,625	9,625
12% senior subordinated notes 2010	24,883(b)	—
Mortgage note	10,945	10,945
Total long-term debt	117,724	143,977
Less: current portion of long-term debt	3,695	3,695
Long-term debt, less current portion	114,028	140,281
Stockholders' equity		
Common Stock	392	392
Additional paid-in capital	152,862	152,862
Accumulated deficit	(47,404)	(62,469)(c)
Treasury Stock (d)	(9,146)	(17,036)
Accumulated other comprehensive loss	(3,000)	(3,000)
Total stockholders' equity	93,704	70,750
Total liabilities and stockholders' equity	$ 289,159	$ 292,458

(a) The carrying value of $17.2 million is net of $7.3 million of unamortized assigned value for warrants.
(b) The carrying value of $24.9 million is net of $4.7 million of unamortized assigned value for warrants.
(c) Accumulated deficit has been adjusted to include approximately $15.3 million of charges that will be incurred if all of the Company's senior subordinated notes due 2007 and 2010 are redeemed. The $15.3 million charge includes prepayment penalties and the write-off of the value of the unamortized warrants.
(d) Treasury Stock at November 1, 2003 of 3,171,930 shares was adjusted to reflect the November 12, 2003 repurchase by the Company of 1,000,000 shares of Common Stock at a price of $7.89 per share, resulting in an adjusted 4,171,930 shares of Treasury Stock at November 1, 2003.

The Company anticipates that cash flow from operations and availability under the Credit Facility will be sufficient to meet all debt service requirements and will be sufficient to enable the Company to execute its future growth plans.

Capital Expenditures

The following table sets forth the stores opened and related square footage at November 1, 2003 and November 2, 2002, respectively, and excludes the 23 Levi's®/Dockers® stores which are in liquidation and are expected to close by the end of fiscal 2004:

Store Concept	At November 1, 2003 Number of Stores	 Square Footage	At November 2, 2002 Number of Stores (1)	 Square Footage
(square footage in thousands)				
Casual Male Big & Tall retail and outlet stores	480	1,630.0	474	1,616.6
Levi's®/Dockers® outlet Stores	57	540.0	100	1,027.0
Ecko Unltd.® outlet stores	21	79.4	5	17.2
Total Stores	558	2,249.4	579	2,660.8

(1) Excludes 12 Candies® outlet stores, which were opened at November 2, 2002 but were subsequently transferred to Candies, Inc. during the fourth quarter of fiscal 2003.

Total cash outlays for capital expenditures for the first nine months of fiscal 2004 were $8.9 million as compared to $6.9 million for the first nine months of fiscal 2003. Below is a summary of store openings and closings since February 1, 2003:

	Casual Male	Levi's®/Dockers® outlet stores	Ecko® Unltd. outlet stores	Total stores
At February 1, 2003	467	82	6	555
New outlet stores	9		15	24
New retail stores	7		—	7
Closed stores	(3)	(25)	—	(28)
At November 1, 2003	480	57	21	558

The Company expects that its total capital expenditures for fiscal 2004 will be between $12.0 to $14.0 million, of which approximately $8.5 million will relate to store expansion. The remaining planned capital expenditures relate to the Company's management information systems, which include new merchandising and distribution systems.

The Company's expansion plans for the remainder of fiscal 2004 will focus on opening another Casual Male Big & Tall retail store, an additional Casual Male Big & Tall outlet store and the Company's first Ecko Unltd.® retail store. The Company continues to focus on expanding its catalog and e-commerce businesses.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

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

The Company utilizes cash from operations and the Credit Facility to fund its working capital needs. The Credit Facility is not used for trading or speculative purposes. In addition, the Company has available letters of credit as sources of financing for its working capital requirements. Borrowings under the Credit Facility, which expires in May 2006, bear interest at variable rates based on FleetBoston, N.A.'s prime rate or the London Interbank Offering Rate ("LIBOR"). These interest rates at November 1, 2003 were 4.50% for prime based borrowings and included various LIBOR contracts with interest rates ranging from 3.88% to 3.89%. Based upon sensitivity analysis as of November 1, 2003, a 50 basis point increase in interest rates would result in a potential annual increase in interest expense of approximately $286,000.

Item 4. Controls and Procedures.

We maintain "disclosure controls and procedures," as such term is defined under Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

As of the end of the period covered by this quarterly report, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as required by Rule 13a-15 under the Exchange Act. This evaluation was carried out under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective. There has been no change in our internal control over financial reporting that has occurred during our last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings.

On October 15, 2003, a class action lawsuit was filed against the Company in the Superior Court of California, County of Santa Clara, by Robin J. Tucker, a former employee. The complaint alleges, among other things, that the Company failed to pay overtime compensation and to provide meal and rest periods to our California store managers for the period from May 14, 2002 to the present. The Company believes that it has substantial legal defenses to these claims and intends to vigorously defend this action. However, there can be no assurance that such claims will not be successful in whole or in part.

Item 2. Changes in Securities and Use of Proceeds.

None.

Item 3. Default Upon Senior Securities.

None.

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

The Company held its Annual Meeting of Stockholders on August 7, 2003. The matters submitted to a vote of the Company's stockholders were (i) the election of eight directors, (ii) amendments to the Company's 1992 Stock Incentive Plan, and (iii) the ratification of Ernst & Young LLP as independent auditors for the Company for the current fiscal year.

(i) The Company's Stockholders elected eight directors to hold office until the 2004 Annual Meeting of Stockholders and until their respective successors are duly elected and qualified. The results of the voting were as follows:

Directors	Votes FOR	Votes AGAINST
Seymour Holtzman	25,255,273	3,109,382
David A. Levin	25,276,093	3,088,562
Alan S. Bernikow	26,224,446	2,140,209
Jesse Choper	25,996,588	2,368,067
Stephen M. Duff	24,843,928	3,520,727
Frank J. Husic	23,897,128	4,467,527
Joseph Pennacchio	25,996,638	2,368,017
George T. Porter, Jr.	25,996,338	2,368,317

(ii) The Company's stockholders approved amendments to the Casual Male Retail Group, Inc. 1992 Stock Incentive Plan. The results of the voting were as follows:

Votes FOR	Votes AGAINST	Votes UNVOTED	Votes ABSTAINED
14,749,811	6,360,949	7,245,065	8,830

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

Votes FOR	Votes AGAINST	Votes ABSTAINED
28,332,414	25,636	6,605

Item 5. Other Information.

On November 12, 2003, subsequent to the end of the third quarter of fiscal 2004, LP Innovations, Inc. ("LPI"), which is presently majority-owned by the Company, filed with the Securities and Exchange Commission filed an amendment on Form S-1/A with respect to an offering of rights to purchase approximately 7,500,000 shares of LPI common stock at a purchase price of $1.00 per share. The rights offering will be effected in connection with a plan to establish LPI as a separate public company that will be owned by the Company's stockholders and by LPI's other stockholders who subscribe for shares of LPI common stock in the offering. The holders of LPI shares other than the Company consist of LPI's executive officers, certain other members of LPI's management and an LPI director. The Company intends to distribute to its stockholders all of the approximately 6,000,000 rights that the Company receives from LPI, in the ratio of one right for every six shares of the Common Stock owned as of the record date for the rights offering. LPI's other stockholders will receive one right for every 0.60 shares of LPI common stock owned by them as of the record date for the rights offering.

Item 6. Exhibits and Reports on Form 8-K.

A. Exhibits:

4.1 Indenture, dated as of November 18, 2003, between the Company and U.S. Bank National Association, as Trustee.

10.1 1992 Stock Incentive Plan, as amended

10.2 Second Amendment to Third Amended and Restated Loan and Security Agreement dated as of November 3, 2003, by and among Fleet Retail Finance, Inc., as Administrative Agent and Collateral Agent, the Lenders identified therein, the Company, as Borrowers' Representative, and the Company and Designs Apparel, Inc., as Borrowers

10.3 Purchase Agreement dated November 12, 2003 by and between the Company and Thomas Weisel Partners LLC.

10.4 Registration Rights Agreement dated November 18, 2003 by and between the Company and Thomas Weisel Partners LLC.

10.5 Employment Agreement dated as of July 9, 2003 between the Company and Linda Carlo.

10.6 Severance Compensation Agreement dated as of May 7, 2002 by and between Casual Male Corp. and Joseph H. Cornely, III.

31.1 Certification of the Chief Executive Officer of the Company pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.

31.2 Certification of the Chief Financial Officer of the Company pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.

32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

99.1 Certain cautionary statements of the Company to be taken into account in conjunction with consideration and review of the Company's publicly-disseminated documents (including oral statements made by others on behalf of the Company) that include forward looking information (included as Exhibit 99.3 to the Company's Current Report on Form 8-K filed on September 17, 2002, and incorporated herein by reference).*

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* Previously filed with the Securities and Exchange Commission.

B. Reports on Form 8-K:

None.

SIGNATURES

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

CASUAL MALE RETAIL GROUP, INC.

Date: December 8, 2003

By: /S/ DENNIS R. HERNREICH

Dennis R. Hernreich
Executive Vice President and Chief Financial Officer

EXHIBIT 4.1

EXECUTION COPY

CASUAL MALE RETAIL GROUP, INC.

ISSUER

TO

U.S. BANK NATIONAL ASSOCATION,

TRUSTEE

INDENTURE

Dated as of November 18, 2003

5% CONVERTIBLE SENIOR SUBORDINATED NOTES DUE JANUARY 1, 2024

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Indenture, dated as of November 18, 2003, between CASUAL MALE RETAIL GROUP, INC., a corporation duly organized and existing under the laws of the State of Delaware, having its principal office at 555 Turnpike Street, Canton, MA 02021 (herein called the "Company"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States, as Trustee hereunder (herein called the "Trustee").

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of its 5% Convertible Senior Subordinated Notes due January 1, 2024 (herein called the "Securities") of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Securities, when the Securities are executed by the Company and authenticated and delivered hereunder, the valid obligations of the Company, and to make this Indenture a valid agreement of the Company, in accordance with their and its terms, have been done. Further, all things necessary to duly authorize the issuance of the Common Stock of the Company issuable upon the conversion of the Securities, and to duly reserve for issuance the number of shares of Common Stock issuable upon such conversion, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.1 Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(2) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation; and

(3) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"Acquired Person" means, with respect to any specified Person, any other Person which merges with or into or becomes a subsidiary of such specified Person.

"Act," when used with respect to any Holder of a Security, has the meaning specified in Section 1.4.

"Additional Interest" has the meaning specified in the Registration Rights Agreement.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent Member" means any member of, or participant in, the Depositary.

"Applicable Procedures" means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of DTC or any successor Depository, in each case to the extent applicable to such transaction and as in effect from time to time.

"Authenticating Agent" means any Person authorized pursuant to Section 6.12 to act on behalf of the Trustee to authenticate Securities.

"Board of Directors" means either the board of directors of the Company or any duly authorized committee of that board.

"Board Resolution" means a resolution duly adopted by the Board of Directors, a copy of which, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, shall have been delivered to the Trustee.

"Business Day," when used with respect to any Place of Payment, Place of Conversion or any other place, as the case may be, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in such Place of Payment, Place of Conversion or other place, as the case may be, are authorized or obligated by law or executive order to close.

"Closing Price Per Share" means, with respect to the Common Stock, for any day, (i) the last reported sale price regular way on the Nasdaq National Market or, (ii) if the Common Stock is not quoted on the Nasdaq National Market, the last reported sale price regular way per share or, in case no such reported sale takes place on such day, the average of the reported closing bid and asked prices regular way, in either case, on the principal national securities exchange on which the Common Stock is listed or admitted to trading, or (iii) if the Common Stock is not quoted on the

Nasdaq National Market or listed or admitted to trading on any national securities exchange, the average of the closing bid prices in the over-the-counter market as furnished by any New York Stock Exchange member firm selected from time to time by the Company for that purpose.

"Code" has the meaning specified in Section 2.1.

"Commission" means the United States Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Common Stock" means the Common Stock, par value $0.01 per share, of the Company authorized at the date of this Indenture as originally executed. Subject to the provisions of Section 12.11, shares issuable on conversion or repurchase of Securities shall include only shares of Common Stock or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; *provided*, *however*, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Securities shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"common stock" includes any stock of any class of capital stock which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the issuer thereof and which is not subject to redemption by the issuer thereof.

"Company" means the Person named as the "Company" in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person. References to the Company shall not include any Subsidiary, unless otherwise stated.

"Company Notice" has the meaning specified in Section 14.2.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by (i) its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President, an Executive Vice President or a Vice President, and by (ii) its principal financial officer, Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"Constituent Person" has the meaning specified in Section 12.11.

"Conversion Agent" means any Person authorized by the Company to convert Securities in accordance with Article XII. The Company has initially appointed the Trustee as its Conversion Agent pursuant to Section 10.2 hereof.

"Conversion Price" has the meaning specified in Section 14.3(3).

"Conversion Rate" has the meaning specified in Section 12.1.

"Corporate Trust Office" means the office of the Trustee at which at any particular time the trust created by this Indenture shall be principally administered (which at the date of this Indenture is located at 633 West Fifth Street, 24th Floor, LM-CA-T24T, Los Angeles, California 90071, Attention: Corporate Trust Services (Casual Male Retail Group, Inc., 5% Convertible Senior Subordinated Notes due January 1, 2024).

"corporation" means a corporation, company, association, joint-stock company or business trust.

"Defaulted Interest" has the meaning specified in Section 3.7.

"DGCL" has the meaning specified in Section 7.1(1).

"Depositary" means, with respect to any Securities (including any Global Securities), a clearing agency that is registered as such under the Exchange Act and is designated by the Company to act as Depositary for such Securities (or any successor securities clearing agency so registered), which shall initially be DTC.

"Designated Senior Debt" means (i) all indebtedness and obligations of the Company under its Third Amended and Restated Loan and Security Agreement dated as of May 14, 2002, by and among the Company, Fleet Retail Finance, Inc., the lenders identified in the agreement, and Designs Apparel, Inc. and any other agreement between the Company and any bank, commercial finance lender or other institutional lender regularly engaged in the business of lending money, providing for unsubordinated revolving credit loans, term loans, receivables financing, factoring arrangements, capital leases or letters of credit including, without limitation, any amendments, supplements, deferrals, renewals, extensions, replacements, refinancings, restructurings, repayments or refundings thereof, or amendments, modifications or supplements thereto and any agreement providing therefore, whether by or with the same or any bank, commercial finance lender or other institutional lender regularly engaged in the business of lending money, and including related notes, guarantee and note agreements and other instruments and agreements executed in connection therewith, (ii) all indebtedness and obligations of the Company incurred to repurchase the Securities pursuant to the exercise by a holder of its repurchase option in the event of a Fundamental Change or on a Purchase Date for the Securities, and any amendments, supplements, deferrals, renewals, extensions, replacements, refinancings, repayments or refundings thereof, or amendments or modifications or supplements thereto, and (iii) any other indebtedness and obligations of the Company in an aggregate principal amount not to exceed $20 million outstanding issued after November 12, 2003 to any person that is not an Affiliate of the Company or any Affiliate of any direct or indirect Subsidiary of the Company where such indebtedness or obligation explicitly states that it shall be "Designated Senior Debt" for the purposes of this Indenture.

"Dollar" or "U.S.$" means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debts.

"DTC" means The Depository Trust Company, a New York corporation.

"Event of Default" has the meaning specified in Section 5.1.

"Exchange Act" means the United States Securities Exchange Act of 1934 (or any successor statute), as amended from time to time.

"Fundamental Change" has the meaning specified in Section 14.3(2).

"Global Security" means a Security that is registered in the Security Register in the name of a Depositary or a nominee thereof.

"Holder" means the Person in whose name the Security is registered in the Security Register.

"Incur" means, with respect to any indebtedness or other obligation of any Person, to create, issue, incur (including by conversion, exchange or otherwise), assume, guarantee or otherwise become liable in respect of such indebtedness or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such indebtedness or other obligation on the balance sheet of such Person (and "Incurrence," "Incurred" and "Incurring" shall have meanings correlative to the foregoing). Indebtedness of any Acquired Person or any of its subsidiaries existing at the time such Acquired Person becomes a subsidiary of the Company (or is merged into or consolidated with the Company or any subsidiary of the Company), whether or not such indebtedness was Incurred in connection with, as a result of, or in contemplation of, such Acquired Person becoming a subsidiary of the Company (or being merged into or consolidated with the Company or any subsidiary of the Company), shall be deemed Incurred at the time any such Acquired Person becomes a subsidiary or merges into or consolidates with the Company or any subsidiary of the Company.

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this Indenture and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively.

"Initial Purchaser" means Thomas Weisel Partners LLC.

"Interest Payment Date" means the Stated Maturity of an installment of interest on the Securities.

"Issue Date" means November 18, 2003.

"Maturity", when used with respect to any Security, means the date on which the principal of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, exercise of the purchase right or repurchase right set forth in Article XIV or otherwise.

"Non-electing Share" has the meaning specified in Section 12.11.

"Notice of Default" has the meaning specified in Section 5.1.

"Notice of Optional Repurchase" has the meaning specified in Section 14.5(b).

"Notice of Withdrawal" has the meaning specified in Section 14.5(c).

"Officers' Certificate" means a certificate signed by (i) the Chairman of the Board, a Vice Chairman of the Board, the Chief Executive Officer, the President, an Executive Vice President, a Senior Vice President or a Vice President and by (ii) the principal financial officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee. One of the Officers signing an Officers' Certificate given pursuant to Section 10.8 shall be the principal executive, financial or accounting officer of the Company.

"Opinion of Counsel" means a written opinion of counsel, who may be an employee of or counsel to the Company and who shall be acceptable to the Trustee.

"Outstanding", when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for the payment or redemption of which money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities, provided that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(iii) Securities which have been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company; and

(iv) Securities converted into Common Stock pursuant to Article XII;

provided, *however*, that in determining whether the Holders of the requisite principal amount of Outstanding Securities are present at a meeting of Holders of Securities for quorum purposes or have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such determination as to the presence of a quorum or upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee has been notified in writing to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor, and the Trustee shall be protected in relying upon an Officer's Certificate to such effect.

"Paying Agent" means any Person authorized by the Company to pay the principal of or interest on any Securities on behalf of the Company and, except as otherwise specifically set forth herein, such term shall include the Company if it shall act as its own Paying Agent. The Company has initially appointed the Trustee as its Paying Agent pursuant to Section 10.2 hereof.

"Payment Blockage Notice" has the meaning specified in Section 13.2.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, trust, estate, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Conversion" has the meaning specified in Section 3.1.

"Place of Payment" has the meaning specified in Section 3.1.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"Purchase Agreement" means the Purchase Agreement, dated as of November 12, 2003, between the Company and the Initial Purchaser, as such agreement may be amended from time to time.

"Purchase Date" has the meaning specified in Section 14.5(a).

"Purchase Notice" has the meaning specified in Section 14.5(a)

"Purchase Price" has the meaning specified in Section 14.5(a).

"Qualified Institutional Buyer" shall mean a "qualified institutional buyer" as defined in Rule 144A under the Securities Act.

"Record Date" means any Regular Record Date or Special Record Date.

"Record Date Period" means the period from the close of business of any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date.

"Redemption Date," when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price," when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"Registrable Securities" has the meaning specified in the Registration Rights Agreement.

"Registration Default" has the meaning specified in Section 2.2.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of November 18, 2003, between the Company and the Initial Purchaser, as such agreement may be amended from time to time.

"Regular Record Date" for interest payable in respect of any Security on any Interest Payment Date means the December 15 or June 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

"Representative" means the (a) indenture trustee or other trustee, agent or representative for any Designated Senior Debt or (b) with respect to any Designated Senior Debt that does not have any such trustee, agent or other representative, (i) in the case of such Designated Senior Debt issued pursuant to an agreement providing for voting arrangements as among the holders or owners of such Designated Senior Debt, any holder or owner of such Designated Senior Debt acting with the consent of the required persons necessary to bind such holders or owners of such Designated Senior Debt and (ii) in the case of all other such Designated Senior Debt, the holder or owner of such Designated Senior Debt.

"Repurchase Date" has the meaning specified in Section 14.1.

"Repurchase Price" has the meaning specified in Section 14.1.

"Responsible Officer," when used with respect to the Trustee, means any officer within the Corporate Trust Office of the Trustee with direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge and familiarity with the particular subject.

"Restricted Global Security" has the meaning specified in Section 2.1.

"Restricted Securities" means all Securities required pursuant to Section 3.5(3) to bear any Restricted Securities Legend. Such term includes the Restricted Global Security.

"Restricted Securities Certificate" means a certificate substantially in the form set forth in Annex A.

"Restricted Securities Legend" means, collectively, the legends substantially in the forms of the legends required in the form of Security set forth in Section 2.2 to be placed upon each Restricted Security.

"Rights Plan" has the meaning specified in Section 12.4(13).

"Rule 144A" means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

"Rule 144A Information" has the meaning specified in Section 10.9.

"Securities" has the meaning ascribed to it in the first paragraph under the caption "Recitals of the Company."

"Securities Act" means the United States Securities Act of 1933 (or any successor statute), as amended from time to time.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 3.5.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Company pursuant to Section 3.7.

"Stated Maturity," when used with respect to any Security or any installment of interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of interest is due and payable.

"Subsidiary" means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, "voting stock" means stock or other similar interests in the corporation which ordinarily has or have voting power for the election of directors, or persons performing similar functions, whether at all times or only so long as no senior class of stock or other interests has or have such voting power by reason of any contingency.

"Successor Security" of any particular Security means every Security issued after, and evidencing all or a portion of the same debt as that evidenced by, such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"Surrender Certificate" means a certificate substantially in the form set forth in Annex C.

"Trading Day" means (i) if the Common Stock is quoted on the Nasdaq National Market or any other system of automated dissemination of quotations of securities prices, days on which trades may be effected through such system, (ii) if the Common Stock is listed or admitted for trading on any national or regional securities exchange, days on which such national or regional securities exchange is open for business, or (iii) if the Common Stock is not listed on a national or regional securities exchange or quoted on the Nasdaq National Market or any other system of automated dissemination of quotation of securities prices, days on which the Common Stock is traded regular way in the over-the-counter market and for which a closing bid and a closing asked price for the Common Stock are available.

"Trust Indenture Act" means the Trust Indenture Act of 1939, and the rules and regulations thereunder, as in force at the date as of which this Indenture was executed, *provided*, *however*, that in the event the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939, and the rules and regulations thereunder, as so amended.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor Trustee.

"United States" means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (its "possessions" including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands).

"Unrestricted Securities Certificate" means a certificate substantially in the form set forth in Annex B.

SECTION1.2 Compliance Certificates And Opinions.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that, in the opinion of such person, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Trust Indenture Act Section 314(a)(4)) (including certificates provided for in Section 10.8) shall include:

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

An Officers' Certificate, statement or Opinion of Counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representation by an accountant (who may be an employee of the Company), or firm of accountants, unless such officer or counsel, as the case may be, knows that the certificate or opinion or representation with respect to the accounting matters upon which his or her certificate, statement or opinion may be based as aforesaid is erroneous.

SECTION 1.3 Form of Documents Delivered to the Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any Officers' Certificate may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which such Officers' Certificate is based are erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company or any other Person deemed appropriate by such counsel, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

SECTION 1.4 Acts of Holders of Securities.

(1) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by (A) one or more instruments of substantially similar tenor signed by such Holders in person or by an agent or proxy duly appointed in writing by such Holders or (B) the record of Holders of Securities voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities duly called and held in accordance with the provisions of Article IX. Such action shall become effective when such instrument or instruments or record is delivered to the Trustee and, where it is hereby expressly required, to the Company. The Trustee shall promptly deliver to the Company copies of all such instruments and records delivered to the Trustee. Such instrument or instruments and records (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders of Securities signing such instrument or instruments and so voting at such meeting. Proof of execution of any such instrument or of a writing appointing any such agent or proxy, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 6.1) conclusive in favor of the Trustee and the Company if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 9.6.

(2) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority.

(3) The principal amount and serial number of any Security held by any Person, and the date of his holding the same, shall be proved by the Security Register.

(4) The fact and date of execution of any such instrument or writing and the authority of the Person executing the same may also be proved in any other manner which the Trustee deems sufficient; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.4.

(5) The Company may set any day as the record date for the purpose of determining the Holders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted by this Indenture to be given or taken by Holders. Promptly and in any case not later than ten days after setting a record date, the Company shall notify the Trustee and the Holders of such record date. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 15.1) prior to such first solicitation or vote, as the case may be. With regard to any record date, the Holders on such date (or their duly appointed agents or proxies), and only such Persons, shall be entitled to give or take, or vote on, the relevant action, whether or not such Holders remain

Holders after such record date. Notwithstanding the foregoing, the Company shall not set a record date for, and the provisions of this paragraph shall not apply with respect to, any notice, declaration or direction referred to in the next paragraph.

Upon receipt by the Trustee from any Holder of (i) any notice of default or breach referred to in Section 5.1(4), if such default or breach has occurred and is continuing and the Trustee shall not have given such a notice to the Company, (ii) any declaration of acceleration referred to in Section 5.2, if an Event of Default has occurred and is continuing and the Trustee shall not have given such a declaration to the Company, or (iii) any direction referred to in Section 5.12, if the Trustee shall not have taken the action specified in such direction, then, with respect to clauses (ii) and (iii), a record date shall automatically and without any action by the Company or the Trustee be set for determining the Holders entitled to join in such declaration or direction, which record date shall be the close of business on the tenth day (or, if such day is not a Business Day, the first Business Day thereafter) following the day on which the Trustee receives such declaration or direction, and, with respect to clause (i), the Trustee may set any day as a record date for the purpose of determining the Holders entitled to join in such notice of default. Promptly after such receipt by the Trustee of any such declaration or direction referred to in clause (ii) or (iii), and promptly after setting any record date with respect to clause (i), and as soon as practicable thereafter, the Trustee shall notify the Company and the Holders of any such record date so fixed. The Holders on such record date (or their duly appointed agents or proxies), and only such Persons, shall be entitled to join in such notice, declaration or direction, whether or not such Holders remain Holders after such record date; provided that, unless such notice, declaration or direction shall have become effective by virtue of Holders of the requisite principal amount of Securities on such record date (or their duly appointed agents or proxies) having joined therein on or prior to the 90th day after such record date, such notice, declaration or direction shall automatically and without any action by any Person be canceled and of no further effect. Nothing in this paragraph shall be construed to prevent a Holder (or a duly appointed agent or proxy thereof) from giving, before or after the expiration of such 90-day period, a notice, declaration or direction contrary to or different from, or, after the expiration of such period, identical to, the notice, declaration or direction to which such record date relates, in which event a new record date in respect thereof shall be set pursuant to this paragraph. In addition, nothing in this paragraph shall be construed to render ineffective any notice, declaration or direction of the type referred to in this paragraph given at any time to the Trustee and the Company by Holders (or their duly appointed agents or proxies) of the requisite principal amount of Securities on the date such notice, declaration or direction is so given.

(6) Except as provided in Sections 5.12 and 5.13, any request, demand, authorization, direction, notice, consent, election, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(7) The provisions of this Section 1.4 are subject to the provisions of Section 9.5.

SECTION 1.5 Notices, Etc to the Trustee and Company.

Any request, demand, authorization, direction, notice, consent, election, waiver or other Act of Holders of Securities or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder of Securities or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with a Responsible Officer of the Trustee and received at its Corporate Trust Office, Attention: Corporate Trust Services (Casual Male Retail Group, Inc., 5% Convertible Senior Subordinated Notes due January 1, 2024).

(2) the Company by the Trustee or by any Holder of Securities shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing, mailed, first-class postage prepaid, or telecopied and confirmed by mail, first-class postage prepaid, or delivered by hand or overnight courier, addressed to the Company at 555 Turnpike Street, Canton, Massachusetts 02021, Attention: Chief Financial Officer, or at any other address previously furnished in writing to the Trustee by the Company.

SECTION 1.6 Notice to Holders of Securities; Waiver.

Except as otherwise expressly provided herein, where this Indenture provides for notice to Holders of Securities of any event, such notice shall be sufficiently given to Holders if in writing and mailed, first-class postage prepaid or delivered by an overnight delivery service, to each Holder of a Security affected by such event, at the address of such Holder as it appears in the Security Register, not earlier than the earliest date and not later than the latest date prescribed for the giving of such notice.

Neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Security shall affect the sufficiency of such notice with respect to other Holders of Securities. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification to Holders of Securities as shall be made with the approval of the Trustee, which approval shall not be unreasonably withheld, shall constitute a sufficient notification to such Holders for every purpose hereunder.

Such notice shall be deemed to have been given when such notice is mailed.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders of Securities shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 1.7 Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 1.8 Successors and Assigns.

All covenants and agreements in this Indenture by the Company and the Trustee shall bind their respective successors and assigns, whether so expressed or not.

SECTION 1.9 Separability Clause.

In case any provision in this Indenture or the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 1.10 Benefits of Indenture.

Except as provided in the next sentence, nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns hereunder and the Holders of Securities, any benefit or legal or equitable right, remedy or claim under this Indenture. The provisions of Article XIII are intended to be for the benefit of, and shall be enforceable directly by, the holders of Designated Senior Debt.

SECTION 1.11 Governing Law.

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, THE UNITED STATES OF AMERICA.

SECTION 1.12 Legal Holidays.

In any case where any Interest Payment Date, Redemption Date, Repurchase Date, Purchase Date or Stated Maturity of any Security or the last day on which a Holder of a Security has a right to convert his Security shall not be a Business Day at a Place of Payment or Place of Conversion, as the case may be, then (notwithstanding any other provision of this Indenture or of the Securities) payment of principal of, premium, if any, or interest on, or the payment of the Redemption Price, Repurchase Price or Purchase Price (whether the same is payable in cash or in shares of Common Stock in the case of the Purchase Price) with respect to, or delivery for conversion of, such Security need not be made at such Place of Payment or Place of Conversion, as the case may be, on or by such day, but may be made on or by the next succeeding Business Day at such Place of Payment or Place of Conversion, as the case may be, with the same force and effect as if made on the Interest Payment Date, Redemption Date, Repurchase Date or Purchase Date, or at the Stated Maturity or by such last day for conversion; *provided*, *however*, that in the case that payment is made on such succeeding Business Day, no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date, Repurchase Date, Purchase Date, Stated Maturity or last day for conversion, as the case may be.

SECTION 1.13 Conflict With Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act, the Trust Indenture Act shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the Indenture provision so modifying or excluding such provision of the Trust Indenture Act shall be deemed to apply. Until such time as this Indenture shall be qualified under the Trust Indenture Act, this Indenture, the Company and the Trustee shall be deemed for all purposes hereof to be subject to and governed by the Trust Indenture Act to the same extent as would be the case if this Indenture were so qualified on the date hereof.

ARTICLE II
SECURITY FORMS

SECTION 2.1 Form Generally.

The Securities shall be in substantially the form set forth in this Article, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange, the Internal Revenue Code of 1986, as amended, and regulations thereunder (the “Code”), or as may, consistent herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof. All Securities shall be in fully registered form.

The Trustee’s certificates of authentication shall be in substantially the form set forth in Section 2.3.

Conversion notices shall be in substantially the form set forth in Section 2.4.

Repurchase notices shall be substantially in the form set forth in Section 2.2.

Purchase notices shall be substantially in the form set forth in Section 2.2.

The Securities shall be printed, lithographed, typewritten or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any automated quotation system or securities exchange (including on steel engraved borders if so required by any securities exchange upon which the Securities may be listed) on which the Securities may be quoted or listed, as the case may be, all as determined by the officers executing such Securities, as evidenced by their execution thereof.

Upon their original issuance, Securities issued as contemplated by the Purchase Agreement to Qualified Institutional Buyers in reliance on Rule 144A shall be issued in the form of one or more

Global Securities in definitive, fully registered form without interest coupons and bearing the Restricted Securities Legend. Such Global Security shall be registered in the name of DTC, as Depositary, or its nominee, and deposited with the Trustee, as custodian for DTC, for credit by DTC to the respective accounts of beneficial owners of the Securities represented thereby (or such other accounts as they may direct). Such Global Security, together with its Successor Securities which are Global Securities, are collectively herein called the “Restricted Global Security.”

SECTION 2.2 Form of Security.

[FORM OF FACE]

[THE FOLLOWING LEGEND (THE "RESTRICTED SECURITIES LEGEND") SHALL APPEAR ON THE FACE OF EACH RESTRICTED SECURITY:

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION THEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION THEREOF MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (IV) TO AN INSTITUTIONAL INVESTOR THAT IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE) OR (V) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (V) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN CLAUSE (A) ABOVE. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THE SECURITIES EXCEPT AS PERMITTED BY THE SECURITIES ACT.

THIS SECURITY, ANY SHARES OF COMMON STOCK ISSUABLE UPON ITS CONVERSION, AND ANY RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON

RESALES AND OTHER TRANSFERS OF THIS SECURITY AND ANY SUCH SHARES TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE RESALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. THE HOLDER OF THIS SECURITY AND SUCH SHARES SHALL BE DEEMED BY THE ACCEPTANCE OF THIS SECURITY AND ANY SUCH SHARES TO HAVE AGREED TO SUCH AMENDMENT OR SUPPLEMENT.]

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH GLOBAL SECURITY:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS OWNER AND HOLDER OF THIS SECURITY FOR ALL PURPOSES.]

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH GLOBAL SECURITY FOR WHICH THE DEPOSITORY TRUST COMPANY IS TO BE THE DEPOSITORY:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE REGISTERED FORM IN THE LIMITED CIRCUMSTANCES REFERRED TO IN THE INDENTURE, THIS GLOBAL SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.]

CASUAL MALE RETAIL GROUP, INC.

5% CONVERTIBLE SENIOR SUBORDINATED NOTE DUE JANUARY 1, 2024

No. _____ $_____

CUSIP NO. [_____]

CASUAL MALE RETAIL GROUP, INC., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company", which term includes any successor Person under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to _____, or registered assigns, the principal sum of _____ United States Dollars (U.S.$_____) (which principal amount may from time to time be increased or decreased to such other principal amounts (which, taken together with the principal amounts of all other Outstanding Securities, shall not exceed $100,000,000) by adjustments made on the records of the Trustee hereinafter referred to in accordance with the Indenture) on January 1, 2024 and to pay interest thereon, from November 18, 2003, or from the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, semi-annually in arrears on January 1 and July 1 in each year (each, an "Interest Payment Date"), commencing July 1, 2004, at the rate of 5% per annum, until the principal hereof is due, and at the rate of 5% per annum on any overdue principal and premium, if any, and, to the extent permitted by law, on any overdue interest. Interest and Additional Interest, if any, will be computed on the basis of a 360-day year composed of twelve 30-day months and, in the case of an incomplete month, the actual number of days elapsed. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the December 15 or June 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Except as otherwise provided in the Indenture, any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Company, notice whereof shall be given to Holders of Securities not less than 10 days prior to the Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any automated quotation system or securities exchange on which the Securities may be quoted or listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Payments of principal shall be made upon the surrender of this Security at the option of the Holder at the Corporate Trust Office of the Trustee, or at such other office or agency of the Company as may be designated by it for such purpose in the Borough of Manhattan, The City of New York, in such lawful monies of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, or at such other offices or agencies as the Company may designate, by United States Dollar check drawn on, or wire transfer to, a United States Dollar account (such a transfer to be made only to a Holder of an aggregate principal amount of Securities

in excess of U.S.$2,000,000 and only if such Holder shall have furnished wire instructions in writing to the Trustee no later than 15 days prior to the relevant payment date). Payment of interest on this Security may be made by United States Dollar check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register, or, upon written application by the Holder to the Security Registrar setting forth wire instructions not later than the relevant Record Date, by transfer to a United States Dollar account (such a transfer to be made only to a Holder of an aggregate principal amount of Securities in excess of U.S.$2,000,000 and only if such Holder shall have furnished wire instructions in writing to the Trustee no later than 15 days prior to the relevant payment date).

Except as specifically provided herein and in the Indenture, the Company shall not be required to make any payment with respect to any tax, assessment or other governmental charge imposed by any government or any political subdivision or taxing authority thereof or therein.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof or an Authenticating Agent by the manual signature of one of their respective authorized signatories, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this Security to be duly executed.

CASUAL MALE RETAIL GROUP, INC.

By: _____

Name:
Title:

Attest:

By: _____

Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities referred to in the within-mentioned Indenture.

Dated:

U.S. BANK NATIONAL ASSOCIATION
as Trustee

By: _____

Authorized Signatory

[FORM OF REVERSE]

This Security is one of a duly authorized issue of securities of the Company designated as its "5% Convertible Senior Subordinated Notes due January 1, 2024" (herein called the "Securities"), limited in aggregate principal amount to U.S. $100,000,000, issued and to be issued under an Indenture, dated as of November 18, 2003 (herein called the "Indenture"), between the Company and U.S. BANK NATIONAL ASSOCIATION, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Designated Senior Debt and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities of any authorized denominations as requested by the Holder surrendering the same upon surrender of the Security or Securities to be exchanged, at the Corporate Trust Office of the Trustee. The Trustee upon such surrender by the Holder will issue the new Securities in the requested denominations.

No sinking fund is provided for the Securities.

The Company may not redeem the Securities prior to January 6, 2007. The Securities are subject to redemption at the option of the Company at any time on or after January 6, 2007, in whole or in part, at a Redemption Price equal to 100% of the principal amount, together with accrued and unpaid interest to, but excluding, the Redemption Date; *provided, however*, that interest installments on Securities whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.

Subject to and in compliance with the Indenture, the Securities are subject to repurchase at the option of the Holder as of January 1, 2009, 2014 or 2019, in whole or in part, at 100% of the principal amount of such Securities to be repurchased, together with accrued and unpaid Additional Interest, if any, to, but excluding, the Purchase Date. The Purchase Price may be paid in cash or, at the election of the Company, in Common Stock or any combination of cash and Common Stock, subject to the conditions set forth in the Indenture.

In the event of a redemption of the Securities, the Company will not be required (a) to register the transfer or exchange of Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Securities called for such redemption or (b) to register the transfer or exchange of any Security, or portion thereof, called for redemption.

In any case where the due date for the payment of the principal of, premium, if any, interest, or Additional Interest on any Security or the last day on which a Holder of a Security has a right to convert his Security shall be, at any Place of Payment or Place of Conversion as the case may be, a day on which banking institutions at such Place of Payment or Place of Conversion are authorized or obligated by law or executive order to close, then payment of principal, premium, if any, interest, or

Additional Interest, or delivery for conversion of such Security need not be made on or by such date at such place but may be made on or by the next succeeding day at such place which is not a day on which banking institutions are authorized or obligated by law or executive order to close, with the same force and effect as if made on the date for such payment or the date fixed for redemption or repurchase, or by such last day for conversion, and no interest shall accrue on the amount so payable for the period after such date.

Subject to and upon compliance with the provisions of the Indenture, the Holder of this Security is entitled, at his option, at any time on or before the close of business on the date of Maturity, or in case this Security or a portion hereof is called for redemption or the Holder hereof has exercised his right to require the Company to repurchase this Security or such portion hereof, then in respect of this Security until the Business Day immediately preceding, but (unless the Company defaults in making the payment due upon redemption or repurchase, as the case may be, in which case the right will terminate at the close of business on the date such default is cured and the Security is redeemed or repurchased, as the case may be) not after, the close of business on the Business Day immediately preceding the Redemption Date, the Repurchase Date or the Purchase Date, as the case may be, to convert this Security (or any portion of the principal amount hereof that is an integral multiple of U.S.$1,000, provided that the unconverted portion of such principal amount is U.S.$1,000 or any integral multiple of U.S.$1,000 in excess thereof) into fully paid and nonassessable shares of Common Stock of the Company at an initial Conversion Rate equal to 93.8967 shares for each U.S.$1,000 principal amount of Securities (or at the current adjusted Conversion Rate if an adjustment has been made as provided in the Indenture) by surrender of this Security, duly endorsed or assigned to the Company or in blank and, in case such surrender shall be made during the Record Date Period (except if this Security or portion thereof has been called for redemption or if a Fundamental Change has occurred and an offer to repurchase the Securities is pending), also accompanied by payment in New York Clearing House or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of this Security then being converted, and also the conversion notice hereon duly executed, to the Company at the Corporate Trust Office of the Trustee, or at such other office or agency of the Company, subject to any laws or regulations applicable thereto and subject to the right of the Company to terminate the appointment of any Conversion Agent (as defined below) as may be designated by it for such purpose in the Borough of Manhattan, The City of New York, or at such other offices or agencies as the Company may designate (each a “Conversion Agent”). The interest that is payable on such Interest Payment Date with respect to any Security (or portion thereof, if applicable) that is surrendered for conversion during the Record Date Period shall be paid to the Holder of such Security as of such Regular Record Date in an amount equal to the interest that would have been payable on such Security if such Security had been converted as of the close of business on such Interest Payment Date. Subject to the provisions of the preceding sentence and, in the case of a conversion after the close of business on the Regular Record Date next preceding any Interest Payment Date and on or before the close of business on such Interest Payment Date, to the right of the Holder of this Security (or any Predecessor Security of record as of such Regular Record Date) to receive the related installment of interest to the extent and under the circumstances provided in the Indenture, no cash payment or adjustment is to be made on conversion for interest accrued hereon from the Interest Payment Date next preceding the day of conversion, or for dividends on the

Common Stock issued on conversion hereof. The Company shall thereafter deliver to the Holder the fixed number of shares of Common Stock (together with any cash adjustment, as provided in the Indenture) into which this Security is convertible and such delivery will be deemed to satisfy the Company's obligation to pay the principal amount of this Security. No fractions of shares or scrip representing fractions of shares will be issued on conversion, but instead of any fractional interest (calculated to the nearest 1/100th of a share) the Company shall pay a cash adjustment as provided in the Indenture. The Conversion Rate is subject to adjustment as provided in the Indenture. In addition, the Indenture provides that in case of certain consolidations or mergers to which the Company is a party (other than a consolidation or merger that does not result in any reclassification, conversion, exchange or cancellation of the Common Stock) or the conveyance, transfer, sale or lease of all or substantially all of the property and assets of the Company, the Indenture shall be amended, without the consent of any Holders of Securities, so that this Security, if then Outstanding, will be convertible thereafter, during the period this Security shall be convertible as specified above, only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, transfer, sale or lease by a holder of the number of shares of Common Stock of the Company into which this Security could have been converted immediately prior to such consolidation, merger, conveyance, transfer, sale or lease (assuming such holder of Common Stock is not a Constituent Person or an Affiliate of a Constituent Person, failed to exercise any rights of election and received per share the kind and amount received per share by a plurality of Non-electing Shares). No adjustment in the Conversion Rate will be made until such adjustment would require an increase or decrease of at least one percent of such rate, provided that any adjustment that would otherwise be made will be carried forward and taken into account in the computation of any subsequent adjustment.

If this Security is a Registrable Security (as defined in the Indenture), then the Holder of this Security (including any Person that has a beneficial interest in this Security) and the Common Stock of the Company issuable upon conversion hereof is entitled to the benefits of a Registration Rights Agreement, dated as of November 18, 2003, executed by the Company (the "Registration Rights Agreement").

