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|---|--|---|
| <b>UNITED STATES BANKRUPTCY COURT</b> Southern District of New York   |  | <b>PROOF OF CLAIM</b>   |
| Name of Debtor:<br><b>JENNIFER CONVERTIBLES, INC., et al.</b>   |  | Case Number:<br><b>10-13779 (ALG)</b>   |
| <i>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>  |  |   |
| Name of Creditor (the person or other entity to whom the debtor owes money or property):<br><b>181st WASHINGTON HEIGHTS ASSOCIATES LLC</b>  |  | <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.<br><br><b>Court Claim Number:</b> _____<br><i>(If known)</i><br><br><b>Filed on:</b> _____   |
| Name and address where notices should be sent:<br><b>c/o Maverick Management Corp., 1000 Pennsylvania Avenue, Brooklyn, New York 11207, Attention: Raymond A. Cohen, Esq.</b>   |  |   |
| Telephone number:<br><b>(718) 360-4234</b>  |  |   |
| Name and address where payment should be sent (if different from above):<br><b>181st Washington Heights Associates LLC, c/o Maverick Management Corp., 1000 Pennsylvania Avenue, Brooklyn, New York 11207, Attention: Raymond A. Cohen, Esq.</b>  |  | <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.<br><br><input type="checkbox"/> Check this box if you are the debtor or trustee in this case.   |
| Telephone number:<br><b>(718) 360-4234</b>  |  |   |
| <b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>115,663.86</u><br><br>If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.<br><br>If all or part of your claim is entitled to priority, complete item 5.<br><br><input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.   |  | <b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b><br><br>Specify the priority of the claim.<br><br><input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).<br><br><input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).<br><br><input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).<br><br><input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).<br><br><input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).<br><br><input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)( ).<br><br><b>Amount entitled to priority:</b><br>\$ _____ |
| <b>2. Basis for Claim:</b> <u>Unpaid rents - See attach</u> <u>See attached Summary for breakdown</u><br>(See instruction #2 on reverse side.)  |  |   |
| <b>3. Last four digits of any number by which creditor identifies debtor:</b> _____<br><br><b>3a. Debtor may have scheduled account as:</b> _____<br>(See instruction #3a on reverse side.)   |  |   |
| <b>4. Secured Claim</b> (See instruction #4 on reverse side.)<br>Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.<br><br><b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other<br><b>Describe:</b><br><br><b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> _____ %<br><br><b>Amount of arrearage and other charges as of time case filed included in secured claim:</b> <u>SEP 08 2010</u><br><b>if any:</b> \$ _____ <b>Basis for perfection:</b> _____<br><br><b>Amount of Secured Claim:</b> \$ _____ <b>Amount Unsecured:</b> \$ _____   |  | <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> <b>RECEIVED</b><br/><br/> <b>SEP 08 2010</b><br/><br/> <b>BMC GROUP</b> </div>   |
| <b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.<br><br><b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)<br><br>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.<br><br><div style="text-align: center;"><b>SEE ATTACHED.</b></div> If the documents are not available, please explain: |  |   |
| <b>Date:</b> <u>09/07/2010</u><br><br><b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.<br><br><b>181st Washington Heights Associates LLC, By: Joseph Chehebar, Manager</b>  |  | <b>FOR COURT USE ONLY</b><br><br><b>Jennifer Convertibles</b><br><br>00063   |

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.*

**Items to be completed in Proof of Claim form****Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**4. Secured Claim:**

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

**Date and Signature:**

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

**DEFINITIONS****Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

**Claim**

A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. §506(a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. §507(a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**INFORMATION****Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

**SUMMARY ANNEXED TO PROOF OF CLAIM OF CREDITOR 181<sup>st</sup>  
WASHINGTON HEIGHTS ASSOCIATES LLC**

**RE: DEBTOR: JENNIFER CONVERTIBLES, INC.; CASE NO.: 10-13779  
(ALG); UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF  
NEW YORK**

**Breakdown of amount of claim as of date the case was filed (07/18/2010):**

- |    |   |                   |
|----|---|-------------------|
| 1. | Base Rents:                                     | \$83,187.51       |
| 2. | Real Estate Taxes:                              | \$2,132.20        |
| 3. | Business Improvement District Taxes:            | \$6,275.21        |
| 4. | Water Charges:                                  | \$150.00          |
| 5. | Utility Expenses:                               | \$1,035.00        |
| 6. | Late Charges:                                   | \$18,498.95       |
| 7. | Legal fees and Costs (Real Estate Tax Contest): | \$60.00           |
| 8. | Legal Fees and Costs (eviction cases):          | <u>\$4,324.99</u> |

**Total due as of 07/18/2010: \$115,663.86**

DOCUMENTS SUPPORTING THIS CLAIM (I.E., LEASE AND ASSIGNMENT OF  
LEASE) ARE ATTACHED.

## ASSIGNMENT OF LEASE AGREEMENT

This Assignment is made, effective as of the 1<sup>st</sup> day of May, 2001, by and between Washington Heights Convertibles, Inc., a New York corporation with corporate offices at 419 Crossways Park Drive, Woodbury, New York, 11797 (hereinafter referred to as "Assignor") and Jennifer Convertibles, Inc., a Delaware corporation, with corporate offices at 419 Crossways Park Drive, Woodbury, New York, 11797 (hereinafter referred to as "Assignee").

### WITNESSETH:

WHEREAS, 181st Washington Heights Associates, LLC, the address of which is 1000 Pennsylvania Avenue, Brooklyn, NY 11207, as Landlord ("Landlord") demised certain premises located at 600-614 West 181st Street, a/k/a 1409-19 St. Nicholas Avenue, New York, NY (the "Premises") to Assignor, as tenant, pursuant to a certain Lease dated as of May 1, 1999; and

WHEREAS, Assignor desires to assign the Lease to Assignee and Assignee desires to acquire all of Assignor's rights under the Lease pursuant to the terms of this Assignment.

### AGREEMENT:

NOW, THEREFORE, for Ten (\$10.00) Dollars and other valuable consideration, receipt which is mutually acknowledged by both parties, the parties hereto agree as follows:

1. Assignor hereby transfers and assigns to Assignee all of Assignor's right, title, and interest together with any Security Deposit, and any accrued interest thereon, and obligations in and to and under the Lease and any and all amendments and modifications thereto effective as of the date hereof.

2. This Assignment shall be binding on and inure to the benefit of Assignor and Assignee and their respective successors and permitted assigns.

3. As a material inducement to Assignee to execute and deliver this Agreement, Assignor represents to Assignee the following:

(a) As of the date hereof, Assignor has not entered into any other

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Agreement to assign or sublet all or any portion of the Premises for any period during any part of the term of the Lease from and after this Date and has not granted any rights or options to any third party with respect to the Premises which exist as of the date hereof;

(b) The Lease Agreement is in full force and effect, and all of the terms, conditions, and promises of the lease have been complied with. As of the delivery of possession, there shall be no default under the Lease for the payment of fixed rent or additional rent due up until the delivery of the Premises (the "Delivery Date");

(c) As of the Delivery Date, there shall be no monetary default by Assignor;

(d) The provisions of this Section shall survive the closing of this Agreement; and

(f) Assignor has full power and authority to assign the Lease in accordance with this Agreement. The party executing this Agreement is authorized to bind Assignor and this Agreement will not violate any law, court orders or other Agreements. This provision shall not apply to any representations in connection with consent requirements under the Lease.

4. As an inducement for Assignor entering into this Agreement, Assignee further agrees to assume any and all obligations under the Lease after the Delivery Date.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the 1 day of May, 2001.

Washington Heights Convertibles, Inc., Assignor

By: [Signature]  
Harley Greenfield, President

JENNIFER CONVERTIBLES, INC., Assignee

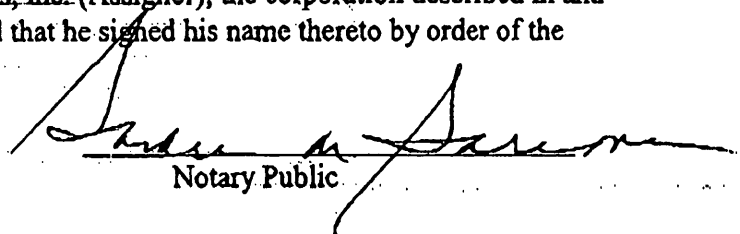
By: [Signature]  
Rami Abada, President

STATE OF NEW YORK )

ss:

COUNTY OF Nassau

On the 1 day of May, 2001, before me personally came Harley Greenfield, to me known, who, being by me duly sworn, did depose and say that he is the President of Washington Heights Convertibles, Inc. (Assignor), the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

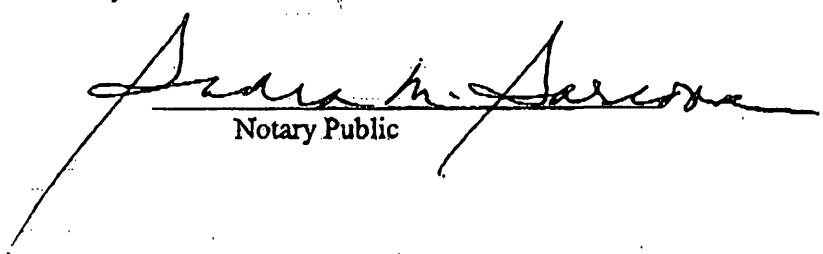
  
Notary Public

STATE OF NEW YORK )

ss:

COUNTY OF Nassau

On the 1 day of May, 2001, before me personally came Rami Abada, to me known, who, being by me duly sworn, did depose and say that he is the President of Jennifer Convertibles, Inc., (Assignee), the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

  
Notary Public

SANDRA M. SARCONA  
Notary Public State of New York  
No. 01SA4726457  
Qualified in Nassau County  
Commission Expires May 31, 192002

# STANDARD FORM OF STORE LEASE

The Real Estate Board of New York, Inc.

Number 2 of  
4 2/94-A  
executed

Agreement of Lease, made as of this 1st day of May 1999, between  
181st WASHINGTON HEIGHTS ASSOCIATES LLC, a New York limited liability company with  
offices at 1000 Pennsylvania Avenue, Brooklyn, New York 11207  
party of the first part, hereinafter referred to as OWNER, or LANDLORD, and  
WASHINGTON HEIGHTS CONVERTIBLES, INC., having offices at 419 Crossways Park Drive,  
Woodbury, New York 11797

party of the second part, hereinafter referred to as TENANT,

Witnesseth: Owner hereby leases to Tenant and Tenant hereby hires from Owner the ground floor store  
as set forth on Exhibit A annexed hereto and forming a part hereof (hereinafter sometimes referred to  
as "Premises", "Demised Premises", "premises" or "demised premises")  
600-614 West 181st Street, a/k/a 1409-19 St. Nicholas Avenue, (hereinafter sometimes  
in the building known as/referred to as "Building" or "building")  
in the Borough of Manhattan, City of New York, for the term of approximately twelve (12) years

(or until such term shall sooner cease and expire as hereinafter provided) to commence on the  
1st day of May, one thousand nine hundred and ninety-nine\*, and to end on the  
30th day of April, two thousand and eleven  
both dates inclusive, at an annual/rental rate of as set forth on Exhibit B annexed hereto and forming a  
part hereof, base.

\*(herein, the "Commencement Date")

which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues,  
public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said  
term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except  
that Tenant shall pay the first monthly installment(s) on the execution hereof (unless this lease be a renewal).

~~In the event that, at the commencement of the term of this lease, or thereafter, Tenant shall be in default in the payment  
of rent to Owner pursuant to the terms of another lease with Owner or with Owner's predecessor in interest, Owner may at  
Owner's option and without notice to Tenant add the amount of such arrears to any monthly installment of rent payable hereunder  
and the same shall be payable to Owner as additional rent.~~

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives,  
successors and assigns, hereby covenant as follows:

- Rent:  
Occupancy:
1. Tenant shall pay the rent as above and as hereinafter provided.
  2. Tenant shall use and occupy demised premises for the sale, at retail, of sofas, furniture,  
home furnishings and related items thereto,

and for no other purpose. Tenant shall at all times conduct its business in a high grade and reputable manner, shall not violate Article 37 hereof,  
and shall keep show windows and signs in a neat and clean condition.

Alterations:  
3. Tenant shall make no changes in or to the demised  
premises of any nature without Owner's prior writ-  
ten consent. Subject to the prior written consent of Owner, and to the  
provisions of this article, Tenant, at Tenant's expense, may make altera-  
tions, installations, additions or improvements which are non-structural  
and which do not affect utility services or plumbing and electrical lines, in  
or to the interior of the demised premises by using contractors or mechanics  
~~first approved in each instance by Owner.~~ Tenant shall, before making any  
alterations, additions, installations or improvements, at its expense, obtain  
all permits, approvals and certificates required by any governmental or  
quasi-governmental bodies and (upon completion) certificates of final  
approval thereof and shall deliver promptly duplicates of all such permits,  
approvals and certificates to Owner and Tenant agrees to carry and will  
cause Tenant's contractors and sub-contractors to carry such workman's  
compensation, general liability, personal and property damage insurance as  
Owner may require. If any mechanic's lien is filed against the demised  
premises, or the building of which the same forms a part, for work claimed  
pursuant to this article, the same shall be discharged by Tenant within 30  
days thereafter, at Tenant's expense, by payment or filing the bond required  
by law. All fixtures and all paneling, partitions, railings and like  
installations, installed in the premises at any time, either by Tenant or by  
Owner on Tenant's behalf, shall, upon installation, become the property of  
Owner and shall remain upon and be surrendered with the demised premises  
unless Owner, by notice to Tenant no later than twenty days prior to the date  
fixed as the termination of this lease, elects to relinquish Owner's rights  
thereto and to have them removed by Tenant, in which event, the same shall  
be removed from the premises by Tenant prior to the expiration of the lease,  
at Tenant's expense. Nothing in this article shall be construed to give Owner  
title to or to prevent Tenant's removal of trade fixtures, moveable office  
furniture and equipment, but upon removal of any such from the premises  
or upon removal of other installation as may be required by Owner, Tenant  
shall immediately and at its expense, repair and restore the premises to the  
condition existing prior to installation and repair any damage to the demised  
premises or the building due to such removal. All property permitted or  
required to be removed by Tenant at the end of the term remaining in the  
premises after Tenant's removal shall be deemed abandoned and may, at  
the election of Owner, either be retained as Owner's property or may be  
removed from the premises by Owner at Tenant's expense.

Repairs:  
4. Owner shall maintain and repair the public  
portions of the building, both exterior and interior,  
except that if Owner allows Tenant to erect on the outside of the building  
a sign or signs, or a hoist, lift or sidewalk elevator for the exclusive use of  
Tenant, Tenant shall maintain such exterior installations in good appearance  
and shall cause the same to be operated in a good and workmanlike manner  
and shall make all repairs thereto necessary to keep same in good order and  
condition, at Tenant's own cost and expense, and shall cause the same to  
be covered by the insurance provided for hereafter in Article 8. Tenant

shall, throughout the term of this lease, take good care of the demised  
premises and the fixtures and appurtenances therein, and the sidewalks  
adjacent thereto, and at its sole cost and expense, make all non-structural  
repairs thereto as and when needed to preserve them in good working order  
and condition, reasonable wear and tear, obsolescence and damage from the  
elements, fire or other casualty, excepted. If the demised premises be or  
become infested with vermin, Tenant shall at Tenant's expense, cause the  
same to be exterminated from time to time to the satisfaction of Owner.  
Except as specifically provided in Article 9 or elsewhere in this lease, there  
shall be no allowance to the Tenant for the diminution of rental value and  
no liability on the part of Owner by reason of inconvenience, annoyance or  
injury to business arising from Owner, Tenant or others making or failing  
to make any repairs, alterations, additions or improvements in or to any  
portion of the building including the erection or operation of any crane,  
derrick or sidewalk shed, or in or to the demised premises or the fixtures,  
appurtenances or equipment thereof. It is specifically agreed that Tenant  
shall be not entitled to any set off or reduction of rent by reason of any failure  
of Owner to comply with the covenants of this or any other article of this  
lease. Tenant agrees that Tenant's sole remedy at law in such instance will  
be by way of an action for damages for breach of contract. The provisions  
of this Article 4 with respect to the making of repairs shall not apply in the  
case of fire or other Casualty which are dealt with in Article 9 hereof.

Window  
Cleaning:  
5. Tenant will not clean nor require, permit, suffer  
or allow any window in the demised premises to be  
cleaned from the outside in violation of Section 202  
of the New York State Labor Law or any other applicable law or of the  
Rules of the Board of Standards and Appeals, or of any other Board or  
body having or asserting jurisdiction.

Requirements  
of Law, Fire  
Insurance:  
6. Prior to the commencement of the lease term,  
if Tenant is then in possession, and at all times  
thereafter, Tenant, at Tenant's sole cost and ex-  
pense, shall promptly comply with all present and  
future laws, orders and regulations of all state,  
federal, municipal and local governments, departments, commissions and  
boards and any direction of any public officer pursuant to law, and all orders,  
rules and regulations of the New York Board of Fire Underwriters or the  
Insurance Services Office, or any similar body which shall impose any  
violation, order or duty upon Owner or Tenant with respect to the demised  
premises, and with respect to the portion of the sidewalk adjacent to the  
premises, if the premises are on the street level, whether or not arising out  
of Tenant's use or manner of use thereof, or with respect to the building if  
arising out of Tenant's use or manner of use of the premises or the building  
(including the use permitted under the lease). Except as provided in Article  
29 hereof, nothing herein shall require Tenant to make structural repairs or  
alterations unless Tenant has by its manner of use of the demised premises  
or method of operation therein, violated any such laws, ordinances, orders,  
rules, regulations or requirements with respect thereto. Tenant shall not do

or permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner. Tenant shall pay all costs, expenses, fines, penalties or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this article. If the fire insurance rate shall, at the beginning of the lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant, to comply with the terms of this article. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to said premises.

**\*presumptive**

**Subordination:** 7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Owner may request.

**Tenant's Liability Insurance Property Loss, Damage, Indemnity:**

8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or other wise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building or caused by operations in construction of any private, public or quasi public work. Tenant agrees, at Tenant's sole cost and expense, to maintain general public liability insurance in standard form in favor of Owner and Tenant against claims for bodily injury or death or property damage occurring in or upon the demised premises, effective from the date Tenant enters into possession and during the term of this lease. Such insurance shall be in an amount and with carriers acceptable to the Owner. Such policy or policies shall be delivered to the Owner. On Tenant's default in obtaining or delivering any such policy or policies or failure to pay the charges therefor, Owner may secure or pay the charges for any such policy or policies and charge the Tenant as additional rent therefor. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agent, contractors, employees, invitees, or licensees; of any covenant on condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any subtenant, and any agent, contractor, employee, invitee or licensee of any subtenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

**\*or certificates thereof,**

**Distraction, Fire, and Other Casualty:**

9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereon shall be repaired by and at the expense of Owner and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent as hereinafter expressly provided shall be proportionately paid up to the time of the casualty and thereupon shall cease until the date when the premises shall have been repaired and restored by Owner (or sooner reoccupied in part by Tenant then rent shall be apportioned as provided in subsection (b) above), subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are damaged in whole or in part if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant given within 90 days after such fire or casualty or 30 days after adjustment of the insurance claim for such fire or casualty, whichever is sooner, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Owner's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, including Owner's obligation to restore under subparagraph (b) above, each party shall

look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery with respect to subparagraphs (b), (d) and (e) above, against the other or any one claiming through or under each of them by way of subrogation or otherwise. The release and waiver herein referred to shall be deemed to include any loss or damage to the demised premises and/or to any personal property, equipment, trade fixtures, goods and merchandise located therein. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

**Eminent Domain:**

10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of the lease to remove such property, trade fixtures and equipment at the end of the term and provided further such claim does not reduce Owner's award.

**Assignment, Mortgage, Etc.:**

11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate tenant or the majority partnership interest of a partnership tenant shall be deemed an assignment. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of the covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

**Electric Current:**


12. Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in ~~RIDER~~ attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the building or the risers or wiring installation and Tenant may not use any electrical equipment which, in Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no wise make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain.

**Access to Premises:**

13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building or which Owner may elect to perform, in the premises, following Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities. Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein, provided they are concealed within the walls, floors or ceiling, wherever practicable. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers or mortgagees of the building, and during the last ~~two~~ months of the term for the purpose of showing the same to prospective tenants and may, during said ~~two~~ months period, place upon the demised premises the usual notice "To Let" and "For Sale" which notices Tenant shall permit to remain thereon without molestation. If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of term Tenant shall have removed all or substantially all of Tenant's property therefrom, Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligations hereunder. Owner shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets, or other public parts of the building and to change the name, number or designation by which the building may be known. \*three

**Vault, Vault Space, Area:**

14. No vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the

 Rider to be added if necessary.



building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. ~~Any fee or charge of municipal authorities for such vault or area shall be paid by Tenant.~~

**Occupancy:** 15. Tenant will not at any time use or occupy the demised premises in violation of Articles 2 or 37 hereof, or of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations whether or not of record.

**Bankruptcy:** 16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Landlord by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) It is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If such premises or any part thereof be re-let by the Owner for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

**Default:** 17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises become vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under Section 365 of Title 11 of the U.S. Code (Bankruptcy Code); or if Tenant shall fail to move into or take possession of the premises within ~~thirty (30) days~~ <sup>sixty (60)</sup> days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then, in any one or more of such events, upon Owner serving a written ~~thirteen (13) days~~ <sup>sixty (60)</sup> notice upon Tenant specifying the nature of said default and upon the expiration of said ~~thirteen (13) days~~ <sup>sixty (60)</sup> days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said ~~thirteen (13) day~~ <sup>sixty (60)</sup> period, and if Tenant shall not have diligently commenced curing such default within such ~~thirteen (13) day~~ <sup>sixty (60)</sup> day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Owner may serve a written five (5) days notice of cancellation of this lease upon Tenant, and upon the expiration of said five (5) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided. **\*\*twenty (20)**

(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

**Remedies of Owner and Waiver of Redemption:** 18. In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or other wise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration. (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of

the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgement, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rent collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant or any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws. (See Insert)

**Fees and Expenses:**

19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, after notice if required and upon expiration of any applicable grace period if any, (except in an emergency), then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder, and if Owner, in connection therewith or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to reasonable attorney's fees, in instituting, prosecuting or defending any actions or proceeding and prevails in any such action or proceeding, such sums so paid or obligations incurred with interest and costs shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within ten (10) days of rendition of any bill or statement to Tenant therefor, and if Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

**No Representations by Owner:**

20. Neither Owner nor Owner's agent have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation, or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition, and agrees to take the same "as is" and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties herein are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

**End of Term:**

21. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

**Quiet Enjoyment:**

22. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 33 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

**Failure to Give Possession:**

23. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants, or if the premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for the inability to obtain possession or complete construction) until after Owner shall have given Tenant written notice that the Owner is able to deliver possession in the condition required by this lease. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease except the obligation to pay the fixed annual rent set forth in page

one of this lease. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

**No Waiver:**

24. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent and/or additional rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed in acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

**Waiver of Trial by Jury:**

25. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any proceeding or action for possession including a summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding, including a counterclaim under Article 4 except for statutory mandatory counterclaims.