In accordance with the terms of the Registration Rights Agreement, during any period in which an Event of Default (as defined in the Registration Rights Agreement) (each, a "Registration Default") has occurred and is continuing, the Company will pay Additional Interest from and including the day following such Registration Default to but excluding the day on which such Registration Default has been cured. Additional Interest will be paid semi-annually in arrears, with the first semi-annual payment due on the first Interest Payment Date, as applicable, in respect of the Registrable Securities following the date on which such Additional Interest begin to accrue, and will accrue at a rate per annum equal to one-quarter of one percent (0.25%) of the principal amount of the Registrable Securities to and including the 90th day following such Registration Default and at a rate per annum equal to one-half of one percent (0.50%) thereof from and after the 91st day following such Registration Default. In no event shall the Company be required to pay Additional Interest in excess of the applicable maximum amount of one-half of one percent (0.50%) set forth above regardless of whether one or multiple Registration Defaults exist.

Whenever in this Security there is a reference, in any context, to the payment of the principal of, premium, if any, or interest on, or in respect of, any Security, such mention shall be deemed to include mention of the payment of Additional Interest payable as described in the preceding paragraph to the extent that, in such context, Additional Interest is, was or would be payable in respect of such Security and express mention of the payment of Additional Interest (if applicable) in any provisions of this Security shall not be construed as excluding Additional Interest in those provisions of this Security where such express mention is not made.

If this Security is a Registrable Security and the Holder of this Security (including any Person that has a beneficial interest in this Security) elects to sell this Security pursuant to the Shelf Registration Statement then, by its acceptance hereof, such Holder of this Security agrees to be bound by the terms of the Registration Rights Agreement relating to the Registrable Securities which are the subject of such election.

If a Fundamental Change occurs, the Holder of this Security, at the Holder's option, shall have the right, in accordance with the provisions of the Indenture, to require the Company to repurchase this Security (or any portion of the principal amount hereof that is at least $1,000 or an integral multiple of $1,000 in excess thereof, provided that the portion of the principal amount of this Security to be Outstanding after such repurchase is at least equal to U.S.$1,000) for cash at a Repurchase Price equal to 100% of the principal amount thereof plus interest accrued to the Repurchase Date. Whenever in this Security there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price payable in respect of such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Security shall not be construed as excluding the Repurchase Price so payable in those provisions of this Security when such express mention is not made.

In the event of a deposit or withdrawal of an interest in this Security, including an exchange, transfer, redemption, repurchase or conversion of this Security in part only, the Trustee, as custodian of the Depositary, shall make an adjustment on its records to reflect such deposit or withdrawal in accordance with the Applicable Procedures.

The indebtedness evidenced by this Security is, to the extent and in the manner provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Designated Senior Debt of the Company, and this Security is issued subject to such provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his attorney-in-fact for any and all such purposes.

If an Event of Default shall occur and be continuing, the principal of all the Securities, together with accrued interest to the date of declaration, may be declared due and payable in the manner and with the effect provided in the Indenture. Upon payment (i) of the amount of principal so declared due and payable, together with accrued interest to the date of declaration, and (ii) of interest on any overdue principal and, to the extent permitted by applicable law, overdue interest, all of the Company's obligations in respect of the payment of the principal of and interest on the Securities shall terminate.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with either (a) the written consent of the Holders of not less than a majority in principal amount of the Securities at the time Outstanding, or (b) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least 66 2/3% in aggregate principal amount of the Outstanding Securities represented and entitled to vote at such meeting. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued in exchange therefore or in lieu hereof whether or not notation of such consent or waiver is made upon this Security or such other Security. Certain modifications or amendments to the Indenture require the consent of the Holder of each Outstanding Security affected.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default, the Holders of not less than 25% in principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity and the Trustee shall not have received from the Holders of a majority in principal amount of the Securities Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof, premiums if any, or interest (including Additional Interest) hereon on or after the respective due dates expressed herein or for the enforcement of the right to convert this Security as provided in the Indenture.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, premium, if any, and interest (including Additional Interest) on this Security at the times, places and rate, and in the coin or currency, herein prescribed or to convert this Security as provided in the Indenture.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable on the Security Register upon surrender of this Security for registration of transfer at the Corporate Trust Office of the Trustee or at such other office or agency of the Company as may be designated by it for such purpose in the Borough of Manhattan, The City of New York (which shall initially be an office or agency of the Trustee), or at such other offices or

agencies as the Company may designate, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder thereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees by the Registrar. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to recover any tax or other governmental charge payable in connection therewith.

Prior to due presentation of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered, as the owner thereof for all purposes, whether or not such Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

No recourse for the payment of the principal (and premium, if any) or interest on this Security and no recourse under or upon any obligation, covenant or agreement of the Company in the Indenture or any indenture supplemental thereto or in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer or director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of consideration for the issue hereof, expressly waived and released.

THE INDENTURE AND THIS SECURITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Security, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	as tenant in common	UNIF GIFT MIN ACT	_____ Custodian _____
TEN ENT	as tenants by the entireties (Cust)		(Cust) (Minor)
JT TEN	as joint tenants with right of survivorship and not as tenants in common		under Uniform Gifts to Minors Act _____ (State)

Additional abbreviations may also be used though not in the above list.

ELECTION OF HOLDER TO REQUIRE REPURCHASE

(1) Pursuant to Section 14.1 of the Indenture, the undersigned hereby elects to have this Security repurchased by the Company.

(2) The undersigned hereby directs the Trustee or the Company to pay it or _____ an amount in cash equal to 100% of the principal amount to be repurchased (as set forth below), plus interest and Additional Interest, if any, accrued to, but excluding, the Repurchase Date, as provided in the Indenture.

Dated:

_____

_____

Signature(s)

Signature(s) must be guaranteed by an Eligible Guarantor Institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

_____

Signature Guaranteed

Principal amount to be repurchased (at least U.S.$1,000 or an integral multiple of $1,000 in excess thereof): _____

Remaining principal amount following such repurchase (not less than U.S.$1,000):

_____

NOTICE: The signature to the foregoing Election must correspond to the Name as written upon the face of this Security in every particular, without alteration or any change whatsoever.

ELECTION OF HOLDER TO REQUIRE PURCHASE

(1) Pursuant to Section 14.5 of the Indenture, the undersigned hereby elects to have this Security repurchased by the Company.

(2) The undersigned hereby directs the Trustee or the Company to pay it or _____ an amount in cash or, at the Company's election, Common Stock valued as set forth in the Indenture, equal to 100% of the principal amount to be repurchased (as set forth below), plus interest and Additional Interest, if any, accrued to, but excluding, the Purchase Date, as provided in the Indenture.

(3) The undersigned hereby agrees that the Securities will be purchased as of the Purchase Date pursuant to the terms and conditions thereof and of the Indenture.

Dated:

_____

_____

Signature(s)

Signature(s) must be guaranteed by an Eligible Guarantor Institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

_____

Signature Guaranteed

Certificate No(s). of Securities _____

Principal amount to be repurchased (at least U.S.$1,000 or an integral multiple of $1,000 in excess thereof): _____

Remaining principal amount following such repurchase (not less than U.S.$1,000):

_____

NOTICE: The signature to the foregoing Election must correspond to the Name as written upon the face of this Security in every particular, without alteration or any change whatsoever. Delivery of the Securities to the Paying Agent prior to, on or after the Purchase Date (together with all necessary endorsements) (at the offices of the Paying Agent in the case of certificated Securities or otherwise by book-entry transfer) is a condition to receipt by the Holder of the Purchase Price therefor.

SECTION 2.3 Form of Certificate of Authentication.

The Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities referred to in the within-mentioned Indenture.

Dated: _____

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____ Authorized Signatory

SECTION 2.4 Form of Conversion Notice.

CONVERSION NOTICE

The undersigned Holder of this Security hereby irrevocably exercises the option to convert this Security, or any portion of the principal amount hereof (which is U.S.$1,000 or an integral multiple of U.S.$1,000 in excess thereof, provided that the unconverted portion of such principal amount is U.S.$1,000 or any integral multiple of U.S.$1,000 in excess thereof) below designated, into shares of Common Stock in accordance with the terms of the Indenture referred to in this Security, and directs that such shares, together with a check in payment for any fractional share and any Securities representing any unconverted principal amount hereof, be delivered to and be registered in the name of the undersigned unless a different name has been indicated below. If shares of Common Stock or Securities are to be registered in the name of a Person other than the undersigned, (a) the undersigned will pay all transfer taxes payable with respect thereto and (b) signature(s) must be guaranteed by an Eligible Guarantor Institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934. Any amount required to be paid by the undersigned on account of interest accompanies this Security.

Dated: _____ _____

Signature(s)

If shares or Securities are to be registered in the name of a Person other than the Holder, please print such Person's name and address:

_____

(Name)

_____

_____

(Address)

Social Security or other Identification
Number, if any

[Signature Guaranteed]

If only a portion of the Securities is to be converted, please indicate:

1. Principal amount to be converted: U.S.$ _____

2. Principal amount and denomination of Securities representing unconverted principal amount to be issued:

Amount: U.S.$_____ Denominations: U.S.$_____

(U.S.$1,000 or any integral multiple of U.S.$1,000 in excess thereof, provided that the unconverted portion of such principal amount is U.S.$1,000 or any integral multiple of U.S.$1,000 in excess thereof)

SECTION 2.5 Form of Assignment.

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or other identifying number of assignee) the within Security, and hereby irrevocably constitutes and appoints _____as attorney to transfer the said Security on the books of the Company, with full power of substitution in the premises.

Dated: _____

_____

Signature(s)

Signature(s) must be guaranteed by an Eligible Guarantor Institution with membership in an approved signature guarantee program pursuant to Rule 17Ad - 15 under the Securities Exchange Act of 1934.

_____

Signature Guaranteed

ARTICLE III
THE SECURITIES

SECTION 3.1 Title and Terms.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is limited to U.S. $85,000,000 and shall be increased to the extent the Initial Purchaser exercises its option to purchase up to an additional $15,000,000 such that the total aggregate principal amount of Securities which may be authenticated and delivered under this Indenture shall not exceed U.S. $100,000,000 of Securities from the Company, except for Securities authenticated and delivered pursuant to Section 3.4, 3.5, 3.6, 8.5, 12.2 or 14.2(5) in exchange for, or in lieu of, other Securities previously authenticated and delivered under this Indenture.

(1) The Securities shall be known and designated as the "5% Convertible Senior Subordinated Notes due January 1, 2024" of the Company. Their Stated Maturity shall be January 1, 2024 and they shall bear interest on their principal amount from November 18, 2003, payable semi-annually in arrears on January 1 and July 1 in each year, commencing July 1, 2004, at the rate of 5% per annum until the principal thereof is due and at the rate of 5% per annum on any overdue principal and, to the extent permitted by law, on any overdue interest; *provided*, *however*, that payments shall only be made on a Business Day as provided in Section 1.12. Interest and Additional Interest, if any, will be computed on the basis of a 360-day year composed of twelve 30-day months and, in the case of an incomplete month, the actual number of days elapsed.

The principal of, premium, if any, and interest on the Securities shall be payable as provided in the form of Securities set forth in Section 2.2, and the Repurchase Price and the Purchase Price, whether payable in cash or in shares of Common Stock, shall be payable at such places as are identified in the Company Notice given pursuant to Section 14.2 or the Notice of Optional Repurchase given pursuant to Section 14.5, as appropriate (any city in which any Paying Agent is located being herein called a "Place of Payment").

The Registrable Securities are entitled to the benefits of the Registration Rights Agreement and in the form of Security set forth in Section 2.2. The Securities are entitled to the payment of Additional Interest as provided in the Registration Rights Agreement and in the form of Security set forth in Section 2.2.

The Securities shall be redeemable at the option of the Company at any time on or after January 6, 2007, in whole or in part, subject to the conditions and as otherwise provided in Article XI and in the form of Security set forth in Section 2.2.

The Securities shall be convertible as provided in Article XII (any city in which any Conversion Agent is located being herein called a "Place of Conversion").

The Securities shall be subordinated in right of payment to Designated Senior Debt of the Company as provided in Article XIII. The Securities shall be subject to repurchase by the Company at the option of the Holders as provided in Article XIV.

SECTION 3.2 Denominations.

The Securities shall be issuable only in registered form, without coupons, in denominations of U.S.$1,000 and integral multiples of U.S.$1,000 in excess thereof.

SECTION 3.3 Execution, Authentication, Delivery and Dating.

The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President, one of its Executive Vice Presidents, one of its Senior Vice Presidents or one of its Vice Presidents, and attested by its Chief Financial Officer, Secretary or one of its Assistant Secretaries. Any such signature may be manual or facsimile.

Securities bearing the manual or facsimile signature of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee or to its order for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with such Company Order shall authenticate and make available for delivery such Securities as in this Indenture provided.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature of an authorized signatory, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

SECTION 3.4 Global Securities; Non-global Securities; Book-entry Provisions.

(1) Global Securities

(i) Each Global Security authenticated under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(ii) Except for exchanges of Global Securities for definitive, Non-global Securities at the sole discretion of the Company, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (A) such Depositary (i) has notified the Company that it is unwilling or unable to continue as Depositary for such Global Security or (ii) has ceased to be a clearing agency registered as such under the Exchange Act or announces an intention permanently to cease business or does in fact do so or (B) there shall have occurred and be continuing an Event of Default with respect to such Global Security. In such event, if a successor Depositary for such Global Security is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company will execute, and the Trustee, upon receipt of an Officers' Certificate directing the authentication and delivery of Securities, will authenticate and deliver, Securities, in any authorized denominations in an aggregate principal amount equal to the principal amount of such Global Security in exchange for such Global Security.

(iii) If any Global Security is to be exchanged for other Securities or canceled in whole, it shall be surrendered by or on behalf of the Depositary or its nominee to the Trustee, as Security Registrar, for exchange or cancellation, as provided in this Article III. If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, in each case, as provided in Section 3.5, then either (A) such Global Security shall be so surrendered for exchange or cancellation, as provided in this Article III, or (B) the principal amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or canceled, or equal to the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Trustee, as Security Registrar, whereupon the Trustee, in accordance with the Applicable Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security, the Trustee shall, subject to Section 3.5(3) and as otherwise provided in this Article III, authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) to or upon the order of, and registered in such names as may be directed by, the Depositary or its authorized representative. Upon the request of the Trustee in connection with the occurrence of any of the events specified in the preceding paragraph, the Company shall promptly make available to the Trustee a reasonable supply of Securities that are not in the form of Global Securities. The Trustee shall be entitled to rely upon any order, direction or request of the Depositary or its authorized representative which is given or made pursuant to this Article III if such order, direction or request is given or made in accordance with the Applicable Procedures.

(iv) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Article III or otherwise, shall be authenticated and delivered in the form of, and shall be, a registered Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof, in which case such Security shall be authenticated and delivered in definitive, fully registered form, without interest coupons.

(v) The Depositary or its nominee, as registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under the Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Procedures. Accordingly, any such owner's beneficial interest in a Global Security will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members and such owners of beneficial interests in a Global Security will not be considered the owners or holders thereof.

(2) Non-global Securities. Securities issued upon the events described in Section 3.4(l)(ii) shall be in definitive, fully registered form, without interest coupons, and shall bear the Restricted Securities Legend if and as required by this Indenture.

SECTION 3.5 Registration; Registration of Transfer and Exchange; Restrictions on Transfer.

(1) The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers and exchanges of Securities as herein provided.

Subject to the other provisions of this Section 3.5, upon surrender for registration of transfer of any Security at an office or agency of the Company designated pursuant to Section 10.2 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

At the option of the Holder, and subject to the other provisions of this Section 3.5, Securities may be exchanged for other Securities of any authorized denomination and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at any such office or agency. Whenever any Securities are so surrendered for exchange, and subject to the other provisions of this Section 3.5, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive. Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Security Registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company, the Trustee and the Security Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt and entitled to the same benefits under this Indenture as the Securities surrendered upon such registration of transfer or exchange.

No service charge shall be made to a Holder for any registration of transfer or exchange of Securities except as provided in Section 3.6, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.4, 8.5, 12.2 or 14.2 (other than where the shares of Common Stock are to be issued or delivered in a name other than that of the Holder of the Security) not involving any transfer and other than any stamp and other duties, if any, which may be imposed in connection with any such transfer or exchange by the United States or any political subdivision thereof or therein, which shall be paid by the Company.

In the event of a redemption of the Securities, neither the Company nor the Securities Registrar will be required (a) to register the transfer of or exchange Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Securities called for such redemption or (b) to register the transfer of or exchange any Security, or portion thereof, called for redemption, except for the unredeemed portion of any Securities being redeemed in part.

(2) Certain Transfers and Exchanges. Notwithstanding any other provision of this Indenture or the Securities, transfers and exchanges of Securities and beneficial interests in a Global Security of the kinds specified in this Section 3.5(2) shall be made only in accordance with this Section 3.5(2).

(i) Restricted Global Security to Restricted Non-global Security. In the event that Non-global Securities are to be issued pursuant to Section 3.4(1)(ii) in connection with any transfer of Securities, such transfer may be effected only in accordance with the provisions of this Clause (2)(i) and subject to the Applicable Procedures. Upon receipt by the Trustee, as Security Registrar, of (A) a Company Order from the Company directing the Trustee, as Security Registrar, to (x) authenticate and deliver one or more Securities of the same aggregate principal amount as the beneficial interest in the Restricted Global Security to be transferred, such instructions to contain the name or names of the designated transferee or transferees, the authorized denomination or denominations of the Securities to be so issued and appropriate delivery instructions and (y) decrease the beneficial interest of a specified Agent Member's account in a Restricted Global Security by a specified principal amount not greater than the principal amount of such Restricted Global Security, and (B) such other certifications, legal opinions or other information as the Company or the Trustee may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, then the Trustee, as Security Registrar, shall decrease the principal amount of the Restricted Global Security by the specified amount and authenticate and deliver Securities in accordance with such instructions from the Company as provided in Section 3.4(1)(iii).

(ii) Restricted Non-global Security to Restricted Global Security. If the Holder of a Restricted Security (other than a Global Security) wishes at any time to transfer all or any portion of such Restricted Security to a Person who wishes to take delivery thereof in the form of a beneficial interest in the Restricted Global Security, such transfer may be effected only in accordance with the provisions of this Clause (2)(ii) and subject to the Applicable Procedures. Upon receipt by the Trustee, as Security Registrar, of (A) such Restricted Security as provided in

Section 3.5(1) and instructions from the Company directing that a beneficial interest in the Restricted Global Security in a specified principal amount not greater than the principal amount of such Security be credited to a specified Agent Member's account, and (B) a Restricted Securities Certificate, satisfactory to the Trustee, and duly executed by such Holder or its attorney duly authorized in writing, then the Trustee, as Security Registrar, shall cancel such Restricted Security (and issue a new Restricted Security in respect of any untransferred portion thereof) as provided in Section 3.5(1) and increase the principal amount of the Restricted Global Security by the specified principal amount as provided in Section 3.4(1)(iii).

(iii) Exchanges Between Global Security and Non-global Security. A beneficial interest in a Global Security may be exchanged for a Security that is not a Global Security only as provided in Section 3.4 or only if such exchange occurs in connection with a transfer effected in accordance with Clause 2(i) above, provided that, if such interest is a beneficial interest in the Restricted Global Security, then such interest shall be exchanged for a Restricted Security (subject in each case to Section 3.5(3)). A Security that is not a Global Security may be exchanged for a beneficial interest in a Global Security only if such exchange occurs in connection with a transfer effected in accordance with Clause (2)(ii) above.

(3) Securities Act Legends. All Securities issued pursuant to this Indenture, and all Successor Securities, shall bear the Restricted Securities Legend, subject to the following:

(i) subject to the following Clauses of this Section 3.5(3), a Security or any portion thereof which is exchanged, upon transfer or otherwise, for a Global Security or any portion thereof shall bear the Restricted Securities Legend borne by such Global Security for which the Security was exchanged;

(ii) subject to the following Clauses of this Section 3.5(3), a new Security that is not a Global Security and is issued in exchange for another Security (including a Global Security) or any portion thereof, upon transfer or otherwise, shall bear the Restricted Securities Legend borne by the Security for which the new Security was exchanged;

(iii) any Securities that are sold or otherwise disposed of pursuant to an effective registration statement under the Securities Act (including the Shelf Registration Statement), together with their Successor Securities shall not bear a Restricted Securities Legend; the Company shall inform the Trustee in writing of the effective date of any such registration statement registering the Securities under the Securities Act and shall notify the Trustee at any time when prospectuses must be delivered with respect to Securities to be sold pursuant to such registration statement. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned registration statement;

(iv) at any time after the Securities may be freely transferred without registration under the Securities Act or without being subject to transfer restrictions pursuant to the Securities Act, a new Security that does not bear a Restricted Securities Legend may be issued in exchange for or in lieu of a Security (other than a Global Security) or any portion thereof that bears such a legend if the Trustee has received an Unrestricted Securities Certificate, satisfactory to the Trustee and duly

executed by the Holder of such Security bearing a Restricted Securities Legend or his attorney duly authorized in writing, and after such date and receipt of such certificate, the Trustee shall authenticate and deliver such new Security in exchange for or in lieu of such other Security as provided in this Article III;

(v) a new Security that does not bear a Restricted Securities Legend may be issued in exchange for or in lieu of a Security or any portion thereof that bears such a legend if, in the Company's judgment, placing such a legend upon such new Security is not necessary to ensure compliance with the registration requirements of the Securities Act, and the Trustee, at the direction of the Company, shall authenticate and deliver such a new Security as provided in this Article III; and

(vi) notwithstanding the foregoing provisions of this Section 3.5(3), a Successor Security of a Security that does not bear a Restricted Securities Legend shall not bear such legend unless the Company has reasonable cause to believe that such Successor Security is a "restricted security" within the meaning of Rule 144, in which case the Trustee, at the direction of the Company, shall authenticate and deliver a new Security bearing a Restricted Securities Legend in exchange for such Successor Security as provided in this Article III.

(4) Any stock certificate representing shares of Common Stock issued upon conversion of the Securities shall bear the Restricted Securities Legend borne by such Securities, to the extent required by this Indenture, unless such shares of Common Stock have been sold pursuant to a registration statement that has been declared effective under the Securities Act (including the Shelf Registration Statement) (and that continues to be effective at the time of such transfer) or sold pursuant to Rule 144(k) of the Securities Act, or unless otherwise agreed by the Company in writing with written notice thereof to the transfer agent for the Common Stock. With respect to the transfer of shares of Common Stock issued upon conversion of the Securities that are restricted hereunder, any deliveries of certificates, legal opinions or other instruments that would be required to be made to the Security Registrar in the case of a transfer of Securities, as described above, shall instead be made to the transfer agent for the Common Stock.

(5) Neither the Trustee, the Paying Agent nor any of their agents shall (i) have any duty to monitor compliance with or with respect to any federal or state or other securities or tax laws or (ii) have any duty to obtain documentation on any transfers or exchanges other than as specifically required hereunder.

SECTION 3.6 Mutilated, Destroyed, Lost or Stolen Securities.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there be delivered to the Company and to the Trustee:

(1) evidence to their satisfaction of the destruction, loss or theft of any Security, and

(2) such security or indemnity as may be satisfactory to the Company and the Trustee to fully protect each of them and any agent of either of them from any loss, liability, cost or expense which any of them may suffer or incur, if the Security is replaced,

then, in the absence of actual notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any Security which has become, or is about to become, due and payable is submitted for repurchase or the repayment pursuant to Article XI or Article XIV, respectively, or is about to be converted into Common Stock pursuant to Article XII shall become mutilated, destroyed, lost or stolen, the Company in its discretion, but subject to any conversion rights, may, instead of issuing a new Security, pay or authorize the payment of or convert or authorize the conversion of such Security (without surrender thereof, except in the case of a mutilated Security), upon satisfaction of the conditions set forth in the preceding paragraph.

Upon the issuance of any new Security under this Section 3.6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto (other than any stamp and other duties, if any, which may be imposed in connection therewith by the United States or any political subdivision thereof or therein, which shall be paid by the Company) and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security issued pursuant to this Section 3.6 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and such new Security shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued, authenticated and delivered hereunder.

The provisions of this Section 3.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies of any Holder with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 3.7 Payment of Interest; Interest Rights Preserved.

Subject to the last paragraph of this Section, interest or Additional Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest or Additional Interest on any Security that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called “Defaulted Interest”) shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having

been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a "Special Record Date" for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security, the date of the proposed payment and the Special Record Date, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. The Special Record Date for the payment of such Defaulted Interest shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder at such Holder's address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the provisions of this Section 3.7 and Section 3.5, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Interest on any Security that is converted in accordance with Section 12.2 during a Record Date Period shall be payable in accordance with the provisions of Section 12.2.

SECTION 3.8 Persons Deemed Owners.

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, any Paying Agent and any agent of the Company, the Trustee or any Paying Agent may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of, premium, if any, and (subject to Section 3.7) interest or Additional Interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee, any Paying Agent nor any agent of the Company, the Trustee or any Paying Agent shall be affected by notice to the contrary.

SECTION 3.9 Cancellation.

All Securities surrendered for payment, redemption, repurchase, registration of transfer or exchange or conversion shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee. All Securities so delivered to the Trustee shall be canceled promptly by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 3.9. The Trustee shall dispose of all canceled Securities in accordance with applicable law and its customary practices in effect from time to time. The Trustee shall deliver certification of the disposal of all cancelled Securities to the Company.

SECTION 3.10 Computation of Interest.

Interest on the Securities (including any Additional Interest) shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 3.11 CUSIP Numbers.

The Company in issuing Securities may use "CUSIP" numbers (if then generally in use) in addition to serial numbers; if so, the Trustee shall use such CUSIP numbers in addition to serial numbers in notices of redemption, repurchase or purchase as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such CUSIP numbers either as printed on the Securities or as contained in any notice of a redemption, repurchase or purchase and that reliance may be placed only on the serial or other identification numbers printed on the Securities, and any such redemption or repurchase shall not be affected by any defect in or omission of such CUSIP numbers.

ARTICLE IV
SATISFACTION AND DISCHARGE

SECTION 4.1 Satisfaction and Discharge of Indenture.

This Indenture shall, upon a Company Request, cease to be of further effect (except as to any surviving rights of conversion, or registration of transfer or exchange, or replacement of Securities herein expressly provided for and any right to receive Additional Interest as provided in the Registration Rights Agreement and in the form of Securities set forth in Section 2.2 and the Company's obligations to the Trustee pursuant to Section 6.7), and the Trustee, at the expense of the Company, shall execute proper instruments in form and substance satisfactory to the Trustee acknowledging satisfaction and discharge of this Indenture, when

(1) either

(i) all Securities theretofore authenticated and delivered pursuant to this Indenture (other than (A) Securities which have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.6 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.3) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore cancelled or delivered to the Trustee or its agent for cancellation (other than Securities referred to in clauses (A) and (B) of clause (1)(i) above)

(a) have become due and payable, or

(b) will have become due and payable at their Stated Maturity within one year, or

(c) are to be called for redemption within one year under arrangements reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company, in the case of clause (a), (b) or (c) above, has deposited or caused to be deposited with the Trustee as trust funds (immediately available to the Holders in the case of clause (a)) in trust for the purpose an amount in cash sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal, premium, if any, and interest (including any Additional Interest) to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Company has paid or caused to be paid all sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.7, the obligations of the Company to any Authenticating Agent under Section 6.12, the obligation of the Company to pay Additional Interest, if money shall have been deposited with the Trustee pursuant to clause (1)(ii) of this Section 4.1, the obligations of the Trustee under Section 4.2 and the last paragraph of Section 10.3 and the obligations of the Company and the Trustee under Section 3.5 and Article XII shall survive. Funds held in trust pursuant to this Section are not subject to the provisions of Article XIII.

SECTION 4.2 Application of Trust Money.

Subject to the provisions of the last paragraph of Section 10.3, all money deposited with the Trustee pursuant to Section 4.1 and in accordance with the provisions of Article XIII shall be held in trust for the sole benefit of the Holders and not be subject to the subordination provisions of

Article XIII, and such monies shall be applied by the Trustee, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent, to the Persons entitled thereto, of the principal, premium, if any, and interest for whose payment such money has been deposited with the Trustee.

All moneys deposited with the Trustee pursuant to Section 4.1 (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be returned to the Company upon Company Request.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed or assessed against all money deposited with the Trustee pursuant to Section 4.1 (other than income taxes and franchise taxes incurred or payable by the Trustee and such other taxes, fees or charges incurred or payable by the Trustee that are not directly the result of the deposit of such money with the Trustee).

ARTICLE V
REMEDIES

SECTION 5.1 Events of Default.

"Event of Default", wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be occasioned by the provisions of Article XIII or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of the principal of or premium, if any, on any Security at its Maturity; or

(2) default in the payment of any interest (including any Additional Interest) upon any Security when it becomes due and payable, and continuance of such default for a period of 30 days; or

(3) failure by the Company to give a Company Notice in accordance with Section 14.2; or

(4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty, a default in the performance or breach of which is specifically dealt with elsewhere in this Section), and continuance of such default or breach for a period of 60 days after receipt of written notice, sent by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) any indebtedness under any bonds, debentures, notes or other evidences of indebtedness for money borrowed (or guarantee thereof) by the Company or any Subsidiary (an "Instrument") with an aggregate principal amount in excess of U.S.$5,000,000, whether such indebtedness now exists or shall hereafter be created, is not paid at final maturity of any Instrument (either at its stated maturity or upon acceleration thereof), and such indebtedness is not discharged, or such acceleration is not rescinded or annulled, within a period of 30 days after receipt of written notice, sent by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities a written notice specifying such default and requiring the Company to cause such indebtedness to be discharged or cause such default to be cured or waived or such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder; or

(6) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company or any Subsidiary a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of the property of either, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

(7) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by either to the entry of a decree or order for relief in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against either, or the filing by either of a petition or answer or consent seeking reorganization or similar relief under any applicable Federal or State law, or the consent by either to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of the property of either, or the making by either of an assignment for the benefit of creditors, or the admission by either in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or any Subsidiary in furtherance of any such action.

SECTION 5.2 Acceleration of Maturity; Rescission and Annulment.

If an Event of Default (other than an Event of Default specified in Section 5.1(6) or 5.1(7) with respect to the Company) occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities may, subject to the provisions of Article XIII, declare the principal of all the Securities to be due and payable

immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), and upon any such declaration such principal and all accrued interest thereon shall become immediately due and payable. If an Event of Default specified in Section 5.1(6) or 5.1(7) with respect to the Company occurs, the principal of, and accrued interest on, all the Securities shall, subject to the provisions of Article XIII, ipso facto become immediately due and payable without any declaration or other Act of the Holders or any act on the part of the Trustee.

At any time after such declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article V provided, the Holders of a majority in principal amount of the Outstanding Securities, by written notice to the Company and the Trustee, may, on behalf of all Holders, rescind and annul such declaration and its consequences if:

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay

(i) all overdue interest on all Securities,

(ii) the principal of and premium, if any, on any Securities that have become due otherwise than by such declaration of acceleration and any interest thereon at the rate borne by the Securities,

(iii) to the extent permitted by applicable law, interest upon overdue interest at a rate of 5% per annum, and

(iv) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel;

(2) all Events of Default, other than the nonpayment of the principal of and any premium and interest on, Securities which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13; and

(3) such rescission and annulment would not conflict with any judgment or decree issued in appropriate judicial proceedings regarding the payment by the Trustee to the Holders of the amounts referred to in 5.2(1).

No rescission or annulment referred to above shall affect any subsequent default or impair any right consequent thereon.

SECTION 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if:

(1) default is made in the payment of any interest (including any Additional Interest) on any Security when it becomes due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of or premium, if any, on any Security at the Maturity thereof,

the Company will, upon demand of the Trustee but subject to the provisions of Article XIII, pay to it, for the benefit of the Holders of such Securities the whole amount then due and payable on such Securities for principal and interest (including any Additional Interest) and interest on any overdue principal and premium, if any, and, to the extent permitted by applicable law, on any overdue interest (including any Additional Interest), at a rate of 5% per annum, and in addition thereto, such further amount as shall be sufficient to cover the reasonable costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 5.4 Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or the creditors of either, the Trustee (irrespective of whether the principal of, and any interest on, the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(1) to file a proof of claim for the whole amount of principal, premium, if any, and interest owing and unpaid in respect of the Securities and take such other actions, including participating as a member, voting or otherwise, of any official committee of creditors appointed in such matter, and to file such other papers or documents, in each of the foregoing cases, as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders of Securities allowed in such judicial proceeding, and

(2) to collect and receive any moneys or other property payable or deliverable on any such claim and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of Securities to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 6.7.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder of a Security in any such proceeding; *provided*, *however*, that the Trustee may, on behalf of such Holders, vote for the election of a trustee in bankruptcy or similar official.

SECTION 5.5 Trustee May Enforce Claims Without Possession of Securities.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which judgment has been recovered.

SECTION 5.6 Application of Money Collected.

Subject to Article XIII, any money collected by the Trustee pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, premium, if any, or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.7;

SECOND: To the payment of the amounts then due and unpaid for principal of, premium, if any, or accrued and unpaid interest (including Additional Interest, if any) on, the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal, premium, if any, and accrued and unpaid interest (including Additional Interest, if any), respectively;

THIRD: To such other Person or Persons, if any, to the extent entitled thereto; and

FOURTH: Any remaining amounts shall be repaid to the Company.

The Trustee shall notify the Company in writing of the payment date or dates fixed by the Trustee pursuant to this Section.

SECTION 5.7 Limitation on Suits.

No Holder of any Security shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) such Holder has previously given written notice to the Trustee of an Event of Default and such Event of Default is continuing at the time of such institution;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee, and if requested, shall have provided to the Trustee, reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice under Section 5.7(1), request under 5.7(2) and offer of indemnity (or if requested, receipt of indemnity) under Section 5.7(3) has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60 day period by the Holders of a majority in principal amount of the Outstanding Securities, it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

SECTION 5.8 Unconditional Right of Holders to Receive Principal, Premium and Interest and to Convert.

Notwithstanding any other provision in this Indenture, but subject to the provisions of Article XIII, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of, premium, if any, and (subject to Section 3.7) interest (including Additional Interest, if any) on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption or repurchase, on the Redemption Date, Repurchase Date or Purchase Date, as the case may be), and to convert such Security in accordance with Article XII, and to institute suit for the enforcement of any such payment and right to convert, and such rights shall not be impaired without the consent of such Holder.

SECTION 5.9 Restoration of Rights and Remedies.

If the Trustee or any Holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders of Securities shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and such Holders shall continue as though no such proceeding had been instituted.

SECTION 5.10 Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.6, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 5.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or any acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee or to the Holders of Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or (subject to the limitations contained in this Indenture) by the Holders of Securities as the case may be.

SECTION 5.12 Control by Holders of Securities.

Subject to Section 6.3, the Holders of a majority in principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture, and

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and

(3) the Trustee need not take any action that might involve it in personal liability or be unjustly prejudicial to the Holders of Securities not consenting.

SECTION 5.13 Waiver of Past Defaults.

The Holders, either (i) through the written consent of not less than a majority in principal amount of the Outstanding Securities or (ii) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least 66 2/3% in principal amount of the Outstanding Securities represented at such meeting, may on behalf of the Holders of all the Securities waive any past default hereunder and its consequences, except a default (A) in the payment of the principal of, premium, if any, or interest (including Additional Interest) on any Security, or (B) in respect of a covenant or provision hereof which under Article VIII cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 5.14 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities, or to any suit instituted by any Holder of any Security for the enforcement of the payment of the principal of, premium, if any, or interest on any Security on or after the respective Stated Maturity or Maturities expressed in such Security (or, in the case of redemption or repurchase, on or after the Redemption Date, Repurchase Date or Purchase Date, as the case may be) or for the enforcement of the right to convert any Security in accordance with Article XII.

SECTION 5.15 Waiver of Stay, Usury or Extension Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, usury or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede by reason of such law the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI
THE TRUSTEE

SECTION 6.1 Certain Duties and Responsibilities.

(1) Except during the continuance of an Event of Default,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture, but not to verify the contents thereof.

(2) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(3) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(i) this paragraph (3) shall not be construed to limit the effect of paragraph (1) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(4) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

SECTION 6.2 Notice of Defaults.

Within 90 days after the occurrence of any default hereunder as to which the Trustee has received written notice, the Trustee shall give to all Holders of Securities, in the manner provided in Section 1.6, notice of such default, unless such default shall have been cured or waived; *provided*, *however*, that, except in the case of a default in the payment of the principal of, premium, if any, or interest on any Security, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders; and provided, further, that in the case of any default of the character specified in Section 5.1(4), no such notice to Holders of Securities shall be given until at least 60 days after the occurrence thereof or, if applicable, the cure period specified therein. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

SECTION 6.3 Certain Rights of Trustee.

Subject to the provisions of Section 6.1:

(1) the Trustee may rely, and shall be protected in acting or refraining from acting, upon any resolution, Officers' Certificate, other certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon, other evidence of indebtedness or other paper or document (collectively, the "Documents") believed by it to be genuine and to have been signed or presented by the proper party or parties, and the Trustee need not investigate any fact or matter stated in such Documents;

(2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be the one specifically prescribed) may, in the absence of bad faith on its part, request and rely upon an Officers' Certificate or Opinion of Counsel;

(4) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Securities pursuant to this Indenture, unless such Holders shall have offered, and, if requested by the Trustee, delivered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon, other evidence of indebtedness or other paper or document, but the Trustee may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; and

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

SECTION 6.4 Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Securities (except the Trustee's certificates of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture, of the Securities or of the Common Stock issuable upon the conversion of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

SECTION 6.5 May Hold Securities, Act as Trustee under Other Indentures.

The Trustee, any Authenticating Agent, any Paying Agent, any Conversion Agent or any other agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Conversion Agent or such other agent.

The Trustee may become and act as trustee under other indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding in the same manner as if it were not Trustee hereunder.

SECTION 6.6 Money Held in Trust.

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

SECTION 6.7 Compensation and Reimbursement.

The Company agrees:

(1) to pay to the Trustee from time to time such reasonable compensation as the Company and the Trustee shall from time to time agree in writing for its acceptance of this Indenture and for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee (including costs and expenses of enforcing this Indenture and defending itself against any claim (whether asserted by the Company, any Holder of Securities or any other Person) or liability in connection with the exercise of any of its powers or duties hereunder) in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(3) to indemnify the Trustee (and its directors, officers, employees and agents) for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs, expenses and reasonable attorneys' fees of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The Trustee shall have a lien prior to the Securities on all money or property held or controlled by the Trustee to secure the Company's payment obligations in the Section 6.7, except that held in trust to pay principal and interest (including Additional Interest) on the Securities.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.1(6) or Section 5.1(7), the expenses (including the reasonable charges of its counsel) and the compensation for the services are intended to constitute expenses of the administration under any applicable Federal or state bankruptcy, insolvency or other similar law.

The provisions of this Section shall survive the termination of this Indenture or the earlier resignation or removal of the Trustee.

SECTION 6.8 Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such, having (or be part of a holding company group with) a combined capital and surplus of at least U.S.$50,000,000, subject to supervision or examination by federal or state authority, and in good standing. The Trustee or an Affiliate of the Trustee shall maintain an established place of business in the Borough of Manhattan, The City of New York. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section,

the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article and a successor shall be appointed pursuant to Section 6.9.

SECTION 6.9 Resignation and Removal; Appointment of Successor.

(1) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.10.

(2) The Trustee may resign at any time by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.10 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(3) The Trustee may be removed at any time by an Act of the Holders of a majority in principal amount of the Outstanding Securities, delivered to the Trustee and the Company. If the instrument of acceptance by a successor Trustee required by Section 6.10 shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the removed Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(4) If at any time:

(i) the Trustee shall cease to be eligible under Section 6.8 and shall fail to resign after written request therefor by the Company or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

(ii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case (i) the Company by a Board Resolution may remove the Trustee, or (ii) subject to Section 5.14, any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(5) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee and shall comply with the applicable requirements of this Section and Section 6.10. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities delivered to the Company and the retiring

Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.10, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Holders of Securities and accepted appointment in the manner required by this Section and Section 6.10, any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(6) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to all Holders of Securities in the manner provided in Section 1.6. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

SECTION 6.10 Acceptance of Appointment by Successor.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments to more fully and with more certainty vest in and confirm to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be eligible under this Article.

SECTION 6.11 Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including the trust created by this Indenture), shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

SECTION 6.12 Authenticating Agents.

The Trustee may, with the consent of the Company, appoint an "Authenticating Agent" or Agents acceptable to the Company with respect to the Securities, which Authenticating Agent shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon exchange or substitution pursuant to this Indenture.

Securities authenticated by an Authenticating Agent shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder, and every reference in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be subject to acceptance by the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent and subject to supervision or examination by government or other fiscal authority. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.12, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.12.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to all or substantially all the corporate agency or corporate trust business of an Authenticating Agent (including the authenticating agency contemplated by this Indenture), shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section 6.12, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.12, the Trustee may appoint a successor Authenticating Agent which shall be subject to acceptance by the Company. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 6.12.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.12.

If an Authenticating Agent is appointed with respect to the Securities pursuant to this Section 6.12, the Securities may have endorsed thereon, in addition to or in lieu of the Trustee's certification of authentication, an alternative certificate of authentication in the following form:

This is one of the Securities referred to in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____

As Authenticating Agent

By: _____

Authorized Signatory

SECTION 6.13 Disqualification; Conflicting Interests.

If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

SECTION 6.14 Preferential Collection of Claims Against Company.

If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

ARTICLE VII
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 7.1 Company May Consolidate, Etc. Only on Certain Terms.

The Company shall not consolidate with or merge into any other Person or convey, transfer, sell or lease all its properties and assets substantially as an entirety to any Person, and the Company shall not permit any Person to consolidate with or merge into the Company or convey, transfer, sell or lease such Person's properties and assets substantially as an entirety to the Company unless:

(1) the Person formed by such consolidation or into or with which the Company is merged or in the case of a merger pursuant to Section 251(g) of the Delaware General Corporation Law (the "DGCL") (or any successor or equivalent statutory provision), the resulting holding company so long as such holding company, after giving effect to such merger and related transactions, is a corporation and holds substantially all the properties and the assets of the Company either directly or in a manner not materially more adverse to the interests of Holders of the Securities

than the manner in which such properties and assets were held by the Company prior to such merger, or the Person to which the properties and assets of the Company are so conveyed, transferred, sold or leased shall be a corporation organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and, if other than the Company, shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of, premium, if any, and interest (including Additional Interest, if any) on all of the Securities as applicable, and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and shall have provided for conversion rights in accordance with Article XII;

(2) immediately after giving effect to such transaction, no Event of Default, and no event that after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with, together with any documents required under Section 8.3.

SECTION 7.2 Successor Substituted.

Upon any consolidation of the Company with, or merger of the Company into any other Person or any conveyance, transfer or lease of all or substantially all the properties and assets of the Company in accordance with Section 7.1, the successor Person formed by such consolidation or into or with which the Company is merged (including a holding company as specified in Section 7.1(1)) or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE VIII
SUPPLEMENTAL INDENTURES

SECTION 8.1 Supplemental Indentures Without Consent of Holders of Securities.