**Inability to Perform:**

26. This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment, fixtures or other materials if Owner is prevented or delayed from so doing by reason of strike or labor troubles, government preemption or restrictions or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of which have been or are affected, either directly or indirectly, by war or other emergency, or when, in the judgement of Owner, temporary interruption of such services is necessary by reason of accident, mechanical breakdown, or to make repairs, alterations or improvements. (See Insert)

**Bills and Notices:**

27. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice. SEE RIDER

**Water Charges:**

28. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes Owner to be the sole judge) Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter as and when bills are rendered. Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the reality of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. The bill rendered by Owner shall be payable by Tenant as additional rent. If the building or the demised premises or any part thereof be supplied with water through a meter through which water is also supplied to other premises Tenant shall pay to Owner as additional rent, on the first day of each month, ~~the total meter charges, as Tenant's portion.~~ <sup>(\$ 50.00 )</sup> of the total meter charges, as Tenant's portion. Independently of and in addition to any of the remedies reserved to Owner hereinabove or elsewhere in this lease, Owner may sue for and collect any monies to be paid by Tenant or paid by Owner for any of the reasons or purposes hereinabove set forth. (See Insert)

**Sprinklers:**

29. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office or any bureau, department or official of the federal, state or city government require or recommend the installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised premises, or for any other reason, or if any such sprinkler system

installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by any fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature. Tenant shall pay to Owner as additional rent the sum of \$ \_\_\_\_\_ on the first day of each month during the term of this lease, as Tenant's portion of the contract price for sprinkler supervisory service. \*Tenant's Proportionate Share (as herein defined)

**Elevators, Heat, Cleaning:**

30. As long as the demised premises are under one of the covenants of this lease beyond the applicable grace period provided in this lease for the curing of such defaults, Owner shall, if and insofar as existing facilities permit furnish heat to the demised premises, when and as required by law, on business days from 8:00 a.m. to 6:00 p.m. and on Saturdays from 10:00 a.m. to 6:00 p.m. Tenant shall at Tenant's expense, keep demised premises clean and in order, to the satisfaction to Owner, and if demised premises are situated on the street floor, Tenant shall, at Tenant's own expense, make all repairs and replacements to the sidewalks and curbs adjacent thereto, and keep said sidewalks and curbs free from snow, ice, dirt and rubbish. Tenant shall pay to Owner the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Owner to Tenant at such times as Owner may elect and shall be due and payable when rendered, and the amount of such bills shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting for the removal of such rubbish and refuse in the event that Tenant does not wish to have same done by employees of Owner. Under such circumstances, however, the removal of such refuse and rubbish by others shall be subject to such rules and regulations as, in the judgment of Owner, are necessary for the proper operation of the building.

**Security:**

31. Tenant has deposited with Owner the sum of \$ \_\_\_\_\_ as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, provisions and conditions of this lease, including but not limited to, any damages or deficiency in the re-letting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security, and Tenant agrees to look to the new Owner solely for the return of said security; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

**Captions:**

32. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provision thereof.

**Definitions:**

33. The term "Owner" as used in this lease means only the Owner, or the mortgagee in possession, for the time being of the land and building (or the Owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties of their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted in their technical legal meaning. The term "business days" as used in this lease shall exclude Saturdays, Sundays and all days designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service. Wherever it is expressly provided in this lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

**Adjacent Excavation-Shoring:**

34. If an excavation shall be made upon land adjacent to the demised premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which demised premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Owner, or diminution or abatement of rent.

**Rules and Regulations:**

35. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the

\*and non-discriminatory (for other tenants in the Building who are similarly situated)

~~Space to be filled in or deleted.~~

parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing upon Owner within fifteen (15) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

**Glass:** 36. ~~Owner~~ <sup>Tenant</sup> shall replace, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the demised premises. ~~Owner may~~ insure, and keep insured, at Tenant's expense, all plate and other glass in the demised premises for and in the name of Owner ~~for the premises~~ <sup>therefor shall be rendered by Owner to Tenant at such times as Owner may elect, and shall be due from, and payable by, Tenant when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rent.</sup>

**Pornographic Uses Prohibited:** 37. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the premises, and shall not permit or conduct any obscene, nude, or semi-nude live performances on the premises, nor permit use of the premises for nude modeling, rap sessions, or as a so called rubber goods shops, or as a sex club of any sort, or as a "massage parlor." Tenant agrees further that Tenant will not permit any of these uses by any sublessee or assignee of the premises. This Article

shall directly bind any successors in interest to the Tenant. Tenant agrees that if at any time Tenant violates any of the provisions of this Article, such violation shall be deemed a breach of a substantial obligation of the terms of this lease and objectionable conduct. Pornographic material is defined for purposes of this Article as any written or pictorial manner with prurient appeal or any objects of instrument that are primarily concerned with lewd or prurient sexual activity. Obscene material is defined here as it is in Penal law §235.00.

**Estoppel Certificate:** 38. Tenant, at any time, and from time to time, upon at least 10 days prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates which the rent and additional rent have been paid, and stating whether or not there exists any defaults by Owner under this lease, and, if so, specifying each such default.

**(See Insert)**  
**Successors and Assigns:** 39. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns. Tenant shall look only to Owner's estate and interest in the land and building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) against Owner in the event of any default by Owner hereunder, and no other property or assets of such Owner (or any partner, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this lease, the relationship of Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

SEE RIDER ANNEXED HERETO AND FORMING A PART HEREOF.

In Witness Whereof, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Witness for Owner:

181st WASHINGTON HEIGHTS ASSOCIATES LLC

By:

Manager

Witness for Tenant:

WASHINGTON HEIGHTS CONVERTIBLES, INC.

By:

### ACKNOWLEDGEMENTS

**CORPORATE OWNER**  
STATE OF NEW YORK, ss.:  
County of

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally came \_\_\_\_\_ to me known, who being by me duly sworn, did depose and say that he resides in \_\_\_\_\_ of the corporation described in and which executed the foregoing instrument, as OWNER; that he knows the seal of said corporation; the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

**INDIVIDUAL OWNER**  
STATE OF NEW YORK, ss.:  
County of

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally came \_\_\_\_\_ to be known and known to me to be the individual described in and who, as OWNER, executed the foregoing instrument and acknowledged to me that \_\_\_\_\_ he executed the same.

**CORPORATE TENANT**  
STATE OF NEW YORK, ss.:  
County of Nassau

On this 29 day of April, 1999, before me personally came EDWARD L. ROTNER to me known, who being by me duly sworn, did depose and say that he resides in \_\_\_\_\_ of WASHINGT. HEIGHTS CONV. I the corporation described in and which executed the foregoing instrument, as TENANT; that he knows the seal of said corporation; the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

**INDIVIDUAL TENANT**  
STATE OF NEW YORK, ss.:  
County of

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally came \_\_\_\_\_ to be known and known to me to be the individual described in and who, as TENANT, executed the foregoing instrument and acknowledged to me that \_\_\_\_\_ he executed the same.

Sandra M. Sarcone  
SANDRA M. SARCONA  
Notary Public State of New York  
No. 01544726457  
Qualified in Nassau County  
Commission Expires May 31, 2002

## INSERTS

18. (continued...)

Landlord shall use commercially reasonable efforts to mitigate Tenant's damages resulting from any default of Tenant hereunder, but in using such reasonable efforts, Landlord shall not be required to give priority to the re-letting of the Demised Premises over the leasing of other areas in the Building, and Landlord shall be entitled to take into account all relevant factors which would be taken into account by a sophisticated developer in securing a replacement tenant for the Demised Premises, such as, but not limited to, the type of business then being operated in the Building, matters of tenant mix, the type of operation proposed to be conducted by any such replacement tenant, and the financial responsibility of any such replacement tenant.

28. (continued...)

Tenant acknowledges that as part of its Initial Work (hereinafter defined) at the Demised Premises, it shall install a new water meter in the Demised Premises, measuring Tenant's consumption of water therein. Tenant agrees to pay for 100% of all charges billed to said meter. Landlord shall have the right to estimate such water charges, and Tenant shall pay to Landlord, upon demand, a monthly sum which Landlord estimates will be sufficient to pay for the water charges payable by Tenant under this lease, and upon Landlord's receipt of the actual water charges, an adjustment shall be made by Landlord based on the payments Tenant has theretofore paid on account of such bill. Tenant shall initially pay to Landlord, on account of such water charges, commencing from the Commencement Date of this lease, the sum of \$50.00 per month, until adjusted as set forth in this paragraph.

26. (continued...)

It is further understood and agreed that neither party shall be considered in default of any of the terms, covenants and conditions of this lease on such party's part to be performed, if such party fails to timely perform same and such failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, Acts of God, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or any other cause beyond the reasonable control of the first party; provided, however, that nothing contained herein is intended nor shall be construed to extend the date for payment of any installment of rent due under this lease or the date for surrender of the premises.

35. (continued...)

\*Tenant shall

\*\*but at Tenant's election, and on notice to Owner, Tenant may self insure all plate glass.

38. (continued...)

Landlord agrees to execute a similar certificate upon request, but not more often than one time each year.

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RIDER TO LEASE

LANDLORD: 181<sup>ST</sup> WASHINGTON HEIGHTS ASSOCIATES LLC  
TENANT: WASHINGTON HEIGHTS CONVERTIBLES, INC.  
PREMISES: GROUND FLOOR STORE IN THE BUILDING KNOWN AS 600-614  
WEST 181<sup>ST</sup> STREET, A/K/A 1409-19 ST. NICHOLAS AVENUE,  
NEW YORK, NEW YORK

40. OBLIGATIONS OF TENANT.

(A) Tenant acknowledges that it has inspected and examined the Demised Premises and the Building and is thoroughly familiar and satisfied with the condition and value thereof; that no representations or warranties have been made to Tenant by Landlord and that Landlord is unwilling to make any representations and has held out no inducements to Tenant. Tenant is thoroughly acquainted with the condition of the Demised Premises and the Building on the commencement of this lease including without limitation, to the extent presently located at the Demised Premises and the Building, the foundations, sidewalks, vault, structural beams and supports, retaining walls, building walls, roof, cornices, ornamental projections, windows, fire escapes, heating equipment, air-conditioning equipment, pipes, conduits, electrical equipment and wiring and other equipment used in the operation and maintenance of the Demised Premises or appurtenant thereto and the subsurface conditions beneath the Demised Premises. Tenant further acknowledges that it shall accept the Demised Premises in its "as-is" condition as of the Commencement Date of this lease, and that Landlord shall not be required to perform any work at the Demised Premises or at the Building in order to effectuate delivery of possession of the Demised Premises to Tenant.

(B) Tenant agrees to maintain the Demised Premises in a clean and orderly fashion that is consistent with the use and appearance of the Building. In the event that Tenant does not conform to this provision, Landlord reserves the right, upon written notice, and at Tenant's sole cost and expense, to reenter the Demised Premises for the specific purpose of rectifying the condition and restoring the Demised Premises to the condition, use and appearance intended by the parties at the time of the execution of this lease. Any such costs and expenses incurred by Landlord shall be paid by Tenant within ten (10) days after demand therefor.

(C) The parties acknowledge that this lease is intended to be, and shall be construed as, an absolutely net net lease, whereby under all circumstances and conditions and except as otherwise set forth herein to the contrary (whether now or hereafter existing or within the contemplation of the parties) the base annual rent shall be a completely net return to Landlord throughout the term of this lease; and Tenant shall indemnify and hold harmless Landlord from and against any and all expenses, costs, liabilities, obligations and charges whatsoever, which shall arise or be incurred or shall become due, during the term of this lease, with respect to or in connection with, the Demised Premises and its operation, management, maintenance and repair.

(D) Tenant shall, at its sole cost and expense, and subject to receipt of Landlord's consent and approval for any alterations requiring consent or approval in accordance with the provisions of this lease, take good care of the Demised Premises, make all installations, and upgrades as is required for the Demised Premises, and keep the Demised Premises and all components of the Demised Premises, including but not limited to, the exterior and interior walls and finishes, mechanical, plumbing, electrical, sanitary, drainage, sprinkler, life safety and alarm systems of the Demised Premises now or hereafter located on the Demised Premises, in good working order, and in a safe and weather tight condition. Landlord shall not be required to make any repairs or improvements of any kind upon the Demised Premises except for necessary structural repairs, not caused by the acts or negligence of Tenant, its agents, employees or contractors. For the purpose of this Article, structural repairs shall be limited to repairs to the roof, structural steel, foundation, ~~floor slab~~ (but not





~~floor coverings~~, steel frame, gutters, downspouts, ~~utility lines leading up to the Building~~, structural beams and structural members caused to be installed by Landlord in connection with the erection of the Building of which the Demised Premises are a part. Repairs to equipment and systems are not considered structural within the contemplation of this Article. Tenant shall neither commit or permit any waste or injury to the Demised Premises, and shall, at Tenant's sole cost and expense, promptly make all needed non-structural repairs, restorations and replacements, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, in and to the Demised Premises, equipment and fixtures now or hereafter erected or installed in or on the Demised Premises. All repairs, restorations and replacements shall be of good quality sufficient for the proper maintenance and operation of the Demised Premises and at least equivalent in quality to the original work or the property replaced and shall be constructed and installed in compliance with all laws and ordinances of all governmental authorities. Notwithstanding anything to the contrary contained herein, in no event shall Tenant be entitled to use any portion of the roof or basement of the building for any purpose whatsoever.

(E) During the entire term of this lease, Tenant shall contract for, in its own name, and shall pay for a qualified service contractor to inspect, adjust, clean and repair the heating, ventilating and air conditioning equipment which services the Demised Premises, including changing filters on a quarterly basis. Tenant shall deliver to Landlord a copy of Tenant's current service contract from time to time during the term of this Lease. The service contract must include all services suggested by the equipment manufacturer within the operation/maintenance manual and must become effective (and a copy thereof delivered to Landlord) within thirty (30) days of the date Tenant takes possession of the Demised Premises. Tenant shall from time to time upon Landlord's request furnish proof reasonably satisfactory to Landlord that all such systems and equipment are being serviced in accordance with the maintenance/service contract. Within the thirty (30) day period preceding move out by Tenant, Tenant shall have the systems and equipment checked and serviced to ensure proper functioning and shall furnish Landlord satisfactory proof thereof upon request.

41. TAXES. In addition to the basic annual rent hereinbefore reserved, Tenant covenants and agrees to pay to Landlord as additional rent, sums computed in accordance with the following provisions:

(A) The term "Taxes" shall mean the aggregate of the real estate taxes, general and special assessments, water and sewer rents, and other governmental charges and levies, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever (including without limitation, assessments for public improvements or benefits and interest on unpaid installments thereof), which may be levied, assessed or imposed or become liens upon or arise out of the use, occupancy or possession of the Building from time to time, and on the land on which the Building is located. The term Taxes shall also include any increase resulting from any additions, improvements or alterations whether or not they benefit the Building. The term Taxes shall not, however, include inheritance, estate, succession, transfer, gift, franchise or profit tax imposed upon Landlord provided, however, that if any time during the term of this lease the methods of taxation prevailing at the commencement of the term of this lease shall be altered so that in addition to, in lieu of, or as a substitute for the whole or any part of the taxes now levied, assessed or imposed on real estate as such there shall be levied, assessed or imposed (i) a tax on the rents received from the Building; (ii) a license fee measured by the rents received by the Landlord from the Building; or (iii) a tax or license imposed by the Landlord which is otherwise measured by or based in whole or in part upon the Building or any portion thereof, then such tax or the fee shall be included in the computation of Taxes, computed as if the amount of such tax or fee so payable for that part due if the Building were the only property of Landlord subject thereto. Landlord agrees that it will timely and fully pay the Taxes (provided, however, that Landlord shall be permitted to withhold payment of any Taxes to the extent such withholding is permitted under applicable law in connection with a bona fide tax certiorari proceeding).

(B) The term "Tax Year" shall mean each period of twelve (12) consecutive months commencing July 1, of any calendar year, or such other period as may hereafter be duly adopted as the fiscal year for real estate tax purposes of the City of New York.

(C) "Tenant's Proportionate Share" shall be deemed to be sixteen (16%) percent.

(D) "Basic Tax" shall mean the Taxes imposed on the Building containing the Demised Premises and on the land on which the Building is located for the year July 1, 1999, to June 30, 2000. If the Basic Tax shall subsequently be adjusted, corrected or reduced, whether as the result of protest, by means of agreement or as the result of legal proceedings, the Basic Tax for the purpose of computing any additional rent payable pursuant to this Article shall be the Basic Tax as so adjusted, corrected or reduced. Until the Basic Tax is so adjusted, corrected or reduced, if ever, Tenant shall pay additional rent hereunder based upon unadjusted, uncorrected or unreduced Basic Tax and upon such adjustment, correction or reduction occurring, any additional rent paid by Tenant prior to the date of such occurrence shall be recomputed and Tenant shall pay to Landlord any additional rent found due by such recomputation within ten (10) days after being billed thereof (which bill shall set forth in reasonable detail the pertinent data causing and comprising such recomputation).

(E) If the Taxes for any Tax Year shall be greater than the Basic Tax, then Tenant shall pay to Landlord as additional rent an amount equal to Tenant's Proportionate Share of the increase over the Basic Tax. If the term of this lease shall expire or be terminated during any Tax Year, such amount shall be pro-rated. Landlord shall bill Tenant for any additional rent payable by Tenant pursuant to this Article, such bill to set forth in reasonable detail the computation of additional rent hereunder which shall be payable by the Tenant to the Landlord in installments in the same manner that such Taxes are payable by the Landlord pursuant to law, commencing on July 1, 2000. Said installments shall be paid by Tenant no later than thirty (30) days prior to the due date for the payment of said installments by Landlord. Notwithstanding the foregoing provisions of this paragraph, Landlord shall have the option to require Tenant to deposit with Landlord on the first day of each and every month of the term of this lease one-twelfth (1/12) of the annual Taxes to be paid by Tenant pursuant to the provisions of this Article, to that end that on the dates when such Taxes become due and payable, without penalty, to the tax authorities, Landlord shall have received an amount sufficient to pay Tenant's Proportionate Share of Taxes. In the event the deposits so made by Tenant are not sufficient to pay same as and when due, Tenant covenants and agrees upon written demand by Landlord to pay such additional amounts as will be required to pay Tenant's Proportionate Share of Taxes.

(F) If Landlord shall incur any reasonable and customary expenses including, but not limited to, reasonable attorneys' fees and disbursements in connection with Landlord's endeavor to reduce or prevent any increase in the assessed valuation, or to reduce Taxes, Tenant shall be obligated to pay, as additional rent, Tenant's Proportionate Share of such expense within ten days after demand therefor by Landlord. In the event Landlord shall secure any refund or rebate in Taxes for which Tenant has paid Tenant's Proportionate Share, Landlord shall credit or refund to Tenant any excess amount thus paid, less Tenant's Proportionate Share of Landlord's expenses in connection therewith.

(G) If the Taxes for any Tax Year subsequent to the Basic Tax Tax Year for which Tenant shall have paid additional rent pursuant to this Article shall be adjusted, corrected or reduced whether as the result of protest of any tentative assessment, or by means of agreement, or as the result of legal proceedings, the additional rent becoming due in said Tax Year pursuant to this Article shall be determined on the basis of said corrected, adjusted or reduced Taxes. If Tenant shall have paid any additional rent pursuant to this Article for such Tax Year prior to any said adjustment, Landlord shall credit or refund to Tenant any excess amount thus paid as reflected by said adjusted Taxes, less Tenant's pro rata share of any cost, expense or fees (including experts' and attorneys' fees) incurred by Landlord in obtaining said tax adjustment. Any payments, credits or refunds due hereunder for any period of less than a full Tax Year at the commencement or end of the term of this lease, or because of any change in the area of the Demised Premises shall be equitably pro-rated to reflect such event. Notwithstanding anything herein to the contrary, if the Taxes for any Tax Year subsequent to the Basic Tax Tax Year is less than the Taxes for the Basic Tax Tax Year, Tenant shall not be entitled to any reduction in base rent or additional rent in excess of the additional rent paid

pursuant to the provisions of this Article for such Tax Year.

(H) If the fiscal tax year or the method of tax payment shall hereafter be changed, appropriate adjustment of the foregoing provisions shall be made accordingly to reflect any such changes.

(I) If requested in writing, by Landlord, Tenant agrees with the assistance of Landlord to file an application, in the name of the Landlord, and using Landlord's designee or attorney in connection therewith, for the Industrial Commercial Incentive Program ("ICIP") requesting an abatement of Taxes on the basis of the improvements made by Tenant at the Demised Premises. Tenant shall promptly furnish to Landlord such information and documentation which Landlord requires in connection with the filing of the ICIP application, including the documentation set forth on Exhibit E annexed hereto. Any refund in Taxes attributable to such ICIP shall be the sole property of Landlord. Tenant acknowledges that the provisions of this paragraph are independent of any other provisions of this lease; that no assurances are being granted to Tenant that any application for abatement of Taxes will be granted and that any denial of such abatement in Taxes will not affect Tenant's obligations to pay Taxes as set forth in this lease.