Without the consent of any Holders of Securities the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto for any of the following purposes:

(1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants and obligations of the Company herein and in the Securities as permitted by Article VII of this Indenture; or

(2) to add to the covenants of the Company for the benefit of the Holders of Securities or to surrender any right or power herein conferred upon the Company; or

(3) to secure the Securities; or

(4) to make provision with respect to the conversion rights of Holders of Securities pursuant to Section 12.11 or to make provision with respect to the repurchase rights of Holders of Securities pursuant to Section 14.4; or

(5) to make any changes or modifications to this Indenture necessary in connection with the registration of any Registrable Securities under the Securities Act as contemplated by the Registration Rights Agreement, provided such action pursuant to this clause (5) shall not adversely affect the interests of the Holders of Securities; or

(6) to comply with the requirements of the Trust Indenture Act or the rules and regulations of the Commission thereunder in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act, as contemplated by this Indenture or otherwise; or

(7) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee; or

(8) subject to Section 13.12, to make any change in Article XIII that would limit or terminate the benefits available to any holder of Designated Senior Debt under such Article; or

(9) to cure any ambiguity, to correct or supplement any provision herein that may be inconsistent with any other provision herein or that is otherwise defective, or to make any other provisions with respect to matters or questions arising under this Indenture as the Company and the Trustee may deem necessary or desirable, provided such action pursuant to this clause (9) shall not adversely affect the interests of the Holders of Securities in any material respect.

Upon Company Request, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and subject to and upon receipt by the Trustee of the documents described in Section 8.3 hereof, the Trustee shall join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained.

SECTION 8.2 Supplemental Indentures with Consent of Holders of Securities.

With either (i) the written consent of the Holders of not less than a majority in principal amount of the Outstanding Securities, by the Act of said Holders delivered to the Company and the Trustee, or (ii) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least 66 2/3% in principal amount of the Outstanding Securities represented at such meeting, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions

of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent or affirmative vote of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of interest on, any Security, or reduce the principal amount of, or the premium, if any, or the rate of interest payable thereon, or reduce the amount payable upon a redemption or mandatory repurchase, or reduce the amount payable upon acceleration of the majority of the Securities, or change the place or currency of payment of the principal of, premium, if any, or interest on any Security (including any payment of Additional Interest or Redemption Price, Repurchase Price or Purchase Price in respect of such Security) or impair the right to institute suit for the enforcement of any payment in respect of any Security on or after the Stated Maturity thereof (or, in the case of redemption or any repurchase, on or after the Redemption Date, Repurchase Date or Purchase Date, as the case may be) or, except as permitted by Section 12.11, adversely affect the right of Holders to convert any Security as provided in Article XII; or

(2) reduce the requirements of Section 9.4 for quorum or voting, or reduce the percentage in principal amount of the Outstanding Securities the consent of whose Holders is required for any such supplemental indenture or the consent of whose Holders is required for any waiver of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences provided for in this Indenture; or

(3) modify the obligation of the Company to maintain an office or agency in the Borough of Manhattan, The City of New York, pursuant to Section 10.2; or

(4) modify any of the provisions of this Section or Section 5.13, except to increase any percentage contained herein or therein or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; or

(5) modify the provisions of Article XIV in a manner adverse to the Holders; or

(6) modify the provisions of Section 11.1 in a manner adverse to the Holders.

It shall not be necessary for any Act of Holders of Securities under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 8.3 Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that such supplemental indenture has been duly

authorized, executed and delivered by the Company and constitutes a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 8.4 Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder appertaining thereto shall be bound thereby.

SECTION 8.5 Reference in Securities to Supplemental Indentures.

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Company and the Trustee, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

SECTION 8.6 Notice of Supplemental Indentures.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of Section 8.2, the Company shall give notice to all Holders of Securities of such fact, setting forth in general terms the substance of such supplemental indenture, in the manner provided in Section 1.6. Any failure of the Company to give such notice, or any defect therein, shall not in any way impair or affect the validity of any such supplemental indenture.

ARTICLE IX
MEETINGS OF HOLDERS OF SECURITIES

SECTION 9.1 Purposes for Which Meetings May Be Called.

A meeting of Holders of Securities may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities.

SECTION 9.2 Call, Notice and Place of Meetings.

(1) The Trustee may at any time call a meeting of Holders of Securities for any purpose specified in Section 9.1, to be held at such time and at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine. Notice of every meeting of Holders of Securities, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 1.6, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(2) In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 25% in principal amount of the Outstanding Securities shall have requested the Trustee to call a meeting of the Holders of Securities for any purpose specified in Section 9.1, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities in the amount specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, for such meeting and may call such meeting for such purposes by giving notice thereof as provided in paragraph (1) of this Section.

SECTION 9.3 Persons Entitled to Vote at Meetings.

To be entitled to vote at any meeting of Holders of Securities, a Person shall be (i) a Holder of one or more Outstanding Securities, or (ii) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 9.4 Quorum; Action.

The Persons entitled to vote a majority in principal amount of the Outstanding Securities shall constitute a quorum. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities, be dissolved. In any other case, the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting (subject to repeated applications of this sentence). Notice of the reconvening of any adjourned meeting shall be given as provided in Section 9.2(1), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage of the principal amount of the Outstanding Securities that shall constitute a quorum.

Subject to the foregoing, at the reconvening of any meeting adjourned for a lack of a quorum, the Persons entitled to vote 25% in principal amount of the Outstanding Securities at the time shall constitute a quorum for the taking of any action set forth in the notice of the original meeting.

At a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid, any resolution and all matters (except as limited by the proviso to Section 8.2 and except to the extent Section 10.12 requires a different vote) shall be effectively passed and decided if passed or decided by the lesser of (i) the Holders of not less than a majority in principal amount of Outstanding Securities and (ii) the Persons entitled to vote not less than 66 $^{2}/_{3}$% in principal amount of Outstanding Securities represented and entitled to vote at such meeting.

Any resolution passed or decisions taken at any meeting of Holders of Securities duly held in accordance with this Section shall be binding on all the Holders of Securities whether or not present or represented at the meeting. The Trustee shall, in the name and at the expense of the Company, notify all the Holders of Securities of any such resolutions or decisions pursuant to Section 1.6.

SECTION 9.5 Determination of Voting Rights; Conduct and Adjournment of Meetings.

(1) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities in regard to proof of the holding of Securities and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 1.4 and the appointment of any proxy shall be proved in the manner specified in Section 1.4 or by having the signature of the Person executing the proxy guaranteed by any bank, broker or other eligible institution participating in a recognized medallion signature guarantee program.

(2) The Trustee shall, by an instrument in writing, appoint a temporary chairman (which may be the Trustee) of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 9.2(2), in which case the Company or the Holders of Securities calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting.

(3) At any meeting, each Holder of a Security or proxy shall be entitled to one vote for each U.S.$1,000 principal amount of Securities held or represented by him; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security or proxy.

(4) Any meeting of Holders of Securities duly called pursuant to Section 9.2 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting, and the meeting may be held as so adjourned without further notice.

SECTION 9.6 Counting Votes and Recording Action of Meetings.

The vote upon any resolution submitted to any meeting of Holders of Securities shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities or of their representatives by proxy and the principal amounts at Stated Maturity and serial numbers of the

Outstanding Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 9.2 and, if applicable, Section 9.4. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE X
COVENANTS

SECTION 10.1 Payment of Principal, Premium and Interest.

The Company covenants and agrees that it will duly and punctually pay the principal of and premium, if any, and interest (including Additional Interest, if any) on the Securities in accordance with the terms of the Securities and this Indenture. The Company will deposit or cause to be deposited with the Trustee or its nominee, no later than 10:00 am (New York City time) on the date of the Stated Maturity of any Security or no later than 10:00 am (New York City time) on the due date for any installment of interest, all payments so due, which payments shall be in immediately available funds on the date of such Stated Maturity or due date, as the case may be.

SECTION 10.2 Maintenance of Offices or Agencies.

The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where the Securities may be surrendered for registration of transfer or exchange or for presentation for payment or for conversion, redemption or repurchase and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee in the Borough of Manhattan, The City of New York.

The Company may at any time and from time to time vary or terminate the appointment of any such agent or appoint any additional agents for any or all of such purposes; *provided*, *however*, that until all of the Securities have been delivered to the Trustee for cancellation, or moneys sufficient to pay the principal of, premium, if any, and interest on the Securities have been made available for payment and either paid or returned to the Company pursuant to the provisions of

Section 10.3, the Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where Securities may be presented or surrendered for payment and conversion, which shall initially be U.S. Bank Trust National Association, an Affiliate of the Trustee, where Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee, and notice to the Holders in accordance with Section 1.6, of the appointment or termination of any such agents and of the location and any change in the location of any such office or agency.

The Company hereby initially designates the Trustee as Paying Agent, Security Registrar and Conversion Agent, and each of the Corporate Trust Office of the Trustee and the office or agency of the Trustee in the Borough of Manhattan, The City of New York, located at U.S. BANK TRUST NATIONAL ASSOCIATION, 100 Wall Street, Suite 1600, New York, New York 10005, attention: Corporate Trust Services (Casual Male Retail Group, Inc. 5% Convertible Senior Subordinated Notes due January 1, 2024) as one such office or agency of the Company for each of the aforesaid purposes.

SECTION 10.3 Money for Security Payments to Be Held in Trust.

If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal of, premium, if any, or interest on any of the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal, premium, if any, or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and the Company will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, no later than 10:00 am (New York City time) on each due date of the principal of, premium, if any, or interest on any Securities, deposit with the Trustee a sum in funds immediately payable on the payment date sufficient to pay the principal, premium, if any, or interest so becoming due, such sum to be held for the benefit of the Persons entitled to such principal, premium, if any, or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure so to act.

The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of, premium, if any, or interest on Securities for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities) in the making of any payment of principal, premium, if any, or interest; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium, if any, or interest on any Security and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

SECTION 10.4 Existence.

Subject to Article VII, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; *provided, however*, that the Company shall not be required to preserve any such right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and that the loss thereof is not disadvantageous in any material respect to the Holders.

SECTION 10.5 Payment of Taxes and Other Claims.

The Company will pay or discharge, or cause to be paid or discharged, before the same may become delinquent, (i) all taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary, (ii) all claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon the property of the Company or any Subsidiary, and (iii) all stamps and other duties, if any, which may be imposed by the United States or any political subdivision thereof or therein in connection with the issuance, transfer, exchange or conversion of any Securities or with respect to this Indenture; *provided, however*, that, in the case of clauses (i) and (ii), the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim (A) if the failure to do so will not, in the aggregate, have a material adverse impact on the Company and its Subsidiaries, taken as a whole, or (B) if the amount, applicability or validity is being contested in good faith by appropriate proceedings.

SECTION 10.6 Statement by Officers as to Default.

The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not, to the knowledge of the signers thereof, the Company is in default in the performance and observance of

any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

The Company will deliver to the Trustee, forthwith upon becoming aware of any default or any Event of Default under the Indenture, an Officers' Certificate specifying with particularity such default or Event of Default and further stating what action the Company has taken, is taking or proposes to take with respect thereto. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

Any notice required to be given under this Section 10.6 shall be delivered to the Trustee at its Corporate Trust Office.

SECTION 10.7 Limitation On Incurring Senior Subordinated Indebtedness.

The Company will not, directly or indirectly, Incur, or suffer to exist, any indebtedness that by its terms would expressly rank senior in right of payment to the Securities and subordinate in right of payment to any of its Designated Senior Indebtedness.

SECTION 10.8 Delivery of Certain Information.

At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder of a Restricted Security or the holder of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder of Restricted Securities or such holder of shares of Common Stock issued upon conversion of Restricted Securities, or to a prospective purchaser of any such security designated by any such Holder or holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act (or any successor provision thereto) in connection with the resale of any such security; *provided, however*, that the Company shall not be required to furnish such information in connection with any request made on or after the date which is two years from the later of (i) the Issue Date, (ii) the date such a security (or any such predecessor security) was last acquired from the Company or (iii) the date such a security (or any such predecessor security) was last acquired from an "affiliate" of the Company within the meaning of Rule 144 under the Securities Act (or any successor provision thereto). "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).

SECTION 10.9 Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any covenant or condition set forth in Sections 10.4 (other than with respect to the existence of the Company (subject to Article VII)), and 10.5, inclusive (other than a covenant or condition which under Article VIII cannot be modified or amended without the consent of the Holder of each Outstanding Security affected), if before the time for such compliance the Holders shall, through (i) the written consent of not less than a majority in principal amount of the Outstanding Securities or (ii) the adoption of a

resolution at a meeting of Holders of the Outstanding Securities at which a quorum is present by the Holders of not less than 66 2/3% in principal amount of the Outstanding Securities represented at such meeting, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee or any Paying or Conversion Agent in respect of any such covenant or condition shall remain in full force and effect.

SECTION 10.10 Additional Interest.

If Additional Interest is payable under the Registration Rights Agreement, the Company shall deliver to the Trustee a certificate to that effect stating (i) the amount of Additional Interest that is payable and (ii) the date on which Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no Additional Interest is payable. If Additional Interest has been paid by the Company directly to the persons entitled to it, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

ARTICLE XI
REDEMPTION OF SECURITIES

SECTION 11.1 Right of Redemption.

The Securities may be redeemed in accordance with the provisions of the form of Securities set forth in Section 2.2.

SECTION 11.2 Applicability of Article.

Redemption of Securities at the election of the Company or otherwise, as permitted or required by any provision of the Securities or this Indenture, shall be made in accordance with such provision and this Article XI.

SECTION 11.3 Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Securities shall be evidenced by a Board Resolution. Subject to Section 11.5, in case of any redemption at the election of the Company of any of the Securities, the Company shall, at least 30 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date.

SECTION 11.4 Selection by Trustee of Securities to Be Redeemed.

If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected by the Trustee within five Business Days after it receives the notice described in 11.3, from the Outstanding Securities not previously called for redemption, on a pro rata basis, by lot or by such other method as the Trustee may deem fair and appropriate.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as Outstanding for the purpose of such selection. The Trustee shall promptly notify the Company and each Security Registrar in writing of the securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

SECTION 11.5 Notice of Redemption.

Notice of redemption shall be given in the manner provided in Section 1.6 to the Holders of Securities to be redeemed not less than 20 nor more than 60 days prior to the Redemption Date, and such notice shall be irrevocable.

All notices of redemption shall state:

(1) the Redemption Date,

(2) the Redemption Price, and accrued interest (including Additional Interest, if any), if any, to, but excluding, the Redemption Date,

(3) if less than all Outstanding Securities are to be redeemed, the aggregate principal amount of Securities to be redeemed and the aggregate principal amount of Securities which will be outstanding after such partial redemption,

(4) that on the Redemption Date the Redemption Price, and accrued but unpaid interest (including Additional Interest, if any), if any, to, but excluding, the Redemption Date, will become due and payable upon each such Security to be redeemed, and that interest thereon shall cease to accrue on and after said date,

(5) the Conversion Rate, the date on which the right to convert the Securities to be redeemed will terminate and the places where such Securities may be surrendered for conversion, and

(6) the place or places where such Securities are to be surrendered for payment of the Redemption Price and accrued interest (including Additional Interest, if any), if any, to, but excluding, the Redemption Date.

In case of a partial redemption, the notice shall specify the serial and CUSIP numbers (if any) and the portions thereof called for redemption and that transfers and exchanges may occur on or prior to the Redemption Date.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's written request, by the Trustee in the name of and at the expense of the Company. Notice of redemption of Securities to be redeemed at the election of the Company received by the Trustee shall be given by the Trustee to each Paying Agent in the name of and at the expense of the Company.

SECTION 11.6 Deposit of Redemption Price.

On or prior to the Redemption Date, the Company shall deposit with the Trustee (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.3) an amount of money (which shall be in immediately available funds on such Redemption Date) sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest (including Additional Interest, if any) to, but excluding, the Redemption Date on, all the Securities which are to be redeemed on that date other than any Securities called for redemption on that date which have been converted prior to the date of such deposit.

If any Security called for redemption is converted, any money deposited with the Trustee or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 3.7) be paid to the Company as promptly as reasonably practicable or, if then held by the Company, shall be discharged from such trust.

SECTION 11.7 Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the Redemption Price, including accrued interest) such Securities shall cease to bear interest. Upon surrender of any Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price together with accrued and unpaid interest (including Additional Interest, if any) to, but excluding, the Redemption Date; *provided, however*, that installments of interest on Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 3.7.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal amount of, premium, if any, and, to the extent permitted by applicable law, accrued interest on such Security shall, until paid, bear interest from the Redemption Date at a rate of 5% per annum and such Security shall remain convertible until the Redemption Price of such Security (or portion thereof, as the case may be) shall have been paid or duly provided for.

Any Security that is to be redeemed only in part shall be surrendered at the Corporate Trust Office or an office or agency of the Company designated for that purpose pursuant to Section 10.2 (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

SECTION 11.8 Conversion Arrangement on Call for Redemption.

In connection with any redemption of Securities, the Company may arrange for the purchase and conversion of any Securities by an agreement with one or more investment bankers or other purchasers (the "Purchasers") to purchase such Securities by paying to the Trustee in trust for the Holders, on or before the Redemption Date, an amount not less than the applicable Redemption Price, together with interest accrued to, but excluding, the Redemption Date, of such Securities. Notwithstanding anything to the contrary contained in this Article XI, the obligation of the Company to pay the Redemption Price, together with interest accrued to, but excluding, the Redemption Date, shall be deemed to be satisfied and discharged to the extent such amount is so paid by such Purchasers. If such an agreement is entered into (a copy of which shall be filed with the Trustee prior to the close of business on the Business Day immediately prior to the Redemption Date), any Securities called for redemption that are not duly surrendered for conversion by the Holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, and consistent with any agreement or agreements with such Purchasers, to be acquired by such Purchasers from such Holders and (notwithstanding anything to the contrary contained in Article XII) surrendered by such Purchasers for conversion, all as of immediately prior to the close of business on the Redemption Date (and the right to convert any such Securities shall be extended through such time), subject to payment of the above amount as aforesaid. At the direction of the Company, the Trustee shall hold and dispose of any such amount paid to it by the Purchasers to the Holders in the same manner as it would monies deposited with it by the Company for the redemption of Securities. Without the Trustee's prior written consent, no arrangement between the Company and such Purchasers for the purchase and conversion of any Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Securities between the Company and such Purchasers, including the costs and expenses, including reasonable legal fees, incurred by the Trustee in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture.

ARTICLE XII
CONVERSION OF SECURITIES

SECTION 12.1 Conversion Privilege and Conversion Rate.

Subject to and upon compliance with the provisions of this Article, at the option of the Holder thereof, any Security may be converted, in whole or in part, into fully paid and nonassessable shares (calculated as to each conversion to the nearest 1/100th of a share) of Common Stock of the Company at the Conversion Rate, determined as hereinafter provided, in effect at the time of conversion. Such conversion right shall commence on the Issue Date and expire at the close of business on the date of Maturity, subject, in the case of conversion of any Global Security, to any Applicable Procedures. In case a Security or portion thereof is called for redemption at the election of the Company or the Holder thereof exercises his right to require the Company to repurchase the Security, such conversion right in respect of the Security, or portion thereof so called for redemption or submitted for repurchase, shall expire at the close of business on the Business Day immediately preceding the Redemption Date or the Repurchase Date or Purchase Date, as the case may be, unless the Company defaults in making the payment due upon redemption or repurchase, as the case may be, in which case the conversion right will terminate at the close of business on the date such default is cured and the Securities are redeemed or repurchased, as the case may be (in each case subject as aforesaid to any Applicable Procedures with respect to any Global Security).

The rate at which shares of Common Stock shall be delivered upon conversion (herein called the “Conversion Rate”) shall be initially equal to 93.8967 shares for each U.S.$1,000 principal amount of Securities. The Conversion Rate shall be adjusted in certain instances as provided in this Article XII.

SECTION 12.2 Exercise of Conversion Privilege.

In order to exercise the conversion privilege, the Holder of any Security to be converted shall surrender such Security, duly endorsed or assigned to the Company or in blank, at any office or agency of the Company maintained for that purpose pursuant to Section 10.2, accompanied by a duly signed conversion notice substantially in the form set forth in Section 2.4 stating that the Holder elects to convert such Security or, if less than the entire principal amount thereof is to be converted, the portion thereof to be converted. Each Security surrendered for conversion (in whole or in part) during the Record Date Period shall (except in the case of any Security or portion thereof which has been called for redemption or if a Fundamental Change has occurred and an offer to repurchase the Securities is pending) be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of such Security (or part thereof, as the case may be) being surrendered for conversion. The interest so payable on such Interest Payment Date with respect to any Security (or portion thereof, if applicable) that is surrendered for conversion during the Record Date Period shall be paid to the Holder of such Security as of such Regular Record Date in an amount equal to the interest that would have been payable on such Security if such Security had been converted as of the close of business on such Interest Payment Date. Interest payable on any Interest Payment Date in respect of any Security surrendered for conversion on or after such Interest

Payment Date shall be paid to the Holder of such Security as of the Regular Record Date next preceding such Interest Payment Date, notwithstanding the exercise of the right of conversion. Except as provided in this paragraph and subject to the last paragraph of Section 3.7, no cash payment or adjustment shall be made upon any conversion on account of any interest accrued from the Interest Payment Date next preceding the conversion date, in respect of any Security (or part thereof, as the case may be) surrendered for conversion, or on account of any dividends on the Common Stock issued upon conversion. The Company's delivery to the Holder of the number of shares of Common Stock (and cash in lieu of fractions thereof, as provided in this Indenture) into which a Security is convertible will be deemed to satisfy the Company's obligation to pay the principal amount of the Security.

Securities shall be deemed to have been converted immediately prior to the close of business on the day of surrender of such Securities for conversion in accordance with the foregoing provisions, and at such time the rights of the Holders of such Securities as Holders shall cease, and the Person or Persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the conversion date, the Company shall issue and deliver to the Trustee, for delivery to the Holder, a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, together with payment in lieu of any fraction of a share, as provided in Section 12.3.

All shares of Common Stock delivered upon such conversion of Restricted Securities shall bear restrictive legends substantially in the form of the legends required to be set forth on the Restricted Securities pursuant to Section 3.5 and shall be subject to the restrictions on transfer provided in such legends. Neither the Trustee nor any agent maintained for the purpose of such conversion shall have any responsibility for the inclusion or content of any such restrictive legends on such Common Stock; *provided*, *however*, that the Trustee or any agent maintained for the purpose of such conversion shall have provided, to the Company or to the Company's transfer agent for such Common Stock, prior to or concurrently with a request to the Company to deliver such Common Stock, written notice that the Securities delivered for conversion are Restricted Securities.

In the case of any Security which is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities of authorized denominations in an aggregate principal amount equal to the unconverted portion of the principal amount of such Security. A Security may be converted in part, but only if the principal amount of such Security to be converted is any integral multiple of U.S.$1,000 and the principal amount of such security to remain Outstanding after such conversion is equal to U.S.$1,000 or any integral multiple of $1,000 in excess thereof.

If shares of Common Stock to be issued upon conversion of a Restricted Security, or Securities to be issued upon conversion of a Restricted Security in part only, are to be registered in a name other than that of the beneficial owner of such Restricted Security, then such Holder must deliver to the Conversion Agent a Surrender Certificate, dated the date of surrender of such

Restricted Security and signed by such beneficial owner, as to compliance with the restrictions on transfer applicable to such Restricted Security. Neither the Trustee nor any Conversion Agent, Registrar or Transfer Agent shall be required to register in a name other than that of the beneficial owner, shares of Common Stock or Securities issued upon conversion of any such Restricted Security not so accompanied by a properly completed Surrender Certificate.

SECTION 12.3 Fractions of Shares.

No fractional shares of Common Stock shall be issued upon conversion of any Security or Securities. If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock that would otherwise be issuable upon conversion of any Security or Securities (or specified portions thereof), the Company shall calculate and pay a cash adjustment in respect of such fraction (calculated to the nearest 1/100th of a share) in an amount equal to the same fraction of the Closing Price Per Share on the last Trading Day prior to the day of conversion.

SECTION 12.4 Adjustment of Conversion Rate.

The Conversion Rate shall be subject to adjustments from time to time as follows:

(1) In case the Company shall pay or make a dividend or other distribution on shares of Common Stock payable in shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such dividend or other distribution shall be increased by dividing such Conversion Rate by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of such number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the total number of shares of Common Stock constituting such dividend or other distribution, such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. If, after any such date fixed for determination, any dividend or distribution is not in fact paid, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would have been in effect if such determination date had not been fixed. For the purposes of this paragraph (1), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(2) In case the Company shall issue rights, options or warrants to all holders of its Common Stock (other than rights issued pursuant to the Rights Plan (as defined in paragraph (13) of this Section 12.4)) entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share (determined as provided in paragraph (8) of this

Section 12.4) of the Common Stock on the date fixed for the determination of stockholders entitled to receive such rights, options or warrants (other than any rights, options or warrants that by their terms will also be issued to any Holder upon conversion of a Security into shares of Common Stock without any action required by the Company or any other Person), the Conversion Rate in effect at the opening of business on the day following the date fixed for such determination shall be increased by dividing such Conversion Rate by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock that the aggregate offering price of the total number of shares of Common Stock so offered for subscription or purchase would purchase at such current market price and the denominator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase, such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. If, after any such date fixed for determination, any such rights, options or warrants are not in fact issued, or are not exercised prior to the expiration thereof, the Conversion Rate shall be immediately readjusted, effective as of the date such rights, options or warrants expire, or the date the Board of Directors determines not to issue such rights, options or warrants, to the Conversion Rate that would have been in effect if the unexercised rights, options or warrants had never been granted or such determination date had not been fixed, as the case may be. For the purposes of this paragraph (2), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not issue any rights, options or warrants in respect of shares of Common Stock held in the treasury of the Company.

(3) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and, conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision or combination becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(4) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock evidences of its indebtedness, shares of any class of capital stock or other property (including cash or assets or securities, but excluding (i) any rights, options or warrants referred to in paragraph (2) of this Section, (ii) any dividend or distribution paid exclusively in cash, (iii) any dividend or distribution referred to in paragraph (1) of this Section, and (iv) any rights issued pursuant to the Rights Plan (as defined in paragraph (13) of this Section 12.4) except as specified in paragraph (13) of this Section 12.4, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by dividing the Conversion Rate in effect immediately prior to the close of business on the date fixed for the determination of stockholders entitled to receive such distribution by a fraction of which the numerator shall be the current market price per share (determined as

provided in paragraph (8) of this Section 12.4) of the Common Stock on the date fixed for such determination less the then fair market value (as determined by the Board of directors, whose determination shall be conclusive and described in a Board Resolution filed with the Trustee) of the portion of the assets, shares or evidences of indebtedness so distributed applicable to one share of Common Stock and the denominator shall be such current market price per share of the Common Stock, such adjustment to become effective immediately prior to the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such distribution. If after any such date fixed for determination, any such distribution is not in fact made, the Conversion Rate shall be immediately readjusted, effective as of the date of the Board of Directors determines not to make such distribution, to the Conversion Rate that would have been in effect if such determination date had not been fixed.

(5) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock, cash (excluding any cash that is distributed as part of a distribution referred to in paragraph (4) of this Section or cash distributed upon a merger or consolidation to which Section 12.11 applies), then, immediately after the close of business on such date for determination, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by dividing the Conversion Rate in effect immediately prior to the close of business on the date fixed for determination of the stockholders entitled to receive such distribution by a fraction (i) the numerator of which shall be equal to the current market price per share (determined as provided in paragraph (8) of this Section) of the Common Stock on the date fixed for such determination less an amount equal to the quotient of (x) the total amount of cash distributed to all holders of the Company's Common Stock divided by (y) the number of shares of Common Stock outstanding on such date for determination and (ii) the denominator of which shall be equal to the current market price per share (determined as provided in paragraph (8) of this Section 12.4) of the Common Stock on such date fixed for determination.

(6) In case a tender offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall expire and such tender offer (as amended upon the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender offer) of Purchased Shares (as defined below)), then, immediately prior to the opening of business on the day after the last time (the "Expiration Time") tenders could have been made pursuant to such tender offer (as it may be amended), the Conversion Rate shall be adjusted so that the same shall equal the rate determined by dividing the Conversion Rate immediately prior to close of business on the date of the Expiration Time by a fraction (i) the numerator of which shall be equal to (A) the product of (I) the current market price per share of the Common Stock (determined as provided in paragraph (8) of this Section 12.4) on the date of the Expiration Time multiplied by (II) the number of shares of Common Stock outstanding (including any tendered shares) on the Expiration Time less (B) the tender amount, and (ii) the denominator of which shall be equal to the product of (A) the current market price per share of the Common Stock (determined as provided in paragraph (8) of this Section 12.4) as of the Expiration Time multiplied by (B) the number of shares of Common Stock outstanding (including any tendered shares) as of the Expiration Time less the number of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the "Purchased Shares").

(7) The reclassification of Common Stock into securities other than Common Stock (other than any reclassification upon a consolidation or merger to which Section 12.11 applies) shall be deemed to involve (a) a distribution of such securities other than Common Stock to all holders of Common Stock (and the effective date of such reclassification shall be deemed to be "the date fixed for the determination of stockholders entitled to receive such distribution" and "the date fixed for such determination" within the meaning of paragraph (4) of this Section), and (b) a subdivision or combination, as the case may be, of the number of shares of Common Stock outstanding immediately prior to such reclassification into the number of shares of Common Stock outstanding immediately thereafter (and the effective date of such reclassification shall be deemed to be "the day upon which such subdivision becomes effective" or "the day upon which such combination becomes effective", as the case may be, and "the day upon which such subdivision or combination becomes effective" within the meaning of paragraph (3) of this Section 12.4).

(8) For the purpose of any computation under paragraphs (2), (4), (5) or (6) of this Section 12.4, the current market price per share of Common Stock on any date shall be calculated by the Company and be the average of the daily Closing Prices Per Share for the ten consecutive Trading Days selected by the Company commencing not more than 10 Trading Days before, and ending not later than the earlier of the day in question and the day before the "ex date" with respect to the issuance or distribution requiring such computation. For purposes of this paragraph, the term "ex date," when used with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way in the applicable securities market or on the applicable securities exchange without the right to receive such issuance or distribution.

(9) No adjustment in the Conversion Rate shall be required unless such adjustment (plus any adjustments not previously made by reason of this paragraph (9)) would require an increase or decrease of at least one percent in such rate; *provided, however*, that any adjustments which by reason of this paragraph (9) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article shall be made to the nearest cent or to the nearest ten-thousandth ($1/10{,}000^{th}$) of a share, as the case may be. Additionally, no adjustment need be made for a change in the par value of the Common Stock.

(10) The Company may make such increases in the Conversion Rate, for the remaining term of the Securities or any shorter term, in addition to those required by paragraphs (1), (2), (3), (4), (5) and (6) of this Section 12.4, as it considers to be advisable in order to avoid or diminish any income tax to any holders of shares of Common Stock resulting from any dividend or distribution of stock or issuance of rights or warrants to purchase or subscribe for stock or from any event treated as such for income tax purposes. The Company shall have the power to resolve any ambiguity or correct any error in this paragraph (10) and its actions in so doing shall, absent manifest error, be final and conclusive.

(11) Notwithstanding the foregoing provisions of this Section, no adjustment of the Conversion Rate shall be required to be made (a) upon the issuance of shares of Common Stock pursuant to any present or future plan for the reinvestment of dividends or (b) because of a tender or exchange offer of the character described in Rule 13e-4(h)(5) under the Exchange Act or any successor rule thereto.

(12) To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least twenty (20) days, the increase is irrevocable during such period, and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive; *provided, however*, that no such increase shall be taken into account for purposes of determining whether the Closing Price Per Share of the Common Stock equals or exceeds 105% of the Conversion Price in connection with an event which would otherwise be a Fundamental Change pursuant to Section 14.3. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall give notice of the increase to the Holders in the manner provided in Section 1.6 at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(13) Pursuant to rights issued under any rights Plan of the Company's (the "Rights Plan"), to the extent the Rights Plan is still in effect, upon conversion of any Security by the holder thereof, such holders will receive, in addition to the Common Stock issuable upon such conversion, the rights described in the Rights Plan, whether or not the rights have separated from the underlying Common Stock at the time of conversion, unless the distribution of such rights would cause certain tax implications as specified in the Rights Plan, in which case the holder shall not receive such rights upon conversion, and in lieu thereof, the Conversion Rate will be adjusted effective immediately prior to conversion pursuant paragraph (4) of this Section 12.4, as though such rights had been distributed to holders of Common Stock on the day immediately preceding the conversion date.

SECTION 12.5 Notice of Adjustments of Conversion Rate.

Whenever the Conversion Rate is adjusted as herein provided:

(1) the Company shall compute the adjusted Conversion Rate in accordance with Section 12.4 and shall prepare a certificate signed by the Chief Financial Officer of the Company setting forth the adjusted Conversion Rate and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall promptly be filed with the Trustee and with each Conversion Agent; and

(2) upon each such adjustment, a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate shall be required, and as soon as reasonably practicable after it is required, such notice shall be provided by the Company to all Holders in accordance with Section 1.6.

Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate or the information and calculations contained therein, except to exhibit the same to any Holder of Securities desiring inspection thereof at its office during normal business hours, and shall not be deemed to have knowledge of any adjustment in the Conversion Rate unless

and until a Responsible Officer of the Trustee shall have received such a certificate. Until a Responsible Officer of the Trustee receives such a certificate, the Trustee and each Conversion Agent may assume without inquiry that the last Conversion Rate of which the Trustee has knowledge of remains in effect.

SECTION 12.6 Notice of Certain Corporate Action.

In case:

(1) the Company shall declare a dividend (or any other distribution) on its Common Stock payable (i) otherwise than exclusively in cash or (ii) exclusively in cash in an amount that would require any adjustment pursuant to Section 12.4; or

(2) the Company shall authorize the granting to all or substantially all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any shares of capital stock of any class or of any other rights; or

(3) of any reclassification of the Common Stock, or of any consolidation, merger or share exchange to which the Company is a party and for which approval of any stockholders of the Company is required, or of the conveyance, sale, transfer or lease of all or substantially all of the assets of the Company; or

(4) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

then the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of Securities pursuant to Section 10.2, and shall cause to be provided to all Holders in accordance with Section 1.6, at least 10 days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights, options or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, conveyance, transfer, sale, lease, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, conveyance, transfer, sale, lease, dissolution, liquidation or winding up. Neither the failure to give such notice or the notice referred to in the following paragraph nor any defect therein shall affect the legality or validity of the proceedings described in clauses (1) through (4) of this Section 12.6. If at the time the Trustee shall not be the conversion agent, a copy of such notice shall also forthwith be filed by the Company with the Trustee.

The Company shall cause to be filed at the Corporate Trust Office and each office or agency maintained for the purpose of conversion of Securities pursuant to Section 10.2, and shall cause to be provided to all Holders in accordance with Section 1.6, notice of any tender offer by the Company or any Subsidiary for all or any portion of the Common Stock at or about the time that such notice of tender offer is provided to the public generally.

SECTION 12.7 Company to Reserve Common Stock.

The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Securities, the full number of shares of Common Stock then issuable upon the conversion of all Outstanding Securities.

SECTION 12.8 Taxes on Conversions.

Except as provided in the next sentence, the Company will pay any and all taxes and duties that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Securities pursuant hereto. The Company shall not, however, be required to pay any tax or duty that may be payable in respect of (i) income of the Holder, or (ii) any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Security or Securities to be converted, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

SECTION 12.9 Covenant as to Common Stock.

The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares to provide for the conversion of the Securities from time to time as such Securities are presented for conversion.

Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Securities, the Company shall take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Price.

The Company agrees that all shares of Common Stock that may be delivered upon conversion of Securities, upon such delivery, will have been duly authorized and validly issued and will be fully paid and nonassessable and, except as provided in Section 12.8, the Company will pay all taxes, liens and charges with respect to the issue thereof.

The Company further covenants that as long as the Common Stock is quoted on the Nasdaq National Market, the Company shall use its reasonable best efforts to cause all Common Stock issuable upon conversion of the Securities to be eligible for such quotation in accordance with, and at the times required under, the requirements of the Nasdaq National Market, and if at any time the Common Stock becomes listed or admitted to trading on any other national securities exchange, or quoted on any other automated quotation system, the Company shall use its reasonable best efforts to cause all Common Stock issuable upon conversion of the Securities to be so listed or quoted and kept so listed or quoted.

SECTION 12.10 Cancellation of Converted Securities.

All Securities delivered for conversion shall be delivered to the Trustee or its agent to be canceled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 3.9.

SECTION 12.11 Provision in Case of Reclassification, Consolidation, Merger or Sale of Assets.

In case of (i) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any consolidation or merger of the Company with or into any other Person, any merger of another Person with or into the Company (other than a merger that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company) or in the case of a merger pursuant to Section 251(g) of the DGCL (or any successor or equivalent statutory provisions), the resulting holding company so long as such holding company, after giving effect to such merger and related transactions, is a corporation and holds substantially all the properties and the assets of the Company either directly or in a manner not materially more adverse to the interests of holders of the Securities than the manner in which such properties and assets were held by the Company prior to such merger, or (iii) any conveyance, sale, transfer or lease of all or substantially all of the assets of the Company, as a result of which holders of Common Stock shall be entitled to receive stock, other securities, other property, assets or cash for such holders' Common Stock (other than a sale of all or substantially all of the assets of the Company that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company), the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then Outstanding shall have the right thereafter, during the period such Security shall be convertible as specified in Section 12.1, to convert such Security only into the kind and amount of securities, cash and other property receivable upon such reclassification, change, consolidation, merger, conveyance, sale, transfer or lease by a holder of the number of shares of Common Stock of the Company into which such Security might have been converted immediately prior to such reclassification, change, consolidation, merger, conveyance, sale, transfer or lease, assuming such holder of Common Stock of the Company (i) is not (A) a Person with which the Company consolidated or merged with or into or which merged into or with the Company or to which such conveyance, sale, transfer or lease was made, as the case may be (a "Constituent Person"), or (B) an Affiliate of a Constituent Person and (ii) failed to exercise his rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such reclassification, change, consolidation, merger, conveyance, sale, transfer or lease (provided that, if the kind or amount of securities, cash and other property receivable upon such reclassification, change, consolidation, merger, conveyance, sale, transfer, or lease is not the same for each share of

Common Stock of the Company held immediately prior to such reclassification, change, consolidation, merger, conveyance, sale, transfer or lease by others than a Constituent Person or an Affiliate thereof and in respect of which such rights of election shall not have been exercised ("Non-electing Share"), then for the purpose of this Section 12.11, the kind and amount of securities, cash and other property receivable upon such reclassification, change, consolidation, merger, conveyance, sale, transfer or lease by the holders of each Non-electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-electing Shares). Such supplemental indenture shall provide for adjustments that, for events subsequent to the effective date of such supplemental indenture, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article. The above provisions of this Section 12.11 shall similarly apply to successive consolidations, mergers, conveyances, sales, transfers or leases. Notice of the execution of such a supplemental indenture shall be given by the Company to the Holder of each Security as provided in Section 1.6 promptly upon such execution.

Neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any such supplemental indenture relating either to the kind or amount of shares of stock or other securities or property or cash receivable by Holders of Securities upon the conversion of their Securities after any such consolidation, merger, conveyance, transfer, sale or lease or to any such adjustment, but may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Opinion of Counsel with respect thereto, which the Company shall cause to be furnished to the Trustee upon request.

SECTION 12.12 Rights Issued in Respect of Common Stock.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"):

(i) are deemed to be transferred with such shares of Common Stock,

(ii) are not exercisable, and

(iii) are also issued in respect of future issuances of Common Stock

shall not be deemed distributed for purposes of Section 12.4(2) until the occurrence of the earliest Trigger Event. In addition, in the event of any distribution of rights or warrants, or any Trigger Event with respect thereto, that shall have resulted in an adjustment to the Conversion Rate under Section 12.4(2), (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of any such rights or warrants all of which shall have expired without exercise by any holder thereof, the Conversion Price shall be readjusted as if such issuance had not occurred.

SECTION 12.13 Responsibility of Trustee for Conversion Provisions.

The Trustee, subject to the provisions of Section 6.1, and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Securities to determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, herein or in any supplemental indenture provided to be employed, in making the same, or whether a supplemental indenture need be entered into. Neither the Trustee, subject to the provisions of Section 6.1, nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind or amount) of any Common Stock, or of any other securities or property or cash, which may at any time be issued or delivered upon the conversion of any Security; and it or they do not make any representation with respect thereto. Neither the Trustee, subject to the provisions of Section 6.1, nor any Conversion Agent shall be responsible for any failure of the Company to make or calculate any cash payment or to issue, transfer or deliver any shares of Common Stock or share certificates or other securities or property or cash upon the surrender of any Security for the purpose of conversion; and the Trustee, subject to the provisions of Section 6.1, and any Conversion Agent shall not be responsible for any failure of the Company to comply with any of the covenants of the Company contained in this Article.

ARTICLE XIII
SUBORDINATION OF SECURITIES

SECTION13.1 Securities Subordinate to Designated Senior Debt.

The Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article (subject to the provisions of Article IV), the indebtedness represented by the Securities and the payment of the principal of, or premium, if any, or interest (including Additional Interest, if any) on, each and all of the Securities (including, but not limited to, the Redemption Price with respect to the Securities to be called for redemption in accordance with Article XI or the Repurchase Price or Purchase Price with respect to Securities submitted for repurchase in accordance with Article XIV), are hereby expressly made subordinate in right of payment to the prior payment in full of all Designated Senior Debt.

SECTION 13.2 No Payment in Certain Circumstances, Payment over of Proceeds upon Dissolution, Etc.

No payment shall be made with respect to the principal of, or premium, if any, or interest (including Additional Interest, if any) on the Securities (including, but not limited to, the Redemption Price with respect to the Securities to be called for redemption in accordance with Article XI or the Repurchase Price or Purchase Price with respect to Securities submitted for

repurchase in accordance with Article XIV), except payments and distributions made by the Trustee as permitted by Section 13.9, if:

(i) a default in the payment of principal, premium, if any, or interest (including a default under any repurchase or redemption obligation) or other amounts with respect to any Designated Senior Debt occurs and is continuing (or, in the case of Designated Senior Debt for which there is a period of grace, in the event of such a default that continues beyond the period of grace, if any, specified in the instrument or lease evidencing such Designated Senior Debt) unless and until such default shall have been cured or waived or shall have ceased to exist; or

(ii) any other event of default occurs and is continuing with respect to Designated Senior Debt that then permits holders of such Designated Senior Debt to accelerate its maturity and the Trustee has received a notice of the default (a "Payment Blockage Notice") from a Representative or holder of Designated Senior Debt or the Company.

If the Trustee receives any Payment Blockage Notice pursuant to clause (ii) above, no subsequent Payment Blockage Notice shall be effective for purposes of this Section unless and until (A) at least 365 days shall have elapsed since the initial effectiveness of the immediately prior Payment Blockage Notice, and (B) all scheduled payments of principal, premium, if any, and interest on the Securities that have come due have been paid in full in cash. No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee shall be, or be made, the basis for a subsequent Payment Blockage Notice.

The Company may and shall resume payments on and distributions in respect of the Securities upon the earlier of:

(1) in the case of a default referred to in clause (i) above, the date upon which the default is cured or waived or ceases to exist, or

(2) in the case of a default referred to in clause (ii) above, the date upon which the default is cured or waived or ceases to exist or 179 days pass after such Payment Blockage Notice is received, if the maturity of such Designated Senior Debt has not been accelerated, unless this Article XIII otherwise prohibits the payment or distribution at the time of such payment or distribution.