42. **BID TAX.** For each year during the term of this lease, Tenant shall pay to Landlord, Tenant's Proportionate Share (as defined in Article 41) of any Business Improvement Development Tax ("BID Tax"), if any, which is levied, assessed or imposed against the Building by the City of New York, or any other governmental authority. Upon demand of Landlord, Tenant shall pay such tax not less than thirty (30) days prior to the date that said tax is due by Landlord to the taxing authorities, whether or not such payments are required on a monthly, quarterly or annual basis. A copy of the tax bill shall be sufficient evidence of the amounts due under this paragraph.

#### 43. **INDEMNIFICATION.**

(A) Tenant shall indemnify and save harmless Landlord and its agents against and from (i) any and all claims (a) arising from (x) the conduct or management of the demised premises or of any business therein, or (y) any work or thing whatsoever done, or any condition created in or about the demised premises during the term hereof or during the period of time, if any, prior to the Commencement Date that Tenant may have been given access to the demised premises, or (b) arising from any negligent or otherwise wrongful act or omission of Tenant or any of its subtenants or licensees or its or their employees, agents, visitors, invitees or contractors or subcontractors, and (ii) all reasonable costs, expenses and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon. In case any action or proceeding be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall resist and defend such action or proceeding at Tenant's expense by counsel reasonably satisfactory to Landlord, without any disclaimer of liability in connection with such claim.

(B) Landlord shall indemnify and hold harmless Tenant from and against any and all third party claims arising from Landlord's operation of the Building and/or the negligence or tortious and willful act of Landlord, its agents, employees or contractors. No indemnity by Landlord shall extend to claims arising by virtue of negligent or wrongful acts or omissions of Tenant or Tenant's employees, agents or contractors.

#### 44. **INSURANCE.**

(A) Tenant shall obtain and provide, on or before the earlier of the commencement of the term or Tenant's entering the Demised Premises for any purposes, and keep in force at all times thereafter, the following insurance coverage with respect to the Premises:

(1) Comprehensive general liability and broad form property damage insurance, written on an occurrence basis, including elevator, machinery and contractual liability insurance, protecting and indemnifying Landlord, Tenant and others having an insurable interest against any and all claims (including all costs and expenses of defending against same) for personal injury, disease or death and for damage or injury to or destruction

of property (including loss of use) occurring on, in or about the Demised Premises, sidewalks, gutters, signs, curbs, vaults or vault spaces appurtenant to the Demised Premises, which insurance shall have a combined single limit of not less than Five Million (\$5,000,000.00) Dollars. The insurance carried pursuant to this paragraph (1) shall include coverage for contractual liability, independent contractors' liability and completed product/operations liability with a personal injury endorsement covering claims arising out of arrest, false imprisonment, libel, slander, wrongful eviction and invasion of privacy.

(2) Fire and Lightning, Extended Coverage, Vandalism and Malicious Mischief, and All Risk Perils, insurance in an amount adequate to cover the replacement value of all personal property, decorations, trade fixtures, and inventory, and all contents therein.

(3) If a sprinkler system is located in the Demised Premises, provide sprinkler leakage insurance in amounts reasonably satisfactory to Landlord, and provide and keep in force a sprinkler supervisory, maintenance and alarm service contract.

(4) Provide boiler and machinery broad form insurance covering explosion in respect of steam and pressure boilers and similar apparatus, if any, located in or upon the Demised Premises in an amount equal to the full replacement value.

(5) At any time prior to undertaking and during the duration of any construction or alteration of any work on the Demised Premises, including the construction of the Initial Work, Tenant shall provide Builder's Risk All Risk Non-Reporting Property insurance for the full replacement value of such alterations, work and construction, with Replacement Cost and Agreed Amount endorsements.

(6) Business Interruption Insurance in such amounts as Landlord may reasonably request, but in no event greater than an amount equal to one (1) year's base annual rent and additional rent.

(7) Workmen's Compensation Insurance covering all persons employed, directly or indirectly, in connection with any finished work performed by Tenant or any repair or alteration authorized by this lease or consented to by Landlord, and all employees and agents of Tenant with respect to whom death or bodily injury claims could be asserted against Landlord or Tenant, as required by the law of the State where the Demised Premises are located.

(8) Such other insurance for the Demised Premises and in such amounts as may from time to time be reasonably required by Landlord against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated and used.

(B) Before undertaking any alterations, additions, improvements or construction, Tenant shall obtain at its expense or require the contractor performing such alterations, additions, improvements or construction to obtain a public liability insurance policy insuring Tenant and Landlord, as additional insured, and any designee of Landlord having an insurable interest in the Demised Premises as an additional insured, against any liability which may arise on account of such proposed alterations, improvements or construction on an occurrence basis with minimum limit of at least Five Million (\$5,000,000.00) Dollars.

(C) Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connecting with the Demised Premises, or otherwise, or for any loss or damage resulting to Tenant or those claiming by, through or under Tenant, or its or their property, from the breaking, bursting, stopping or leaking of electric cables and wires, and water, gas, sewer or steam pipes.

(D) Tenant covenants and agrees that Tenant will not do or permit anything to

be done in or upon the Premises, or bring in anything or keep anything therein, which shall increase the rate of insurance on the Demised Premises above the current rate on said Demised Premises; and Tenant further agrees that, in the event that Tenant shall do any of the foregoing, Tenant will promptly pay to Landlord, on demand, any such increase resulting therefrom, which shall be due and payable as additional rent hereunder.

(E) All insurance provided for in this Article by Tenant shall be (i) effected under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the state in which the Demised Premises are located; (ii) issued by insurers that at all times during the term of this lease are in a financial category of not less than XII and with a general policy holder's rating of not less than A as rated in the most current Best's Insurance Reports, or if Best's Insurance Reports shall cease to be published, an equivalent rating with such other publication of a similar nature as shall be in current use and which shall be acceptable to Landlord; (iii) issued by insurers which shall have been approved in writing by Landlord and any mortgagees and ground lessors; and (iv) in such forms as may from time to time be satisfactory to Landlord. Any policies of insurance of the character described in this Article shall expressly provide that any losses thereunder shall be adjusted with and approved by, and all proceeds paid solely to, Landlord and any ground lessors and mortgagees. All such insurance except the Workers' Compensation Insurance shall name Landlord and all master and ground lessors and mortgagees and such other parties as Landlord shall designate as additional insureds. Each policy evidencing the insurance to be carried by Tenant under this lease shall contain a clause that such policy and the coverage evidenced thereby shall be primary with respect to any policies carried by Landlord, and that any coverage carried by Landlord, if any, shall be excess insurance. So long as the Tenant named herein is the Tenant under this lease, and operating for business at the Demised Premises, all insurance maintained by Tenant may have a deductible up to the amount of \$15,000.00; otherwise, no insurance may have a deductible in excess of \$5,000.00.

(F) Each party shall include in each of its insurance policies covering loss, damage or destruction by fire or other casualty (insuring the Building and Landlord's property therein and the rental value thereof, in the case of Landlord, and insuring Tenant's personal property and fixtures and business interruption insurance, in the case of Tenant) a waiver of the insurer's right of subrogation against the other party or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the insured waives before the casualty the right of recovery against any party responsible for a casualty covered by such policies, or (ii) any other form of permission for the release of the other party. If such waiver, agreement or permission shall cease to be obtainable without additional charge, then if the other party shall so elect and shall pay the insurer's additional charge therefor, such waiver, agreement or permission shall be included in the policy; provided, however, that Tenant shall at no time be named a loss payee or additional insured under any of Landlord's insurance policies.

(G) In the event that Tenant fails to procure, maintain or pay for as specified in this Article, any insurance required by this Article or fails to carry insurance required by law or governmental regulation, Landlord may (but without obligation to do so) from time to time and without notice, procure such insurance and pay the premiums therefor, in which event Tenant shall repay Landlord, as additional rent, all sums so paid by Landlord together with interest at the rate of sixteen (16%) percent per annum, but in no event greater than the maximum amount permitted by law, and any costs or expenses incurred by Landlord in connection therewith within ten (10) days following Landlord's written demand for such payment, without prejudice to any other rights and remedies of Landlord under this lease.

(H) Tenant agrees to deliver to Landlord, at least twenty (20) days prior to the time that such insurance is first required to be carried by Tenant and thereafter at least thirty (30) days prior to the expiration of any such policy, a duplicate original of all policies provided by Tenant in compliance with its obligations hereunder, or certificates thereof, together with evidence of payment thereof for at least one (1) year's premiums. Said policies shall include an endorsement which states that such insurance may not be cancelled or changed in any material way the nature or extent of the coverage provided by such policy except upon thirty

(30) days written notice to Landlord and any designees of Landlord. Landlord may at any time and from time to time, inspect and/or copy any and all insurance policies required to be procured by Tenant pursuant to this lease.

(I) Landlord shall, subject to reimbursement as provided herein, maintain, during the term hereof, fire with extended coverage insurance, liability insurance, rental loss insurance and any other insurance coverages covering the Building of which the Demised Premises forms a part, in such amounts and in such form as Landlord may elect (collectively "Landlord-Carried Insurance" herein). Tenant agrees to reimburse Landlord, as additional rent, for Tenant's Proportionate Share (as herein defined) of the premiums incurred by Landlord for any Landlord-Carried Insurance, payment to be made within ten (10) days after demand therefor.

#### 45. UTILITY EXPENSES.

(A) The terms defined below shall for the purposes of this lease have the meanings herein specified:

(i) "Operations Year" shall mean each calendar year in which occurs any part of the term of this lease.

(ii) "Tenant's Utility Expense Percentage" shall be deemed to be sixteen (16%) percent.

(iii) "Utility Expenses" as used herein shall mean the total costs and expenses incurred by Landlord, its agents, and/or designees for operating, maintaining, repairing and/or replacing the sprinkler systems and fire alarm systems servicing the Building (Tenant acknowledging that Tenant shall be solely responsible for maintaining, operating, repairing and replacing such systems that are located within the Demised Premises), repair and/or replacement of onsite water lines, electrical lines affecting the fire alarm systems, sanitary sewer lines and storm water lines; all water, sewer, electrical or other utility charges for servicing the Building; fees for required licenses and permits for such utility systems; and fifteen (15%) percent of the foregoing costs to cover the Landlord's administrative costs and overhead.

(B) In addition to the basic annual rent hereinbefore reserved, Tenant covenants and agrees to pay to Landlord as and when billed by Landlord, as additional rent, Tenant's Utility Expense Percentage of Utility Expenses for each Operations Year commencing with the Commencement Date of this lease.

(C) During the term of the lease, and commencing on the Commencement Date, Tenant shall pay to Landlord, as additional rent, monthly in advance on the first day of each month, a sum equal to one-twelfth (1/12) of Tenant's Utility Expense Percentage of Utility Expenses for each Operations Year, based upon Landlord's reasonable estimates (Landlord's Estimate) subject to the adjustment as hereinafter provided. For the Operations Year in which the term of this lease commences or terminates, the provisions of this Article shall apply and Tenant's liability for its share of the Utility Expenses for such year shall be subject to a pro rata adjustment based on the number of days of said Operations Year during which the term is in effect.