In the event of (a) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to the Company or to its creditors, as such, or to its assets, or (b) any liquidation, dissolution or other winding up of the Company, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (c) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Company, then and in any such event the holders of Designated Senior Debt shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Designated Senior Debt in cash before the Holders of the Securities are entitled to receive any payment on account of principal of (or premium, if any) or interest (including any Additional Interest) on the Securities or on account of the purchase, redemption or other acquisition of Securities, and to that end the holders of Designated Senior Debt shall be entitled to receive, for

application to the payment thereof, any payment or distribution of any kind or character, whether in cash, property or securities, which may be payable or deliverable in respect of the Securities in any such case, proceeding, dissolution, liquidation or other winding up or event.

In the event that, notwithstanding the foregoing provisions of this Section, the Trustee or the Holder of any Security shall have received any payment or distribution of assets of the Company of any kind or character, whether in cash, securities or other property, before all Designated Senior Debt is paid in full, and if such fact shall, at or prior to the time of such payment or distribution, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment or distribution shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Company for application to the payment of all Designated Senior Debt remaining unpaid, to the extent necessary to pay all Designated Senior Debt in full, after giving effect to any concurrent payment or distribution to or for the holders of Designated Senior Debt.

For purposes of this Article only, the words “cash, securities or other property” shall not be deemed to include shares of capital stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, which shares of capital stock or securities are subordinated in right of payment to all then outstanding Designated Senior Debt to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance or transfer of its properties and assets substantially as an entirety to another Person upon the terms and conditions set forth in Article VII shall not be deemed a dissolution, winding up, liquidation, reorganization, assignment for the benefit of creditors or marshaling of assets and liabilities of the Company for the purposes of this Section if the Person formed by such consolidation or into which the Company is merged or which acquires by conveyance or transfer such properties and assets substantially as an entirety, as the case may be, shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions set forth in Article VII.

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Trustee or the Holder of any Security prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company, in the case of the Trustee, or the Trustee, in the case of such Holder.

SECTION 13.3 Prior Payment to Designated Senior Debt upon Acceleration of Securities.

In the event of the acceleration of the Securities because of an Event of Default, no payment or distribution shall be made to the Trustee or any holder of Securities in respect of the principal of, premium, if any, or interest (including Additional Interest, if any) on the Securities (including, but not limited to, the Redemption Price with respect to the Securities called for redemption in accordance with Article XI or the Repurchase Price or Purchase Price with respect to the Securities submitted for repurchase in accordance with Article XIV), except payments and distributions made

by the Trustee as permitted by Section 13.9, until all Designated Senior Debt has been paid in full in cash or other payment satisfactory to the holders of Designated Senior Debt or such acceleration is rescinded in accordance with the terms of this Indenture. If payment of the Securities is accelerated because of an Event of Default, the Company shall promptly notify holders of Designated Senior Debt of the acceleration.

SECTION 13.4 Payment Permitted If No Default.

Nothing contained in this Article or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time except during the pendency of any case, proceeding, dissolution, liquidation or other winding up, assignment for the benefit of creditors or other marshaling of assets and liabilities of the Company referred to in Section 13.2, or during the circumstances referred to in the first paragraph of Section 13.2, or under the conditions described in Section 13.3, from making payments at any time of principal of (and premium, if any) or interest on the Securities, or (b) the application by the Trustee of any money deposited with it hereunder to the payment of or on account of the principal of (and premium, if any) or interest on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge that such payment would have been prohibited by the provisions of this Article.

SECTION 13.5 Subrogation to Rights of Holders of Designated Senior Debt.

Subject to the payment in full of all Designated Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Designated Senior Debt pursuant to the provisions of this Article to the rights of the holders of such Designated Senior Debt to receive payments and distributions of cash, property and securities applicable to the Designated Senior Debt until the principal of (and premium, if any) and interest on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Designated Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article, and no payments over pursuant to the provisions of this Article to the holders of Designated Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Designated Senior Debt and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Designated Senior Debt.

SECTION 13.6 Provisions Solely to Define Relative Rights.

The provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Designated Senior Debt on the other hand. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall (i) impair, as among the Company, its creditors other than holders of Designated Senior Debt and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of (and premium, if any) and interest (including Additional Interest, if any) on the Securities as and when the same shall become due and payable in accordance with their terms; or (ii) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than the holders of

Designated Senior Debt; or (iii) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Designated Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 13.7 Trustee to Effectuate Subordination.

Each Holder of a Security by its acceptance thereof authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee its attorney-in-fact for any and all such purposes.

SECTION 13.8 No Waiver of Subordination Provisions.

No right of any present or future holder of any Designated Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company, or by any non-compliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Designated Senior Date may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to the Holders of the Securities and without impairing or releasing the subordination provided in this Article or the obligations hereunder of the Holders of the Securities to the holders of Designated Senior Date, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Designated Senior Date, or otherwise amend or supplement in any manner Designated Senior Date or any instrument evidencing the same or any agreement under which Designated Senior Date is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Designated Senior Date; (iii) release any Person liable in any manner for the collection of Designated Senior Date; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

SECTION 13.9 Notice to Trustee.

The Company shall give prompt written notice to the Trustee of any fact known to the Company that would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a Representative or a holder of Designated Senior Debt and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.1, shall be entitled in all respects to assume that no such facts exist; *provided*, *however*, that if the Trustee shall not have received the notice provided for in this Section 13.9 at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the

payment of the principal of (and premium, if any) or interest (including Additional Interest, if any) on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it within one Business Day prior to such date.

Notwithstanding anything in this Article XIII to the contrary, nothing shall prevent any payment by the Trustee to the Holders of monies deposited with it pursuant to Section 4.1, and any such payment shall not be subject to the provisions of Section 13.2 or 13.3.

Subject to the provisions of Section 6.1, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a Representative or a holder of Designated Senior Debt to establish that such notice has been given by a Representative or a holder of Designated Senior Debt. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Designated Senior Debt to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Designated Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 13.10 Reliance on Judicial Order or Certificate of Liquidating Agent.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 6.1, and the Holders of the Securities shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Designated Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

SECTION 13.11 Trustee Not Fiduciary for Holders of Designated Senior Debt.

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Designated Senior Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Designated Senior Debt shall be entitled by virtue of this Article or otherwise.

SECTION 13.12 Reliance by Holders of Designated Senior Debt on Subordination Provisions.

Each Holder by accepting a Security acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Designated Senior Debt, whether such Designated Senior Debt was created or acquired before or after the issuance of the Securities, to acquire and continue to hold, or to continue to hold, such Designated Senior Debt and such holder of Designated Senior Debt shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such Designated Senior Debt, and no amendment or modification of the provisions contained herein shall diminish the rights of such holders of Designated Senior Debt unless such holders shall have agreed in writing thereto.

SECTION 13.13 Rights of Trustee as Holder of Designated Senior Debt; Preservation of Trustee's Rights.

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Designated Senior Debt which may at any time be held by it, to the same extent as any other holder of Designated Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.7.

SECTION 13.14 Article Applicable to Paying Agents.

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; *provided, however*, that Section 13.13 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

SECTION 13.15 Certain Conversions and Repurchases Deemed Payment.

For the purposes of this Article only, (i) the issuance and delivery of junior securities upon conversion of Securities in accordance with Article XII or upon the repurchase of Securities in accordance with Article XIV shall not be deemed to constitute a payment or distribution on account of the principal of or premium or interest (including Additional Interest, if any) on Securities or on account of the purchase or other acquisition of Securities, and (ii) the payment, issuance or delivery of cash (except in satisfaction of fractional shares pursuant to Section 12.3), property or securities (other than junior securities) upon conversion of a Security shall be deemed to constitute payment on account of the principal of such Security. For the purposes of this Section, the term "junior securities" means (a) shares of any stock of any class of the Company and securities into which the Securities are convertible pursuant to Article XII and (b) securities of the Company which are subordinated in right of payment to all Designated Senior Debt that may be outstanding at the time

of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than holders of Designated Senior Debt and the Holders of the Securities, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article XII or to exchange such Security for Common Stock in accordance with Article XIV if the Company elects to satisfy the obligations under Article XIV by the delivery of Common Stock.

ARTICLE XIV
REPURCHASE OF SECURITIES AT THE OPTION OF THE HOLDER

SECTION 14.1 Right to Require Repurchase Upon a Fundamental Change.

In the event that a Fundamental Change (as hereinafter defined) shall occur, then each Holder shall have the right, at the Holder's option, to require the Company to repurchase, and upon the exercise of such right the Company shall repurchase, all of such Holder's Securities not theretofore converted or called for redemption, or any portion of the principal amount thereof that is equal to U.S.$1,000 or any integral multiple of U.S.$1,000 in excess thereof (provided that no single Security may be repurchased in part unless the portion of the principal amount of such Security to be Outstanding after such repurchase is equal to U.S.$1,000 or integral multiples of U.S.$1,000 in excess thereof), on the date (the "Repurchase Date") that is 30 Business Days after the date of the Company Notice (as defined in Section 14.2) at a purchase price equal to 100% of the principal amount of the Securities to be repurchased plus interest accrued but unpaid to, but excluding, the Repurchase Date (the "Repurchase Price"); *provided, however*, that installments of interest on Securities whose Stated Maturity is on or prior to the Repurchase Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 3.7. Such right to require the repurchase of the Securities shall not continue after a discharge of the Company from its obligations with respect to the Securities in accordance with Article IV, unless a Fundamental Change shall have occurred prior to such discharge. Whenever in this Indenture (including Sections 2.2, 3.1, 5.1(1) and 5.8) there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price payable in respect of such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Indenture shall not be construed as excluding the Repurchase Price in those provisions of this Indenture when such express mention is not made.

SECTION 14.2 Notices; Method of Exercising Repurchase Right, Etc.

(1) Unless the Company shall have theretofore called for redemption all of the Outstanding Securities, on or before the 30th day after the occurrence of a Fundamental Change, the Company or, at the request and expense of the Company on or before the 15th day after such occurrence, the Trustee, shall give to all Holders of Securities, in the manner provided in Section 1.6, notice (the "Company Notice") of the occurrence of the Fundamental Change and of the repurchase right set forth herein arising as a result thereof. The Company shall also deliver a copy of such Company Notice to the Trustee.

Each Company Notice shall state:

(i) the Repurchase Date,

(ii) the date by which the repurchase right must be exercised,

(iii) the Repurchase Price,

(iv) a description of the procedure that a Holder must follow to exercise a repurchase right, and the place or places where such Securities are to be surrendered for payment of the Repurchase Price and accrued interest (including Additional Interest, if any), if any to the Repurchase Date,

(v) that on the Repurchase Date the Repurchase Price, and accrued interest (including Additional Interest, if any), if any to, but excluding, the Repurchase Date, will become due and payable upon each such Security designated by the Holder to be repurchased, and that interest thereon shall cease to accrue on and after said date,

(vi) the Conversion Rate then in effect, the date on which the right to convert the principal amount of the Securities to be repurchased will terminate and the place or places where such Securities may be surrendered for conversion, and

(vii) the place or places that the Security certificate with the Election of Holder to Require Repurchase as specified in Section 2.2 shall be delivered.

No failure of the Company to give the foregoing notices or defect therein shall limit any Holder' s right to exercise a repurchase right or affect the validity of the proceedings for the repurchase of Securities.

If any of the foregoing provisions or other provisions of this Article XIV are inconsistent with applicable law, such law shall govern.

(2) To exercise a repurchase right, a Holder shall deliver to the Trustee on or before the close of business on the Business Day prior to the Repurchase Date (i) irrevocable written notice of the Holder's exercise of such right, which notice shall set forth the name of the Holder, the principal amount of the Securities to be repurchased (and, if any Security is to repurchased in part, the serial number thereof, the portion of the principal amount thereof to be repurchased and the name of the Person in which the portion thereof to remain Outstanding after such repurchase is to be registered) and a statement that an election to exercise the repurchase right is being made thereby, and (ii) the Securities with respect to which the repurchase right is being exercised. Such written notice shall be irrevocable, except that the right of the Holder to convert the Securities with respect to which the repurchase right is being exercised shall continue until the close of business on the Business Day immediately preceding the Repurchase Date.

(3) In the event a repurchase right shall be exercised in accordance with the terms hereof, the Company shall pay or cause to be paid to the Trustee the Repurchase Price in cash, as provided above, for payment to the Holder on the Repurchase Date, together with accrued and unpaid interest to, but excluding, the Repurchase Date payable with respect to the Securities as to which the repurchase right has been exercised; *provided, however*, that installments of interest that mature on or prior to the Repurchase Date shall be payable in cash to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular Record Date.

(4) If any Security (or portion thereof) surrendered for repurchase shall not be so paid on the Repurchase Date, the principal amount of such Security (or portion thereof, as the case may be) shall, until paid, bear interest to the extent permitted by applicable law from the Repurchase Date at the rate of 5% per annum, and each Security shall remain convertible into Common Stock until the principal of such Security (or portion thereof, as the case may be) shall have been paid or duly provided for.

(5) Any Security that is to be repurchased only in part shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unrepurchased portion of the principal of the Security so surrendered.

(6) All Securities delivered for repurchase shall be delivered to the Trustee to be canceled at the direction of the Trustee, which shall dispose of the same as provided in Section 3.9.

SECTION 14.3 Certain Definitions.

For purposes of this Article XIV,

(1) the term “beneficial owner” shall be determined in accordance with Rule 13d-3, as in effect on the date of the original execution of this Indenture, promulgated by the Commission pursuant to the Exchange Act;

(2) a “Fundamental Change” shall be deemed to have occurred, at any time after the original issuance of the Securities, if any of the following occurs:

(i) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors (together with any new directors whose election to the Board of Directors, or whose nomination for election by the stockholders of the Company, was

approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such periods or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the Board of Directors then in office; or

(ii) the acquisition by any Person of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of capital stock of the Company entitling such person to exercise more than 50% of the total voting power of all shares of capital stock of the Company entitled to vote generally in the elections of directors, other than any such acquisition by the Company, any Subsidiary or any employee benefit plan of the Company; or

(iii) any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company, or any conveyance, sale, transfer or lease of all or substantially all of the assets of the Company to another Person (other than (a) any such transaction (x) involving a merger or consolidation that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of capital stock of the Company and (y) pursuant to which the holders of more than 50% of the total voting power of all shares of the Company's capital stock entitled to vote generally in the election of directors immediately prior to such transaction have the entitlement to exercise, directly or indirectly, more than 50% of the total voting power of all shares of capital stock entitled to vote generally in the election of directors of the continuing or surviving corporation, in generally the same proportion, immediately after such transaction or (b) any transaction which is effected solely to change the jurisdiction of incorporation of the Company and results in a reclassification, conversion or exchange of outstanding shares of Common Stock into solely shares of common stock); or

(iv) the Common Stock into which the Securities are convertible ceases to be quoted on the Nasdaq National Market and is not listed on an established national securities exchange or automated over-the-counter trading market in the United States;

provided, however, that a Fundamental Change shall not be deemed to have occurred if the Closing Price Per Share of the Common Stock for any five Trading Days within the period of 10 consecutive Trading Days ending immediately after the later of the Fundamental Change or the public announcement of the Fundamental Change (in the case of a Fundamental Change under clause (ii) above) or the period of 10 consecutive Trading Days ending immediately before the Fundamental Change (in the case of a Fundamental Change under clause (iii) above) shall equal or exceed 105% of the Conversion Price in effect on each such Trading Day.

(3) the term "Conversion Price" shall equal the quotient obtained by dividing $1000 by the Conversion Rate; and

(4) for purposes of Section 14.3(2)(i), the term "person" shall include any syndicate or group which would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act, as in effect on the date of the original execution of this Indenture.

SECTION 14.4 Consolidation, Merger, etc.

In the case of any merger, consolidation, conveyance, sale, transfer or lease of all or substantially all of the assets of the Company to which Section 12.11 applies, in which the Common Stock of the Company is changed or exchanged as a result into the right to receive shares of stock and other securities or property or assets (including cash) which includes shares of Common Stock of the Company or common stock of another Person that are, or upon issuance will be, traded on a United States national securities exchange or approved for trading on an established automated over-the-counter trading market in the United States and such shares constitute at the time such change or exchange becomes effective in excess of 50% of the aggregate fair market value of such shares of stock and other securities, property and assets (including cash) (as determined by the Company, which determination shall be conclusive and binding), then the Person formed by such consolidation or resulting from such merger or combination or which acquires the properties or assets (including cash) of the Company, as the case may be, shall execute and deliver to the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) modifying the provisions of this Indenture relating to the right of Holders to cause the Company to repurchase the Securities following a Fundamental Change, including without limitation the applicable provisions of this Article XIV and the definitions of the Common Stock and Fundamental Change, as appropriate, and such other related definitions set forth herein as determined in good faith by the Company (which determination shall be conclusive and binding), to make such provisions apply in the event of a subsequent Fundamental Change to the common stock and the issuer thereof if different from the Company and Common Stock of the Company (in lieu of the Company and the Common Stock of the Company).

SECTION 14.5 Purchase at the Option of the Holder on the Purchase Date

(a) General. At the option of the Holder, the Securities shall be purchased by the Company on January 1, 2009, 2014 or 2019 (each, a "Purchase Date"), in whole or in part, at 100% of the principal amount in cash or, at the election of the Company, in Common Stock or any combination of cash and Common Stock, subject to the considerations set forth in paragraph (d) below, on the Purchase Date, of such Securities to be purchased, together with accrued and unpaid interest and Additional Interest, if any, to, but excluding, the relevant Purchase Date (the "Purchase Price") upon delivery to the Paying Agent by the Holder, of a written notice of purchase (a "Purchase Notice") at any time from the opening of business on the date that is 20 Business Days prior to the Purchase Date until the close of business on the Purchase Date. The Purchase Notice shall include the following information:

(i) if certificated Securities have been issued, the certificate number of the Securities that the Holder will deliver to be purchased, or if no certificated Securities have been issued, such information as may be required under the applicable procedures of the Depositary and the Indenture;

(ii) the portion of the principal amount of the Securities that the Holder will deliver to be purchased, which portion must be $1,000 or an integral multiple thereof;

(iii) that such Securities shall be purchased by the Company as of the Purchase Date pursuant to the terms and conditions specified in the Securities and this Indenture, and

(iv) that delivery of such Security to the Paying Agent prior to, on or after the Purchase Date (together with all necessary endorsements) (at the offices of the Paying Agent in the case of certificated Securities or otherwise by book-entry transfer) is a condition to receipt by the Holder of the Purchase Price therefor; *provided, however*, that such Purchase Price shall be so paid pursuant to this Section 14.5 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Purchase Notice.

The Paying Agent shall promptly notify the Company of the receipt by it of a Purchase Notice.

Any purchase by the Company contemplated pursuant to the provisions of this Section 14.5 shall be consummated by the delivery of the consideration from the Company to the Paying Agent, to be received by the Holder promptly following the later of the Purchase Date and the time of delivery of the Security.

If the Paying Agent holds money or securities sufficient to pay the Purchase Price of the Securities on the Business Day following the Purchase Date in accordance with the terms of this Indenture, then, immediately after the Purchase Date, the Securities will cease to be Outstanding whether or not the Securities have been delivered to the Paying Agent. Thereafter, all other rights of the Holders shall terminate, other than the right to receive the Purchase Price upon delivery of the Securities.

Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of a portion of a Security.

(b) Notice of Optional Repurchase. The Company is required to give notice (the "Notice of Optional Repurchase") to the Holders on a date that is no less that 20 Business Days prior to the Purchase Date. The Notice of Optional Repurchase shall be delivered to all Holders at their respective addresses shown in the Register and to beneficial owners as required by law, and shall include the following information:

(i) the manner of payment selected by the Company;

(ii) the name and address of the Paying Agent;

(iii) that the Purchase Notice must be delivered by each Holder electing to have the Company repurchase such Holder's Securities (or a portion thereof) as of the Purchase Date, to the Paying Agent the Notice of Optional Repurchase shall include a form of Purchase Notice;

(iv) that the Securities must be surrendered (by physical delivery at the office of the Paying Agent in the case of certificated Securities, or otherwise by book-entry transfer) to the Paying Agent to collect payment;

(v) that the Purchase Price for any security as to which a Purchase Notice has been given and not withdrawn will be paid promptly following the later of the Purchase Date and the time of surrender of such Security;

(vi) a brief summary of the conversion rights of the Securities;

(vii) the procedures for withdrawing a Purchase Notice and a sample form of Notice of Withdrawal; and

(viii) the CUSIP number or numbers of the Securities being purchased.

At the Company's request, the Trustee shall give the Notice of Optional Repurchase in the Company's name and at the Company's expense; *provided*, *however*, that, in all cases, the text of such Notice of Optional Repurchase shall be prepared by the Company.

(c) Notice of Withdrawal. Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Purchase Notice contemplated by this Section 14.5 shall have the right to withdraw such Purchase Notice at any time prior to the close of business on the Purchase Date by delivery of a written notice of withdrawal (a "Notice of Withdrawal") to the Paying Agent. The Notice of Withdrawal shall indicate the following:

(i) the principal amount being withdrawn;

(ii) if certificated Securities have been issued, the certificate numbers of the Securities being withdrawn or if certificated Securities have not been issued, such information as may be required under the applicable procedures of the Depositary; and

(iii) the principal amount, if any, that remains subject to the Purchase Notice.

The Paying Agent shall promptly notify the Company of the receipt by it of any written notice of withdrawal.

(d) Conditions for Election to Pay Purchase Price in Common Stock. If the Company elects to pay all or any portion of the Purchase Price in Common Stock, the number of shares of Common Stock to be paid will equal the quotient obtained by dividing (i) the portion of the Purchase Price to be paid in shares of Common Stock by (ii) 97.5% of the average Closing Price of the shares of Common Stock for the ten Trading Day period immediately preceding but ending on the second Business Day immediately preceding the Purchase Date, appropriately adjusted to take into account the occurrence, during the period commencing on the first of the Trading Days during the five Trading Day period and ending on the Purchase Date, of any event described in Section 12.4, subject to the next succeeding paragraph. The Company shall designate, in the Notice of Optional Repurchase delivered pursuant to paragraph (b) above, whether it will repurchase the Securities for cash or shares of Common Stock, or, if a combination thereof, the percentages of the Purchase Price of Securities in respect of which it will pay in cash or shares of Common Stock; *provided* that the Company will pay cash for fractional interests in shares of Common Stock. For purposes of

determining the existence of potential fractional interests, all Securities subject to repurchase by the Company held by a Holder shall be considered together (no matter how many separate certificates are to be presented). Each holder whose Securities are repurchased pursuant to this Section 14.5 shall receive the same percentage of cash or shares of Common Stock in payment of the Purchase Price for such Securities, except with regard to the payment of cash in lieu of fractional shares of Common Stock. The Company may not change its election with respect to the consideration (or components or percentages of components thereof) to be paid once the Company has given its Notice of Optional Repurchase to holders except as set forth in the next succeeding paragraph in the event of a failure to satisfy, prior to the close of business on the Business Day prior to the Purchase Date, any condition to the payment of the Purchase Price, in whole or in part, in shares of Common Stock.

The Company's right to exercise its election to repurchase Securities through the issuance of shares of Common Stock shall be conditioned upon:

(i) the Company's giving a timely Notice of Optional Repurchase containing an election to purchase all or a specified percentage of the Securities with shares of Common Stock as provided herein;

(ii) the registration of such shares of Common Stock under the Securities Act and the Exchange Act, if required;

(iii) the listing of such shares of Common Stock on a United States national securities exchange or the quotation of such shares of Common Stock in an inter-dealer quotation system of any registered United States national securities association, in each case, if the Common Stock is then listed on a national securities exchange or quoted in an inter-dealer quotation system;

(iv) any necessary qualification or registration of such shares of Common Stock under applicable state securities laws or the availability of an exemption from such qualification and registration; and

(v) the receipt by the Trustee of an (A) Officers' Certificate stating that the terms of the issuance of the shares of Common Stock are in conformity with this Indenture, (B) an Opinion of Counsel to the effect that the shares of Common Stock to be issued by the Company in payment of the Purchase Price in respect of the Securities have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture in payment of the Purchase Price in respect of the Securities, will be validly issued, fully paid and non-assessable and (c) an Officers' Certificate, stating that the conditions to the issuance of the shares of Common Stock have been satisfied.

Such Officers' Certificate shall also set forth the number of shares of Common Stock to be issued for each $1,000 principal amount of Securities upon their Stated Maturity and the Closing Price of a share of Common Stock on each Trading Day during the period commencing on the fifth Trading Day immediately preceding but ending on the second Business Day prior to the applicable Purchase Date. If the foregoing conditions are not satisfied prior to the close of business on the Business Day immediately preceding the Purchase Date and the Company has elected to repurchase the Securities through the issuance of shares of Common Stock, the Company shall pay the entire Purchase Price of the Securities in cash.

Promptly after determination of the actual number of shares of Common Stock to be issued upon repurchase of Securities, the Company shall be required to deliver notice to all Holders at their respective addresses shown in the Register and to beneficial owners as required by law containing substantially the same information.

All shares of Common Stock delivered upon repurchase of the Securities shall be duly authorized, validly issued, fully paid and nonassessable.

If a holder of a repurchased Security is paid in shares of Common Stock, the Company shall pay any documentary, stamp or similar issue or transfer tax due on such issue of Common Stock. However, the holder shall pay any such tax which is due because the holder requests the Common Stock to be issued in a name other than the holder's name. The Trustee (or other paying agent appointed by the Company) may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the holder's name until the Trustee (or other paying agent appointed by the Company) receives a sum sufficient to pay any tax which will be due because the shares of Common Stock are to be issued in a name other than the holder's name. Nothing herein shall preclude any income tax withholding required by law or regulations.

ARTICLE XV
HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY; NON-RECOURSE

SECTION 15.1 Company to Furnish Trustee Names and Addresses of Holders.

The Company will furnish or cause to be furnished to the Trustee:

(1) semi-annually, not more than 15 days after the Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities as of such Regular Record Date, and

(2) at such other times as the Trustee may reasonably request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished; *provided, however*, that no such list need be furnished so long as the Trustee is acting as Security Registrar.

SECTION 15.2 Preservation of Information.

(1) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 15.1 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list, if any, furnished to it as provided in Section 15.1 upon receipt of a new list so furnished.

(2) After this Indenture has been qualified under the Trust Indenture Act, the rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights, and duties of the Trustee, shall be as provided by the Trust Indenture Act.

(3) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

SECTION 15.3 Reports by Trustee.

After this Indenture has been qualified under the Trust Indenture Act, the Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.

(1) After this Indenture has been qualified under the Trust Indenture Act, a copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which the Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when the Securities are listed on any stock exchange.

SECTION15.4 Reports by Company.

After this Indenture has been qualified under the Trust Indenture Act, the Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; provided that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission.

ARTICLE XVI
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

SECTION 16.1 Indenture and Securities Solely Corporate Obligations.

No recourse for the payment of the principal of or premium, if any, or interest on any Security and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer, or director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Securities.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the day and year first above written.

CASUAL MALE RETAIL GROUP, INC.

By: _____

Name:
Title:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____

Name: Paula M. Oswald
Title: Vice President

ANNEX A — Form of Restricted Securities Certificate

RESTRICTED SECURITIES CERTIFICATE (For transfers pursuant to Section 3.5(2)(ii) and (iii) of the Indenture)

U.S. BANK NATIONAL ASSOCIATION
633 West 5th Street
24th Floor
Los Angeles, CA 90071
Attention: Corporate Trust Service

Re: 5% CONVERTIBLE SENIOR SUBORDINATED NOTES DUE JANUARY 1, 2024
OF CASUAL MALE RETAIL GROUP, INC. (THE "SECURITIES")

Reference is made to the Indenture, dated as of November 18, 2003 (the "Indenture"), from Casual Male Retail Group, Inc. (the "Company") to U.S. Bank National Association, as Trustee. Terms used herein and defined in the Indenture or Rule 144 under the U.S. Securities Act of 1933 (the "Securities Act") are used herein as so defined.

This certificate relates to U.S. $_____ principal amount of Securities, which are evidenced by the following certificate(s) (the "Specified Securities"):

CUSIP No. [_____]

CERTIFICATE No(s). _____

The person in whose name this certificate is executed below (the "Undersigned") hereby certifies that either (i) it is the sole beneficial owner of the Specified Securities or (ii) it is acting on behalf of all the beneficial owners of the Specified Securities and is duly authorized by them to do so. Such beneficial owner or owners are referred to herein collectively as the "Owner". If the Specified Securities are represented by a Global Security, they are held through the Depositary or an Agent Member in the name of the Undersigned, as or on behalf of the Owner. If the Specified Securities are not represented by a Global Security, they are registered in the name of the Undersigned, as or on behalf of the Owner.

The Owner has requested that the Specified Securities be transferred to a person (the "Transferee") who will take delivery in the form of a Restricted Security. In connection with such transfer, the Owner hereby certifies that, unless such transfer is being effected pursuant to an effective registration statement under the Securities Act, it is being effected in accordance with Rule 144A, to an institutional "accredited investor" within the meaning of Rule 501(A)(1), (2), (3) or (7), or pursuant to another exemption from registration under the Securities Act (if available) or

Rule 144 under the Securities Act and all applicable securities laws of the states of the United States and other jurisdictions. Accordingly, the Owner hereby further certifies as:

(1) RULE 144A TRANSFERS. If the transfer is being effected in accordance with Rule 144A:

(A) the Specified Securities are being transferred to a person that the Owner and any person acting on its behalf reasonably believe is a "qualified institutional buyer" within the meaning of Rule 144A, acquiring for its own account or for the account of a qualified institutional buyer; and

(B) the Owner and any person acting on its behalf have taken reasonable steps to ensure that the Transferee is aware that the Owner may be relying on Rule 144A in connection with the transfer; and

(2) RULE 144 TRANSFERS. If the transfer is being effected pursuant to Rule 144:

(A) the transfer is occurring after a holding period of at least one year (computed in accordance with paragraph (d) of Rule 144) has elapsed since the date the Specified Securities were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and is being effected in accordance with the applicable amount, manner of sale and notice requirements of paragraphs (e), (f) and (h) of Rule 144; or

(B) the transfer is occurring after a period of at least two years has elapsed since the date the Specified Securities were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and the Owner is not, and during the preceding three months has not been, an affiliate of the Company.

(3) INSTITUTIONAL ACCREDITED INVESTORS. If the transfer is to an institutional investor that is an accredited investor within the meaning of Rule 501(A)(1), (2), (3) or (7) of Regulation D under the Securities Act, a signed letter containing certain representations and agreements relating to the restrictions on transfer of the Securities and, if such transfer is for less than an aggregate principal amount of $250,000, an opinion of counsel acceptable to the Company if requested by the Company, that the transfer is exempt from registration, must be supplied to the Trustee prior to such transfer.

(4) TRANSFERS PURSUANT TO OTHER SECURITY ACT EXEMPTIONS. If the transfer is being effected pursuant to a Security Act Exemption other than ones set forth in (1) through (3) above, there shall be delivered to the Company an opinion of counsel with respect to such holders.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Initial Purchasers.

Dated: _____

Print the name of the Undersigned, as such term is defined in the second paragraph of this certificate.)

By: _____

Name: _____

Title: _____

(If the Undersigned is a corporation, partnership or fiduciary, the title of the person signing on behalf of the Undersigned must be stated.)

ANNEX B — Form of Unrestricted Securities Certificate

UNRESTRICTED SECURITIES CERTIFICATE

(For removal of Restricted Securities Legend pursuant to Section 3.5(3))

U.S. BANK NATIONAL ASSOCIATION
633 West Fifth Street
24th Floor
Los Angeles, California 90071
Attention: Corporate Trust Services

RE: 5% CONVERTIBLE SENIOR SUBORDINATED NOTES DUE JANUARY 1, 2024
OF CASUAL MALE RETAIL GROUP, INC. (THE "SECURITIES")

Reference is made to the Indenture, dated as of November 18, 2003 (the "Indenture"), from CASUAL MALE RETAIL GROUP, INC. (the "Company") to U.S. BANK NATIONAL ASSOCIATION, as Trustee. Terms used herein and defined in the Indenture or in Rule 144 under the U.S. Securities Act of 1933 (the "Securities Act") are used herein as so defined.

This certificate relates to U.S.$_____ principal amount of Securities, which are evidenced by the following certificate(s) (the "Specified Securities"):

CUSIP No. [_____]

CERTIFICATE No(s). _____

The person in whose name this certificate is executed below (the "Undersigned") hereby certifies that either (i) it is the sole beneficial owner of the Specified Securities or (ii) it is acting on behalf of all the beneficial owners of the Specified Securities and is duly authorized by them to do so. Such beneficial owner or owners are referred to herein collectively as the "Owner." If the Specified Securities are represented by a Global Security, they are held through the Depositary or an Agent Member in the name of the Undersigned, as or on behalf of the Owner. If the Specified Securities are not represented by a Global Security, they are registered in the name of the Undersigned, as or on behalf of the Owner.

The Owner has requested that the Specified Securities be exchanged for Securities bearing no Restricted Securities Legend pursuant to Section 3.5(3) of the Indenture. In connection with such exchange, the Owner hereby certifies that the exchange is occurring after a period of at least two years has elapsed since the date the Specified Securities were acquired from the Company or from an "affiliate" (as such term is defined in Rule 144) of the Company, whichever is later, and the Owner is not, and during the preceding three months has not been, an affiliate of the Company. The Owner also acknowledges that any future transfers of the Specified Securities must comply with all applicable securities laws of the states of the United States and other jurisdictions.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Initial Purchaser.

Dated: _____

(Print the name of the Undersigned, as such term is defined in the second paragraph of this certificate.)

By: _____

Name: _____

Title: _____

(If the Undersigned is a corporation, partnership or fiduciary, the title of the person signing on behalf of the Undersigned must be stated.)

ANNEX C — Form of Surrender Certificate

In connection with the certification contemplated by Section 12.2 relating to compliance with certain restrictions relating to transfers of Restricted Securities, such certification shall be provided substantially in the form of the following certificate, with only such changes thereto as shall be approved by the Company and Thomas Weisel Partners LLC:

CERTIFICATE

CASUAL MALE RETAIL GROUP, INC.

5% CONVERTIBLE SENIOR SUBORDINATED NOTES DUE JANUARY 1, 2024

This is to certify that as of the date hereof with respect to U.S.$_____ principal amount of the above-captioned securities surrendered on the date hereof (the "Surrendered Securities") for registration of transfer, or for conversion or repurchase where the securities issuable upon such conversion or repurchase are to be registered in a name other than that of the undersigned Holder (each such transaction being a "transfer"), the undersigned Holder (as defined in the Indenture) certifies that the transfer of Surrendered Securities associated with such transfer complies with the restrictive legend set forth on the face of the Surrendered Securities for the reason checked below:

_____ The transfer of the Surrendered Securities complies with Rule 144A under the Securities Act; or

_____ The transfer of the Surrendered Securities complies with Rule 144 under the United States Securities Act of 1933, as amended (the "Securities Act"); or

_____ The transfer of the Surrendered Securities has been made to an institution that is an "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act in a transaction exempt from the registration requirements of the Securities Act and a signed letter in form and substance reasonably satisfactory to the Company containing certain representations and agreements which are true and correct relating to restrictions on transfer of the Securities (and an opinion of counsel in form and substance reasonably acceptable to the Company if requested by the Company, that such transfer is exempt from registration); or

_____ The transfer of the Surrendered Securities has been made pursuant to an exemption from registration under the Securities Act and an opinion of counsel has been delivered to the Company with respect to such transfer.

[Name of Holder]

Dated: _____
*To be dated the date of surrender

EXHIBIT 10.1

CASUAL MALE RETAIL GROUP, INC.

1992 STOCK INCENTIVE PLAN, AS AMENDED

SECTION 1. General Purpose Of The Plan; Definitions.

The name of the plan is the Casual Male Retail Group, Inc. 1992 Stock Incentive Plan (the "Plan"). The purpose of the Plan is to encourage and enable the officers, employees and directors of Casual Male Retail Group, Inc. (the "Company") and its Subsidiaries, and other persons who are responsible for or contribute to the management, growth or profitability of, or who provide substantial services to, the Company and its Subsidiaries, upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its business, to acquire a proprietary interest in the Company. It is anticipated that providing such persons with a direct stake in the Company's welfare will assure a closer identification of their interests with those of the Company, thereby stimulating their efforts on the Company's behalf and strengthening their desire to remain with the Company.

The following terms shall be defined as set forth below:

"Act" means the Securities Exchange Act of 1934, as amended.

"Award" or "Awards", except where referring to a particular category of grant under the Plan, shall include Incentive Stock Options, Non-Qualified Stock Options, Conditioned Stock Awards, Unrestricted Stock Awards and Performance Share Awards.

"Board" means the Board of Directors of the Company.

"Cause" means and shall be limited to a vote of the Board of Directors at a meeting of the Board of Directors resolving that the participant should be dismissed as a result of (i) any material breach by the participant of any agreement to which the participant and the Company or any Subsidiary are both parties, (ii) any act (other then retirement) or omission to act by the participant which may have a material and adverse effect on the business of the Company or any Subsidiary or on the participant's ability to perform services for the Company or any Subsidiary, including, without limitation, the commission of any crime (other than ordinary traffic violations), or (iii) any material misconduct or neglect of duties by the participant in connection with the business or affairs of the Company or any Subsidiary of the Company.

"Change of Control" shall have the meaning set forth in Section 13.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor Code, and related rules, regulations and interpretations.

"Committee" shall have the meaning set forth in Section 2.

"Conditioned Stock Award" means Awards granted pursuant to Section 6.

"Disability" means disability as set forth in Section 22(e)(3) of the Code.

"Effective Date" means the date on which the Plan is approved by stockholders as set forth in Section 15.

"Fair Market Value" means the fair market value of Stock as determined by the Committee or under procedures established by the Committee. Unless otherwise determined by the Committee, Fair Market Value, on any given date, shall be the last reported sale price at which Stock is traded on such date or, if no Stock is traded on such date, the most recent date on which Stock was traded, as reflected in the NASDAQ National Market System or, if applicable, any national stock exchange on which the Stock is traded.

"Incentive Stock Option" means any Stock Option designated and qualified as an "incentive stock option" as defined in Section 422 of the Code.

"Non-Employee Director" means a member of the Board who is not also an employee of the Company or any Subsidiary.

"Non-Qualified Stock Option" means any Stock Option that is not an Incentive Stock Option.

"Normal Retirement" means retirement from active employment with the Company and its Subsidiaries in accordance with the retirement policies of the Company and its Subsidiaries then in effect.

"Option" or "Stock Option" means any option to purchase shares of Stock granted pursuant to Section 5.

"Performance Share Award" means Awards granted pursuant to Section 8.

"Stock" means the Common Stock, $.01 par value per share, of the Company, subject to adjustments pursuant to Section 3.

"Subsidiary" means any corporation or other entity (other than the Company) in any unbroken chain of corporations or other entities, beginning with the Company if each of the corporations or entities (other than the last corporation or entity in the unbroken chain) owns stock or other interests possessing 50% or more of the total combined voting power of all classes of stock or other interests in one of the other corporations or entities in the chain.

"Unrestricted Stock Award" means Awards granted pursuant to Section 7.

SECTION 2. Administration Of Plan; Committee Authority To Select Participants And Determine Awards.

(a) Committee. The Plan shall be administered by all of the Non-Employee Director members of the Stock Option Committee of the Board, or any other committee of not less than two Non-Employee Directors performing

similar functions, as appointed by the Board from time to time (the "Committee"). Each member of the Committee shall be an "outside director" within the meaning of Section 162(m) of the Code and the regulations promulgated thereunder and a "non-employee director" within the meaning of Rule 16-3b(3)(i) promulgated under the Act, or any successor definition under said Rule.

(b) Powers of Committee. The Committee shall have the power and authority to grant Awards consistent with the terms of the Plan, including the power and authority:

(i) to select the officers, other employees of the Company and its Subsidiaries and other eligible individuals to whom Awards may from time to time be granted;

(ii) to determine the time or times of grant, and the extent, if any, of Incentive Stock Options, Non-Qualified Stock Options, Conditioned Stock, Unrestricted Stock and Performance Shares, or any combination of the foregoing, granted to any one or more participants.

(iii) to determine the number of shares to be covered by any Award;

(iv) to determine and modify the terms and conditions, subject to the provisions of Section 11, including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and participants, and to approve the form of written instruments evidencing the Awards;

(v) to accelerate the exercisability or vesting of all or any portion of any Award;

(vi) subject to the provisions of Section 5(a)(ii), to extend the period in which Stock Options may be exercised;

(vii) to determine whether, to what extent, and under what circumstances Stock and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the participant and whether and to what extent the Company shall pay or credit amounts equal to interest (at rates determined by the Committee) or dividends or deemed dividends on such deferrals; and

(viii) to adopt, alter and repeal such rules, guidelines and practices for administration of the Plan and for its own acts and proceedings as it shall deem advisable; to interpret the terms and provisions of the Plan and any Award (including related written instruments); to make all determinations it deems advisable for the administration of the Plan; to decide all disputes arising in connection with the Plan; and to otherwise supervise the administration of the Plan; to decide all disputes arising in connection with the Plan; and to otherwise supervise the administration of the Plan (including the power and authority to waive the requirement set forth in Section 7(c) of the Plan that an irrevocable written election to receive Unrestricted Stock, in lieu of directors' fees otherwise due, be delivered prior to the commencement of the calendar year in which the Non-Employee Director serves on the Board.

All decisions and interpretations of the Committee shall be binding on all persons, including the Company and Plan participants.

SECTION 3. Shares Issuable Under The Plan; Mergers; Substitution.

(a) Shares Issuable. The maximum number of shares of Stock reserved and available for issuance under the Plan shall be 6,930,000. For purposes of this limitation, the shares of Stock underlying any Awards which are forfeited, canceled, reacquired by the Company, satisfied without the issuance of Stock or otherwise terminated (other than by exercise) shall be added back to the shares of Stock available for issuance under the Plan. Subject to such overall limitation, shares may be issued up to such maximum number pursuant to any type or types of Award, including Incentive Stock Options. Shares issued under the Plan may be authorized but unissued shares or shares reacquired by the Company. No individual participant in the Plan may, during any fiscal year of the Company (including all options granted during fiscal 2004), be granted one or more Stock Options the sum of which cover more than 500,000 shares of Stock (such amount being subject to adjustment in accordance with Section 3(b) hereof).

(b) Stock Dividends, Mergers, Etc. In the event that after approval of the Plan by the stockholders of the Company in accordance with Section 15, the Company effects a stock dividend, stock split or similar change in capitalization affecting the Stock, the Committee shall make appropriate adjustments in (i) the number and kind of shares of stock or securities on which Awards may thereafter be granted, (ii) the number and kind of shares remaining subject to outstanding Awards, and (iii) the option or purchase price in respect of such shares. In the event of any merger, consolidation, dissolution or liquidation of the Company, the Committee in its sole discretion may, as to any outstanding Awards, make such substitution or adjustment in the aggregate number of shares reserved for issuance under the Plan and in the number and purchase price (if any) of shares subject to such Awards as it may determine and as may be permitted by the terms of such transaction, or accelerate, amend or terminate such Awards upon such terms and conditions as it shall provide (which, in the case of the termination of the vested portion of any Award, shall require payment or other consideration which the Committee deems equitable in the circumstances), subject, however, to the provisions of Section 13.

(c) Substitute Awards. The Committee may grant Awards under the Plan in substitution for stock and stock based awards held by employees of another corporation who concurrently become employees of the Company or a Subsidiary as the result of a merger or consolidation of the employing corporation with the Company or a Subsidiary or the acquisition by the Company or a Subsidiary of property or stock of the employing corporation. The Committee may direct that the substitute awards be granted on such terms and conditions as the Committee considers appropriate in the circumstances. The shares which may be delivered under such substitute awards shall be in addition to the maximum number of shares provided for in Section 3(a) only to the extent that the substitute Awards are granted in substitution for awards issued under a plan approved by the stockholders of the entity which issued such predecessor awards.