(D) As soon as practicable after the end of each Operations Year, Landlord shall furnish to Tenant a statement showing the total Utility Expenses for the Operations Year just expired, the amount of Tenant's Utility Expense Percentage of such Utility Expenses and the payments made by Tenant during such Operations Year pursuant to paragraph (C) above. If the aggregate of Tenant's payments shall exceed Tenant's share of such Utility Expenses as shown on said statement, Tenant shall be entitled to offset such excess against payments next thereafter becoming due under paragraph (C) above. In the event the aggregate of Tenant's payments of such installments during the Operations Year shall be less than the amount of Tenant's share of Utility Expenses, such deficiency shall be paid to Landlord within ten (10) days after delivery of said statement. Tenant shall continue to pay monthly as Tenant's share

of Utility Expenses the amount shown on the last Landlord's Estimate unless and until Tenant receives from Landlord a new Landlord's Estimate based on Landlord's reasonable estimate of Tenant's Utility Expense Percentage of Utility Expenses. If such new Landlord's Estimate is given, Tenant shall immediately within ten (10) days after the giving of such Landlord's Estimate pay as additional rent the difference between (x) the amount actually paid by Tenant pursuant to paragraph (C) since the commencement of the period to which such Landlord's Estimate pertains and (y) the amount payable by Tenant for such period pursuant to Landlord's Estimate and will then continue to pay monthly the amount shown on Landlord's Estimate until adjusted as set forth herein. Landlord's failure to render Landlord's Estimate with respect to any year of the Term shall not prejudice Landlord's right to render a Landlord's Estimate with respect to that or any subsequent portion of the Term.

(E) In the event of any dispute under this Article, Tenant shall pay Tenant's Utility Expense Percentage of Utility Expenses for any Operations Year in accordance with the applicable bill or statement, and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, by agreement or otherwise, Landlord shall pay to Tenant the amount of Tenant's overpayment resulting from compliance with such bill or statement. Any such bill or statement shall be deemed binding and conclusive if Tenant fails to object thereto within sixty (60) days after receipt thereof.

(F) Notwithstanding anything to the contrary contained herein, Landlord shall have the right, in its sole and absolute discretion, to discontinue the present fire alarm system presently located within the Building. Landlord shall endeavor to provide Tenant with thirty (30) days prior written notice of Landlord's election therewith. In the event Landlord does, in fact, discontinue such fire alarm system, Tenant covenants and agrees to install its own fire alarm system, if required by the governmental authorities, and maintain such system at its sole cost and expense.

#### 46. UTILITIES AND OTHER SERVICES.

(A) Landlord shall not be obligated to supply any utilities or services to the Demised Premises or make any installations, repairs or perform any maintenance in connection with the Demised Premises including, but not limited to, the utility systems. Tenant shall be responsible at Tenant's sole cost and expense for the installation of separate utility meters for measuring Tenant's consumption of electric, water and gas. Tenant shall be responsible for and shall pay and discharge all bills rendered for any electric, gas, heat or air-conditioning which it may require, including, but not limited to, Tenant's installation of its own HVAC system, and Tenant shall make its own arrangement with the public utility company servicing the Demised Premises for the furnishing, installation, upgrades and payment of all charges for electricity and other utilities consumed by Tenant at the Demised Premises, including, if necessary, the installation of meters therefor. Tenant acknowledges that Landlord has made no representation concerning the plumbing, heating and air conditioning systems, if any, located in the Demised Premises and takes same in "as is" condition. Tenant's roof top air-conditioning unit may only be installed on the lower roof of the Building in which the Demised Premises forms a part, and only in that area so designated by Landlord.

(B) Tenant shall, at Tenant's sole cost and expense, promptly pay and discharge all liens, penalties, violations and fines (including but not limited to Environmental Control Board liens) against the Demised Premises, ~~provided same were attributable to or caused by Tenant, or which resulted from Tenant's failure to comply with any of the provisions of this lease.~~ If Landlord shall incur any expense to pay or discharge any lien, penalty, violation or fine, Tenant shall pay same to Landlord as additional rent, upon demand, which payment shall include reasonable attorneys' fees incurred by Landlord in connection with the payment or discharge of such lien, penalty, violation or fine.

(C) The entire Demised Premises, including store fronts, and the sidewalk abutting the Demised Premises, are to be kept clean by Tenant, at its sole cost and expense. In particular, and without derogating from the generality of the foregoing, Tenant agrees to sweep the sidewalk as reasonably necessary. Tenant further agrees not to permit the accumulation (unless in concealed metal or plastic containers) of any rubbish or garbage in, on or about any

part of the Demised Premises. Tenant shall not encumber or obstruct, or permit to be encumbered or obstructed, the street and sidewalk adjacent to or abutting upon the Demised Premises. Tenant agrees to pay on behalf of Landlord any fines or costs Landlord is assessed due to Tenant's failure to fulfill Tenant's obligations under this Article. Tenant shall comply with all applicable requirements, if any, of the Departments of Health and Sanitation of the City of New York relating to the treatment of such rubbish prior to its placement for disposal. Tenant shall accumulate garbage only in concealed containers, and if designated by Landlord, only in those areas designated by Landlord for garbage pickup.

(D) Tenant agrees that it shall independently contract, at its sole cost and expense, for the removal of all snow and ice from the Demised Premises. The removal of such snow and ice shall be subject to such rules and regulations as, in the reasonable judgment of Landlord, are necessary for the proper operation of the Demised Premises.

(E) Tenant covenants and agrees that it will, at its own cost and expense, cause the Demised Premises to be free at all times of all vermin and insects and that it will take whatever reasonable precautions that is reasonably necessary to prevent any such vermin or insects from existing in the Demised Premises, including the hiring by Tenant of an exterminator to provide regular monthly service to the Demised Premises. Tenant at its expense shall contract for termite and pest extermination services covering the Premises, to be rendered as required in Landlord's sole judgment reasonably exercised, but in no event less than once per month. Tenant shall keep said contract in force for the term of this lease and supply Landlord with evidence of said contract upon request.

47. BROKER. Tenant represents and warrants to Landlord that Tenant has had no dealings, negotiations or consultations with respect to the Demised Premises or this transaction with any broker or finder other than J.W. Burke & Company (the "Broker"), and that no broker or finder other than the Broker called the Demised Premises to Tenant's attention for lease or took any part in any dealings, negotiations or consultations with respect to the Demised Premises or this lease. In the event that any broker or finder claims to have submitted the Demised Premises to Tenant, to have induced Tenant to lease the Demised Premises or to have taken part in any dealings, negotiations or consultations with respect to the Demised Premises or this lease, Tenant will be responsible for and will indemnify and save Landlord harmless from and against all costs, fees (including, without limitation, attorneys' fees), expenses, liabilities and claims incurred or suffered by Landlord as a result thereof.

48. ATTORNMEN. In the event foreclosure proceedings are brought by the holder of any fee mortgage, Tenant will attorn to such mortgagee or purchaser in foreclosure proceedings, as the case may be, and will recognize such fee mortgagee or purchaser as the Tenant's landlord under this lease. The foregoing provisions shall inure to the benefit of any such owner or fee mortgagee and shall, in the event of any such election and demand, be self-operative without the necessity of the execution of any further instruments; but Tenant agrees that it shall execute and deliver, at any time and from time to time, upon the request of the fee owner or of the holder of any such fee mortgage any instrument which may be necessary or appropriate to evidence such attornment and the Tenant shall appoint the Landlord the attorney-in-fact of the Tenant to execute and deliver such instrument or instruments.

#### 49. MORTGAGES AND LEASEHOLDS.

(A) Subject to the provisions of paragraph (B) and (C) of this Article, this lease is subject and subordinate in all respects to all ground leases and/or underlying leases and to all mortgages which may now or hereafter be placed on or affect such leases and/or the real property of which the Demised Premises form a part, or any part or parts of such real property, and/or Landlord's interest or estate therein, and to each advance made and/or hereafter to be made under any such mortgages, and to all renewals, modifications, consolidations, replacements and extensions thereof and all substitutions therefor. This Section (A) shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall, without charge, execute and deliver promptly any reasonable certificate that Landlord and/or any mortgagee and/or the lessor under any ground or underlying lease and/or their respective successors in interest may reasonably request.



(B) Landlord agrees to request, in good faith, to have all future mortgagees and ground lessees to issue to Tenant a non-disturbance agreement in form and substance reasonably satisfactory to the holder of such mortgage, to the effect that the rights of Tenant to quiet and peaceful possession under this lease will not be terminated or disturbed by reason of the foreclosure of any such mortgage so long as Tenant shall not be in default under this lease and shall pay the base annual rent and additional rent and fully perform and comply with all of the terms, covenants and conditions of this lease on the part of Tenant to be performed and/or complied with. The form of such non-disturbance agreement shall be such mortgagee's or ground lessee's standard form of non-disturbance agreement. The failure of any Institutional Mortgagee (as hereinafter defined) or ground lessee to issue a non-disturbance agreement to Tenant for any reason whatsoever, shall not affect subordination of this lease to such mortgage or ground lease.

(C) Anything to the contrary contained in this lease notwithstanding, this lease shall be subject and subordinate to any non-Institutional Mortgage which may hereafter affect the real property of which the Premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such mortgage, only if such non-Institutional Mortgagee shall execute, acknowledge and deliver a non-disturbance agreement to the effect that the leasehold estate granted to Tenant under this lease and the rights of Tenant to quiet and peaceful possession under this lease will not be terminated or disturbed by reason of any termination of such mortgage, so long as Tenant shall not be in default under this lease beyond any grace or cure period provided for herein.

(D) For purposes of this Article, an Institutional Mortgagee shall mean an insurance company, bank or trust company, whose loans on real estate or with respect thereto are regulated by state or federal law.

(E) Tenant shall, without charge, at any time and from time to time, upon not less than ten (10) days' prior demand by Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modification), and the dates to which the rent, additional rent and other charges have been paid in advance, if any, and stating whether or not to the best knowledge of the signer of such certificate Landlord is in default in performance of any covenant, agreement, term, provision or condition contained in this lease and, if so, specifying each such default of which the signer may have knowledge, it being intended that any such statement delivered pursuant hereto may be relied upon by any prospective purchaser or lessee of said real property or any interest or estate therein, any mortgagee or prospective mortgagee thereof or any prospective assignee of any mortgagee thereof. If, in connection with obtaining financing for the Building, lender shall request reasonable modifications in this lease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereto.

50. ASSIGNMENT. Notwithstanding the provisions of Article 11, and in modification and amplification thereof:

(A) If Tenant's interest in this lease is assigned, whether or not in violation of the provisions of this lease, Landlord may collect rent from the assignee; if the Demised Premises or any part thereof are sublet to, or occupied by, or used by, any person other than Tenant, whether or not in violation of this lease, Landlord, after default by Tenant under this lease and expiration of Tenant's time, if any, to cure such default, may collect rent from the subtenant, user or occupant. In either case, Landlord shall apply the net amount collected to the rents reserved in this lease, but neither any such assignment, subletting, occupancy, nor use, nor any such collection or application shall be deemed a waiver of any terms, covenant or condition of this lease or the acceptance by Landlord of such assignee, subtenant, occupant or user as a tenant. The consent by Landlord to any assignment, subletting, occupancy or use shall not relieve Tenant from its obligation to obtain the express prior written consent of Landlord to any further assignment, subletting, occupancy or use. The listing of any name other than Tenant's on any door of the Demised Premises, or on any directory, or on any elevator in the Building, or otherwise, shall not operate to vest in the party so named, any right

or interest in this lease or in the Demised Premises, or be deemed to constitute, or serve as a substitute for, any prior written consent of Landlord required under this Article, and it is understood that any such listing shall constitute a privilege extended by Landlord which shall be revocable at Landlord's will by notice to Tenant. Tenant agrees to pay to Landlord any reasonable counsel fees incurred by Landlord in connection with any proposed assignment of Tenant's interest in this lease or any proposed subletting of the Demised Premises or any part thereof. Neither any assignment of Tenant's interest in this lease nor any subletting, occupancy or use of the demised premises or any part thereof by any person other than Tenant, nor any collection of rent by Landlord from any person other than Tenant as provided in this paragraph (A), nor any application of any such rent as aforementioned as provided in this paragraph (A), shall in any circumstances relieve Tenant of Tenant's obligations fully to observe and perform the terms, covenants and conditions of this lease on Tenant's part to be observed and performed.

(B) Tenant will not sell, assign, mortgage, pledge or in any manner transfer this lease or any interest therein, nor sublet all or any part of the Premises, nor license concessions nor lease departments therein, without Landlord's written consent in each instance, which consent shall not be unreasonably withheld or delayed. The consent by Landlord to any assignment or subletting shall not waive the necessity for consent to any subsequent assignment or subletting. Notwithstanding any such assignment, Tenant shall continue to remain liable for the performance of all obligations under this lease. Any assignment or subletting (i) as to which Landlord has consented; or (ii) which is required by reason of final nonappealable order of a court of competent jurisdiction; or (iii) which is made by reason of and in accordance with the provisions of any law or statute, including, without limitation, the laws governing bankruptcy, insolvency or receivership shall be subject to all terms and conditions of this lease, and shall not be effective or deemed valid unless, at the time of each such assignment or subletting:

(i) Tenant shall have provided Landlord with (1) a conformed or photostatic copy of the proposed assignment or sublease, the effective or commencement date of which shall be at least 30 days after the giving of such notice; (2) a statement setting forth in reasonable detail the identify of the proposed assignee or subtenant, the nature of its business and its proposed use of the demised premises, and (3) current financial information with respect to the proposed assignee or subtenant, including, without limitation, its most recent financial report;

(ii) in Landlord's reasonable judgment, the proposed assignee or subtenant is engaged in a business and the Demised Premises, or the relevant part thereof, will be used in a manner which (1) is in keeping with the then standards of the Building, (2) is limited to the use expressly permitted under this lease, (3) will not violate any negative covenant or restrictive covenant as contained in any other lease of space in the Building, and (4) the proposed assignee's or sublessee's use will not be disruptive to other tenants in the Building, such use will not increase Landlord's insurance premiums or increase the fire rating, and such proposed assignee will not be handling Hazardous Substances;

(iii) in Landlord's reasonable judgment, the proposed assignee or subtenant is a reputable person of good character and with sufficient financial worth considering the responsibility involved, and is not a government or a government agency, or a charity or other organization dependent in whole or in part on charitable contributions;

(iv) the proposed assignee or subtenant shall not be a person with whom Landlord is then negotiating to lease space in the Building (or with whom Landlord has negotiated the lease of space in the Building within the past six months);

(v) the form of the proposed sublease shall be in form reasonably satisfactory to Landlord and shall expressly state that it is subject and subordinate to the terms and conditions of this lease;

(vi) there shall not be more than one (1) subtenant of the Demised

Premises at any time;

(vii) Tenant shall reimburse Landlord on demand for any and all reasonable costs that may be reasonably incurred by Landlord in connection with said assignment or sublease, including, without limitation, the reasonable costs of making investigations as to the acceptability of the proposed assignee or subtenant, and reasonable legal costs incurred in connection with the granting of any requested consent;

(viii) each assignee or sublessee has deposited with Landlord, as security to be retained by Landlord in accordance with the provisions of Article 31 of this lease, an amount equal to three (3) times the then monthly base rental payable under this lease, to be paid to Landlord simultaneously with Tenant's request for Landlord's consent to such proposed assignment or subletting, as the case may be; and

(ix) Tenant shall not advertise or publicize in any way the availability of the Demised Premises without prior notice to and approval by Landlord (which approval shall not be unreasonably withheld).

(C) If Tenant is a corporation the stock of which is not traded on any national securities exchange (as defined in the Securities Exchange Act of 1934, as amended), then the following shall constitute an assignment of this lease for all purposes of this Article: (i) the merger, consolidation or reorganization of Tenant; and/or (ii) the sale, issuance, or transfer, cumulatively or in one transaction, of any voting stock, by Tenant or the stockholders of record of Tenant as of the date of this lease, which results in a change in the voting control of Tenant, except any such transfer by inheritance or testamentary disposition. If Tenant is a joint venture, partnership or other association, then for all purposes of this Article, the sale, issuance or transfer, cumulatively or in one transaction, of either voting control or of a twenty-five (25%) percent interest, or the termination of any joint venture, partnership or other association, shall constitute an assignment, except any such transfer by inheritance or testamentary disposition.

(D) Provided Tenant is not in default under any of the terms and conditions of this lease, after notice and expiration of the applicable cure period, Tenant may, without the consent of Landlord, assign this lease to Tenant's wholly owned subsidiary, an "affiliated corporation" (as herein defined) or an immediate controlling corporation (for such period of time as such corporation remains such a subsidiary, affiliated corporation or a controlling corporation, respectively, it being agreed that the subsequent sale or transfer of stock resulting in a change in voting control, or any other transaction(s) having the overall effect that such corporation ceases to be such a subsidiary, affiliated corporation or a controlling corporation, respectively, shall be treated as if such sale or transfer or transaction(s) were, for all purposes, an assignment of this lease governed by the provisions of this Article), or in connection with the sale of all of the stores operated by Tenant and all of Tenant's affiliated corporations (as herein defined) to Jennifer Convertibles, Inc., a Delaware corporation (which entity is presently publicly traded on a national securities exchange and is hereinafter referred to as "Jennifer"), provided (and it shall be a condition of the validity of any such assignment) that such wholly owned subsidiary, affiliated corporation, such immediate controlling corporation, or Jennifer, as the case may be, first agree directly with Landlord to be bound by all of the obligations of Tenant hereunder, including, without limitation, the obligation to pay the rent and other amounts provided for under this lease, the covenant to use the Demised Premises only for the purposes specifically permitted under this lease and the covenant against further assignment, except as specifically set forth herein; but such assignment shall not relieve Tenant of any of its obligations hereunder, and Tenant shall remain fully liable therefor. For the purposes of this paragraph, the term "affiliated corporation" shall mean a corporation, company, trust or partnership, the controlling beneficial interest of which is owned and controlled by Tenant or by the same person or entity who owns and controls the Tenant.

(E) With respect to each and every sublease or subletting consented to by Landlord under the provisions of this lease, it is further agreed:

(1) No subletting shall be for a term ending later than one (1) day prior to the expiration date of this lease.

(2) No sublease shall be valid unless an executed counterpart of such sublease has been delivered to Landlord within ten (10) days after the execution of such sublease.

(3) Each sublease shall provide that it is subject and subordinate to this lease and to the matters to which this lease is or shall be subordinate, and that in the event of termination, re-entry or dispossession by Landlord under this lease, Landlord may, at its option, take over all the right, title and interest of Tenant, as sublessor under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not (a) be liable for any previous act or omission of Tenant under such sublease, (b) be subject to any offset, not expressly provided in such sublease, which theretofore accrued, to such subtenant against Tenant, or (c) be bound by any previous modification of such sublease or by any previous prepayment of more than one month's rent.

(F) If Landlord shall decline to give its consent to any proposed assignment or sublease, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all losses, liabilities, damages, costs and expenses (including reasonable counsel fees) resulting from any claims that may be made against Landlord by the proposed assignee or subtenant or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

(G) No consented to assignment or subletting shall be effective or valid for any purpose whatsoever unless and until a counterpart of the assignment or a counterpart or reproduced copy of the sublease shall have been first delivered to the Landlord, and, in the event of an assignment, the Tenant shall deliver to Landlord a written agreement executed and acknowledged by the Tenant and such assignee in recordable form wherein such assignee shall assume jointly and severally with Tenant the due performance of this lease on Tenant's part to be performed for the remaining term of this lease and shall remain fully liable hereunder, notwithstanding any other or further assignment.

(H) Neither any assignment of Tenant's interest in this lease nor any subletting, occupancy or use of the Demised Premises or any part thereof by any person other than Tenant, nor any collection of rent by Landlord from any person other than Tenant as provided in Article 11 hereof, nor any application of any such rent as provided in said Article 11 shall, in any circumstances, relieve Tenant of its obligations fully to observe and perform the terms, covenants and conditions of this lease on Tenant's part to be observed and performed.

51. LANDLORD'S EXCULPATION. It is specifically understood and agreed that there shall be no personal liability on Landlord in respect of any of the covenants, conditions or provisions of this lease; and if Landlord or a successor in interest is an individual (which term as used herein includes aggregates of individuals, such as joint ventures, general or limited partnerships or associations), such individual shall be under no personal liability with respect to any of the provisions of this lease, and if Landlord is in breach or default with respect to its obligations under this lease, Tenant shall look solely to the equity of the Landlord in the Building of which the Demised Premises forms a part, for the satisfaction of Tenant's remedies and in no event shall Tenant attempt to secure any personal judgment against Landlord or against any partner, member, employee or agent of Landlord by reason of such default by Landlord.

52. RIDER CONTROLS. This rider is annexed to and made a part of the printed part of this lease to which it is attached and in each instance in which the provisions of this rider shall contradict or be inconsistent with the provisions of the printed portion of this lease, as constituted without this rider, the provisions of this rider shall prevail and govern and the contradicted or inconsistent provisions of the printed portion of this lease shall be deemed amended accordingly.

53. AS-IS CONDITION. Tenant has inspected the Demised Premises and is aware of its present condition and, except as otherwise specifically set forth herein, agrees to accept the Demised Premises in its "AS IS" condition. Neither Landlord nor its agents have made any representations with respect to the physical condition, size, dimensions or potential development of the Demised Premises, except as expressly set forth herein and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease.

54. TENANT'S WORK. Any work, installations, alterations, additions or improvements to be performed by Tenant in the Demised Premises being leased hereunder shall be undertaken by Tenant, at Tenant's sole cost and expense, subject to the following terms and conditions:

(A) That all such Tenant's work shall comply with all applicable provisions of this lease, including, but not limited to, paragraphs 3 and 6 of the printed portion of this lease, and all applicable governmental rules and regulations and the rules and regulations of any Board of Fire Underwriters or similar agency having jurisdiction over the Demised Premises;

(B) That Tenant shall first submit to Landlord for Landlord's approval the plans and specifications covering Tenant's work, as well as copies of all proposed contracts for all contractors who will be performing work at the Demised Premises, all such plans to be in detail reasonably satisfactory to Landlord, but Landlord's approval thereof shall not constitute an acknowledgment that such plans and specifications are in compliance with code or applicable law, and Landlord shall endeavor and make good faith efforts to review said plans and specifications within ten (10) business days after receipt of same from Tenant;

(C) That Tenant and its contractors shall employ only first class workmanlike contractors and labor in the performance of the Tenant's work;

(D) That Tenant and any contractor or contractors employed by the Tenant to render services and furnish labor to the Demised Premises, shall be covered by Workmen's Compensation Insurance and a Certificate thereof shall be furnished to the Landlord before commencement of any work by any contractor, sub-contractor, their agents, servants or employees;

(E) All Tenant's work shall at all times (a) comply with all laws, rules, orders, and regulations of governmental authorities having jurisdiction thereof and all insurance requirements, (b) comply with the Building's rules and regulations now or hereafter in existence, and (c) comply with Tenant's plans and specifications approved by Landlord.