SECTION 4. Eligibility.

Participants in the Plan will be such full or part-time officers and other employees of the Company or any of its Subsidiaries, such Non-Employee Directors and such other persons who are responsible for or contribute to the management, growth or profitability of, or who provide substantial services to, the Company and/or its Subsidiaries and who are selected from time to time by the Committee, in its sole discretion, and any person who has been offered employment by the Company or a Subsidiary, provided that such prospective employee may not receive any payment or exercise any right to an Award until such person has commenced employment with the Company or a Subsidiary. Notwithstanding the foregoing, Incentive Stock Options only may be granted to employees of the Company.

An employee who is employed primarily to render services within the jurisdiction of a labor union and whose compensation, hours of work, or condition of employment are determined by collective bargaining with such union shall not be an Eligible Employee for purposes of the Plan unless the applicable collective bargaining agreement expressly provides that such employee shall be eligible to participate in the Plan, in which event, however, such employee shall be entitled to participate in the Plan only to the extent and on the terms and conditions specified in such collective bargaining agreement.

SECTION 5. Stock Options.

Any Stock Option granted under the Plan shall be in such form as the Committee may from time to time approve.

Stock Options granted under the Plan may be either Incentive Stock Options or Non-Qualified Stock Options. To the extent that any option does not qualify as an Incentive Stock Option, it shall constitute a Non-Qualified Stock Option.

No Incentive Stock Option shall be granted under the Plan after April 2, 2007.

(a) Discretionary Stock Options. The Committee in its discretion may grant Stock Options to employees of the Company or any Subsidiary or any other individual eligible to receive such an Award pursuant to Section 4. Stock Options granted pursuant to this Section 5(a) shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Committee shall deem desirable:

(i) Exercise Price. The exercise price per share for the Stock covered by a Stock Option granted pursuant to this Section 5(a) shall be determined by the Committee at the time of grant but shall be not less than 100% of Fair Market Value on the date of grant whether such Stock Option be an Incentive Stock Option or a Non-Qualified Stock Option. If an employee

owns or is deemed to own (by reason of the attribution rules applicable under Section 424(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company or any Subsidiary or parent corporation and an Incentive Stock Option is granted to such employee, the option price shall be not less than 110% of Fair Market Value on the grant date.

(ii) Option Term. The term of each Stock Option shall be fixed by the Committee, but no Incentive Stock Option shall be exercisable more than ten years after the date the option is granted. If an employee owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company or any Subsidiary or parent corporation and an Incentive Stock Option is granted to such employee, the term of such option shall be no more than five years from the date of grant.

(iii) Exercisability; Rights of a Shareholder. Stock Options shall become vested and exercisable at such time or times, whether or not in installments, as shall be determined by the Committee at or after the grant date. The Committee may at any time accelerate the exercisability of all or any portion of any Stock Option. An optionee shall have the rights of a shareholder only as to shares acquired upon the exercise of a Stock Option and not as to unexercised Stock Options.

(iv) Method of Exercise. Stock Options may be exercised in whole or in part, by giving written notice of exercise to the Company, specifying the number of shares to be purchased. Payment of the purchase price may be made by one or more of the following methods:

(A) In cash, by certified or bank check or other instrument acceptable to the Committee;

(B) In the form of shares of Stock that are not then subject to restrictions under any Company plan, if permitted by the Committee, in its discretion. Such surrendered shares shall be valued at Fair Market Value on the exercise date; or

(C) By the optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the purchase price; provided that in the event the optionee chooses to pay the purchase price as so provided, the optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Committee shall prescribe as a condition of such payment procedure. Payment instruments will be received subject to collection.

The delivery of certificates representing shares of Stock to be purchased pursuant to the exercise of a Stock Option will be contingent upon receipt from the Optionee (or a purchaser acting in his stead in accordance with the provisions of the Stock Option) by the Company of the full purchase price for such shares and the fulfillment of any other requirements contained in the Stock Option or applicable provisions of laws.

(v) Termination by Death. If any optionee's employment by the Company and its Subsidiaries terminates by reason of death, the Stock Option may thereafter be exercised, to the extent exercisable at the date of death, by the legal representative or legatee of the optionee, for a period of 180 days (or such longer period as the Committee shall specify at any time) from the date of death, or until the expiration of the stated term of the Option, if earlier.

(vi) Termination by Reason of Disability or Normal Retirement.

(A) Any Stock Option held by an optionee whose employment by the Company and its Subsidiaries has terminated by reason of Disability may thereafter be exercised, to the extent it was exercisable at the time of such termination, for a period of 180 days (or such longer period as the Committee shall specify at any time) from the date of such termination of employment, or until the expiration of the stated term of the Option, if earlier.

(B) Any Stock Option held by an optionee whose employment by the Company and its Subsidiaries has terminated by reason of Normal Retirement may thereafter be exercised, to the extent it was exercisable at the time of such termination, for a period of 90 days (or such longer period as the Committee shall specify at any time) from the date of such termination of employment, or until the expiration of the stated term of the Option, if earlier.

(C) The Committee shall have sole authority and discretion to determine whether a participant's employment has been terminated by reason of Disability or Normal Retirement.

(D) Except as otherwise provided by the Committee at the time of grant, the death of an optionee during a period provided in this Section 5(a)(vi) for the exercise of a Non-Qualified Stock Option, shall extend such period for 180 days from the date of death, subject to termination on the expiration of the stated term of the Option, if earlier.

(vii) Termination for Cause. If any optionee's employment by the Company and its Subsidiaries has been terminated for Cause, any Stock Option held by such optionee shall immediately terminate and be of no further force and effect; provided, however, that the Committee may, in its sole discretion, provide that such stock option can be exercised for a period of up to 30 days from the date of termination of employment or until the expiration of the stated term of the Option, if earlier.

(viii) Other Termination. Unless otherwise determined by the Committee, if an optionee's employment by the Company and its Subsidiaries terminates for any reason other than death, Disability, Normal Retirement or for Cause, any Stock Option held by such optionee may thereafter be exercised, to the extent it was exercisable on the date of termination of employment, for 30 days (or such longer period as the Committee shall specify at any time) from the date of termination of employment or until the expiration of the stated term of the Option, if earlier.

(ix) Annual Limit on Incentive Stock Options. To the extent required for "incentive stock option" treatment under Section 422 of the Code, the aggregate Fair Market Value (determined as of the time of grant) of the Stock with respect to which incentive stock options granted under this Plan and any other plan of the Company or its Subsidiaries become exercisable for the first time by an optionee during any calendar year shall not exceed $100,000.

(x) Form of Settlement. Shares of Stock issued upon exercise of a Stock Option shall be free of all restrictions under the Plan, except as otherwise provided in this Plan.

(b) Reload Options. At the discretion of the Committee, Options granted under this Section 5(a) may include a so-called "reload" feature pursuant to which an optionee exercising an option by the delivery of a number of shares of Stock in accordance with Section 5(a)(iv)(B) hereof would automatically be granted an additional Option (with an exercise price equal to the Fair Market Value of the Stock on the date the additional Option is granted and with the same expiration date as the original Option being exercised, and with such other terms as the Committee may provide) to purchase that number of shares of Stock equal to the number delivered to exercise the original Option.

(c) Stock Options Granted to Non-Employee Directors.

(i) Grant of Options Upon Election to Board. Each Non-employee Director who is elected by the stockholders of the Company to the Board on or subsequent to October 8, 1999 shall automatically be granted, upon such election, a Non-Qualified Stock Option to purchase 15,000 shares of Stock. Each Non-Employee Director who is re-elected by the stockholders of the Company to the Board on or subsequent to October 8, 1999 shall automatically be granted, upon each such re-election, a Non-qualified Stock Option to purchase 15,000 shares of Stock.

(ii) Exercise Price. The exercise price per share for the Stock covered by a Stock Option granted pursuant to this Section 5(c) shall be equal to the Fair Market Value of the Stock on the date the Stock Option is granted.

(iii) Exercise; Termination; Non-transferability.

(A) Options granted under this Section 5(c) shall be vested at the rate of 33 1/3% of such options shall be exercisable on the date of grant, an additional 33 1/3% of such options shall be exercisable on the first anniversary of the grant thereof, and an additional 33 1/3% of such options shall become exercisable on the second anniversary of grant thereof; subject to the provisions of Section 5(c)(iii)(B), any Option so granted shall be exercisable after the termination of service of the Non-Employee Director, whether because of death, disability or otherwise. No Option issued under this Section 5(c) shall be exercisable after the expiration of ten years from the date upon which such Option is granted.

(B) The rights of a Non-Employee Director in an Option granted under Section 5(c) shall terminate 90 days after such Director ceases to be a Director of the Company or the specified expiration date, if earlier; provided, however, that if the Non-Employee ceases to be a Director for Cause, the rights shall terminate immediately on the date on which he ceases to be a Director.

(C) Any Option granted to a Non-Employee Director and outstanding on the date of his or her death may be exercised by the legal representative or legatee of the optionee for a period of 180 days from the date of death or until the expiration of the stated term of the option, if earlier.

(D) Options granted under this Section 5(c) may be exercised only by written notice to the Company specifying the number of shares to be purchased. Payment of the full purchase price of the shares to be purchased may be made by one or more of the methods specified in Section 5(a)(iv). An optionee shall have the rights of a shareholder only as to shares acquired upon the exercise of a Stock Option and not as to unexercised Stock Options.

(iv) Limited to Non-Employee Directors. The provisions of this Section 5(c) shall apply only to Options granted or to be granted to Non-Employee Directors, and shall not be deemed to modify, limit or otherwise apply to any other provision of this Plan or to any Option issued under this Plan to a participant who is not a Non-Employee Director of the Company. To the extent inconsistent with the provisions of any other Section of this Plan, the provisions of this Section 5(c) shall govern the rights and obligations of the Company and Non-Employee Directors respecting Options granted or to be granted to Non-Employee Directors pursuant to this Section 5(c).

(d) Non-transferability of Options. No Stock Option shall be transferable by the optionee otherwise than by will or by the laws of descent and distribution and all Stock Options shall be exercisable, during the optionee's lifetime, only by the optionee. Notwithstanding the foregoing, the Committee may permit the optionee to transfer, without consideration for the transfer, his Non-Qualified Stock Options to members of his immediate family, to trusts for the benefit of such family members, or to partnerships in which such family members are the only partners; provided that the transferee agrees in writing with the Company to be bound by all terms and conditions of the Plan and the applicable Stock Option.

SECTION 6. Conditioned Stock Awards.

(a) Nature of Conditioned Stock Award. The Committee may grant Conditioned Stock Awards to any employees of the Company or any Subsidiary or any other individual eligible to receive such an Award pursuant to Section 4. A Conditioned Stock Award is an Award entitling the recipient to acquire, at no cost or for a purchase price determined by the Committee, shares of Stock subject to such restrictions and conditions as the Committee may determine at the time of grant ("Conditioned Stock"). Conditions may be based on continuing employment and/or achievement of pre-established performance goals and objectives. In addition, a Conditioned Stock Award may be granted to an employee by the Committee in lieu of a cash bonus due to such employee pursuant to any other plan of the Company.

(b) Acceptance of Award. A participant who is granted a Conditioned Stock Award shall have no rights with respect to such Award unless the participant shall have accepted the Award within 60 days (or such shorter date as the Committee may specify) following the award date by making payment to the Company, if required, by certified or bank check or other instrument or form of payment acceptable to the Committee in an amount equal to the specified purchase price, if any, of the shares covered by the Award and by executing and delivering to the Company a written instrument that sets forth the terms and conditions of the Conditioned Stock in such form as the Committee shall determine.

(c) Rights as a Shareholder. Upon complying with Section 6(b) above, a participant shall have all the rights of a shareholder with respect to the Conditioned Stock, including voting and dividend rights, subject to non-transferability restrictions and Company repurchase or forfeiture rights described in this Section 6 and subject to such other conditions contained in the written instrument evidencing the Conditioned Award. Unless the Committee shall otherwise determine, certificates evidencing shares of Conditioned Stock shall remain in the possession of the Company until such shares are vested as provided in Section 6(e) below.

(d) Restrictions. Shares of Conditioned Stock may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of except as specifically provided herein. In the event of termination of employment by the Company and its Subsidiaries for any reason (including death, Disability, Normal Retirement and for Cause), the Company shall have the right, at the discretion of the Committee, to repurchase shares of Conditioned Stock with respect to which conditions have not lapsed at their purchase price, or to require forfeiture of such shares to the Company if acquired at no cost, from the participant or the participant's legal representative. The Company must exercise such right of repurchase or forfeiture not later than the 90th day following such termination of employment (unless otherwise specified in the written instrument evidencing the Conditioned Award).

(e) Vesting of Conditioned Stock. The Committee at the time of grant shall specify the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which the nontransferability of the Conditioned Stock and the Company's right of repurchase or forfeiture shall lapse. Subsequent to such date or dates and/or the attainment of such pre-established performance goals, objectives and other conditions, the shares on which all restrictions have lapsed shall no longer be Conditioned Stock and shall be deemed "vested." The Committee at any time may accelerate such date or dates and otherwise waive or, subject to Section 11, amend any conditions of the Award.

(f) Waiver, Deferral and Reinvestment of Dividends. The written instrument evidencing the Conditioned Stock Award may require or permit the immediate payment, waiver, deferral or investment of dividends paid on the Restricted Stock.

SECTION 7. Unrestricted Stock Awards.

(a) Grant or Sale of Unrestricted Stock. The Committee may, in its sole discretion, grant (or sell at a purchase price determined by the Committee which shall in no event be less than 85% of Fair Market Value) to any employees of the Company or any Subsidiary or any other individual eligible to receive such an Award pursuant to Section 4, shares of Stock free of any restrictions under the Plan ("Unrestricted Stock"). Shares of Unrestricted Stock may be granted or sold as described in the preceding sentence in respect of past services or other valid consideration.

(b) Elections to Receive Unrestricted Stock in Lieu of Compensation. Upon the request of an employee and with the consent of the Committee, each employee may, pursuant to an irrevocable written election delivered to the Company no later than the date or dates specified by the Committee, receive a portion of the cash compensation otherwise due to him in Unrestricted Stock (valued at Fair Market Value on the date or dates the cash compensation would otherwise be paid). Such Unrestricted Stock may be paid to the employee at the same time as the cash compensation would otherwise be paid, or at a later time, as specified by the employee in the written election.

(c) Elections to Receive Unrestricted Stock in Lieu of Directors' Fees. Each Non-Employee Director may, pursuant to an irrevocable written election delivered to the Company no later than December 31 of any calendar year, receive all or a portion of the directors' fees otherwise due to him in the subsequent calendar year in Unrestricted Stock (valued at Fair Market Value on the date or dates the directors' fees would otherwise be paid). Such Unrestricted Stock may be paid to the Non-Employee Director at the same time the directors' fees would otherwise have been paid, or at a later time, as specified by the Non-Employee Director in the written election.

(d) Restrictions on Transfers. The right to receive Unrestricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered, other than by will or the laws of descent and distribution.

SECTION 8. Performance Share Awards.

(a) Nature of Performance Shares. A Performance Share Award is an award entitling the recipient to acquire shares of Stock upon the attainment of specified performance goals. The Committee may make Performance Share Awards independent of or in connection with the granting of any other Award under the Plan. Performance Share Awards may be granted under the Plan to any employees of the Company or any Subsidiary, including those who qualify for awards under other performance plans of the Company and any other individual eligible to receive such an Award pursuant to Section 4. The Committee in its sole discretion shall determine whether and to whom Performance Share Awards shall be made, the performance goals applicable under each such Award, the periods during which performance is to be measured, and all other limitations and conditions applicable to the awarded Performance Shares; provided, however, that the Committee may rely on the performance goals and other standards applicable to other performance-based plans of the Company in setting the standards for Performance Share Awards under the Plan.

(b) Restrictions of Transfer. Performance Share Awards and all rights with respect to such Awards may not be sold, assigned, transferred, pledged or otherwise encumbered.

(c) Rights as a Shareholder. A participant receiving a Performance Share Award shall have the rights of a shareholder only as to shares actually received by the participant under the Plan and not with respect to shares subject to the Award but not actually received by the participant. A participant shall be entitled to receive a stock certificate evidencing the acquisition of shares of Stock under a Performance Share Award only upon satisfaction of all conditions specified in the written instrument evidencing the Performance Share Award (or in a performance plan adopted by the Committee).

(d) Termination. Except as may otherwise be provided by the Committee at any time prior to termination of employment, a participant's rights in all Performance Share Awards shall automatically terminate upon the participant's termination of employment by the Company and its Subsidiaries for any reason (including death, Disability, Normal Retirement and for Cause).

(e) Acceleration, Waiver, Etc. At any time prior to the participant's termination of employment by the Company and its Subsidiaries, the Committee may in its sole discretion accelerate, waive or, subject to Section 11, amend any or all of the goals, restrictions or conditions imposed under any Performance Share Award.

SECTION 9. Tax Withholding.

(a) Payment by Participant. Each participant shall, no later than the date as of which the value of an Award or of any Stock or other amounts received thereunder first becomes includable in the gross income of the participant for Federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Committee regarding payment of any Federal, state, or local taxes of any kind required by law to be withheld with respect to such income. The Company and its Subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the participant.

(b) Payment in Shares. With the approval of the Committee, a participant may elect to have such tax withholding obligation satisfied, in whole or in part, by (i) authorizing the Company to withhold from shares of Stock to be issued pursuant to any Award a number of shares with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due with respect to such Award, or (ii) transferring to the Company shares of Stock owned by the participant with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due.

SECTION 10. Transfer, Leave Of Absence, Etc.

For purposes of the Plan, the following events shall not be deemed a termination of employment:

(a) a transfer to the employment of the Company from a Subsidiary or from the Company to a Subsidiary, or from one Subsidiary to another;

(b) an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if the employee's right to re-employment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Committee otherwise so provides in writing.

SECTION 11. Amendments And Termination.

The Board may at any time amend or discontinue the Plan and the Committee may at any time amend or cancel any outstanding Award (or provide substitute Awards at the same or reduced exercise price or with no exercise or purchase price, but such price, if any, must satisfy the requirements which would apply to the substitute or amended Award if it were then initially granted under this Plan) for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall adversely affect rights under any outstanding Award without the holder's consent. However, no such repricing shall be effective unless approved by the stockholders of the Company, nor shall such amendment, unless approved by the stockholders of the Company, be effective if it would cause the Plan to fail to satisfy the incentive stock option requirements of the Code or if it would increase the limitation set forth in Section 3(a) on the number of shares of Stock covered by Options that may be granted to any individual participant during any fiscal year.

SECTION 12. Status Of Plan.

With respect to the portion of any Award which has not been exercised and any payments in cash, Stock or other consideration not received by a participant, a participant shall have no rights greater than those of a general creditor of the Company unless the Committee shall otherwise expressly determine in connection with any Award or Awards. In its sole discretion, the Committee may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver Stock or make payments with respect to Awards hereunder, provided that the existence of such trusts or other arrangements is consistent with the provision of the foregoing sentence.

SECTION 13. Change Of Control Provisions.

(a) Upon the occurrence of a Change of Control as defined in this Section 13:

(i) Each Stock Option shall automatically become fully exercisable notwithstanding any provision to the contrary hereof.

(ii) Restrictions and conditions on Awards of Conditioned Stock shall automatically be deemed waived, and the recipients of such Awards shall become entitled to receipt of the stock subject to such Awards.

(b) The Committee may at any time prior to a Change of Control accelerate the exercisability of any Stock Options, Conditioned Stock, and Performance Share Awards to the extent it shall in its sole discretion determine.

(c) "Change of Control" shall mean the occurrence of any one of the following events:

(i) any "person" (as such term is used in Sections 13(d) and 14(d)(2) of the Act) becomes a "beneficial owner" (as such term is defined in Rule 13d-3 promulgated under the Act) (other than the Company, any trustee or other fiduciary holding securities under an employee benefit plan of the Company, or any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company), directly or indirectly, of securities of the Company representing thirty-five percent (35%) or more of the combined voting power of the Company's then outstanding securities; or, in the case of any person which as of October 20, 2000, is the beneficial owner, directly or indirectly, of securities of the Company representing more than [10%] of the combined voting power of the Company's then outstanding securities, such person shall become the beneficial owner, directly or indirectly, of securities of the Company representing [thirty-five percent (35%)] or more of the combined voting power of the Company's then outstanding securities in addition to the securities beneficially owned, directly or indirectly, by such person as of October 20, 2000 (excluding, for the avoidance of doubt, becoming the beneficial owner of such percentage of securities by reason of any acquisition, retirement or cancellation of securities by the Company).

(ii) at any time after October 20, 2000, persons who, as of October 20, 2000, constituted the Company's Board (the "Incumbent Board") cease for any reason, including without limitation as a result of a tender offer, proxy contest, merger or similar transaction, to constitute at least a majority of the Board, provided that any person becoming a director of the Company subsequent to October 20, 2000 whose election was approved by, or who was nominated with the approval of, at least a majority of the directors then comprising the Incumbent Board shall, for purposes of this Plan, be considered a member of the Incumbent Board; or

(iii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation or other entity, other than (a) a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 65% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation or (b) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no "person" (as hereinabove defined) acquires more than 50% of the combined voting power of the Company's then outstanding securities; or

(iv) the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets.

SECTION 14. General Provisions.

(a) No Distribution; Compliance with Legal Requirements. The Committee may require each person acquiring shares pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares without a view to distribution thereof.

No shares of Stock shall be issued pursuant to an Award until all applicable securities law and other legal and stock exchange requirements have been satisfied. The Committee may require the placing of such stop-orders and restrictive legends on certificates for Stock and Awards as it deems appropriate.

(b) Delivery of Stock Certificates. Delivery of stock certificates to participants under this Plan shall be deemed effected for all purposes when the Company or a stock transfer agent of the Company shall have delivered such certificates in the United States mail, addressed to the participant, at the participant's last known address on file with the Company.

(c) Other Compensation Arrangements; No Employment Rights. Nothing contained in this Plan shall prevent the Board from adopting other or additional compensation arrangements, including trusts, subject to stockholder approval if such approval is required; and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of the Plan or any Award under the Plan does not confer upon any employee any right to continued employment with the Company or any Subsidiary.

SECTION 15. Effective Date Of Plan.

The Plan shall become effective upon approval by the holders of a majority of the shares of capital stock of the Company present or represented and entitled to vote at a meeting of stockholders.

SECTION 16. Governing Law.

This Plan shall be governed by, and construed and enforced in accordance with, the substantive laws of The Commonwealth of Massachusetts without regard to its principles of conflicts of laws.

Exhibit 10.2

SECOND AMENDMENT TO
THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

This Second Amendment to Third Amended and Restated Loan and Security Agreement (the "Second Amendment") is made as of this 3rd day of November, 2003 by and among

CASUAL MALE RETAIL GROUP, INC. (formerly known as Designs, Inc.), a Delaware corporation and DESIGNS APPAREL, INC. (referred to individually as a "Borrower" and collectively as the "Borrowers"); and

CASUAL MALE RETAIL GROUP, INC., a Delaware corporation, as Borrowers' Representative for the Borrowers; and

FLEET RETAIL FINANCE INC., HELLER FINANCIAL, INC., NATIONAL CITY COMMERCIAL FINANCE, INC., WELLS FARGO RETAIL FINANCE LLC, WELLS FARGO BUSINESS CREDIT, INC., LASALLE RETAIL FINANCE, A DIVISION OF LASALLE BUSINESS CREDIT, INC., AGENT FOR STANDARD FEDERAL BANK NATIONAL ASSOCIATION, THE PROVIDENT BANK, and WEBSTER WHITEHALL BUSINESS CREDIT CORPORATION (together with each of their successors and assigns, referred to individually as a "Revolving Credit Lender" and collectively as the "Revolving Credit Lenders"); and

FLEET RETAIL FINANCE INC., as SwingLine Lender; and

BACK BAY CAPITAL FUNDING LLC, as Tranche B Lender (together with the Revolving Credit Lenders and the SwingLine Lender, the "Lenders"); and

FLEET RETAIL FINANCE INC., as Administrative Agent and Collateral Agent for the Lenders; and

WELLS FARGO RETAIL FINANCE, LLC, as Syndication Agent; and

NATIONAL CITY COMMERCIAL FINANCE, INC. and HELLER FINANCIAL, INC., as Co-Documentation Agents (together with the Administrative Agent, Collateral Agent and Syndication Agent, the "Agents").

in consideration of the mutual covenants herein contained and benefits to be derived herefrom.

W I T N E S S E T H

A. Reference is made to the Third Amended and Restated Loan and Security Agreement dated as of May 14, 2002 by and among the Borrowers, the Borrowers' Representative, the Lenders and the Agents, as amended by a certain First Amendment to Third Amended and Restated Loan and Security Agreement dated as of October 16, 2002 (the "Credit Agreement").

B. The Agents, the Lenders, the Borrowers and the Borrowers' Representative desire to modify the Credit Agreement as set forth herein.

Accordingly, the Agents, the Lenders, the Borrowers, and the Borrowers' Representative agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

2. Amendments to Credit Agreement:

a. The Credit Agreement shall be amended by inserting the following definition in Article 1, thereof:

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

Rate	Period
85%	December 16 through April 14 of each year
90%	April 15 through June 15 of each year
85%	June 16 through September 30 of each year
90%	October 1 through December 15 of each year

b. The Credit Agreement shall be amended by deleting the definition of "Applicable Margin" in Article 1, thereof, and inserting in lieu thereof the following:

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

LEVEL	AVERAGE EXCESS AVAILABILITY		LIBOR MARGIN	BASE MARGIN
	Less Than	Equal to or Greater Than		
I		$ 35,000,000	2.00%	0%
II	$ 35,000,000	$ 20,000,000	2.25%	0%
III	$ 20,000,000	$ 12,500,000	2.50%	.25%
IV	$ 12,500,000		2.75%	.50%

The Applicable Margin shall initially be established at Level III. Thereafter, the Applicable Margin shall be adjusted quarterly on the first day of each calendar quarter, commencing with the Fiscal quarter June 2003, based upon the average Excess Availability during the prior quarter,

provided that in no event shall the Applicable Margin be established at Level I or Level II during the first twelve (12) months subsequent to the Closing Date. Upon the occurrence of an Event of Default, the Applicable Margin may, at the option of the Administrative Agent, be immediately increased to the percentages set forth in Level IV (even if the Excess Availability requirements for another Level have been met) and interest shall be determined in the manner set forth in Section 2.12(f).

c. The Credit Agreement shall be amended by deleting the following text appearing in the definition of "Borrowing Base" in Article 1, thereof:

(ii) 85% of the Appraised Inventory Liquidation Value.

and inserting in lieu thereof the following:

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

d. The Credit Agreement shall be amended by inserting the following definition in Article 1, thereof:

"**Designs Store**": any store operated by any one of the Designs, Inc. Companies.

e. The Credit Agreement shall be amended by deleting the definition of "Maturity Date" in Article 1, thereof, and inserting in lieu thereof the following:

"**Maturity Date**": May 14, 2006.

f. The Credit Agreement shall be amended by deleting the definition of "Permitted Asset Disposition" in Article 1, thereof, and inserting in lieu thereof the following:

"**Permitted Asset Disposition**": The following:

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

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

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

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

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

(b) The rejection of up to fifteen (15) leases as contemplated by section 6.16 of the Casual Male Acquisition Agreement.

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

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

g. The Credit Agreement shall be amended by inserting the following text at the end of the definition of "Permitted Indebtedness" in Article 1, thereof:

(g) indebtedness incurred by the Borrowers, in addition to the indebtedness set forth in **Exhibit A** attached hereto, of up to Sixteen Million Dollars ($16,000,000), subordinated on terms and conditions satisfactory to Administrative Agent, the proceeds of which shall be used exclusively for the repayment of the Tranche B Loan.

h. The Credit Agreement shall be amended by deleting the definition of "Revolving Credit Casual Male Companies Inventory Advance Rate" in Article 1, thereof, and inserting in lieu thereof the following:

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

Rate	Period
29%	December 16 through April 14 of each year
30.6%	April 15 through June 15 of each year
29%	June 16 through September 30 of each year
30.6%	October 1 through December 15 of each year

i. The Credit Agreement shall be amended by deleting the definition of "Revolving Credit Designs, Inc. Companies Inventory Advance Rate" in Article 1, thereof, and inserting in lieu thereof the following:

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

Rate	Period
62%	December 16 through April 14 of each year
66%	April 15 through June 15 of each year
62%	June 16 through September 30 of each year
66%	October 1 through December 15 of each year

j. The Credit Agreement shall be amended by deleting the definition of "Revolving Credit Ceiling" in Article 1, thereof, and inserting in lieu thereof the following:

"**Revolving Credit Ceiling**": $90,000,000.00

k. The Credit Agreement shall be amended by deleting the following text appearing in Section 2.16 thereof, entitled "Revolving Credit Early Termination Fee":

(a) In the event that the Termination Date occurs, for any reason (whether by virtue of Acceleration or otherwise), prior to the Maturity Date, then except as provided in Section 2.16(b), the Borrowers shall pay the Administrative Agent, for the Pro-Rata account of the Revolving Credit Lenders, the **"Revolving Credit Early Termination Fee"** (so referred to herein) consisting of (i) one and one-half percent (1 1/2%) of the Revolving Credit Ceiling in effect as of the date of this Agreement if the Termination Date shall occur at any time prior to the first anniversary of the Closing Date and (i) one percent (1%) of the Revolving Credit Ceiling in effect as of the date of this Agreement if the Termination Date shall occur at any time after the first anniversary of the Closing Date and more than 90 days prior to the Maturity Date.

and inserting in lieu thereof the following:

(a) In the event that the Termination Date occurs, for any reason (whether by virtue of Acceleration or otherwise), prior to May 14, 2005, then except as provided in Section 2.16(b), the Borrowers shall pay the Administrative Agent, for the Pro-Rata account of the Revolving Credit Lenders, the **"Revolving Credit Early Termination Fee"** (so referred to herein) consisting of (i) one and one-half percent (1 1/2%) of the Revolving Credit Ceiling if the Termination Date shall occur at any time

prior to the first anniversary of the Closing Date and (ii) one percent (1%) of the Revolving Credit Ceiling if the Termination Date shall occur after the first anniversary of the Closing Date and on or before May 14, 2005.

l. The Credit Agreement shall be amended by deleting the following text appearing in subsection (c) of Section 5.20 thereof, entitled "Dividends. Investments. Entity Action.":

(iii) investments in the ECKO Joint Venture not to exceed $5,000,000 in the aggregate during the term of this agreement.

and inserting in lieu thereof the following:

(iii) investments in the ECKO Joint Venture not to exceed $10,000,000 in the aggregate during the term of this agreement.

m. The Credit Agreement shall be amended by deleting Section 6.11 thereof, entitled "Financial Performance Covenants", and inserting in lieu thereof the following:

6.11 Financial Performance Covenants.

(a) The Loan Parties shall maintain at all times Excess Availability of not less than the lesser of: (i) $6,000,000, and (ii) 8.5% of the Borrowing Base.

(b) The Loan Parties shall not permit or suffer Capital Expenditures for the

(i) Fiscal year ending January 25, 2003, to be greater than $12,000,000;

(ii) Fiscal year ending January 30, 2004, to be greater than $15,000,000;

(iii) Fiscal year ending January 29, 2005, to be greater than $20,000,000;

(iv) Fiscal year ending January 28, 2006, to be greater than $20,000,000; and

(v) period from January 29, 2006, through the Maturity Date, to be greater than $10,000,000.

Notwithstanding the foregoing, any amount set forth in clauses (i) through (iv) which is not committed or spent in such Fiscal year may be carried over for Capital Expenditures during the next Fiscal year.

(c) In the event that the Loan Parties' Excess Availability is less than the aggregate of (A) $10,000,000, and (B) the Excess Availability requirement pursuant to Section 6.11(a) above, the Loan Parties shall maintain EBITDA of not less than:

(i) $21,900,000 through November 30, 2003;

(ii) $22,800,000 as of December 31, 2003;

(iii) $23,000,000 as of January 31, 2004;

(iv) $23,000,000 as of February 29, 2004;

(v) $24,100,000 as of March 31, 2004;

(vi) $23,500,000 as of April 30, 2004;

(vii) $24,400,000 as of May 31, 2004;

(viii) $25,500,000 as of June 30, 2004;

(ix) $25,000,000 as of July 31, 2004;

(x) $25,000,000 as of August 31, 2004;

(xi) $25,000,000 as of September 30, 2004;

(xii) $25,500,000 as of October 31, 2004;

(xiii) $25,500,000 as of November 30, 2004;

(xiv) $26,500,000 as of December 31, 2004;

(xv) $26,500,000 as of January 31, 2005;

(xvi) $27,000,000 as of February 28, 2005;

(xvii) $27,500,000 as of March 31, 2005;

(xviii) $28,500,000 as of April 30, 2005;

(xix) $29,000,000 as of May 31, 2005;

(xx) $30,000,000 as of June 30, 2005;

(xxi) $31,000,000 as of July 31, 2005;

(xxii) $31,000,000 as of August 31, 2005;

(xxiii) $32,000,000 as of September 30, 2005;

(xxiv) $33,000,000 as of October 31, 2005;

(xxv) $34,500,000 as of November 30, 2005;

(xxvi) $36,000,000 as of December31, 2005;

(xxvii) $36,500,000 as of January 31, 2006;

(xxviii) $37,101,000 as of February 28, 2006;

(xxix) $37,490,000 as of March 31, 2006;

(xxx) $38,006,000 as of April 30, 2006; and

(xxxi) $38,434,000 as of May 31, 2006.

EBITDA will be tested on a rolling twelve (12) month basis as of last day of the month prior to any date on which the Loan Parties' Excess Availability is less than the aggregate of (A) $10,000,000, and (B) the Excess Availability requirement pursuant to Section 6.11(a).

The Administrative Agent may determine the Loan Parties' compliance with such covenants based upon financial reports and statements provided by the Borrowers' Representative to the Administrative Agent (whether or not such financial reports and statements are required to be furnished pursuant to this Agreement) as well as by reference to interim financial information provided to, or developed by, the Administrative Agent.

3. Amendment Fee. Borrowers shall pay to Administrative Agent an amendment fee equal to One Hundred Fifty Thousand Dollars ($150,000.00), which fee shall be due on the date hereof and shall be deemed fully earned as of the date hereof.

4. Ratification of Loan Documents. Except as otherwise provided for herein, the terms and conditions of the Credit Agreement and of the other Loan Documents remain in full force and effect, and each Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and conditions of, and the warranties and representations set forth, therein.

5. Conditions Precedent to Effectiveness. This Second Amendment shall not be effective until each of the following conditions precedent have been fulfilled to the satisfaction of the Administrative Agent:

a. This Second Amendment shall have been duly executed and delivered by the respective parties hereto, and, shall be in full force and effect.

b. All action on the part of the Borrowers necessary for the valid execution, delivery and performance by the Borrowers of this Second Amendment shall have been duly and effectively taken and evidence thereof satisfactory to the Administrative Agent shall have been provided to the Administrative Agent.

c. The Borrowers shall have provided such additional instruments and documents to the Administrative Agent as the Administrative Agent and the Administrative Agent's counsel may have reasonably requested.

6. Miscellaneous.

a. This Second Amendment may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument.

b. This Second Amendment expresses the entire understanding of the parties with respect to the transactions contemplated hereby. No prior negotiations or discussions shall limit, modify, or otherwise affect the provisions hereof.

c. Any determination that any provision of this Second Amendment or any application hereof is invalid, illegal or unenforceable in any respect and in any instance shall not effect the validity, legality or enforceability of such provision in any other instance, or the validity, legality or enforceability of any other provisions of this Second Amendment.

d. The Borrowers shall pay on demand all reasonable costs and expenses of the Administrative Agent, including, without limitation, reasonable attorneys' fees in connection with the preparation, negotiation, execution and delivery of this Second Amendment.

e. Each Borrower warrants and represents that the Borrower has consulted with independent legal counsel of each Borrower's selection in connection with this Second Amendment and is not relying on any representations or warranties of the Administrative Agent or its counsel in entering into this Second Amendment.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties have duly executed this Second Amendment as of the day and year first above written.

CASUAL MALE RETAIL GROUP, INC., as Borrowers' Representative and Borrower

by _____

Name:
Title:

DESIGNS APPAREL, INC., as Borrower

by _____

Name:
Title:

FLEET RETAIL FINANCE INC., as Administrative Agent, Collateral Agent, Revolving Credit Lender, and SwingLine Lender

by _____

Name:
Title:

HELLER FINANCIAL, INC., as Co-Documentation Agent and Revolving Credit Lender

by _____

Name:
Title:

NATIONAL CITY COMMERCIAL FINANCE, INC., as Co-Documentation Agent and Revolving Credit Lender

by _____

Name:
Title:

WELLS FARGO RETAIL FINANCE LLC,
as Syndication Agent and Revolving Credit Lender

by _____

Name:
Title:

WELLS FARGO BUSINESS CREDIT,
INC., as Revolving Credit Lender

by _____

Name:
Title:

LASALLE RETAIL FINANCE, A
DIVISION OF LASALLE BUSINESS
CREDIT, INC., AGENT FOR STANDARD FEDERAL
BANK NATIONAL
ASSOCIATION, as Revolving Credit Lender

by _____

Name:
Title:

THE PROVIDENT BANK, as Revolving
Credit Lender

by _____

Name:
Title:

WEBSTER WHITEHALL BUSINESS
CREDIT CORPORATION, as Revolving
Credit Lender

by _____

Name:
Title:

BACK BAY CAPITAL FUNDING LLC, as Tranche B
Lender

by _____

Name:
Title:

EXHIBIT 10.3

EXECUTION COPY

$85,000,000

CASUAL MALE RETAIL GROUP, INC.

5% Convertible Senior Subordinated Notes due 2024

PURCHASE AGREEMENT

Dated November 12, 2003

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(Continued)

November 12, 2003

Thomas Weisel Partners LLC
One Montgomery Street, Suite 3700
San Francisco, California 94104
Ladies and Gentlemen:

Introduction. Casual Male Retail Group, Inc., a Delaware corporation (the "**Company**"), proposes to issue and sell to you ("**you**," or the "**Initial Purchaser**"), an aggregate of $85,000,000 principal amount of its 5% Convertible Senior Subordinated Notes due 2024, (the "**Firm Securities**") to be issued pursuant to the provisions of an Indenture dated as of November 18, 2003 (the "**Indenture**") between the Company and U.S. Bank National Association, as Trustee (the "**Trustee**").

The Company also proposes to issue and sell to you not more than an additional $15,000,000 aggregate principal amount of its 5% Convertible Senior Subordinated Notes due 2024, (the "**Additional Securities**"), if and to the extent that you shall have determined to exercise the right to purchase such 5% Convertible Senior Subordinated Notes due 2024 granted to you in Section 2 hereof. The Firm Securities and the Additional Securities are hereinafter collectively referred to as the "**Securities**."

The Securities will be convertible into shares of the Company's Common Stock, par value $0.01 per share (the "**Common Stock**"). The shares of Common Stock into which the Securities are convertible are hereinafter referred to as the "**Underlying Securities.**"

The Securities and the Underlying Securities will be offered without being registered under the Securities Act of 1933, as amended (the "**Securities Act**"), only to qualified institutional buyers as defined in Rule 144A under the Securities Act ("**QIBs**") in compliance with the exemption from registration provided by Rule 144A under the Securities Act.

The Initial Purchaser and its direct and indirect transferees will be entitled to the benefits of a Registration Rights Agreement dated the date hereof between the Company and the Initial Purchaser (the "**Registration Rights Agreement**").

In connection with the sale of the Securities, the Company has prepared a preliminary offering circular (the "**Preliminary Offering Circular**") and will prepare a final offering circular (the "Final Offering Circular" and, with the Preliminary Offering Circular, each an "Offering Circular") including or incorporating by reference a description of the terms of the Securities and the Underlying Securities, the terms of the offering and a description of the Company. As used herein,

the term "Offering Circular" shall include in each case the documents incorporated by reference therein. All references in this Purchase Agreement (this "**Agreement**") to amendments of or supplements to an Offering Circular shall be deemed to mean and include the filing of any document under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), which is or is deemed to be incorporated by reference in the Offering Circular.

1. Representations and Warranties of the Company. The Company represents and warrants to and agrees with the Initial Purchaser that:

1.1 Contents of Offering Circulars. (i) The Preliminary Offering Circular (other than the documents incorporated by reference) did not, as of its date, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and (ii) the Final Offering Circular (other than the documents incorporated by reference) did not, as of its date contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in either Offering Circular based solely upon information relating to the Initial Purchaser furnished to the Company in writing by the Initial Purchaser for use therein.

1.2 Exchange Act Compliance. The documents incorporated or deemed to be incorporated by reference in either Offering Circular, at the time they were filed with the Securities and Exchange Commission (the "**Commission**"), conformed, in all material respects, with the requirements of the Exchange Act and the rules and regulations promulgated thereunder, and did not, as of their respective dates, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and any further documents so filed or incorporated by reference in the Final Offering Circular, when such documents are filed with the Commission, will conform to the requirements of the Exchange Act and the rules and regulations promulgated thereunder, and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

1.3 Due Incorporation. The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in each Offering Circular and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

1.4 Subsidiaries. Each subsidiary of the Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business

as described in each Offering Circular and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole. All of the issued shares of capital stock of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly by the Company, free and clear of all liens, encumbrances, equities or claims, except the shares of capital stock of each subsidiary of the Company, which are pledged to Fleet Retail Finance, Inc. under the Company's existing credit facility.

1.5 Purchase Agreement. This Agreement has been duly authorized, executed and delivered by the Company, and is a valid and binding agreement of the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and or similar laws affecting creditors' rights and remedies generally, and subject as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except as rights to indemnification hereunder may be limited under applicable law.

1.6 Indenture. The Indenture has been duly authorized by the Company, and when executed and delivered by the Company (assuming the authorization, execution and delivery by the Trustee), will constitute a valid and binding agreement of the Company enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity)..

1.7 Registration Rights Agreement. The Registration Rights Agreement has been duly authorized, and when executed and delivered by the Company (assuming the authorization, execution and delivery by the Initial Purchaser) will constitute a valid and binding agreement of, the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except as rights to indemnification and contribution under the Registration Rights Agreement may be limited under applicable law.

1.8 Description of Capital Stock. The authorized capital stock of the Company conforms in all material respects as to legal matters to the description thereof contained in the Final Offering Circular.

1.9 Authorized Stock. All of the issued shares of capital stock of the Company have been duly authorized and are validly issued, fully paid and non-assessable.

1.10 Validly Issued Securities. The Securities have been duly authorized and, when issued and delivered pursuant to this Agreement, will have been duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity), and will be entitled to the benefits provided by the Indenture under which they are to be issued; and the Securities and the Indenture will conform in all material respects to the descriptions thereof in the Final Offering Circular.

1.11 Underlying Securities. The Underlying Securities reserved for issuance upon conversion of the Securities have been duly authorized and reserved and, when issued upon conversion of the Securities in accordance with the terms of the Securities and the Indenture, will be validly issued, fully paid and non-assessable, and the issuance of the Underlying Securities will not be subject to any preemptive or similar rights.

1.12 No Conflict. Neither the Company nor any of its subsidiaries is in violation of its certificate of incorporation or by-laws or in default in the performance or observance of any material obligation, covenant or condition contained in any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its subsidiaries, taken as a whole. The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the Indenture, the Registration Rights Agreement and the Securities and the consummation of the transactions herein and therein contemplated will not contravene any provision of applicable law or the certificate of incorporation or by-laws of the Company or any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its subsidiaries, taken as a whole, or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Company of its obligations under this Agreement, the Indenture, the Registration Rights Agreement or the Securities except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Securities and the Underlying Securities (and by federal and state securities laws with respect to the Company's obligations under the Registration Rights Agreement) or that have been obtained.

1.13 No Material Adverse Change. There has not occurred any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Final Offering Circular.

1.14 Legal Proceedings; Exhibits. There are no legal or governmental proceedings pending or, to the best knowledge of the Company, threatened to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is

subject other than proceedings accurately described in all material respects in each Offering Circular and proceedings that would not have a material adverse effect on the Company and its subsidiaries, taken as a whole, or on the power or ability of the Company to perform its obligations under this Agreement, the Indenture, the Registration Rights Agreement or the Securities or to consummate the transactions contemplated by the Final Offering Circular.

1.15 Not an Investment Company. The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Final Offering Circular, will not be an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

1.16 Compliance with Laws. The Company and its subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("**Environmental Laws**"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, individually or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

1.17 No Environmental Costs. There are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, individually or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

1.18 Cuban Business Statute. The Company has complied with all provisions of Section 517.075, Florida Statutes relating to doing business with the Government of Cuba or with any person or affiliate located in Cuba.

1.19 Absence of Material Charges. Subsequent to the date as of which information is given in the Final Offering Circular: (1) the Company and its subsidiaries have not incurred any material liability or obligation, direct or contingent, nor entered into any material transaction not in the ordinary course of business; (2) the Company has not purchased any of its outstanding capital stock, nor declared, paid or otherwise made any dividend or distribution of any kind on its capital stock other than ordinary and customary dividends; and (3) there has not been any material change in the capital stock, short-term debt or long-term debt of the Company and its subsidiaries, except in each case as described in the Final Offering Circular.

1.20 Good Title to Properties. The Company and its subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company and its subsidiaries, in

each case free and clear of all liens, encumbrances and defects except such as are described in the Final Offering Circular or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and any real property and buildings held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its subsidiaries.

1.21 Descriptions in Offering Circular. The statements in each Offering Circular under the captions "Description of Notes," "Description of Capital Stock," "Certain United States Federal Income Tax Considerations," "Related Party Transactions," "Plan of Distribution" and "Transfer Restrictions" and in "Item 3 - Legal Proceedings" of the Company's most recent annual report on Form 10-K, in "Part 2, Item I - Legal Proceedings" of any quarterly report on Form 10-Q and in "Item 5 - Other Events" of any current report on Form 8-K included or incorporated by reference in the Final Offering Circular, in each case insofar as such statements constitute summaries of the legal matters, documents or proceedings referred to therein, are accurate and fairly summarize in all material respects the matters referred to therein.

1.22 Securities of Different Class. When the Securities are issued and delivered pursuant to this Agreement, the Securities will not be of the same class (within the meaning of Rule 144A under the Securities Act) as securities which are listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system.

1.23 Exchange Act Reporting Company. The Company is subject to Section 13 or 15(d) of the Exchange Act.

1.24 No Integration, General Solicitation or General Advertising. Neither the Company nor any affiliate (as defined in Rule 501(b) of Regulation D under the Securities Act, an "**Affiliate**") of the Company, nor any person acting on its or their behalf, has directly, or through any agent, (i) sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the sale of the Securities in a manner that would require the registration under the Securities Act of the Securities or (ii) engaged in any form of general solicitation or general advertising in connection with the offering of the Securities (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act.

1.25 No Registration of the Securities or Qualification of the Indenture. Assuming the accuracy of the representations of the Initial Purchaser contained in Section 6 hereof and its compliance with the agreements set forth herein, it is not necessary in connection with the offer, sale and delivery of the Securities to the Initial Purchaser in the manner contemplated by this Agreement and the Offering Circular to register the Securities under the Securities Act or to qualify the Indenture under the Trust Indenture Act of 1939, as amended.

1.26 No Violation of Section 7 of the Exchange Act. None of the transactions contemplated by this Agreement (including, without limitation, the use of the proceeds from the sale of the Securities) will violate or result in a violation of Section 7 of the Exchange Act, or any regulation promulgated thereunder, including, without limitation, Regulations T, U, and X of the Board of Governors of the Federal Reserve System.

1.27 No Price Stabilization or Manipulation. Prior to the date hereof, neither the Company nor, to the best knowledge of the Company, any of its Affiliates has taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of the Company in connection with the offering of the Securities.

1.28 Independent Public Accountants. Ernst & Young LLP, who have certified certain financial statements of the Company and its subsidiaries, are independent public accountants as required by the Securities Act and the rules and regulations of the Commission thereunder.

1.29 No Registration Rights. Except as set forth in the Offering Circular, there are no contracts, agreements or understandings between the Company and any person granting such person the right to include securities held by such person in any registration statement required under the Registration Rights Agreement with respect to the Securities.

1.30 Intellectual Property Rights. The Company and its subsidiaries own or possess, or can acquire on reasonable terms, all material patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names currently employed by them in connection with the business now operated by them, and neither the Company nor any of its subsidiaries has received any notice of infringement of or conflict with asserted rights of others with respect to any of the foregoing which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a material adverse affect on the Company and its subsidiaries, taken as a whole.

1.31 No Labor Disputes. No material labor dispute with the employees of the Company or any of its subsidiaries exists, or, to the knowledge of the Company, is imminent; and the Company is not aware of any existing, threatened or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers or contractors that could have a material adverse effect on the Company and its subsidiaries, taken as a whole.

1.32 Insurance. The Company and its subsidiaries are insured by the insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; and neither the Company nor any of its subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

1.33 Governmental Permits. The Company and its subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct their respective business the absence of which would not have a material adverse effect on the Company and its subsidiaries, taken as a whole, and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a material adverse effect on the Company and its subsidiaries, taken as a whole.

1.34 Accounting Controls. The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (1) transactions are executed in accordance with management's general or specific authorizations; (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

1.35 Listing of Common Stock. The Common Stock is registered pursuant to Section 12(g) of the Exchange Act and is listed on the Nasdaq National Market, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Nasdaq National Market, nor has the Company received any notification that the Commission or the National Association of Securities Dealers, Inc. is contemplating terminating such registration or listing.

1.36 Sarbanes Oxley Compliance. The Company is in substantial compliance with all presently applicable provisions of the Sarbanes Oxley Act of 2002 (the "Sarbanes Oxley Act") and is actively taking steps to ensure that it will be in compliance with other applicable provisions of the Sarbanes Oxley Act upon the effectiveness of such provisions.

2. Purchase and Sale Agreements.

2.1 Firm Securities. The Company hereby agrees to sell to the Initial Purchaser, and the Initial Purchaser, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees to purchase from the Company the principal amount of Firm Securities set forth in Schedule A hereto opposite its name at a purchase price of 96.5% of the principal amount thereof (the "**Purchase Price**").

2.2 Additional Securities. On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to sell to the Initial Purchaser the Additional Securities, and the Initial Purchaser shall have a right to purchase, up to $15,000,000 principal amount of Additional Securities at the Purchase Price. If you, elect to exercise such option, you shall so notify the Company in writing not later than thirteen (13) days after the date of this Agreement, which notice shall specify the principal amount of Additional Securities to be purchased by you and the date on which such Securities are to be purchased. Such date may be the same as the Closing Date (as defined below) but not earlier than the Closing Date nor ten business days after the date of such notice.

2.3 Market Standoff Provision. The Company hereby agrees that, without the prior written consent of Thomas Weisel Partners, it will not, during the period ending 90 days after the date of the Final Offering Circular, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the Securities to be sold hereunder, (B) the issuance by the Company of shares of Common Stock upon the exercise of options or warrants or the conversion of a security outstanding on the date hereof of which the Initial Purchaser has been advised in writing, (C) securities issued in connection with the rights offering of LP Innovations, Inc. in the manner contemplated by the registration statement on Form S-1/A as filed by LP Innovations, Inc. on November 12, 2003 or (D) the issuance of shares of Common Stock and options to purchase Common Stock pursuant to the Company's stock option plans and employee stock purchase plans existing on the date of this Agreement.

2.4 Terms of Offering. You have advised the Company that the Initial Purchaser proposes to offer privately pursuant to Rule 144A under the Securities Act the Securities purchased hereunder on the terms to be set forth in the Final Offering Circular as soon after this Agreement is entered into as in your judgment is advisable.

3. Payment and Delivery.

The Securities to be purchased by the Initial Purchaser hereunder will be represented by one or more definitive global securities in book-entry form, which will be deposited by or on behalf of the Company with The Depository Trust Company ("**DTC**") or its designated custodian. The Company will deliver the Securities to the Initial Purchaser, against payment by or on behalf of the Initial Purchaser of the Purchase Price therefor by wire transfer of federal (same-day) funds to the account specified by the Company to the Initial Purchaser at least forty-eight (48) hours in advance, by causing DTC to credit the Securities to the account of Thomas Weisel Partners at DTC. The time and date of such delivery and payment for the Firm Securities shall be 10:00 a.m., New York City time, on November 18, 2003, or at such other time on the same or such other date, not later than November 18, 2003, as shall be designated in writing by you (the "**Closing Date**"). The time and date of such delivery and payment for the Additional Securities shall be 10:00 a.m., New York City time, on the date specified in the notice described in Section 2.2, or at such other time on the same or such other date, not later than ten (10) business days after the date the option to purchase the Additional Securities is exercised, as shall be designated in writing by you (the "**Option Closing Date**"). The Company will cause the certificates representing the Securities to be made available to Thomas Weisel Partners for checking at least twenty-four (24) hours prior to the Closing Date or the Option Closing Date, as the case may be, at the office of DTC or its designated custodian (the "**Designated Office**").

The documents to be delivered at the Closing Date or the Option Closing Date, as the case may be, by or on behalf of the parties hereto pursuant to Section 5 hereof, including the cross-receipt for the Securities and any additional documents requested by Initial Purchaser or counsel for the Initial Purchaser pursuant to Section 5.9 hereof, will be delivered at the offices of Wilson Sonsini Goodrich & Rosati, P.C., 12 East 49th Street, 30th Floor, New York, NY 10017 (the "**Closing Location**") at the Closing Date or the Option Closing Date, as the case may be. On the Closing Date or the Option Closing Date, as the case may be, the Securities will be delivered at the Designated Office. A meeting will be held at the Closing Location at 4:00 p.m., New York City time, on the business day next preceding the Closing Date or the Option Closing Date, as the case may be, at which meeting the final drafts of the documents to be delivered pursuant to this paragraph will be available for review by the parties hereto. For the purposes of this Section 3, "business day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York City are generally authorized or obligated by law or executive order to close.

4. Covenants of the Company. In further consideration of the agreements of the Initial Purchaser herein contained, the Company covenants with the Initial Purchaser as follows:

4.1 Furnish Copies of Final Offering Circular. To furnish to you in New York City, without charge, on the business day next succeeding the date of this Agreement and during the period mentioned in Section 4.3 below, as many copies of the Final Offering Circular and any supplements and amendments thereto (including any documents incorporated or deemed incorporated by reference therein) as you may reasonably request.

4.2 Notification of Amendments or Supplements. Before amending or supplementing either Offering Circular, to furnish to you a copy of each such proposed amendment or supplement and not to use any such proposed amendment or supplement to which you reasonably object.

4.3 Preparing Amendments or Supplements. If, during such period after the date hereof and prior to the date on which all of the Securities shall have been sold by the Initial Purchaser, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Final Offering Circular in order to make the statements therein, in the light of the circumstances when the Final Offering Circular is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Initial Purchaser, it is necessary to amend or supplement the Final Offering Circular to comply with applicable law, forthwith to prepare and furnish, at its own expense, to the Initial Purchaser either amendments or supplements to the Final Offering Circular so that the statements in the Final Offering Circular as so amended or supplemented will not, in the light of the circumstances when the Final Offering Circular is delivered to a purchaser, be misleading or so that the Final Offering Circular, as amended or supplemented, will comply with applicable law.

4.4 Blue Sky Laws. To endeavor to qualify the Securities and the Underlying Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as you shall reasonably request; *provided*, that the Company shall not be required to file a general consent to service of process in any jurisdiction or to qualify as a foreign corporation or an a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

4.5 Use of Proceeds. The Company shall apply the net proceeds from the sale of the Securities sold by it in the manner described under the caption "Use of Proceeds" in the Final Offering Circular.

4.6 Subsequent Sales of Securities. Neither the Company nor any Affiliate will sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the Securities Act) which could be integrated with the sale of the Securities in a manner which would require the registration under the Securities Act of the Securities.

4.7 No Public Offering of Securities. Not to solicit any offer to buy or offer or sell the Securities or the Underlying Securities by means of any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act.

4.8 Additional Information. While any of the Securities or the Underlying Securities remain "restricted securities" within the meaning of the Securities Act, to make available, upon request, to any seller of such securities the information specified in Rule 144A(d)(4) under the Securities Act, unless the Company is then subject to Section 13 or 15(d) of the Exchange Act.

4.9 PORTAL. If requested by you, to use its best efforts to permit the Securities to be designated PORTAL securities in accordance with the rules and regulations adopted by the National Association of Securities Dealers, Inc. relating to trading in the PORTAL Market.

4.10 Resales by the Company and Affiliates. During the period of two years after the Closing Date or the Option Closing Date, if later, the Company will not, and will use its reasonable efforts to cause its affiliates (as defined in Rule 144 under the Securities Act) not to, resell any of the Securities or the Underlying Securities which constitute "restricted securities" under Rule 144 that have been reacquired by any of them.

4.11 No Registration Under Section 8 of the Investment Company Act. Not to be or become, at any time prior to the expiration of three years after the Closing Date (or the Option Closing Date, if later), an open-end investment company, unit investment trust, closed-end investment company or face-amount certificate company that is or is required to be registered under Section 8 of the Investment Company Act of 1940, as amended.

4.12 Reservation of Underlying Securities. To reserve and keep available at all times, free of preemptive rights, the Underlying Securities for the purpose of enabling the Company to satisfy any obligations to issue the Underlying Securities upon conversion of the Securities.

4.13 Listing of Underlying Securities. To use its best efforts to list, subject to notice of issuance, the Underlying Securities on the Nasdaq National Market.

4.14 Sarbanes Oxley Compliance. To use its reasonable efforts to maintain such controls and other procedures, including, without limitation, those necessary to enable the Company's Chief Executive Officer and Chief Financial Officer to make the certifications required by Sections 302 and 906 of the Sarbanes Oxley Act and the applicable regulations thereunder, that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its chief executive officer and chief financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure and to ensure that material information relating to the Company is made known to them by others within those entities, particularly during the period in which such periodic reports are being prepared.

4.15 Sales in the United States or to U.S. Persons. The Company will take reasonable precautions designed to insure that any offer or sale, direct or indirect, in the United States or to any U.S. person (as defined in Rule 902 under the Securities Act) of any Securities or any substantially similar security issued by the Company, within six months subsequent to the date on which the distribution of the Securities has been completed (as notified to the Company by the Initial Purchaser), is made under restrictions and other circumstances reasonably designed not to affect the status of the offer and sale of the Securities in the United States and to U.S. persons contemplated by this Agreement as transactions exempt from the registration provisions of the Securities Act.

5. Conditions Precedent to Closing.

(a) Conditions to the Initial Purchaser's Obligations. The obligations of the Initial Purchaser to purchase and pay for the Firm Securities on the Closing Date or Option Closing Date, as the case may be, are subject to the following conditions:

5.1 No Downgrading. Subsequent to the execution and delivery of this Agreement and prior to the Closing Date or Option Closing Date, as the case may be, (i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded the Company or any of the Company's securities or in the rating outlook for the Company by any "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Securities Act and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's securities.

5.2 No Material Adverse Change. Subsequent to the execution and delivery of this Agreement and prior to the Closing Date or Option Closing Date, as the case may be, there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Final Offering Circular (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement) that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to market the Securities on the terms and in the manner contemplated in the Final Offering Circular.

5.3 Officer's Certificate. The Initial Purchaser shall have received on the Closing Date or the Option Closing Date, as the case may be, a certificate of the Company, dated the Closing Date or the Option Closing Date, as the case may be, signed on behalf of the Company by the Company's Chief Executive Officer and the Company's Chief Financial Officer, to the effect that, and you shall be satisfied that:

(i) The only indentures, mortgages, deeds of trust, loan agreements, bonds, debentures, note agreements or other evidences of indebtedness to which the Company or any subsidiary is a party or by which any of them are bound are as set forth on Schedule B attached hereto (true, correct and complete copies of which have been delivered to counsel for the Initial Purchaser).

(ii) As of the date hereof and the Closing Date or the Option Closing Date, as the case may be, the Company is not in breach of, or default under, the provisions of the agreements and instruments referred to in paragraph (i) above, nor does any condition exist which, with the giving of notice or passage of time, would constitute such a default or breach, and the issuance by the Company of the Securities and their sale would not result in a breach of, or constitute a default under, the provisions of the agreements and instruments referred to in paragraph (i) above including, without limitation, with respect to the financial covenants in such agreements and instruments. The Company will attach as an exhibit to such certificate the computations demonstrating the compliance of such financial covenants. Such computations have been made in conformity with the provisions of such agreements and instruments, and the terms used in such agreements and instruments, and the terms used in such computations have the meanings assigned thereto in such agreements and instruments.

(iii) Attached as an exhibit to such certificate are copies of all waivers or amendments or consents in respect of the agreements referred to paragraph (i) above.

(iv) The conditions set forth in Section 5.2 and Section 5.10 of this Agreement shall have been satisfied.

5.4 Opinion of Company Counsel. The Initial Purchaser shall have received on the Closing Date or Option Closing Date, as the case may be, an opinion of Arlene Feldman, General Counsel to the Company, substantially to the effect set forth as Exhibit A hereto, and an opinion of Kramer Levin Naftalis & Frankel LLP, substantially to the effect set forth as Exhibit B hereto. Such opinions shall be rendered to the Initial Purchaser at the request of the Company and shall so state therein.

5.5 Opinion of Initial Purchaser's Counsel. The Initial Purchaser shall have received on the Closing Date or Option Closing Date, as the case may be, an opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel for the Initial Purchaser, dated the Closing Date or Option Closing Date, as the case may be, in form and substance reasonably satisfactory to it.

5.6 Accountant's Comfort Letter. The Initial Purchaser shall have received, on each of the date hereof and the Closing Date or Option Closing Date, as the case may be, a letter dated the date hereof or the Closing Date or Option Closing Date, as the case may be, in form and substance satisfactory to the Initial Purchaser, from Ernst & Young LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in or incorporated by reference into the Final Offering Circular; *provided* that the letter delivered on the Closing Date shall use a "cut-off date" not earlier than the date hereof.

5.7 Lock-Up Agreements. The "lock-up" agreements, each substantially in the form of Exhibit C hereto, between you and certain stockholders, officers and directors of the Company, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date or Option Closing Date, as the case may be.

5.8 PORTAL. The Securities have been designated for trading on PORTAL.

5.9 Additional Documents. On the Closing Date or Option Closing Date, as the case may be, the Initial Purchaser and counsel for the Initial Purchaser shall have received such information, documents and opinions as they may reasonably require for the purposes of enabling them to pass upon the issuance and sale of the Securities as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

5.10 Representations and Warranties. The representations and warranties of the Company contained in this Agreement shall be true and correct as of the Closing Date or Option Closing Date, as the case may be, and the Company has complied with all of the agreements to be performed hereunder on or before the Closing Date or Option Closing Date, as the case may be.

The obligations of the Initial Purchaser to purchase Securities hereunder are subject to the satisfaction of each of the above conditions on or prior to the Closing Date or Option Closing Date, as the case may be, and to the delivery to you on the Closing Date or Option Closing Date, as the case may be, of such documents as you may reasonably request with respect to the good standing of the Company, the due authorization, execution and authentication of the Securities and other matters related to the execution and authentication of the Securities.

(b) Conditions to the Obligations of the Company and the Initial Purchaser. On or prior to the Closing Date, the Indenture, when executed by the Company and the Trustee, will conform in all material respects to the "Description of Notes" section contained in the Final Offering Circular.

6. Offering of Securities; Restrictions on Transfer.

6.1 Institutional Accredited Investor. The Initial Purchaser represents and warrants that it is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act.

6.2 Offering of Securities. The Initial Purchaser agrees with the Company that (i) it will not solicit offers for, or offer or sell, such Securities by any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act and (ii) it will solicit offers for such Securities only from, and will offer such Securities only to, persons that it reasonably believes to be QIBs, that in purchasing such Securities are deemed to have represented and agreed as provided in the Final Offering Circular under the caption "Transfer Restrictions."

With respect to offers and sales of the Securities inside the United States to "qualified institutional buyers" within the meaning of Rule 144A, as described in clause (ii) above, the Initial Purchaser hereby represents and agrees with the Company that prior to or contemporaneously with the purchase of the Securities, the Initial Purchaser will take reasonable steps to inform U.S. persons acquiring Securities from the Initial Purchaser that the Securities (A) are being sold to them in reliance on Rule 144A under the Securities Act, (B) have not been and, except as described in the Offering Memorandum, will not be registered under the Securities Act, and (C) may not be offered, sold or otherwise transferred except as described in the Offering Circular.

7. Expenses. Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, the Company agrees to pay or cause to be paid all expenses incident to the performance of their obligations under this Agreement, including: (i) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the issuance and sale of the Securities and all other fees or expenses in connection with the preparation of each Offering Circular and any amendments and supplements thereto, including all printing costs associated therewith, and the mailing and delivering of copies thereof to the Initial Purchaser, in the quantities hereinabove specified; (ii) all costs and expenses related to the transfer and delivery of the Securities to the Initial Purchaser, including any transfer or other taxes payable thereon; (iii) the cost of printing or producing this Agreement, the Indenture, the Blue Sky and legal investment memoranda, closing documents (including any compilations thereof) and any other documents in connection with the offer, purchase, sale and delivery of the Securities; (iv) all expenses in connection with the qualification of the Securities for offer and sale under state securities laws as contemplated by Section 4.4 hereof, including filing fees and the reasonable fees and disbursements of counsel for the Initial Purchaser in connection with such qualification and in connection with the Blue Sky and legal investment memoranda; (v) any fees charged by securities rating services for rating the Securities; (vi) the cost of preparing, issuing and delivering the

Securities; (vii) the costs and charges of the Trustee and any agent of the Trustee and the fees and disbursements of counsel for the Trustee in connection with the Indenture and the Securities; (viii) the costs and charges of any transfer agent, registrar or depositary; (ix) the fees and expenses, if any, incurred in connection with the admission of the Securities for trading in PORTAL or any appropriate market system; (x) all costs and expenses incident to listing the Underlying Securities on the Nasdaq National Market; (xi) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Securities, including, without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives and officers of the Company and any such consultants and the cost of any aircraft chartered in connection with the road show; and (xii) all other costs and expenses which have been approved by the Company incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section. It is understood, however, that except as provided in this Section, Section 8 entitled "Indemnity and Contribution," and the last paragraph of Section 11 below, the Initial Purchaser will pay all of their costs and expenses, including fees and disbursements of their counsel and any advertising expenses connected with any offers they may make.

8. Indemnity and Contribution.

8.1 Indemnification by the Company. The Company agrees to indemnify and hold harmless the Initial Purchaser and each person, if any, who controls the Initial Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in either Offering Circular (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to the Initial Purchaser furnished to the Company in writing by the Initial Purchaser expressly for use therein or any failure by the Initial Purchaser to deliver the Final Offering Circular, or any amendment or supplement thereto, to a purchaser of Securities in connection with the initial resale of the Securities by the Initial Purchaser.

8.2 Indemnification by the Initial Purchaser. The Initial Purchaser agrees to indemnify and hold harmless the Company, the directors of the Company, the officers of the Company and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in either Offering Circular (as amended or supplemented if the Company shall have furnished any amendments or

supplements thereto), or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein not misleading, but only with reference to information relating to the Initial Purchaser furnished to the Company in writing by the Initial Purchaser expressly for use therein or any failure by the Initial Purchaser to deliver the Final Offering Circular, or any amendment or supplement thereto, to a purchaser of Securities in connection with the initial resale of the Securities by the Initial Purchaser.

8.3 Indemnification Procedures. In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to this Section 8, such person (the "**indemnified party**") shall promptly notify the person against whom such indemnity may be sought (the "**indemnifying party**") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Initial Purchaser and such control persons of the Initial Purchaser, such firm shall be designated in writing by Thomas Weisel Partners. In the case of any such separate firm for the Company and such directors, officers and control persons of the Company, such firm shall be designated in writing by the Company. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

8.4 Contribution Agreement. To the extent the indemnification provided for in Section 8.1 or Section 8.2 hereof is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such section, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Initial Purchaser on the other hand from the offering of the Securities or (ii) if the allocation provided by Section 8.4(i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in Section 8.4(i) above but also the relative fault of the Company on the one hand and of the Initial Purchaser on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Initial Purchaser on the other hand in connection with the offering of the Securities shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Securities (before deducting expenses) received by the Company and the total discounts and commissions received by the Initial Purchaser, in each case as set forth in the Final Offering Circular, bear to the aggregate offering price of the Securities. The relative fault of the Company on the one hand and the Initial Purchaser on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Initial Purchaser and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

8.5 Contribution Amounts. The Company and the Initial Purchaser agree that it would not be just or equitable if contribution pursuant to Section 8.4 were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 8.4. The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 8.4 shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, the Initial Purchaser shall not be required to contribute any amount in excess of the amount by which the total price at which the Securities purchased by it were offered exceeds the amount of any damages that the Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

8.6 Remedies Not Exclusive. The remedies provided for in this Section 8 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any indemnified party at law or in equity.

8.7 Survival of Provisions. The indemnity and contribution provisions contained in this Section 8 and the representations, warranties and other statements of the Company contained

in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Initial Purchaser or any person controlling the Initial Purchaser or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Securities.

9. Effectiveness. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

10. Termination. This Agreement shall be subject to termination by notice given by you to the Company, if (a) after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on or by, as the case may be, any of the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers, Inc., the Chicago Board of Options Exchange, the Chicago Mercantile Exchange or the Chicago Board of Trade, (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a general moratorium on commercial banking activities in New York or California shall have been declared by either federal or New York or California state authorities, (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis that, in your judgment, is material and adverse, or (v) in the judgment of the Initial Purchaser, there shall have occurred any material adverse change, or any development that could reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, business, operations or prospects, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, taken as a whole, and (b) in the case of any of the events specified in Sections 10(a)(i)-10(a)(v), such event, individually or together with any other such event, makes it, in your judgment, impracticable to market the Securities on the terms and in the manner contemplated in the Final Offering Circular.

11. Termination. If this Agreement shall be terminated by the Initial Purchaser because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement, the Company will reimburse the Initial Purchaser for all out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by the Initial Purchaser in connection with this Agreement or the offering contemplated hereunder.

12. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

13. Headings; Table of Contents. The headings of the sections of this Agreement and the table of contents have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

14. Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Initial Purchaser:

Thomas Weisel Partners LLC
390 Park Avenue, 16th Floor
New York, New York 10022
Facsimile: (212) 271-3747
Attention: Alexander Chefetz

with a copy to:

Wilson Sonsini Goodrich & Rosati, Professional Corporation
650 Page Mill Road
Palo Alto, California 94304
Facsimile: (650) 493-6811
Attention: John A. Fore, Esq.
Michael A. Occhiolini, Esq.

and:

Wilson Sonsini Goodrich & Rosati, Professional Corporation
12 East 49th Street, 30th Floor
New York, New York 10017
Facsimile: (212) 999-5899
Attention: Alexander D. Lynch, Esq.

If to the Company:

Casual Male Retail Group, Inc.
555 Turnpike Street
Canton, Massachusetts 02021
Facsimile: (781) 444-8999
Attention: General Counsel

with a copy to:

Kramer Levin Naftalis & Frankel LLP
919 Third Avenue
New York, New York 10022
Facsimile: (212) 715-8000
Attention: Peter Smith, Esq.

Any party hereto may change the address for receipt of communications by giving written notice to the others.

15. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto, and to the benefit of the officers and directors and controlling persons referred to in Section 8 hereof, and in each case their respective successors, and no other person will have any right or obligation hereunder. The term "successors" shall not include any purchaser of the Securities as such from the Initial Purchaser merely by reason of such purchase.

16. Partial Unenforceability. The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

17. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN SUCH STATE.

18. Consent to Jurisdiction. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby ("Related Proceedings") may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York in each case located in the City of New York (collectively, the "Specified Courts"), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a "Related Judgment"), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

19. Entire Agreement. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof.

20. Amendments. This Agreement may only be amended or modified in writing, signed by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit.

21. Sophisticated Parties. Each of the parties hereto acknowledges that it is a sophisticated business person who was adequately represented by counsel during negotiations regarding the provisions hereof, including, without limitation, the indemnification and contribution provisions of Section 8, and is fully informed regarding said provisions. Each of the parties hereto further acknowledges that the provisions of Section 8 hereto fairly allocate the risks in light of the ability of the parties to investigate the Company, its affairs and its business in order to assure that adequate disclosure has been made in each Offering Circular (and any amendments and supplements thereto).

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

CASUAL MALE RETAIL GROUP, INC.

By: _____

Name: _____

Title: _____

Accepted as of the date hereof

THOMAS WEISEL PARTNERS LLC

By: Thomas Weisel Partners LLC

By: _____

Name:
Title:

SCHEDULE A

Initial Purchaser	Number of Firm Securities To Be Purchased
Thomas Weisel Partners LLC	$ 85,000,000

SCHEDULE B

Schedule of Indebtedness

1. Third Amended and Restated Loan and Security Agreement (as amended to date of the opinion, the "Credit Facility") among Fleet Retail Finance Inc. (in such capacity, the "Administrative Agent"), a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109, as Administrative Agent for the ratable benefit of (i) the Collateral Agent, (ii) the "Revolving Credit Lenders" who are the financial institutions identified on the signature pages of the Credit Facility and any person who becomes a "Revolving Credit Lender" in accordance with the provisions of Article 17.1 of the Credit Facility and (iii) the Tranche B Lender, and Fleet Retail Finance Inc. (in such capacity, the "Collateral Agent"), a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109, as Collateral Agent for the ratable benefit of (i) the Administrative Agent, (ii) the Revolving Credit Lenders and (iii) the Tranche B Lender, and The Revolving Credit Lenders; and Back Bay Capital Funding LLC (in such capacity, with any successor or assign, the "Tranche B Lender"), a limited liability company with offices at 40 Broad Street, Boston, Massachusetts 02109, and Designs, Inc., a Delaware corporation with its principal executive offices at 66 B Street, Needham, Massachusetts 02194 as agent for the persons named on Exhibit 1.0 (A) annexed to the Credit Facility.

2. Note Agreement, dated as of April 26, 2002, and amended and restated as of May 14, 2002, among Designs, Inc., a Delaware corporation, certain subsidiaries of Designs, Inc. and the purchasers identified on the signature pages thereto.

3. The Company's 12% Senior Subordinated Notes due 2007.

4. The Company's 5% Subordinated Notes due 2007.

5. 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.

6. The Company's 12% Senior Subordinated Notes due 2010.

7. Mortgage Loan from LaSalle Bank National Association, as Trustee under that certain Pooling and Servicing Agreement dated as of June 1, 1997, for Certificateholders of Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1997-1 as successor in interest to The Chase Manhattan Bank, a New York banking corporation ("Chase") to JBAK Canton Realty, Inc. a Massachusetts corporation ("JBAK").

8. Promissory Note dated December 30, 1996 in the original principal amount of Fifteen Million Five Hundred Thousand Dollars ($15,500,000) made by JBAK to Chase.

9. Mortgage and Security Agreement from JBAK to Chase, dated as of December 30, 1996, and filled with the Norfolk County Registry District of the Land Court as Document No. 753737.

EXHIBIT A

Form of Legal Opinion of Arlene Feldman

(i) The Company has been duly incorporated and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(ii) Each subsidiary of the Company has been duly incorporated, is validly existing as a corporation and is in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Final Offering Circular and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(iii) All of the issued shares of capital stock of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except the shares of capital stock of each subsidiary of the Company, which are pledged to Fleet Retail Finance, Inc. under the Company's existing credit facility.

(iv) To such counsel's knowledge, neither the Company nor any of its subsidiaries is in violation of its certificate of incorporation or bylaws or in breach of or default under any agreement or other instrument filed as an exhibit to any report filed with the Commission included or incorporated by reference in the Final Offering Circular or under the Mortgage Loan from LaSalle Bank National Association and the lenders thereto, dated as of June 1, 1997 (the "Mortgage Loan") and the Promissory Note and Mortgage and Security Agreement related to the Mortgage Loan (each, a "**Material Agreement**"), except such violations, breaches or defaults which would not reasonably be expected as to legal matters to materially and adversely affect the consummation by the Company of the transactions contemplated by the Purchase Agreement, the Indenture, the Registration Rights Agreement or the Securities and the performance by the Company of its obligations thereunder.

(v) The execution and delivery by the Company of, and the performance by the Company of its obligations under, the Purchase Agreement, the Indenture, the Registration Rights Agreement and the Securities do not result in the violation of (i) any

applicable law of the Commonwealth of Massachusetts, the General Corporation Law of the State of Delaware (the "DGCL") or the Federal laws of the United States, (ii) the Company's Certificate of Incorporation or Bylaws or (iii) to such counsel's knowledge, any judgment, order or decree of any court or governmental body or agency of the Commonwealth of Massachusetts, the State of Delaware (under the DGCL) or of the United States having jurisdiction over the Company or any subsidiary, nor will such action conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any Material Agreement.

(vi) To such counsel's knowledge, there are no legal or governmental proceedings pending or threatened in writing to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject other than proceedings summarized in all material respects in the Final Offering Circular and proceedings which such counsel believes are not likely as to legal matters to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or on the power or ability of the Company to perform its obligations under the Purchase Agreement, the Indenture, the Registration Rights Agreement or the Securities or to consummate the transactions contemplated by the Final Offering Circular.

(vii) The statements in the Final Offering Circular under the caption "Related Party Transactions" and in "Item 3 - Legal Proceedings" of the Company's most recent annual report on Form 10-K, in "Part 2, Item I - Legal Proceedings" of any quarterly report on Form 10-Q and in "Item 5 - Other Events" of any current report on Form 8-K included or incorporated by reference in the Final Offering Circular, in each case insofar as such statements constitute summaries of the legal matters, documents or proceedings referred to therein, are accurate and fairly summarize in all material respects the matters referred to therein, as of the date of such statements.

(viii) Each document incorporated by reference into the Final Offering Circular (except for financial statements, the notes thereto and related schedules and other financial or accounting data as to which such counsel need not express any opinion) complied when so filed with the Securities and Exchange Commission (the "Commission") as to form in all material respects with the Exchange Act and the rules and regulations of the Commission thereunder.

Such opinion shall also contain a statement to the effect that, although such counsel has not undertaken to determine independently the accuracy and completeness of the statements contained in the Final Offering Circular, such counsel has obtained information as a result of discussions and meetings with officers and other representatives of the Company and its subsidiaries and discussions with representatives of and independent public accountants of the Company, in connection with the preparation of the Final Offering Circular, and the examination of other information and documents requested by such counsel; and although such counsel has not undertaken to determine

independently, and therefore, such counsel does not assume responsibility, explicitly or implicitly, for the accuracy and completeness of the statements contained in the Final Offering Circular, and cannot provide assurance that the procedures described in the preceding clause would necessarily reveal matters of significance with respect to the following comments, during the course of the above-described procedures, nothing has come to such counsel's attention that would lead such counsel to believe that the Final Offering Circular, at its date or the Closing Date, included or includes, as the case may be, any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (it being understood that such counsel need not express a view with respect to financial statements, the notes thereto and related schedules and other financial or accounting data included in or omitted from the Final Offering Circular).

EXHIBIT B

FORM OF LEGAL OPINION OF KRAMER LEVIN NAFTALIS & FRANKEL LLP

(i) The Company is validly existing as a corporation and is in good standing under the laws of the jurisdiction of its incorporation. The Company has the corporate power to own its property and to conduct its business as described in the Final Offering Circular

(ii) The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in the Final Offering Circular.

(iii) The Securities have been duly authorized by the Company and, when executed by the Company and authenticated by the Trustee in accordance with the provisions of the Indenture and delivered to and paid for by the Initial Purchaser in accordance with the terms of the Purchase Agreement, will be valid and binding obligations of the Company, entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms. The Securities and the Indenture conform to the descriptions thereof contained in the Final Offering Circular.

(iv) The Underlying Securities reserved for issuance upon conversion of the Securities have been duly authorized and reserved and, when issued upon conversion of the Securities in accordance with the terms of the Securities and the Indenture, will be validly issued, fully paid and non-assessable and the issuance of the Underlying Securities will not be subject to any preemptive or similar rights under the Company's Certificate of Incorporation or Bylaws or the General Corporation Law of the State of Delaware (the "DGCL").

(v) The Purchase Agreement has been duly authorized, executed and delivered by the Company.

(vi) The Indenture has been duly authorized, executed and delivered by the Company, and is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

(vii) The Registration Rights Agreement has been duly authorized, executed and delivered by the Company, and is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

(viii) The execution and delivery by the Company of, and the performance by the Company of its obligations under, the Purchase Agreement, the Indenture, the Registration Rights Agreement and the Securities do not result in a breach or violation of any of the terms or provisions of, or constitute a default under, any agreement listed on Schedule I to this Exhibit B.

(ix) No consent, approval, authorization or order of, or qualification with, any United States federal or New York court, governmental body or agency or under the DGCL is required for the issue and sale of the Securities and the issuance of the Underlying Securities or the consummation by the Company of the transactions contemplated by the Purchase Agreement, the Indenture, the Registration Rights Agreement or the Securities, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Securities or the issuance of the Underlying Securities (as to which we express no opinion) and by federal and state securities laws with respect to the Company's obligations under the Registration Rights Agreement.

(x) The statements in the Final Offering Circular under the captions "Description of Notes," "Description of Capital Stock," "Plan of Distribution" and "Transfer Restrictions," in each case insofar as such statements constitute summaries of the legal matters, documents or proceedings referred to therein, are accurate and fairly summarize in all material respects the matters referred to therein.

(xi) The statements in the Final Offering Circular under the caption "Material United States Federal Tax Considerations," insofar as such statements constitute a summary of the United States federal tax laws referred to therein, are accurate and fairly summarize in all material respects the United States federal tax laws referred to therein.

(xii) The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Final Offering Circular, will not be an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(xiii) Assuming (i) the representations of the Initial Purchaser in Section 6 of the Purchase Agreement and of the Company in Sections 1.24, 1.25, 1.26, and 1.27 of the Purchase Agreement are true, correct and complete, (ii) compliance by the Initial Purchaser and the Company with their respective covenants set forth in Sections 4.6, 4.7, 4.10 and 4.11 of the Purchase Agreement, (iii) the compliance of the Initial Purchaser with the offering and the transfer procedures and restrictions described in the Final Offering Circular, and (iv) the accuracy of the representations and warranties made in accordance with the Purchase Agreement and the Final Offering Circular by purchasers to whom the Initial Purchaser initially resells the Securities, it is not necessary in connection with the offer, sale and delivery of the Securities to the Initial Purchaser pursuant to the Purchase Agreement or in connection

with the initial resale of such Securities by the Initial Purchaser in accordance with Section 6 of the Purchase Agreement to register the Securities under the Securities Act of 1933, as amended or to qualify the Indenture under the Trust Indenture Act of 1939, as amended, it being understood that no opinion is expressed as to any subsequent resale of any Security or Underlying Security.

Such opinion shall also contain a statement to the effect that, although such counsel has not undertaken to determine independently the accuracy and completeness of the statements contained in the Final Offering Circular, such counsel has obtained information as a result of discussions and meetings with officers and other representatives of the Company and its subsidiaries and discussions with representatives of and independent public accountants of the Company, in connection with the preparation of the Final Offering Circular, and the examination of other information and documents requested by such counsel; and although such counsel has not undertaken to determine independently, and therefore, such counsel does not assume responsibility, explicitly or implicitly, for the accuracy and completeness of the statements contained in the Final Offering Circular, and cannot provide assurance that the procedures described in the preceding clause would necessarily reveal matters of significance with respect to the following comments, during the course of the above-described procedures, nothing has come to such counsel's attention that would lead such counsel to believe that the Final Offering Circular, at its date or the Closing Date, included or includes, as the case may be, any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (it being understood that such counsel need not express a view with respect to financial statements, the notes thereto and related schedules and other financial or accounting data included in or omitted from the Final Offering Circular).

The above opinion is subject to and limited by the following:

The opinion set forth in paragraphs (iii), (vi) and (vii) is qualified (A) by the effects of applicable laws relating to bankruptcy, insolvency, and other similar laws relating to or affecting the rights and remedies of creditors generally, (B) with respect to the remedies of specific performance and injunctive and other forms of equitable relief, by the availability of equitable defenses and the discretion of the court before which any enforcement thereof may be brought and (C) by general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law).

With respect to the opinion expressed in paragraphs (iii), (vi) and (vii), such counsel has assumed that (A) the Indenture has been duly authorized, executed and delivered by the Trustee and constitutes the valid and binding obligation of the Trustee, enforceable against the Trustee in accordance with its terms, and (B) the Registration Rights Agreement has been duly authorized, executed and delivered by the Initial Purchaser and constitutes the valid and binding obligation of the Initial Purchaser, enforceable against the Initial Purchaser in accordance with its terms.

Such counsel expresses no opinion as to the validity, binding effect or enforceability of (i) provisions relating to severability, indemnity, contribution, set off, delay or omission of enforcement of rights or remedies, (ii) provisions relating to consent to jurisdiction or choice of forum, or (iii) any provision if and to the extent that such provision provides a remedy for breach that may be deemed to be disproportionate to actual damages or may be deemed to be a penalty (other than with respect to additional interest under the Registration Rights Agreement).

The opinion set forth in paragraph (xi) herein is based on relevant provisions of the Internal Revenue Code of 1986, as amended, the Treasury Regulations issued thereunder, court decisions and administrative determinations as currently in effect, all of which are subject to change, prospectively or retrospectively, at any time. No ruling has been (or will be) sought from the Internal Revenue Service (the "IRS") by the Company as to the United States federal tax consequences relating to the Securities. Such opinion is not binding on the IRS or any court, and there can be no assurance that the IRS or a court of competent jurisdiction will not disagree with such opinion. Such opinion is limited to the United States federal tax matters addressed therein, and no other opinions are rendered with respect to other federal tax or other matters or to any issues arising under the tax laws of any other country or any state or locality.

Such counsel expresses no opinion with respect to any matters which require such counsel to perform a mathematical calculation or make a financial or accounting determination.

Such counsel expresses no opinion as to any laws other than the laws of the State of New York, the General Corporation Law of the State of Delaware and the Federal laws of the United States of America. Without limiting the foregoing, and except with respect to the opinion expressed in paragraphs (xii) and (xiv), such counsel expresses no opinion with respect to Federal or state securities laws.

As used in the opinion, "knowledge" shall mean the current, actual knowledge, without independent investigation or verification, of those attorneys who are currently members or associates of, or counsel to, the firm who have directly participated in this engagement or who regularly perform work for the Company.

SCHEDULE I TO EXHIBIT A

1. Third Amended and Restated Loan and Security Agreement (as amended to date of the opinion, the "Credit Facility") among Fleet Retail Finance Inc. (in such capacity, the "Administrative Agent"), a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109, as Administrative Agent for the ratable benefit of (i) the Collateral Agent, (ii) the "Revolving Credit Lenders" who are the financial institutions identified on the signature pages of the Credit Facility and any person who becomes a "Revolving Credit Lender" in accordance with the provisions of Article 17.1 of the Credit Facility and (iii) the Tranche B Lender, and Fleet Retail Finance Inc. (in such capacity, the "Collateral Agent"), a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109, as Collateral Agent for the ratable benefit of (i) the Administrative Agent, (ii) the Revolving Credit Lenders and (iii) the Tranche B Lender, and The Revolving Credit Lenders; and Back Bay Capital Funding LLC (in such capacity, with any successor or assign, the "Tranche B Lender"), a limited liability company with offices at 40 Broad Street, Boston, Massachusetts 02109, and Designs, Inc., a Delaware corporation with its principal executive offices at 66 B Street, Needham, Massachusetts 02194 as agent for the persons named on Exhibit 1.0 (A) annexed to the Credit Facility.

2. Note Agreement, dated as of April 26, 2002, and amended and restated as of May 14, 2002, among Designs, Inc., a Delaware corporation, certain subsidiaries of Designs, Inc. and the purchasers identified on the signature pages thereto.

3. The Company's 12% Senior Subordinated Notes due 2007.

4. The Company's 5% Subordinated Notes due 2007.

5. 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.

6. The Company's 12% Senior Subordinated Notes due 2010.

EXHIBIT C

FORM OF LOCK-UP AGREEMENT

November 12, 2003

Thomas Weisel Partners LLC
One Montgomery Street, Suite 3700
San Francisco, California 94104

Re: Lock-Up Agreement (the "Agreement")

Ladies and Gentlemen:

The undersigned is an owner of record or beneficially of certain shares of Common Stock, par value $0.01 per share (the "**Common Stock**"), of Casual Male Retail Group, Inc., a Delaware (the "**Company**"), or securities convertible into or exchangeable or exercisable for Common Stock. The undersigned understands that you propose to enter into a Purchase Agreement with the Company providing for an offering (the "**Offering**") of $85,000,000 principal amount of 5% Convertible Senior Subordinated Notes due 2024 of the Company (the "**Securities**"). The Securities will be convertible into shares of Common Stock. The undersigned recognizes that the Offering will be of benefit to the undersigned and will benefit the Company by, among other things, raising additional capital for its operations. The undersigned acknowledges that you are relying on the representations and agreements of the undersigned contained in this letter in carrying out the Offering and in entering into underwriting arrangements with the Company with respect to the Offering.

To induce you to continue your efforts in connection with the Offering, the undersigned hereby agrees that, without your prior written consent (which consent may be withheld in its sole discretion), it will not, during the period commencing on the date hereof and ending 90 days after the date of the final offering circular relating to the Offering (the "Final Offering Circular"), (1) offer, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. In addition, the undersigned agrees that, without your prior written consent (which consent may be withheld in its sole discretion), it will not, during the period commencing on the date hereof and ending 90 days after the date of the Final Offering Circular, make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock. With respect to the Offering, the undersigned waives any registration rights relating to registration under the Securities Act of any Common Stock or other securities owned either of record or beneficially by the undersigned, including any rights to receive notice of the Offering.

The foregoing restrictions are expressly agreed to preclude the undersigned from engaging in any hedging or other transaction which is designed to or reasonably expected to lead to or result in a sale or disposition of the Common Stock even if such Common Stock would be disposed of by someone other than the undersigned. Such prohibited hedging or other transactions would include without limitation any short sale or any purchase, sale or grant of any right (including without limitation any put option or put equivalent position or call option or call equivalent position) with respect to any of the Common Stock or with respect to any security that includes, relates to, or derives any significant part of its value from such Common Stock.

Notwithstanding the foregoing, the undersigned may transfer shares of Common Stock (i) as a *bona fide* gift or gifts, *provided* that the donee or donees thereof agree to be bound by the restrictions set forth herein or (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned, *provided* that the trustee of the trust agrees to be bound by the restrictions set forth herein, and *provided* further that any such transfer shall not involve a disposition for value. For purposes of this Agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin. In addition, notwithstanding the foregoing, if the undersigned is a corporation, the corporation may transfer the capital stock of the Company to any wholly-owned subsidiary of such corporation; *provided*, *however*, that in any such case, it shall be a condition to the transfer that the transferee execute an agreement stating that the transferee is receiving and holding such capital stock subject to the provisions of this Agreement and there shall be no further transfer of such capital stock except in accordance with this Agreement, and *provided* further that any such transfer shall not involve a disposition for value.

The undersigned understands that whether or not the Offering actually occurs depends on a number of factors, including stock market conditions. The Offering will only be made pursuant to a Purchase Agreement, the terms of which are subject to negotiation among the Company and you.

The undersigned agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of shares of Common Stock or securities convertible into or exchangeable or exercisable for Common Stock held by the undersigned except in compliance with the foregoing restrictions.

This agreement is irrevocable and will be binding on the undersigned and the respective successors, heirs, personal representatives, and assigns of the undersigned.

Very truly yours,

_____

(Name)

_____

(Address)

EXHIBIT 10.4

EXECUTION COPY

CASUAL MALE RETAIL GROUP, INC.

5% Convertible Senior Subordinated Notes due 2024

Registration Rights Agreement

November 18, 2003

Thomas Weisel Partners LLC
One Montgomery Street, Suite 3700
San Francisco, California 94104

Ladies and Gentlemen:

Casual Male Retail Group, Inc., a Delaware corporation (the "**Company**"), proposes to issue and sell to Thomas Weisel Partners LLC as the Initial Purchaser named in the Purchase Agreement (as hereinafter defined) (the "**Initial Purchaser**") upon the terms set forth in a purchase agreement of even date herewith (the "**Purchase Agreement**"), $85,000,000 aggregate principal amount (plus up to an additional $15,000,000 principal amount) of its 5% Convertible Senior Subordinated Notes due 2024 (the "**Securities**"). The Securities will be convertible into shares of the Company's Common Stock, par value $0.01 per share (the "**Common Stock**") at the conversion price set forth in the Final Offering Circular dated November 12, 2003. The Securities will be issued pursuant to an Indenture, dated as of November 18, 2003 (the "**Indenture**"), among the Company and U.S. Bank National Association, as trustee (the "**Trustee**"). As an inducement to the Initial Purchaser to enter into the Purchase Agreement, the Company agrees with the Initial Purchaser, for the benefit of the Holders (as hereinafter defined), as follows:

1. Definitions.

(a) Capitalized terms used herein without definition shall have the meanings ascribed to them in the Purchase Agreement. As used in this Agreement, the following defined terms shall have the following meanings:

"Additional Interest" has the meaning assigned thereto in Section 7(b) hereof.

"**Affiliate**" of any specified person means any other person which, directly or indirectly, is in control of, is controlled by, or is under common control with such specified person. For purposes of this definition, control of a person means the power, direct or indirect, to direct or cause the direction of the management and policies of such person whether by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Agreement**" means this Registration Rights Agreement, as the same may be amended from time to time.

"**Closing Date**" means the Closing Date as defined in the Purchase Agreement.

"**Commission**" means the Securities and Exchange Commission, or any other federal agency at the time administering the Exchange Act or the Securities Act, whichever is the relevant statute for the particular purpose.

"**DTC**" means The Depository Trust Company.

"**Default Date**" has the meaning assigned thereto in Section 7(b) hereof.

"**Default Period**" has the meaning assigned thereto in Section 7(b) hereof.

"**Default Termination Date**" has the meaning assigned thereto in Section 7(b) hereof.

"**Effective Date**" has the meaning assigned thereto in Section 2(b)(i) hereof.

"**Effective Time**" means the time at which the Commission declares the Shelf Registration Statement effective or at which the Shelf Registration Statement otherwise becomes effective.

"**Electing Holder**" has the meaning assigned thereto in Section 3(a)(iii) hereof.

"**Event of Default**" has the meaning assigned thereto in Section 7(a) hereof.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Holder**" means any person that is the record owner of Registrable Securities (and includes any person that has a beneficial interest in any Registrable Security in book-entry form).

"**Managing Underwriters**" means the investment banker(s) or manager(s) that shall administer an underwritten offering, if any, conducted pursuant to Section 6 hereof.

"**NASD Rules**" means the rules of the National Association of Securities Dealers, Inc., as amended from time to time.

"**Notice and Questionnaire**" means a Notice of Registration Statement and Selling Securityholder Questionnaire substantially in the form of Appendix A hereto.

The term "**person**" means an individual, partnership, corporation, trust or unincorporated organization, or a government or agency or political subdivision thereof.

"**Prospectus**" means the prospectus (including, without limitation, any preliminary prospectus, any final prospectus and any prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A

under the Securities Act) included in the Shelf Registration Statement, as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by the Shelf Registration Statement and by all other amendments and supplements to such prospectus, including all material incorporated by reference in such prospectus and all documents filed after the date of such prospectus by the Company under the Exchange Act and incorporated by reference therein.

"**Registrable Securities**" means all or any portion of the Securities issued from time to time under the Indenture in registered form and the shares of Common Stock issuable upon conversion, repurchase or redemption of such Securities; provided, however, that a security ceases to be a Registrable Security when it is no longer a Restricted Security.

"**Registration Expenses**" shall mean any and all expenses incident to the Company's performance of and compliance with this Agreement, including without limitation: (i) all registration and filing fees and expenses (including, without limitation, fees and expenses (x) with respect to filings to be made pursuant to the NASD Rules, if any, and (y) incurred in connection with compliance with state securities or blue sky laws (including reasonable fees and disbursements of counsel for any underwriters or Holders in connection with blue sky qualification of any of the Registrable Securities)); (ii) all expenses of any persons in preparing or assisting in preparing, word processing, printing and distributing the Shelf Registration Statement, the Prospectus, any amendments or supplements thereto, any underwriting agreements, securities sales agreements and other documents relating to the performance of and compliance with this Agreement; (iii) all rating agency fees; (iv) all fees and disbursements relating to the qualification of the Indenture under applicable securities laws; (v) expenses of printing certificates for Registrable Securities in a form eligible for deposit with DTC; (vi) the fees and disbursements of the Trustee and its counsel; (vii) the fees and disbursements of counsel for the Company; and (viii) the fees and disbursements of the independent public accountants of the Company, including the expenses of any special audits or "cold comfort" letters required by or incident to such performance and compliance, if any.

"**Registration Period**" has the meaning assigned thereto in Section 2(b)(i) hereof.

"**Restricted Security**" means any Security or share of Common Stock issuable upon conversion thereof except any such Security or share of Common Stock that (i) has been effectively registered under the Securities Act and sold in a manner contemplated by the Shelf Registration Statement, (ii) has been transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or is transferable pursuant to paragraph (k) of such Rule 144 (or any successor provision thereto), or (iii) has otherwise been transferred and a new Security or share of Common Stock not subject to transfer restrictions under the Securities Act has been delivered by or on behalf of the Company in accordance with Section 3.5(3) of the Indenture.

"**Rules and Regulations**" means the published rules and regulations of the Commission promulgated under the Securities Act or the Exchange Act, as in effect at any relevant time.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Shelf Registration Statement**" means a "shelf" registration statement filed under the Securities Act providing for the registration of, and the sale on a continuous or delayed basis by the

Holders of, all of the Registrable Securities pursuant to Rule 415 under the Securities Act and/or any similar rule that may be adopted by the Commission, filed by the Company pursuant to the provisions of Section 2 of this Agreement, including the Prospectus contained therein, any amendments and supplements to such registration statement, including post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, or any successor thereto, and the rules, regulations and forms promulgated thereunder, as the same shall be amended from time to time.

The term "**underwriter**" means any underwriter of Registrable Securities in connection with an offering thereof under the Shelf Registration Statement.

(b) Wherever there is a reference in this Agreement to a percentage of the "**principal amount**" of Registrable Securities or to a percentage of Registrable Securities, Common Stock shall be treated as representing the principal amount of Securities that was surrendered for conversion or exchange in order to receive such number of shares of Common Stock.

2. Shelf Registration.

(a) The Company shall, no later than 90 calendar days following the Closing Date, file with the Commission a Shelf Registration Statement relating to the offer and sale of the Registrable Securities by the Holders from time to time in accordance with the methods of distribution elected by such Holders and set forth in such Shelf Registration Statement and, thereafter, shall use its reasonable efforts to cause such Shelf Registration Statement to be declared effective under the Securities Act as soon as practicable and in any event no later than 180 calendar days following the Closing Date; provided, however, that no Holder shall be entitled to be named as a selling securityholder in the Shelf Registration Statement or to use the Prospectus forming a part thereof for resales of Registrable Securities unless such Holder is an Electing Holder.

(b) The Company shall use its reasonable efforts:

(i) to keep the Shelf Registration Statement continuously effective in order to permit the Prospectus forming a part thereof to be usable by Holders until the earliest of: (A) the sale of all Registrable Securities covered by the Shelf Registration Statement; (B) the expiration of the period referred to in Rule 144(k) of the Securities Act, or any successor rule thereto, with respect to all Registrable Securities (assuming for the purposes hereof that the Holders are not Affiliates of the Company); and (C) two years from the date (the "**Effective Date**") such Shelf Registration Statement is declared effective (such period being referred to herein as the "**Registration Period**"). The Company shall be deemed not to have used its best efforts to keep the Shelf Registration Statement effective during the Registration Period if the Company voluntarily takes any action that would result in Holders of Registrable Securities covered thereby not being able to offer and sell any of such Registrable Securities during that period, unless such action is (1) required by applicable law and the Company thereafter promptly complies with the requirements of Section 3(j) below or (2) permitted pursuant to Section 2(c) below;

(ii) after the Effective Time, promptly upon the request of any Holder that is not then an Electing Holder, to take any action reasonably necessary to enable such Holder to use the Prospectus forming a part thereof for resales of Registrable Securities, including, without limitation, any action necessary to identify such Holder as a selling securityholder in the Shelf Registration Statement as contemplated by Section 3(a)(ii) hereof; provided, however, that nothing in this subparagraph shall relieve such Holder of the obligation to return a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(ii) hereof; and

(iii) if at any time the Securities, pursuant to Article XII of the Indenture, are convertible into securities other than Common Stock, to cause, or to cause any successor under the Indenture to cause, such securities to be included in the Shelf Registration Statement no later than the date on which the Securities may then be convertible into such securities.

(c) The Company may suspend the use of the Prospectus for a period not to exceed 45 days in any 90-day period or an aggregate of 90 days in any 365-day period if the Board of Directors of the Company shall have determined in good faith that because of valid business reasons (not including avoidance of the Company's obligations hereunder), including the acquisition or divestiture of assets, pending corporate developments, public filings with the Commission, and similar events, it is in the best interests of the Company to suspend such use, and prior to suspending such use the Company provides the Holders with written notice of such suspension, which notice need not specify the nature of the event giving rise to such suspension.

3. Registration Procedures. In connection with the Shelf Registration Statement, the following provisions shall apply:

(a) (i) Not less than 30 calendar days prior to the Effective Time, the Company shall mail the Notice and Questionnaire to the Holders. No Holder shall be entitled to be named as a selling securityholder in the Shelf Registration Statement as of the Effective Time, and no Holder shall be entitled to use the Prospectus for resales of Registrable Securities at any time, unless such Holder has returned a completed and signed Notice and Questionnaire to the Company by the deadline for response set forth therein; provided, however, Holders shall have at least 28 calendar days from the date on which the Notice and Questionnaire is first mailed to such Holders to return a completed and signed Notice and Questionnaire to the Company.

(ii) The Company shall, upon the request of any Holder that is not then an Electing Holder, promptly send a Notice and Questionnaire to such Holder. The Company shall not be required to take any action to name such Holder as a selling securityholder in the Shelf Registration Statement or to enable such Holder to use the Prospectus for resales of Registrable Securities unless such Holder has returned a completed and signed Notice and Questionnaire to the Company by the initial deadline for response set forth therein. Upon receipt of a completed and signed Notice and Questionnaire after such initial deadline for response, the Company shall as promptly as practicable thereafter, and in any event upon the later of (A) ten (10) days after the date of receipt of such Notice and Questionnaire or (B) if the use of the Prospectus has been suspended by the Company under Section 2(c) hereof at the time of receipt of the Notice and Questionnaire, ten (10) days after the expiration of the period during which the use of the Prospectus is suspended, (1) if required by applicable law, file with the Commission a pre-effective or post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file a

supplement to the Prospectus or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law and, (2) if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its reasonable efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as is practicable, but in any event by the date that is forty-five (45) days after the date such post-effective amendment is required by this clause to be filed. Notwithstanding any of the foregoing, the Company shall not be required to file more than one post-effective amendment to the Shelf Registration Statement during any 30-day period.

(iii) The term "**Electing Holder**" shall mean any Holder that has returned a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(i) or 3(a)(ii) hereof.

(b) The Company shall (i) furnish to each Electing Holder, prior to the Effective Time, a copy of the Shelf Registration Statement initially filed with the Commission, and shall furnish to such Holders, prior to the filing thereof with the Commission, copies of each amendment thereto and each amendment or supplement, if any, to the Prospectus included therein, and shall use its reasonable efforts to reflect in each such document, at the Effective Time or when so filed with the Commission, as the case may be, such comments as such Holders and their respective counsel reasonably may propose and (ii) name the Electing Holders as selling securityholders in the Shelf Registration Statement.

(c) The Company shall promptly take such action as may be necessary so that (i) the Shelf Registration Statement and any amendment thereto and the Prospectus and any amendment or supplement thereto (and each report or other document incorporated therein by reference in each case) complies in all material respects with the Securities Act, the Exchange Act and the Rules and Regulations, (ii) the Shelf Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (iii) the Prospectus and any amendment or supplement thereto, does not at any time during the Registration Period include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) The Company shall promptly notify each Electing Holder in writing:

(i) when a Shelf Registration Statement and any amendment thereto has been filed with the Commission and when a Shelf Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the Commission for amendments or supplements to the Shelf Registration Statement or the Prospectus or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of any proceedings for such purpose;

(iv) if the Company receives any notification with respect to the suspension of the qualification of the securities included in the Shelf Registration Statement for sale in any jurisdiction or the initiation of any proceeding for such purpose; and

(v) of the happening of any event or the existence of any state of facts that requires the making of any changes in the Shelf Registration Statement or the Prospectus so that, as of such date, the Shelf Registration Statement and the Prospectus do not contain an untrue statement of a material fact and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading.

A notice pursuant to clauses (ii) through (v) above may be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes to the Prospectus have been made or such other action is taken to remedy the fact or event that led to the suspension of the use of the Prospectus.

(e) The Company shall use its reasonable efforts: (i) to prevent the issuance of any order suspending the effectiveness of the Shelf Registration Statement; (ii) if issued, to obtain the withdrawal of any such order at the earliest possible time; and (iii) to provide immediate notice to each Electing Holder of the withdrawal of such order.

(f) The Company shall furnish to each Electing Holder, without charge, at least one copy of the Shelf Registration Statement and all post-effective amendments thereto, including financial statements and schedules, and, if such Electing Holder so requests in writing, all reports, other documents and exhibits that are filed with or incorporated by reference in the Shelf Registration Statement.

(g) The Company shall, during the Registration Period, deliver to each Electing Holder, without charge, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such Electing Holder may reasonably request. The Company consents (except during the periods specified in Section 2(c) above or during the continuance of any event described in clauses (ii) through (v) of Section 3(d) above) to the use of the Prospectus and any amendment or supplement thereto by each of the Electing Holders in connection with the offering and sale of the Registrable Securities covered by the Prospectus and any amendment or supplement thereto during the Registration Period.

(h) The Company shall: (i) prior to any offering of Registrable Securities pursuant to the Shelf Registration Statement, register or qualify or cooperate with the Electing Holders and their respective counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or “blue sky” laws of such jurisdictions within the United States as any Electing Holder may reasonably request; (ii) keep such registrations or qualifications in effect and comply with such laws so as to permit the continuance of offers and sales in such jurisdictions for so long as may be necessary to enable any Electing Holder or

underwriter, if any, to complete its distribution of Registrable Securities pursuant to the Shelf Registration Statement; and (iii) take any and all other actions necessary or advisable to enable the disposition in such jurisdictions of such Registrable Securities; provided, however, that in no event shall the Company be obligated to (A) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to so qualify but for this Section 3(h) or (B) file any general consent to service of process in any jurisdiction where it is not then so subject.

(i) Except with respect to Registrable Securities in book-entry only form, the Company shall cooperate with the Electing Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to the Shelf Registration Statement, which shall be free of any restrictive legends and in such denominations and registered in such names as the Electing Holders may request a reasonable period of time prior to sales of such Registrable Securities pursuant to the Shelf Registration Statement.

(j) Upon the occurrence of any fact or event contemplated by clauses (ii) through (v) of Section 3(d) above during the Registration Period, the Company shall promptly prepare a post-effective amendment to the Shelf Registration Statement or an amendment or supplement to the related Prospectus or file any other required document or take such other action so that, (A) with respect to clauses (ii) through (iv) of Section 3(d), the fact or event which has led to the suspension of the use of the Prospectus is remedied, and (B) with respect to clause (v) of Section 3(d), as thereafter delivered to purchasers of the Registrable Securities included therein, the Prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. If the Company provides notice to the Electing Holders of the occurrence of any fact or event contemplated by clauses (ii) through (v) of Section 3(d) above along with an instruction to suspend the use of the Prospectus, the Electing Holder shall suspend the use of the Prospectus until the requisite changes to the Prospectus have been made or such other action is taken to remedy the fact or event that led to the suspension of the use of the Prospectus.

(k) Not later than the Effective Time, the Company shall provide a CUSIP number for the Registrable Securities that are debt securities.

(l) The Company will comply with all Rules and Regulations to the extent and so long as they are applicable to the Shelf Registration Statement and will make generally available to its securityholders (or otherwise provide in accordance with Section 11(a) of the Securities Act) an earnings statement satisfying the provisions of Section 11(a) of the Securities Act, no later than 45 days after the end of a 12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the Shelf Registration Statement, which statement shall cover such 12-month period. For purposes of this paragraph, the term "effective date" with respect to the Shelf Registration Statement shall have the meaning assigned to it in paragraph (c) of Rule 158 (or any successor provision thereto) under the Securities Act.

(m) Not later than the Effective Time, the Company shall cause the Indenture to be qualified under the Trust Indenture Act. In connection with such qualification, the Company shall cooperate with the Trustee and the Holders (as defined in the Indenture) to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of

the Trust Indenture Act; and the Company shall execute, and shall use its best efforts to cause the Trustee to execute, all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner. In the event that any such amendment or modification referred to in this Section 3(m) involves the appointment of a new trustee under the Indenture, the Company shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture.

(n) The Company shall enter into such customary agreements (including an underwriting agreement in customary form in the event of an underwritten offering) and take all other appropriate action in order to expedite and facilitate the registration and disposition of the Registrable Securities.

(o) The Company shall: (i) make available for inspection by the Electing Holders, any underwriter participating in any disposition pursuant to the Shelf Registration Statement, and any attorney, accountant or other agent retained by such Electing Holders or any such underwriter, at reasonable times and in a reasonable manner, all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries; and (ii) cause the Company's officers, directors and employees to supply all information reasonably requested by such Electing Holders or any such underwriter, attorney, accountant or agent in connection with the Shelf Registration Statement, in each case, as is customary for similar due diligence examinations; provided that such inspection and information gathering shall, to the greatest extent possible, be coordinated by one counsel designated by and on behalf of the Electing Holders and other parties.

(p) The Company will use its reasonable efforts to cause the Common Stock issuable upon conversion of the Securities to be listed for quotation on the Nasdaq National Market System or other stock exchange or trading system on which the Common Stock primarily trades on or prior to the 60th calendar day following the Closing Date.

(q) In the event that any broker-dealer registered under the Exchange Act shall underwrite, participate as a member of an underwriting syndicate or selling group or assist in the distribution of any Registrable Securities covered by the Shelf Registration Statement, whether as an Electing Holder or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, the Company shall assist such broker-dealer in complying with the requirements of the NASD Rules, including, without limitation, by (i) if the NASD Rules shall so require, engaging a "qualified independent underwriter" (as defined in Rule 2720 of the NASD Rules (or any successor provision thereto)) to participate in the preparation of the registration statement relating to such Registrable Securities, to exercise usual standards of due diligence in respect thereto and to recommend the public offering price of such Registrable Securities, (B) indemnifying any such qualified independent underwriter to the extent of the indemnification of underwriters provided in Section 5 hereof, and (C) providing such information to such broker-dealer as may be required in order for such broker-dealer to comply with the requirements of the NASD Rules.

(r) The Company shall use its reasonable efforts to take all other steps necessary to effect the registration, offering and sale of the Registrable Securities covered by the Shelf Registration Statement contemplated hereby.

(s) The Company may require each Electing Holder to furnish to the Company such information regarding the Electing Holder and the distribution of the Registrable Securities as the Company may from time to time reasonably request for inclusion in the Shelf Registration Statement, and the Company may exclude from such registration the Registrable Securities of any Electing Holder that unreasonably fails to furnish such information within a reasonable time after receiving such request.

4. Registration Expenses. The Company will bear all Registration Expenses incurred in connection with the performance of its obligations hereunder. The Company will also bear or reimburse the Electing Holders for the reasonable fees and disbursements of Wilson Sonsini Goodrich & Rosati, Professional Corporation, as counsel for the Holders in connection with the Shelf Registration Statement. Each Electing Holder shall pay all underwriting discounts and commissions and transfer taxes, if any, and, subject to the preceding sentence, the expenses of its own counsel, relating to the sale or disposition of such Electing Holder's Registrable Securities pursuant to the Shelf Registration Statement.

5. Indemnification and Contribution.

(a) Indemnification by the Company. The Company agrees to indemnify and hold harmless each Electing Holder and each person, if any, who controls any Electing Holder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement or any amendment thereof, any preliminary prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by (a) any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Electing Holder furnished to the Company in writing by such Electing Holder expressly for use in the Shelf Registration Statement, any amendment thereof, any preliminary prospectus, the Prospectus or any amendments or supplements thereto or (b) any failure of such Electing Holder to deliver the final Prospectus to a purchaser of Securities as required by applicable law. In connection with any underwritten offering permitted hereunder, the Company will also indemnify the underwriters, their officers and directors and each person who controls such underwriters (within the meaning of the Securities Act and the Exchange Act) to the same extent as provided above with respect to the indemnification of the Electing Holders, if requested by such Electing Holders.

(b) Indemnification by the Electing Holders. Each Electing Holder agrees, severally and not jointly, to indemnify and hold harmless the Company, the directors of the Company, the officers of the Company who sign the Shelf Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue

statement of a material fact contained in the Shelf Registration Statement or any amendment thereof, any preliminary prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, but only with reference to information relating to such Electing Holder furnished to the Company in writing by such Electing Holder expressly for use in the Shelf Registration Statement, any amendment thereof, any preliminary prospectus, the Prospectus or any amendments or supplements thereto. In no event shall the liability of any Electing Holder hereunder be greater in amount than the dollar amount of the proceeds received by such Electing Holder from the sale of such Electing Holder's Registrable Securities (after deducting any fees, discounts and commissions applicable thereto) pursuant to the Shelf Registration Statement.

(c) Indemnification Procedures. In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to this Section 5, such person (the "**indemnified party**") shall promptly notify the person against whom such indemnity may be sought (the "**indemnifying party**") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all indemnified parties, and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Electing Holders and such control persons of any Electing Holders, such firm shall be designated in writing by the Electing Holders holding a majority of the Registrable Securities covered by the Shelf Registration Statement. In the case of any such separate firm for the Company and such directors, officers and control persons of the Company, such firm shall be designated in writing by the Company. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified

party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) Contribution Agreement. To the extent the indemnification provided for in paragraph (a) or paragraph (b) of this Section 5 is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault of the Company on the one hand and the Electing Holders on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Electing Holders and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Electing Holders' respective obligations to contribute pursuant to this Section 5(d) are several in proportion to the respective principal amount of Registrable Securities of each such Electing Holder that were registered pursuant to the Shelf Registration Statement, and not joint.

(e) Contribution Amounts. The Company and the Electing Holders agree that it would not be just or equitable if contribution pursuant to Section 5(d) were determined by *pro rata* allocation (even if the Electing Holders were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 5(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 5(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 5, no Electing Holder shall be required to contribute any amount in excess of the amount by which the total price at which Registrable Securities sold by such Electing Holder exceeds the amount of any damages that such Electing Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(f) Remedies Not Exclusive. The remedies provided for in this Section 5 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any indemnified party at law or in equity.

(g) Survival of Provisions. The indemnity and contribution provisions contained in this Section 5 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Electing Holder or any person controlling any Electing Holder, or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) any sale of the Registrable Securities pursuant to the Shelf Registration Statement.

6. Underwritten Offering. Any Holder who desires to do so may sell Registrable Securities (in whole or in part) in an underwritten offering; provided that (i) the Electing Holders of at least 33 1/3% in aggregate principal amount of the Registrable Securities then covered by the Shelf Registration Statement shall request such an offering and (ii) at least such aggregate principal amount of such Registrable Securities shall be included in such offering; and provided further that the Company shall not be obligated to cooperate with more than one underwritten offering during the Registration Period. Upon receipt of such a request, the Company shall provide all Holders written notice of the request, which notice shall inform such Holders that they have the opportunity to participate in the offering. In any such underwritten offering, the Managing Underwriters will be selected by, and the underwriting arrangements with respect thereto (including the size of the offering) will be approved by, the holders of a majority of the Registrable Securities to be included in such offering; provided, however, that such Managing Underwriters and underwriting arrangements must be reasonably satisfactory to the Company. No Holder may participate in any underwritten offering contemplated hereby unless (a) such Holder agrees to sell such Holder's Registrable Securities to be included in the underwritten offering in accordance with any approved underwriting arrangements, (b) such Holder completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents required under the terms of such approved underwriting arrangements, and (c) if such Holder is not then an Electing Holder, such Holder returns a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(ii) hereof within a reasonable amount of time before such underwritten offering. Each Electing Holder shall pay all underwriting discounts and commissions and transfer taxes, if any, and, subject to Section 4, the expenses of its own counsel, relating to the sale or disposition of such Electing Holder's Registrable Securities pursuant to the Shelf Registration Statement. Notwithstanding the foregoing, upon receipt of a request from the Managing Underwriters or a representative of holders of a majority of the Registrable Securities to be included in an underwritten offering to prepare and file an amendment or supplement to the Shelf Registration Statement and Prospectus in connection with an underwritten offering, the Company may delay the filing of any such amendment or supplement for up to 60 days if the Board of Directors of the Company shall have determined in good faith that the Company has a bona fide business reason for such delay.

7. **Additional Interest**.

(a) The occurrence of any of the following will constitute an "**Event of Default**" hereunder:

(i) the Company fails to file a Shelf Registration Statement with the Commission on or prior to the 90th day following the Closing Date;

(ii) such Shelf Registration Statement is not declared effective by the Commission on or prior to the 180th day following the Closing Date;

(iii) the Company fails to file a post-effective amendment to the Shelf Registration Statement, or the post-effective amendment is not declared effective, within the periods required by Section 3(a)(ii) hereof;

(iv) the Shelf Registration Statement ceases to be effective (or the Company prevents or restricts Holders from effecting sales pursuant thereto) for more than 45 days, whether or not consecutive, in any 90-day period, or for more than 90 days, whether or not consecutive, during any 365-day period. In calculating the 45- or 90-day period, days on which the Company has been obligated to pay **Additional Interest** in respect of a prior Event of Default under this clause (iv) within the applicable 90-day or 365-day period, as the case may be, shall not be included; or

(v) after the Effective Date, the Company fails to make the filing required by Section 3(a)(ii) or, in the event such filing is a post-effective amendment to the Shelf Registration Statement that is required to be declared effective under the Securities Act, if such post-effective amendment is not declared effective within 45 days after such filing.

(b) Upon the occurrence of any Event of Default, the Company shall be required to pay **additional interest ("Additional Interest")** (but in the case of paragraph 7(a)(v) above, only with respect to such Holders who have returned a completed and executed Notice and Questionnaire and not been named as a selling securityholder in the Shelf Registration Statement) at a rate per annum equal to one-quarter of one percent (0.25%) of the aggregate principal amount of Registrable Securities, from and including the Default Date (as hereinafter defined) through and including the Default Termination Date (as hereinafter defined) (the "**Default Period**"); provided, however, that if the Default Period exceeds 90 days, from and after the 91st day after the Default Date such **Additional Interest** shall accrue at a rate per annum equal to one-half of one percent (0.5%) of the aggregate principal amount of Registrable Securities. The term "**Default Date**" shall mean: (i) with respect to clause (i) of Section 7(a) above, the 91st calendar day following the Closing Date; (ii) with respect to clause (ii) of Section 7(a) above, the 181st calendar day following the Closing Date; (iii) with respect to clause (iii) of Section 7(a) above, the first day following the date upon which the post-effective amendment was required to be filed or declared effective, as the case may be, pursuant to Section 3(a)(ii) above; and (iv) with respect to clause (iv) of Section 7(a) above, the 46th day of such 90-day period or the 91st day of such 365-day period, as the case may be. The term "**Default Termination Date**" shall mean (x) with respect to clauses (i) through (iii) of Section 7(a) above, the date the Shelf Registration Statement or the post-effective amendment, as the case may be, is either so filed or so filed and subsequently declared effective, as the case may be, and (y) with respect to clause (iv) of Section 7(a) above, the date the Shelf Registration Statement again becomes effective or the Holders of Registrable Securities are again able to make sales under the Shelf Registration Statement. Notwithstanding the foregoing, no **Additional Interest** shall accrue as to any Registrable Security from and after the earlier of (1) the date such security is no longer a Registrable Security and (2) the expiration of the Registration Period.

(c) Any amounts to be paid as **Additional Interest** shall be paid semi-annually in arrears, with the first semi-annual payment due on the first Interest Payment Date (as defined in the Indenture), as applicable, following the applicable Default Date. In

determining the amount of **Additional Interest** to be paid with respect to shares of Common Stock issued upon conversion of the Securities, the rate set forth in Section 7(b) hereof shall be applied to the Conversion Price(s) (as defined in the Indenture) in effect during the applicable Default Period.

(d) Except as provided in Section 8(a) hereof, **Additional Interest** shall be the exclusive monetary remedy available to the Holders for Events of Default. In no event shall the Company be required to pay **Additional Interest** in excess of the applicable maximum amount of one-half of one percent (0.5%) set forth above, regardless of whether one or multiple Events of Default exist.

8. Miscellaneous.

(a) Specific Performance. The parties hereto acknowledge that there would be no adequate remedy at law if the Company fails to perform any of its obligations hereunder and that the Initial Purchaser and the Holders from time to time may be irreparably harmed by any such failure, and accordingly agree that the Initial Purchaser and such Holders, in addition to any other remedy to which they may be entitled at law or in equity and without limiting the remedies available to the Electing Holders under Section 7 hereof, shall be entitled to compel specific performance of the obligations of the Company under this Agreement in accordance with the terms and conditions of this Agreement, in any court of the United States or any State thereof having jurisdiction.

(b) Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, except by the Company and the written consent of the Holders of a majority in principal amount of the Registrable Securities then outstanding (provided that holders of Common Stock issued upon conversion of Securities shall not be deemed holders of Common Stock, but shall be deemed to be holders of the aggregate principal amount of Securities from which such Common Stock was converted). Each Holder of Registrable Securities outstanding at the time of any such amendment, waiver or consent or thereafter shall be bound by any amendment, modification, supplement, waiver or consent effected pursuant to this Section 8(b).

(c) Notices. All notices and other communications provided for or permitted hereunder shall be given as provided in the Indenture.

(d) Parties in Interest. The parties to this Agreement intend that all Holders of Registrable Securities shall be entitled to receive the benefits of this Agreement and that any Electing Holder shall be bound by the terms and provisions of this Agreement by reason of such election with respect to the Registrable Securities which are included in a Shelf Registration Statement. All the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective successors and assigns of the parties hereto and any Holder from time to time of the Registrable Securities. In the event that any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by gift, bequest, purchase, operation of law or otherwise, such transferee shall, without any further writing or action of any kind, be entitled to receive the benefits of and, if an Electing Holder, be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement to the aforesaid extent.

(e) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

(f) Headings. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

(g) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN SUCH STATE.

(h) Partial Enforceability. The invalidity or unenforceability of any section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other section, paragraph or provision hereof. If any section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

(i) Survival. The respective indemnities, agreements, representations, warranties and other provisions set forth in this Agreement or made pursuant hereto shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Electing Holder, any director, officer or partner of such Holder, or any controlling person of any of the foregoing, and shall survive the transfer and registration of the Registrable Securities of such Holder.

[Remainder of page intentionally left blank]

Please confirm that the foregoing correctly sets forth the agreement between the Company and you.

Very truly yours,

CASUAL MALE RETAIL GROUP, INC.

By: _____

Name:
Title:

Accepted as of the date hereof

By: Thomas Weisel Partners LLC

By: _____

Name:
Title:

Appendix A

CASUAL MALE RETAIL GROUP, INC.

INSTRUCTION TO DTC PARTICIPANTS

[Mailing Date]

URGENT - IMMEDIATE ATTENTION REQUESTED

DEADLINE FOR RESPONSE: [DATE]

The Depository Trust Company ("**DTC**") has identified you as a DTC Participant through which beneficial interests in the Casual Male Retail Group, Inc. (the "**Company**") 5% Convertible Senior Subordinated Notes due 2024 (the "**Securities**") are held.

The Company has filed a registration statement under the Securities Act of 1933, as amended, to allow the beneficial owners to resell the Securities. Beneficial owners must complete and return the enclosed Notice of Registration Statement and Selling Securityholder Questionnaire in order to have their Securities included in the registration statement.

It is important that you deliver a copy of the enclosed materials to the beneficial owners of the Securities as soon as possible. The beneficial owners' right to participate as a selling securityholder under the registration statement is conditioned upon their returning the Notice and Questionnaire by **[Response Deadline]**. Please forward a copy of the enclosed documents to each beneficial owner that holds interests in the Securities through you. If you require more copies of the enclosed materials or have any questions pertaining to this matter, please contact [_____].

Appendix B

Completed by: _____

NOTICE OF REGISTRATION STATEMENT

AND

SELLING SECURITYHOLDER QUESTIONNAIRE

5% Convertible Senior Subordinated Notes Due 2024

of

Casual Male Retail Group, Inc.

Casual Male Retail Group, Inc. ("Casual Male") has filed or intends to file with the U.S. Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (the "Shelf Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), 5% Convertible Senior Subordinated Notes due 2024 (the "Notes") or common stock, $0.01 par value per share (the "Common Stock" and, together with the Notes, the "Securities"), of Casual Male in accordance with the terms of that certain Registration Rights Agreement, dated as of November 18, 2003 (the "Registration Rights Agreement"), between Casual Male and the initial purchaser named therein. All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Registration Rights Agreement.

Each beneficial owner of Securities is entitled to the benefits of the Registration Rights Agreement. In order to sell or otherwise dispose of any Securities pursuant to the Shelf Registration Statement, a beneficial owner of Securities generally will be required to be named as a selling securityholder in the related prospectus, deliver a prospectus to purchasers of Securities and be bound by those provisions of the Registration Rights Agreement applicable to such beneficial owner (including certain indemnification provisions described below). Beneficial owners that do not complete this Notice and Questionnaire and deliver it to Casual Male as provided below will not be named as selling securityholders in the prospectus and therefore will not be permitted to sell any Securities pursuant to the Shelf Registration Statement. Beneficial owners are encouraged to complete and deliver this Notice and Questionnaire prior to the effectiveness of the Shelf Registration Statement so that such beneficial owners may be named as selling securityholders in the related prospectus at the time of effectiveness. Upon receipt of a completed Notice and Questionnaire from a beneficial owner following the effectiveness of the Shelf Registration Statement, Casual Male will, as promptly as practicable, file such amendments to the Shelf Registration Statement or supplements to the related prospectus as are necessary to permit such holder to deliver such prospectus to purchasers of Securities. Casual Male has agreed to pay additional amounts pursuant to the Registration Rights Agreement under certain circumstances set forth therein.

Certain legal consequences arise from being named as a selling securityholder in the Shelf Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Shelf Registration Statement and the related prospectus.

Notice

The undersigned beneficial owner (the "Selling Securityholder") of Securities hereby gives notice to Casual Male of its intention to sell or otherwise dispose of Securities beneficially owned by it and listed below in Item 3 (unless otherwise specified under such Item 3) pursuant to the Shelf Registration Statement. The undersigned, by signing and returning this Notice and Questionnaire, understands that it will be bound by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless Casual Male's directors and officers and each person, if any, who controls Casual Male within the meaning of either Section 15 of the Securities Act or Section 20 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), from and against certain losses arising in connection with statements concerning the undersigned made in Casual Male's Shelf Registration Statement or the related prospectus in reliance upon the information provided in this Notice and Questionnaire.

If the Selling Securityholder transfers all or any portion of the Securities listed in Item 3 below after the date on which such information is provided to Casual Male, the Selling Securityholder agrees to notify the transferee(s) at the time of the transfer of its rights and obligations under this Notice and Questionnaire and the Registration Rights Agreement.

Questionnaire

Please respond to every item, even if your response is "none." If you need more space for any response, please attach additional sheets of paper. Please be sure to indicate your name and the number of the item being responded to on each such additional sheet of paper, and to sign each such additional sheet of paper before attaching it to this Questionnaire. Please note that you may be asked to answer additional questions depending on your responses to the following questions.

If you have any questions about the contents of this Questionnaire or as to who should complete this Questionnaire, please contact Arlene Feldman at Casual Male Retail Group, Inc. at telephone number: (781) 828-9300.

Completed questionnaires should be returned as soon as possible but no later than _____ to Casual Male Retail Group, Inc. as follows:

Copy By Facsimile to Investor Relations, Fax: (781) 821-5174

With The Original Copy To Follow To:

CASUAL MALE RETAIL GROUP, INC.

555 Turnpike Street

Canton, MA 02021

ATTENTION: INVESTOR RELATIONS

The undersigned hereby provides the following information to Casual Male and represents and warrants that such information is accurate and complete:

1. Your Identity and Background as the Beneficial Holder of the Securities.

(a) Your full legal name:

(b) Your business address (including street address) (or residence if no business address), telephone number and facsimile number:

Address:

_____

_____

Telephone No.: _____

Fax No.: _____

(c) Are you a broker-dealer registered pursuant to Section 15 of the Exchange Act?

☐ Yes.

☐ No.

(d) If your response to Item 1(c) above is no, are you an "affiliate" of a broker-dealer registered pursuant to Section 15 of the Exchange Act?

☐ Yes.

☐ No.

For the purposes of this Item 1(d), an "affiliate" of a registered broker-dealer shall include any company that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such broker-dealer, but does not include any individuals employed by such broker-dealer or its affiliates.

(e) If your response to 1(d) above is yes, please name the broker-dealer(s) with whom you are affiliated.

_____

_____

(f) Full legal name of person through which you hold the Securities (i.e. name of your broker or the DTC participant, if applicable, through which your Registered Securities are held):

Name of broker: _____

DTC No.: _____

Contact person: _____

Telephone No.: _____

2. Your Relationship with Casual Male Retail Group, Inc.

(a) Have you or any of your affiliates, officers, directors or principal equity holders (owners of 5% or more of your equity securities) held any position or office or have you had any other material relationship with Casual Male (or its predecessors or affiliates) within the past three years?

☐ Yes.

☐ No.

(b) If your response to Item 2(a) above is yes, please state the nature and duration of your relationship with Casual Male:

_____

_____

3. Your Interest in the Securities.

(a) State the type of Securities (Notes or Common Stock) and the principal amount or number of such Securities beneficially owned by you. Check any of the following that applies to you.

☐ I own Notes:

Principal amount of the Notes beneficially owned:

_____

☐ I own shares of Common Stock that were issued upon conversion of the Notes:

Number of shares of the Common Stock beneficially owned:

_____

(b) Other than as set forth in your response to Item 3(a) above, do you beneficially own any other securities of Casual Male Retail Group, Inc.?

☐ Yes.

☐ No.

(c) If your answer to Item 3(b) above is yes, state the type, the aggregate amount and, if other than Common Stock, the CUSIP No(s). of such other securities of Casual Male beneficially owned by you:

Type: _____

Aggregate amount: _____

CUSIP No(s).: _____

(d) Did you acquire the securities listed in Item 3(a) above in the ordinary course of business?

☐ Yes.

☐ No.

(e) At the time of your purchase of the securities listed in Item 3(a) above, did you have any agreements or understandings, directly or indirectly, with any person to distribute the securities?

☐ Yes.

☐ No.

(f) If your response to Item 3(e) above is yes, please describe such agreements or understandings:

_____

_____

4. Nature of Your Ownership.

(a) (i) If the name of the beneficial holder of the Securities set forth in your response to Item 1(a) above is that of a limited partnership, state the names, business addresses (including street addresss) (or residence address, if no business address), telephone numbers and facsimile numbers of the general partners of such limited partnership:

Full Legal Name	**Business or Residence Address**	**Telephone and Facsimile Numbers**

(ii) With respect to each general partner listed in Item 4(a)(i) above who is not a natural person, and is not publicly held, name each shareholder (or other interest holder) of such general partner. If any of these named shareholders or other interest holders are not natural persons or publicly held entities, please provide the same information. This process should be repeated until you reach natural persons or a publicly held entity.

Full Legal Name	Business or Residence Address	Telephone and Facsimile Numbers

(b) (i) If the name of the beneficial holder of the Securities set forth in your response to Item 1(a) above is that of a limited liability company, state the names, business addresses (including street address) (or residence address, if no business address), telephone numbers and facsimile numbers of the managing members of such limited liability company.

Full Legal Name	Business or Residence Address	Telephone and Facsimile Numbers

(ii) With respect to each managing member listed in Item 4(b)(i) above who is not a natural person, and is not publicly held, name each shareholder (or other interest holder) of such managing member. If any of these named shareholders or other interest holders are not natural persons or publicly held entities, please provide the same information. This process should be repeated until you reach natural persons or a publicly held entity.

Full Legal Name	Business or Residence Address	Telephone and Facsimile Numbers

(c) (i) If the name of the beneficial holder of the Securities set forth in your response to Item 1(a) above is that of a corporation that is not publicly held, state the names, business addresses (including street address) (or residence address, if no business address), telephone numbers and facsimile numbers of the controlling shareholders (the "Controlling Persons").

Full Legal Name	Business or Residence Address	Telephone and Facsimile Numbers

(ii) If any Controlling Person is not a natural person and is not a publicly held entity, name each controlling shareholder or other interest holder of such Controlling Person. If any of these named shareholders or other interest holders are not natural persons or publicly held entities, please provide the same information. This process should be repeated until you reach natural persons or a publicly held entity.

Full Legal Name	Business or Residence Address	Telephone and Facsimile Numbers

(d) If the beneficial holder of the Securities set forth in response to Item 1(a) is an investment or hedge fund, name the individual or individuals who have or share voting or investment power over the Securities and describe their relationship with the beneficial owner.

If you need more space for this response, please attach additional sheets of paper. Please be sure to indicate your name and the number of the item being responded to on each such additional sheet of paper, and to sign each such additional sheet of paper before attaching it to this Questionnaire. Please note that you may be asked to answer additional questions depending on your responses to the following questions.

5. Plan of Distribution.

Except as set forth below, the undersigned (including its donees or pledgees) intends to distribute the Securities listed above in Item 3 pursuant to the Shelf Registration Statement only as follows (if at all): Such Securities may be sold from time to time directly by the undersigned or, alternatively, through underwriters, broker-dealers or agents. If the Securities are sold through underwriters, broker-dealers or agents, the Selling Securityholder will be responsible for underwriting discounts or commissions or agents' commissions. Such Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale or at negotiated prices. Such sales may be effected in transactions (which may involve block transactions) (i) on any national securities exchange or quotation service on which the Securities may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market, or (iv) through the writing of options. In connection with sales of the Securities or otherwise, the undersigned may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Securities in the course of hedging positions they assume. The undersigned may also sell Securities short and deliver Securities to close out short positions, or loan or pledge Securities to broker-dealers that in turn may sell such securities.

State any exceptions here:

_____

_____

Note: In no event will such method(s) of distribution take the form of an underwritten offering of the Securities without the prior agreement of Casual Male in its sole discretion.

The undersigned acknowledges that its obligation to comply with the provisions of the Exchange Act and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Securities pursuant to the Registration Rights Agreement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The undersigned hereby acknowledges its obligations under the Registration Rights Agreement to indemnify and hold harmless certain persons as set forth therein. Pursuant to the Registration Rights Agreement, Casual Male has agreed under certain circumstances to indemnify the undersigned against certain liabilities.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law (including interpretations of the staff of the Commission with which Casual Male is required to comply) for inclusion in the Shelf Registration Statement, the undersigned agrees to promptly notify Casual Male of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains effective. **In particular, the undersigned agrees to promptly notify Casual Male if it sells or otherwise transfers any of the Securities other than pursuant to the Shelf Registration Statement.**

All notices to the beneficial owner hereunder and pursuant to the Registration Rights Agreement shall be made in writing to the undersigned at the address set forth in Item 1(b) of this Notice and Questionnaire.

By signing below, the undersigned acknowledges that it is the beneficial owner of the Securities set forth herein, represents that the information provided herein is accurate, consents to the disclosure of the information contained in this Notice and Questionnaire and the inclusion of such information in the Shelf Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by Casual Male in connection with the preparation or amendment of the Shelf Registration Statement and the related prospectus.

Once this Notice and Questionnaire is executed by the undersigned beneficial owner and received by Casual Male, the terms of this Notice and Questionnaire, and the representations and warranties contained herein, shall be binding on, shall inure to the benefit of and shall be enforceable by the respective successors, heirs, personal representatives and assigns of Casual Male and the undersigned beneficial owner. This Agreement shall be governed in all respects by the laws of the State of New York.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Name of Beneficial Owner:

_____

(Please Print)

Signature: _____

Name and Title: _____

(Please Print)

Date: _____

Exhibit 1
to Appendix A

NOTICE OF TRANSFER PURSUANT TO REGISTRATION STATEMENT

Casual Male Retail Group, Inc.
555 Turnpike Street
Canton, MA 02021

Attention: **[General Counsel]**

[Name of Trustee]
[Address of Trustee]

Attention: **[Corporate Trust Services]**

Re: Casual Male Retail Group, Inc. (the "**Company**")
5% Convertible Senior Subordinated Notes due 2024 (the "**Securities**")

Dear Sirs:

Please be advised that [_____] has transferred $[_____] aggregate principal amount of the above-referenced Securities or shares of the Company's common stock, issued upon conversion, repurchase or redemption of the Securities, pursuant to an effective Registration Statement on Form [__] (File No. 333-[____]) filed by the Company.

We hereby certify that the prospectus delivery requirements, if any, of the Securities Act of 1933, as amended, have been satisfied with respect to the transfer described above and that the above-named beneficial owner of the Securities or common stock is named as a selling securityholder in the Prospectus dated **[date]**, or in amendments or supplements thereto, and that the aggregate principal amount of the Securities or number of shares of common stock transferred are **[a portion of]** the Securities or shares of common stock listed in such Prospectus as amended or supplemented opposite such owner's name.

Dated:

Very truly yours,

_____
(Name)

By: _____
(Authorized Signature)

EXHIBIT 10.5

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made as of July 9, 2003 between CASUAL MALE RETAIL GROUP, INC., a Delaware corporation with an office at 555 Turnpike Street, Canton, Massachusetts, 02021 (the "Company"), and Linda Carlo (the "Executive") having an address at 16 Upton Street, Boston, Massachusetts 02118.

WITNESSETH:

WHEREAS, the Company desires that Executive serve as Executive Vice President, General Merchandise Manager of the Casual Male Division of the Company, and Executive desires to be so employed by the Company.

WHEREAS, Executive and the Company desire to set forth in writing the terms and conditions of the Executive's employment with the Company from the date hereof.

NOW, THEREFORE, in consideration of the premises and the mutual promises, representations and covenants herein contained, the parties hereto agree as follows:

1. EMPLOYMENT

The Company hereby employs Executive and Executive hereby accepts such employment, subject to the terms and conditions herein set forth. Executive shall hold the office of Executive Vice President, General Merchandise Manager of the Casual Male Division.

2. TERM

The term of employment under this Agreement shall begin on August 4, 2003 (the "Employment Date") and shall continue for a period of one (1) year from that date (the "Term"), subject to prior termination in accordance with the terms hereof.

3. COMPENSATION

(a) As compensation for the employment services to be rendered by Executive hereunder, the Company agrees to pay to Executive, and Executive agrees to accept, payable in equal installments in accordance with Company practice, an annual base salary of $290,000.

(b) In addition to the annual base salary, Executive may receive a bonus payable at the time of normal distribution of bonuses for the year ending January 31, 2004 (the "Bonus"); such Bonus shall be determined in accordance with the Company's bonus program in effect at the time. Executive will participate in the Company's bonus program at a bonus incentive rate of 40% of Executive's annual base salary.

4. OPTIONS

The Company shall grant to the Executive 50,000 options under the Company's 1992 Stock Incentive Plan, which are exercisable at a purchase price per share equal to the closing price of the Common Stock on the Employment Date (the "Grant Date"). The options will vest pro rata over a three (3) year period commencing on the first anniversary of the Grant Date, with one third of the total vesting and becoming exercisable on each of the first, second and third anniversaries of the Grant Date, subject to the terms of the Stock Option Agreement, which the Executive must execute in connection with the grant of the options.

5. EXPENSES

The Company shall pay or reimburse Executive, in accordance with the Company's policies and procedures and upon presentment of suitable vouchers, for all reasonable business and travel expenses, which may be incurred or paid by Executive in connection with her employment hereunder. Executive shall comply with such restrictions and shall keep such records as the Company may reasonably deem necessary to meet the requirements of the Internal Revenue Code of 1986, as amended from time to time, and regulations promulgated thereunder.

6. OTHER BENEFITS

(a) Executive shall be entitled to such vacations and to participate in and receive any other benefits customarily provided by the Company to its senior management (including any profit sharing, pension, 401 (k), short and long-term disability insurance, major medical insurance and group life insurance plans in accordance with the terms of such plans), all as determined from time to time by the Compensation Committee of the Board of Directors.

(b) The Company will, during the term of Executive's employment hereunder, provide Executive with an automobile allowance in the total amount of $7,200.00 annually. Executive shall pay and be responsible for all insurance, repairs and maintenance costs associated with operating the automobile. Executive is responsible for her gasoline, unless the gasoline expense is reimbursable under the Company's policies and procedures.

(c) Executive will be eligible to participate in the Company's annual performance appraisal process on or about March of 2004. Salary adjustment will be made based upon Executive's job performance.

7. DUTIES

(a) Executive shall perform such duties and functions consistent with her position as Executive Vice President, General Merchandise Manager, and/or as the Board of Directors of the Company shall from time to time determine and Executive shall comply in the performance of her duties with the policies of, and be subject to the direction of, the Board of Directors.

(b) At the request of President or the Board of Directors, Executive shall serve, without further compensation, as an executive officer, corporate officer and/or director of any subsidiary or affiliate of the Company and, in the performance of such duties, Executive shall comply with the directives and policies of the Board of Directors of each such subsidiary or affiliate.

(c) During the Term of this Agreement, Executive shall devote substantially all of her time and attention, vacation time and absences for sickness excepted, to the business of the Company, as necessary to fulfill her duties. Executive shall perform the duties assigned to him with fidelity and to the best of her ability. Notwithstanding anything herein to the contrary, and subject to the foregoing, Executive may engage in other activities so long as such activities do not unreasonably interfere with Executive's performance of her duties hereunder and do not violate Section 10 hereof.

(d) The principal location at which the Executive shall perform her duties hereunder shall be at the Company's offices in Canton, Massachusetts or at such other location as may be designated from time to time by the Board of Directors of the Company. Notwithstanding the foregoing, Executive shall perform such services at such other locations as may be required for the proper performance of her duties hereunder, and Executive recognizes that such duties may involve travel.

8. TERMINATION OF EMPLOYMENT; EFFECT OF TERMINATION

(a) Executive's employment hereunder may be terminated by the Company at any time:

(i) upon the determination by the President or the Board of Directors that Executive's performance of her duties has not been fully satisfactory for any reason which would not constitute justifiable cause (as hereinafter defined) upon thirty (30) days' prior written notice to Executive; or

(ii) upon the determination by the President or the Board of Directors that there is justifiable cause (as hereinafter defined) for such termination upon ten (10) days' prior written notice to Executive.

(b) Executive's employment shall terminate upon:

(i) the death of Executive; or

(ii) the "total disability" of Executive (as hereinafter defined in Subsection (c) herein) pursuant to Subsection (h) hereof.

(c) For the purposes of this Agreement, the term "total disability" shall mean Executive is physically or mentally incapacitated so as to render Executive incapable of performing the essentials of Executive's job, even with reasonable accommodation, as reasonably determined by the Board of Directors of the Company, (after examination of Executive by an independent physician reasonably acceptable to Executive), which determination shall be final and binding.

(d) For the purposes hereof, the term “justifiable cause” shall mean: any repeated willful failure or refusal to perform any of the duties pursuant to this Agreement where such conduct shall not have ceased within 5 days following written warning from the Company; any breach of this Agreement by the Executive, Executive’s conviction (which, through lapse of time or otherwise, is not subject to appeal) of any crime or offense involving money or other property of the Company or its subsidiaries or affiliates or which constitutes a felony in the jurisdiction involved; Executive’s performance of any act or her failure to act, as to which if Executive were prosecuted and convicted, a crime or offense involving money or property of the Company or its subsidiaries or affiliates, or a crime or offense constituting a felony in the jurisdiction involved, would have occurred; any unauthorized disclosure by Executive to any person, firm or corporation of any confidential information or trade secret of the Company or any of its subsidiaries or affiliates; any attempt by Executive to secure any personal profit in connection with the business of the Company or any of its subsidiaries and affiliates; or the engaging by Executive in any business other than the business of the Company and its subsidiaries and affiliates which unreasonably interferes with the performance of her duties hereunder. Upon termination of Executive’s employment for justifiable cause, this Agreement shall terminate immediately and Executive shall not be entitled to any amounts or benefits hereunder other than such portion of Executive’s annual salary and reimbursement of expenses pursuant to Section 5 hereof as have been accrued through the date of her termination of employment.

(e) Executive may terminate her employment with the Company upon ten (10) days’ prior written notice to the Company, for “Good Reason” (as defined below). For the purpose of this paragraph, “Good Reason” shall mean: (1) the assignment to Executive, without her express consent, of a substantial amount of duties which are materially inconsistent with her position with the Company, or (2) a change in Executive’s responsibilities which materially diminishes her responsibilities with the Company when considered as a whole; or (3) a reduction by the Company in Executive’s base salary; or (4) the Company’s requiring Executive to be permanently based anywhere other than the Company’s office in Canton, Massachusetts, or within fifty (50) mile of said office.

(f) If the Company terminates this Agreement without “justifiable cause” as provided in Subsection 8 (a)(i) above or if Executive terminates this Agreement for “Good Reason” as described in Subsection 8(e) above; the Company shall pay Executive the greater of: (i) the base salary for the remainder of the Term or (ii) an amount equal to one half of Executive’s annual base salary. However, if Executive is employed or retained, as an employee, independent contractor, consultant or in any other capacity or if she is offered another position by the Company at a comparable salary (“New Employment”) during the time she receives payment under this Subsection or Subsection 3 (b), the Company is entitled to a credit for all sums paid or earned by Executive during this period of time or which she could have earned had she accepted the comparable position by the Company. The Executive must make a good faith effort to find New Employment and mitigate the amount of money to be paid by the Company to Executive under this Subsection or Subsection 3(b). Executive also agrees to immediately notify the Vice President of Human Resources of the Company at 555 Turnpike Street, Canton, Massachusetts,

02021, if and when she is offered another position and/or accepts another position. The Company will pay any amount due and owing under 8 (f)(i) or 8(f)(ii) above in accordance with the payment schedule in 3(a), until paid in full.

(g) If Executive shall die during the term of her employment hereunder, this Agreement shall terminate immediately. In such event, the estate of Executive shall thereupon be entitled to receive such portion of Executive's annual salary and reimbursement of expenses pursuant to Section 5 as have been accrued through the date of her death.

(h) Upon Executive's "total disability", the Company shall have the right to terminate Executive's employment. Notwithstanding any inability to perform her duties, Executive shall be entitled to receive her base salary and reimbursement of expenses pursuant to Section 5 as provided herein until she begins to receive long-term disability insurance benefits under the policy provided by the Company pursuant to Section 6 hereof. Any termination pursuant to this Subsection (g) shall be effective on the later of (i) the date 30 days after which Executive shall have received written notice of the Company's election to terminate or (ii) the date she begins to receive long-term disability insurance benefits under the policy provided by the Company pursuant to Section 6 hereof

(i) Upon the resignation of Executive in any capacity, that resignation will be deemed to be a resignation from all offices and positions that Executive holds with respect to the Company and any of its subsidiaries and affiliates.

(j) Change of Control. In the event the Executive's employment with the Company is terminated by the Company during the Term as a result of a Change of Control of the Company occurring during the Term then, in such event, the Company shall pay Executive an amount as set forth in Section 8(f) above, which amount will be subject to mitigation in accordance with Section 8(f) above. For the purposes of the foregoing, Change of Control shall have the meaning set forth in the Designs, Inc. 1992 Stock Incentive Plan (without regard to any subsequent amendments thereto).

9. REPRESENTATION AND AGREEMENTS OF EXECUTIVE

(a) Executive represents and warrants that she is free to enter into this Agreement and to perform the duties required hereunder, and that there are no employment contracts or understandings, restrictive covenants or other restrictions, whether written or oral, preventing the performance of her duties hereunder.

(b) Executive agrees to submit to a medical examination and to cooperate and supply such other information and documents as may be required by any insurance company in connection with the Company's obtaining life insurance on the life of Executive, and any other type of insurance or fringe benefit as the Company shall determine from time to time to obtain.

(c) Executive represents and warrants that she has never been convicted of a felony and she has not been convicted or incarcerated for a misdemeanor within the past five years, other than a first conviction for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace.

(d) Executive represents and warrants that she has never been a party to any judicial or administrative proceeding that resulted in a judgement, decree, or final order (i) enjoining him from future violations of, or prohibiting any violations of any federal or state securities law, or (ii) finding any violations of any federal or state securities law.

(e) Executive represents and warrants that she has never been accused of any impropriety in connection with any employment;

Any breach of any of the above representations and warranties is "justifiable cause" for termination under Section 8 of this Agreement.

10. NON-COMPETITION

(a) Executive agrees that during her employment by the Company and during the one (1) year period following the termination of Executive's employment hereunder (the "Non-Competitive Period"), Executive shall not, directly or indirectly, as owner, partner, joint venturer, stockholder, employee, broker, agent, principal, 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 business which is competitive with products or services of the Company or any subsidiaries and affiliates, in any geographic area in the United States of America and Puerto Rico where, at the time of the termination of her employment hereunder, the business of the Company or any of such subsidiaries and affiliates was being conducted or was proposed to be conducted in any manner whatsoever; provided, however, that Executive 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, Executive shall not, during the Non-Competitive Period, directly or indirectly, request or cause any suppliers or customers with whom the Company or any of its subsidiaries and affiliates has a business relationship to cancel or terminate any such business relationship with the Company or any of its subsidiaries and affiliates or solicit, hire, interfere with or entice from the Company any employee (or former employee) of the Company.

(b) If any portion of the restrictions set forth in this Section 10 should, for any reason whatsoever, be declared invalid by a court of competent jurisdiction, the validity or enforceability of the remainder of such restrictions shall not thereby be adversely affected. For the purposes of this Section 10, a business competitive with the products and services of the Company (or such subsidiaries and affiliates) shall include, a specialty retailer which primarily distributes, sells or markets so-called "big and tall" apparel of any kind for men or which utilizes the "big and tall" retail or wholesale marketing concept as part of its business.

(c) Executive acknowledges that the Company conducts business throughout the United States and Puerto Rico, that its sales and marketing prospects are for continued expansion throughout the United States and therefore, the territorial and time limitations set forth in this Section 10 are reasonable and properly required for the adequate protection of the business of the

Company and its subsidiaries and affiliates. In the event any such territorial or time limitation is deemed to be unreasonable by a court of competent jurisdiction, Executive agrees to the reduction of the territorial or time limitation to the area or period which such court shall deem reasonable.

(d) The existence of any non-material claim or cause of action (a "non-material" claim or cause of action is defined as a claim or cause of action which results from something other than a material breach of the terms and provisions of this Agreement by the Company) by Executive against the Company or any subsidiary or affiliate shall not constitute a defense to the enforcement by the Company or any subsidiary or affiliate of the foregoing restrictive covenants, but such claim or cause of action shall be litigated separately.

11. INVENTIONS AND DISCOVERIES

(a) Upon execution of this Agreement and thereafter, Executive shall promptly and fully disclose to the Company, and with all necessary detail for a complete understanding of the same, all existing and future developments, know-how, discoveries, inventions, improvements, concepts, ideas, writings, formulae, processes and Methods (whether copyrightable, patentable or otherwise) made, received, conceived, acquired or written during working hours, or otherwise, by Executive (whether or not at the request or upon the suggestion of the Company) during the period of her employment with, or rendering of advisory or consulting services to, the Company or any of its subsidiaries and affiliates, solely or jointly with others, in or relating to any activities of the Company or its subsidiaries and affiliates known to him as a consequence of her employment or the rendering of advisory and consulting services hereunder (collectively the "Subject Matter").

(b) Executive hereby assigns and transfers, and agrees to assign and transfer, to the Company, all her rights, title and interest in and to the Subject Matter, and Executive further agrees to deliver to the Company any and all drawings, notes, specifications and data relating to the Subject Matter, and to execute, acknowledge and deliver all such further papers, including applications for copyrights or patents, as may be necessary to obtain copyrights and patents for any thereof in any and all countries and to vest title thereto to the Company. Executive shall assist the Company in obtaining such copyrights or patents during the term of this Agreement, and at any time thereafter on reasonable notice and at mutually convenient times, and Executive agrees to testify in any prosecution or litigation involving any of the Subject Matter; provided, however, that Executive shall be compensated in a timely manner at the rate of $250 per day (or portion thereof), plus out-of-pocket expenses incurred in rendering such assistance or giving or preparing to give such testimony if it is required after the termination of this Agreement.

12. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

(a) Executive shall not, during the term of this Agreement or at any time following termination of this Agreement, directly or indirectly, disclose or permit to be known (other than as is required in the regular course of her duties (including without limitation disclosures to the Company's advisors and consultants), as required by law (in which case Executive shall give the Company prior written notice of such required disclosure) or with the prior written consent of the

Board of Directors of the Company), to any person, firm, corporation, or other entity, any confidential information acquired by him during the course of, or as an incident to, her employment or the rendering of her advisory or consulting services hereunder, relating to the Company or any of its subsidiaries and affiliates, the directors of the Company or its subsidiaries and affiliates, any supplier or customer of the Company or any of their subsidiaries and affiliates, or any corporation, partnership or other entity owned or controlled, directly or indirectly, by any of the foregoing, or in which any of the foregoing has a beneficial interest, including, but not limited to, the business affairs of each of the foregoing. Such confidential information shall include, but shall not be limited to, proprietary technology, trade secrets, patented processes, research and development data, know-how, market studies and forecasts, financial data, competitive analyses, pricing policies, employee lists, personnel policies, the substance of agreements with customers, suppliers and others, marketing or dealership arrangements, servicing and training programs and arrangements, supplier lists, customer lists and any other documents embodying such confidential information. This confidentiality obligation shall not apply to any confidential information, which is or becomes publicly available other than pursuant to a breach of this Section 12(a) by Executive.

(b) All information and documents relating to the Company and its affiliates as herein above described (or other business affairs) shall be the exclusive property of the Company, and Executive shall use commercially reasonable best efforts to prevent any publication or disclosure thereof. Upon termination of Executive's employment with the Company, all documents, records, reports, writings and other similar documents containing confidential information, including copies thereof then in Executive's possession or control shall be returned and left with the Company.

13. SPECIFIC PERFORMANCE

Executive agrees that if she breaches, or threatens to commit a breach of, any of the provisions of Sections 10, 11 or 12 (the "Restrictive Covenants"), the Company shall have, in addition to, and not in lieu of, any other rights and remedies available to the Company under law and in equity, the right to have the Restrictive Covenants specifically enforced by a court of competent jurisdiction, it being agreed that any breach or threatened breach of the Restrictive Covenants would cause irreparable injury to the Company and that money damages would not provide an adequate remedy to the Company. Notwithstanding the foregoing, nothing herein shall constitute a waiver by Executive of her right to contest whether a breach or threatened breach of any Restrictive Covenant has occurred.

14. AMENDMENT OR ALTERATION

No amendment or alteration of the terms of this Agreement shall be valid unless made in writing and signed by both of the parties hereto.

15. GOVERNING LAW

This Agreement shall be governed by, and construed and enforced in accordance with the substantive laws of The Commonwealth of Massachusetts, without regard to its principles of conflicts of laws.

16. SEVERABILITY

The holding of any provision of this Agreement to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision of this Agreement, which shall remain in full force and effect.

17. NOTICES

Any notices required or permitted to be given hereunder shall be sufficient if in writing, and if delivered by hand or courier, or sent by certified mail, return receipt requested, to the addresses set forth above or such other address as either party may from time to time designate in writing to the other, and shall be deemed given as of the date of the delivery or at the expiration of three days in the event of a mailing.

18. WAIVER OR BREACH

It is agreed that a waiver by either party or a breach of any provision of this Agreement shall not operate, or be construed as a waiver of any subsequent breach by that same party.

19. ENTIRE AGREEMENT AND BINDING EFFECT

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, heirs, distributors, successors and assigns and supersedes any and all prior agreements between the parties whether oral or written including the Letter Agreement dated June 30, 2003.

20. SURVIVAL.

Except as otherwise expressly provided herein, the termination of Executive's employment hereunder or the expiration of this Agreement shall not affect the enforceability of Sections 5, 8, 10, 11, 12 and 13 hereof.

21. RESOLUTION OF DISPUTES

Any and all disputes arising under or in connection with this Agreement shall be resolved in accordance with this Section 21.

The parties shall attempt to resolve any dispute, controversy or difference that may arise between them through good faith negotiations. In the event the parties fail to reach resolution of any such dispute within thirty (30) days after entering into negotiations, either party may proceed to institute action in any state or federal court located within the Commonwealth of Massachusetts and each party consents to the personal jurisdiction of any such state or federal court.

22. FURTHER ASSURANCES

The parties agree to execute and deliver all such further documents, agreements and instruments and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

23. HEADINGS

The Section headings appearing in this Agreement are for the purposes of easy reference and shall not be considered a part of this Agreement or in any way modify, amend or affect its provisions.

24. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, under seal, as of the date and year first above written.

CASUAL MALE RETAIL GROUP, INC.

By: _____
Name: David A. Levin
Its: President, Chief Executive Officer

By: _____
Name: Dennis R. Hernreich
Its: Executive VP, COO, CFO

_____
Linda Carlo

EXHIBIT 10.6

SEVERANCE COMPENSATION AGREEMENT

This Severance Compensation Agreement (the "Agreement") by and between **Casual Male Corp.**, a Massachusetts corporation (the "Company") with its principal place of business at 555 Turnpike Street, Canton, Massachusetts and **Joseph H. Cornely, III of 157 Warren Ave., Boston, MA 02116** (the "Executive") shall be effective as of the date the Agreement is approved by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

WHEREAS, the Company and certain of its affiliates filed voluntary petitions to reorganize their businesses under Chapter 11 of the United States Bankruptcy Code, as amended, on May 18, 2001, which cases have been administratively consolidated under the heading "Casual Male Corp. et al." and have been assigned case numbers 01-41403(REG) through 01-41418(REG) (the "Chapter 11 Case");

WHEREAS, the Board of Directors of the Company has determined that it is in the best interests of the Company and its stakeholders that certain key members of management be provided with the appropriate incentives to cause them to remain employed by the Company pending the Company's reorganization;

WHEREAS, the Official Committee of Unsecured Creditors of the Company has consented to the Company entering into this Agreement;

NOW THEREFORE, in consideration of the agreements contained herein including the undertakings of the parties hereto, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, it is covenanted and agreed as follows:

1. Severance Compensation upon Termination of Employment.

In the event that the Executive's employment with the Company or any of its affiliates is terminated for one of the reasons described below, the Company shall pay to the Executive the corresponding cash severance payment (the "Severance Payment"):

(a) Termination Without Cause or For Good Reason. In the event the Executive's employment with the Company is terminated (x) by the Company without Cause or (y) by the Company or by the Executive for "good reason" (as defined in Section 1(d) below), the Severance Payment shall be the Executive's Annual Base Salary for a period of 14 months and shall be payable to the Executive in accordance with the Company's regular pay intervals for its senior executives beginning immediately following the Executive's Termination Date. The Severance Payments made pursuant to this Section 1(a) shall be offset by any salary, earned income, deferred income or other compensation earned by the Executive from other

employment during the Severance Period, it being understood that the Executive shall use reasonable efforts to find new employment suitable to, and consistent with, his or her training and experience during such 14 month period.

(b) Change of Control. In the event that the Executive's employment with the Company is terminated by the Company or any successor thereto following or in connection with a "change of control" as defined in Exhibit A hereto then, at the election of the Executive, the Severance Payment shall be either: (x) a payment equal to the Executive's Annual Base Salary for a period of 14 months, payable in accordance with the Company's normal pay intervals for its senior executives, offset by any salary, earned income, deferred income or other compensation earned by the Executive from other employment during the Severance Period (it being understood that the Executive shall use reasonable efforts to find new employment suitable to, and consistent with, his or her training and experience during such 14 month period) or (y) a payment equal to Executive's Annual Base Salary for a period of 8 months made to the Executive in a single lump sum cash payment within ten (10) business days of the Termination Date, which payment shall not by offset by salary, earned income, deferred income or other income earned by the Executive from other Employment.

(c) Liquidation of Company. In the event that the Executive's employment with the Company is terminated by the Company or its estate following or in connection with the conversion of the Company's Chapter 11 Case to a case under Chapter 7 of the United States Bankruptcy Code or other liquidation of the Company the Severance Payment shall be a payment equal to Executive's Annual Base Salary for a period of 8 months made to the Executive in a single lump sum cash payment within ten (10) business days of the Termination Date, which payment shall not by offset by salary, earned income, deferred income or other income earned by the Executive from other Employment.

(d) Certain Definitions. For purposes of this Agreement, the following words and phrases shall have the following meanings:

(i) "Annual Base Salary" shall mean the Executive's base salary in effect on the date of this Agreement, as such base salary may be increased from time to time.

(ii) "Termination Date" shall mean the date upon which the Executive formally ceases all regular employment activities on behalf of the Company as recognized by the records of the Company.

(iii) A termination for "good reason" shall be deemed to have

occurred, and the Executive shall be entitled to the benefits set forth in this Section 1, if the Executive voluntarily terminates his employment after the occurrence of any of the following events: (x) the assignment to the Executive of any duties inconsistent with the highest position (including status, offices, titles and reporting requirements), authority, duties or responsibilities attained by the Executive during the period of his employment by the Company; (y) a relocation of the Executive outside the metropolitan Boston area; or (z) a decrease in the Executive's compensation (including base salary, bonus or fringe benefits).

(iv) "Cause" shall mean (w) willful misconduct with regard to the Company intended to have, and having, a material adverse affect on the Company, (x) failure by the Employee to cure a material breach of this Agreement within 15 days after written notice thereof by the Company, (y) refusal to or failure to attempt to follow the reasonable written legal direction of the Board of Directors of the Company or the Chief Executive Officer of the Company or (z) the commission by the Employee of an act constituting a felony.

2. Effective Date.

This Agreement shall become effective as of the date on which the Bankruptcy Court grants its approval thereto.

3. Release of Liability.

Notwithstanding anything to the contrary herein, as a condition precedent to the Company's obligation to make the Severance Payment described in Section 1 hereof, Executive shall execute and deliver to the Company a release and waiver of employment liabilities in substantially the form attached to this Agreement as Exhibit B, provided, however, that the Company may modify such form from time to time in order for such form to comply with the continually developing law of employment release enforceability.

4. Confidential Information.

The Employee will never use for his own advantage or disclose any proprietary or confidential information relating to the business operations or properties of the Company, any affiliate thereof or any of their respective customers, suppliers, landlords or licensees. On the Termination Date, the Executive will surrender and deliver to the Company all documents and information of every kind relating to or connected with the Company and its affiliates and their respective businesses, customers, suppliers, landlords and licensees.

5. Nonsolicitation of Employees.

(a) For a one (1) year period following the Termination Date, Executive will not, in any manner, hire or engage, or assist any company or business organization by which he is employed or which is directly or indirectly controlled by him to hire or engage, any person who is or was employed by the Company or one of its affiliates at any time during his employment with the Company or during the period of one (1) year thereafter.

(b) For a one (1) year period following the Termination Date, Executive will not, in any manner, solicit, recruit or induce, or assist any company or business organization by which he is employed or which is directly or indirectly controlled by him to solicit, recruit or induce, any person who is or was employed by the Company or one of its affiliates (or is or was an agent, representative, contractor, project consultant or consultant of the Company or one of its affiliates) at any time during his employment with the Company, or during the period of one (1) year thereafter, to leave his or her employment, relationship or engagement with the Company.

6. Nonsolicitation of Customers.

(a) Executive agrees that, for a period of one (1) year following the Termination Date he will not, in any manner, solicit for business (or assist any company or business organization by which he is employed or which is directly or indirectly controlled by him to solicit or do business) any customer or client of the Company or any of its affiliates with whom Executive has had contact or for whom Executive has performed services during his employment with the Company.

(b) Executive agrees that, for a period of one (1) year following the Termination Date, Executive will not, in any manner, solicit for business (or assist any company or business organization by which he is employed or which is directly or indirectly controlled by him to solicit or do business) any customer or client of the Company made known to him by the Company during his employment with the Company.

7. Company's Sole Severance Obligation.

Executive acknowledges and agrees that the Severance Payment set forth in Section 1 is in lieu of and shall preclude any and all other severance or termination payments that would otherwise be made by Company to Executive as the result of Company policy, state or federal laws or regulations or otherwise (including, without limitation, claims under the Worker Adjustment and Retraining Act) and that Company's commitment to make said Severance Payment is subject to and conditioned upon the prior execution by Executive of the release and waiver described in Section 3 above.

8. Nonguarantee of Employment.

Nothing contained in this Agreement shall be construed as a contract of employment between the Company and the Executive, or as a right of the Executive to continue in the employ of the Company, or as a limitation of the right of the Company to discharge the Executive with or without cause.

9. Successors.

(a) This Agreement shall be binding upon the Company, its successors and assigns, and in the event of a Change of Control of the Company or in the event the Company shall be merged or consolidated or otherwise combined into one or more other corporations or other entities, or substantially all of its assets are sold or otherwise transferred to one or more other corporations or entities, this Agreement shall be binding upon the corporation or entity resulting from such merger or consolidation or to which such assets shall be sold or transferred and shall be assignable by it by way of transfer of assets, merger, consolidation or combination to the same extent as if it were the Company. Except as provided above in this Section 8(a), this Agreement shall not be assignable by the Company or its successors and assigns. The Company will require any successor or assign (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, by agreement in form and substance satisfactory to the Executive, expressly, absolutely and unconditionally to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession or assignment had taken place.

(b) This Agreement shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

10. Assignment by Executive.

This Agreement shall not be assignable by the Executive and shall not be subject to attachment, execution, pledge or hypothecation.

11. Notice.

For the purpose of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and either delivered in hand or by mail by United States registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight courier, and shall be deemed to have been duly given the sooner of when actually

received or three (3) days following deposit (a) in the mail by United States registered or certified mail, return receipt requested, postage prepaid or (b) with a nationally recognized overnight courier, as follows:

If to the Company:

Casual Male Corp.
555 Turnpike Street
Canton, MA 02021
Attn: Chief Executive Officer

Copy to: General Counsel

If to the Executive:

Joseph H. Cornely, III
157 Warren Ave.
Boston, MA 02116

or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

12. Modification.

No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing signed by the Executive and the Company. No waiver by either party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such party shall be deemed a waiver of any other provisions hereof or of any similar or dissimilar provisions or conditions at the same or any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement.

13. Validity.

The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

14. Governing Law.

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without giving effect to the conflicts of law principles thereof. The parties hereby agree that Bankruptcy Court shall retain exclusive jurisdiction to determine any disputes under this Agreement during the pendency of the Chapter 11 Case (or any conversion of such case to a case under Chapter 7 of the United States Bankruptcy Court).

15. Entire Agreement

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties (including, without limitation, any employment agreements, severance agreements and change of control agreements) and is intended as a final expression of their Agreement. This Agreement shall take precedence over any other documents that may be in conflict therewith.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Casual Male Corp.

By: _____

Alan I. Weinstein
Chairman and
Chief Executive Officer

EXECUTIVE:

_____

Joseph H. Cornely, III

EXHIBIT A

"*Change of Control*" shall mean the occurrence of any one of the following events:

(i) any "*person,*" as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "Act") (other than the Company, any of its Subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its Subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing 30% or more of either (A) the combined voting power of the Company's then outstanding securities having the right to vote in an election of the Company's Board of Directors ("Voting Securities") or (B) the then outstanding shares of Stock of the Company (in either such case other than as a result of an acquisition of securities directly from the Company); or

(ii) persons who, as of the Effective Date, constitute the Company's Board of Directors (the "Incumbent Directors") cease for any reason, including, without limitation, as a result of a tender offer, proxy contest, merger or similar transaction, to constitute at least a majority of the Board, provided that any person becoming a director of the Company subsequent to the Effective Date whose election or nomination for election was approved by a vote of at least a majority of the Incumbent Directors shall, for purposes of this Plan, be considered an Incumbent Director; or

(iii) the stockholders of the Company shall approve (A) any consolidation or merger of the Company or any Subsidiary where the shareholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, shares representing in the aggregate 80% or more of the voting shares of the corporation issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any), (B) any sale, lease, exchange or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company or (C) any plan or proposal for the liquidation or dissolution of the Company.

Notwithstanding the foregoing, a "Change of Control" shall not be deemed to have occurred for purposes of the foregoing clause (i) solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Stock or other Voting Securities outstanding, increases (x) the proportionate number of shares of Stock beneficially owned by any person to 30% or more of the shares of Stock then outstanding or (y) the proportionate voting

power represented by the Voting Securities beneficially owned by any person to 30% or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any person referred to in clause (x) or (y) of this sentence shall thereafter become the beneficial owner of any additional shares of Stock or other Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction), then a *"Change of Control"* shall be deemed to have occurred for purposes of the foregoing clause (i).

EXHIBIT B

Form of Release

In exchange for the amounts described in the Severance Compensation Agreement dated as of _____, 2001 and other good and valuable consideration, the receipt of which is hereby acknowledged, Executive and his representatives, agents, estate, heirs, successors and assigns, without limitation, hereby irrevocably and unconditionally release and forever discharge the Company, its predecessors, successors, parents, subsidiaries, divisions, affiliates, assigns, and its and their current and former officers, agents, directors, supervisors, employees, representatives, successors and assigns, and all persons acting by, through, under, or in concert with, any of them, from any and all charges, complaints, claims, suits, contracts, causes of action, debts, sums of money, controversies, agreements, promises, damages, and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected (hereinafter referred to as "claim" or "claims") arising from conduct occurring up to and through the date of this release, including, without limitation, any claims incidental to or arising out of Executive's employment with the Company or the termination thereof. This release is intended by the parties to be all encompassing and to act as a full and total release of any claims, whether specifically enumerated herein or not, that Executive has, may have or has had, that exist or ever have existed, on or prior to the date of this Agreement, including, but not limited to, any claims based upon any federal or state law or regulation dealing with either employment or employment discrimination such as those laws or regulations concerning discrimination on the basis of age, race, color, religion, creed, sex, sex harassment, sexual orientation, national origin, ancestry, marital status, handicap or physical disability, mental disability, medical condition or status as a disabled or Vietnam-era veteran, veteran status or any military service or application for military service; any contract, whether oral or written, express or implied; any tort; or common law.

If applicable:

Waiver of Rights and Claims Under the Age Discrimination in Employment Act of 1967.

Since Executive is 40 years of age or older, Executive has been informed and agrees that Executive:

(a) has or may have specific rights and/or claims under the Age Discrimination in Employment Act ("ADEA") of 1967;

(b) is, in consideration for the amounts and benefits described in the Severance Compensation Agreement dated _____, 2001, specifically waiving such rights and/or claims he might have against the Company, its predecessors, successors, parents, subsidiaries, divisions, affiliates, assigns, and its and their current and former officers, agents, directors, supervisors, employees, representatives, successors and assigns, and all persons acting by, through, under, or in concert with any of them, to the extent such rights and/or claims arose prior to the date this release was executed;

(c) understands that rights or claims under ADEA which may arise after the date this release is executed are not waived by him;

(d) was advised when presented by the Company with the original draft of this release that he had at least 21 days within which to consider this release; this 21-day review period will not be affected or extended by any revisions which might be made to this release;

(e) has been advised to consider the terms of this release carefully and of his right to consult with or seek advice from an attorney of his choice or any other person of his choosing prior to executing this release and has not been subject to any undue or improper influence interfering with the exercise of his free will in deciding whether to execute this release;

(f) has carefully read and fully understands all of the provisions of this release, and he knowingly and voluntarily agrees to all of the terms set forth in this release; and

(g) after signing this release, Executive may revoke this release for a period of seven (7) days following said execution. The release shall not become effective or enforceable under this revocation period has expired.

Exhibit 31.1

CERTIFICATION

I, David A. Levin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Casual Male Retail Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 8, 2003

/s/ DAVID A. LEVIN

David A. Levin
Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Dennis R. Hernreich, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Casual Male Retail Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 8, 2003

/s/ DENNIS R. HERNREICH

Dennis R. Hernreich
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Casual Male Retail Group, Inc. (the "Company") for the period ended November 1, 2003, 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; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original 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.

/s/ DAVID A. LEVIN

David A. Levin
Chief Executive Officer
December 8, 2003

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Casual Male Retail Group, Inc. (the "Company") for the period ended November 1, 2003, 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; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original 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.

/s/ DENNIS R. HERNREICH

Dennis R. Hernreich
Chief Financial Officer
December 8, 2003