(F) That promptly following the completion of all of said Tenant's work, and as soon as reasonably feasible, Tenant shall with due diligence obtain and furnish to Landlord all appropriate certifications from all authorities (including, but not limited to, the N.Y.C. Building Department and Fire Department) having jurisdiction to the effect that all such Tenant's work has been performed and completed in accordance with the filed plans, if any, and with all laws, rules, regulations and orders of said authorities having jurisdiction thereover, including, but not limited to, Tenant's furnishing to Landlord of any new certificate of occupancy, certificates of completion and sign-offs with respect to such work performed at the Demised Premises;

(G) Prior to the commencement of such work, Tenant, at its expense, shall procure and deliver to Landlord each and every permit, license, franchise, or other authorization required for the performance of such Tenant's work.

(H) No Tenant's work shall be undertaken, started, or begun by Tenant or by its agents, employees, contractors, or anyone else acting for or on behalf of Tenant until Landlord has approved such plans and specifications. No amendments or additions to such plans and specifications as approved shall be made without the prior written consent of Landlord.

(I) Notwithstanding the foregoing, with respect to carpeting, painting and other Tenant work which (a) are nonstructural in nature (i.e., do not involve changes to the structural elements of the Building); (b) do not involve changes to the Building's systems, including, without limitation, the electrical, plumbing, and HVAC systems, sprinkler system, or fire alarm system, or to the storefront or storefront gates, or affect the floor height, perimeter walls or square footage of the Demised Premises [(a) and (b) are hereinafter collectively referred to as "Nonstructural Changes"]; and (c) in the aggregate would not cost in excess of \$15,000.00 when added together with the cost of all other Nonstructural Changes made during the prior 12-month period, Tenant need not obtain Landlord's prior written consent, but must notify Landlord in writing within twenty (20) days prior to the commencement of such Tenant's work, which notification shall be accompanied with the documentation set forth in this Article, including, but not limited to, a detailed description of the work, the contractors' agreements, and a detailed cost of the work to be performed. Landlord agrees not to unreasonably withhold or delay its consent to Nonstructural Changes proposed to be undertaken by Tenant, provided Tenant complies with the remaining provisions of this Article.

**55. SIGNS.**

(A) Tenant shall not place or install any sign on any exterior wall of the Demised Premises nor install any sign on or in the Demised Premises until Tenant shall have: (i) received Landlord's prior written consent thereto; and (ii) received all approvals and permits and delivered copies thereof to Landlord together with evidence of payment for any fees pertaining to Tenant's signs if such permit or approval is required. In no event shall Tenant be authorized to place any sign or any other structure on the roof of the Demised Premises. All interior signs to be installed by Tenant shall be professionally made and neat in appearance.

(B) As used in this Article, the word "sign" shall be construed to include any light or other advertising symbol or object irrespective of whether same be temporary or permanent.

**56. SPECIFIC PERFORMANCE.** With respect to any provision of this lease which provides, in effect, that Landlord shall not unreasonably withhold, or unreasonably delay any consent or any approval, Tenant, in no event, shall be entitled to make, nor shall Tenant make, any claim, and Tenant hereby waives any claim, for money damages; nor shall Tenant claim any money damages by way of set-off, counterclaim or defense, based upon any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed any consent or approval; but Tenant's sole remedy shall be an action or proceeding to enforce any such provision, or for specific performance, injunction or declaratory judgment.

**57. UNENFORCEABLE PROVISIONS.** If any term, covenant, condition or provision of this lease or the application thereof to any person or circumstance shall, at any time, or to any extent, be invalid or unenforceable, the remainder of this lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this lease shall be valid and enforceable to the fullest extent permitted by law.

**58. NEW YORK LAW GOVERNS.** This lease shall be governed by and construed in accordance with the laws of the State of New York and, if any provisions of this lease shall to any extent be invalid, the remainder of this lease shall not be affected thereby. There are no oral or written agreements between Landlord and Tenant affecting this lease. This lease may be amended only by instruments in writing executed by Landlord and Tenant. Landlord shall not be deemed, in any way or for any purpose, to have become, by the execution of this lease or any action taken hereunder, a partner of Tenant in its business or otherwise a joint venturer or member of any enterprise with Tenant. This lease shall be binding upon and shall inure to (and the words "Owner," "Landlord," and "Tenant" appearing in this lease shall be construed to mean) those named above and their respective heirs, executors, administrators, successors and assigns, and those claiming through or under them respectively. Words and phrases used in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender. The terms

"person" and "persons" as used in this lease, shall be deemed to include natural persons, firms, corporations, associations and any other private or public entities.

**59. LATE CHARGES; INTEREST.**

(A) In addition to, and not instead of, any and all rights and remedies of Landlord under this lease or the laws of the State of New York, if any monthly installment of basic rent or additional rent shall not be paid within ten (10) days after the date that payment is due, then Tenant agrees to pay Landlord as additional rent a late charge equivalent to three (3%) percent of the amount not paid within such ten (10) day period. Tenant further agrees that the late charge imposed is fair and reasonable, complies with all laws, regulations and statutes, and constitutes an agreement between Landlord and Tenant as to the estimated compensation for costs and administrative expenses incurred by Landlord due to the late payment of rent to Landlord by Tenant. Tenant further agrees that the late charge assessed pursuant to this Article is not interest, and the late charge assessed does not constitute a lender or borrower/creditor relationship between Landlord and Tenant.

(B) In addition to the payment set forth in paragraph (A) above of this Article, any rent, additional rent or other amounts to be paid by Tenant which are not paid within thirty (30) days after the date such payment is due, shall bear interest from and after the expiration of such thirty (30) day period at a rate equal to four (4%) percent over the prime rate announced from time to time in The Wall Street Journal, but in no event greater than the maximum rate of interest permitted in the State of New York.

**60. MISCELLANEOUS.**

(A) Whenever Tenant shall request approval by Landlord of plans, drawings, specifications, or otherwise with respect to the remodeling of the Premises thereof, installation of signs including subsequent changes thereof, or the like, and such proposed work is structural in nature, and Landlord has such plans, drawings or the like reviewed by an outside consultant, Tenant specifically agrees promptly to reimburse Landlord for all reasonable costs incurred by Landlord for all charges involved in the review (and re-review, if necessary), and approval or disapproval thereof whether or not approval shall ultimately be given, such costs, however, not to exceed \$1,500.00 for any one (1) project contemplated by Tenant. Landlord agrees to waive the fees referred to in this paragraph (A) with respect to the review of Tenant's plans for its Initial Work.

(B) The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provision thereof.

(C) Tenant shall, at its own cost and expense, and as part of its Initial Work (as herein defined) at the Demised Premises: (i) install and maintain, in first class condition, at its own cost and expense, chemical extinguishing devices approved by the Fire Insurance Rating Organization and shall keep such devices under service as required by such organization; (ii) install and maintain, in first class condition, at its own cost and expense, a central station fire alarm system; (iii) install and maintain, in first class condition, at its own cost and expense, a gas cut-off device; and (iv) install and maintain, in first class condition, at its own cost and expense, water and sprinkler shut-off valves.

**61. ADDITIONAL RENT.** All costs, charges and expenses which Tenant assumes, agrees or is obligated to pay pursuant to this lease shall be deemed additional rent, and in the event of non- payment, Landlord shall have all of the rights and remedies with respect thereto as is herein provided for in the case of non- payment of rent.

**62. PERMITS.** Tenant shall, at its own cost and expense, obtain any and all permits, licenses and/or certificates, of whatsoever kind or nature, from any and all authorities having jurisdiction over the Demised Premises, necessary or required for the occupation and use of the Demised Premises as provided for in this lease, and Landlord agrees to cooperate with Tenant (without cost or expense to Landlord) in order to help Tenant obtain such permits. Tenant covenants that Tenant will not use or suffer or permit any person to use the Demised

Premises for any unlawful purpose and to obtain and maintain at Tenant's sole cost and expense all licenses and permits from any and all governmental authorities having jurisdiction of the Demised Premises which may be necessary for the conduct of Tenant's business therein. Tenant further covenants to comply with applicable laws, resolutions, codes, rules and regulations of any department, bureau, agency, or any governmental authority having jurisdiction over the operation, occupancy, maintenance and use of the Demised Premises for the purposes set forth herein. Tenant will indemnify and save Landlord harmless from and against any claims, penalties, loss, damage or expense imposed by reason of a violation of any applicable law or the rules and regulations of governmental authorities having jurisdiction thereof related to Tenant's use and occupancy.

**63. HOLDOVER.**

(A) Tenant acknowledges that possession of the Demised Premises must be surrendered to Landlord at the expiration or sooner termination of the term of this lease. Tenant agrees to indemnify and save Landlord harmless against all costs, claims, loss or liability resulting from delay by Tenant in so surrendering the Demised Premises, including, without limitation, any claims made by any succeeding tenant founded on such delay. The parties recognize and agree the damage to Landlord resulting from any failure by Tenant to timely surrender possession of the Demised Premises as aforesaid will be extremely substantial, will exceed the amount of the monthly rent and additional rent theretofore payable hereunder, and will be impossible to accurately measure. Tenant therefore agrees that if possession of the Demised Premises is not surrendered to Landlord within twenty-four (24) hours after the date of the expiration or sooner termination of the term of this lease, then Tenant shall pay to Landlord for each month and for each portion of any month during which Tenant holds over in the Demised Premises after the expiration or sooner termination of the term of this lease, a sum equal to three (3) times the aggregate of that portion of the Base Annual Rent and additional rent which was payable under this lease during the last month of the term hereof. The provisions of this Article shall survive the expiration or said sooner termination of the term of this lease. Notwithstanding the foregoing provisions, Tenant shall not be required to pay three (3) times the base annual rent and additional rent for such period (but shall pay base annual rent and additional rent in the amounts payable during the last month of the term) so long as Tenant and Landlord are negotiating in good faith for a new lease for the Demised Premises; provided, however, the foregoing shall not obligate Landlord or Tenant to negotiate in good faith or otherwise for a new lease for the Demised Premises. Negotiations for renewal may be terminated by either party at any time by written notice, and the increased rent imposed by the holdover provisions of this Article shall apply immediately upon notice of termination.

(B) Tenant shall occupy the Demised Premises during the holdover period in its "as is" condition as of the expiration of the term or prior termination of this lease and Landlord shall not be required to perform any work, furnish any materials or make any repairs within the Demised Premises during the holdover period. Nothing contained in this lease shall be construed as a consent by Landlord to the possession by Tenant of the Demised Premises beyond the expiration of the term or prior termination of this lease, and Landlord, upon said expiration of the term or prior termination of this lease shall be entitled to the benefits of all legal remedies that may now be in force or may hereafter be enacted relating to speedy repossession of the Demised Premises by Landlord.

**64. UNCOLLECTIBLE CHECKS.** It is hereby understood and agreed by Tenant that in the event Landlord receives a check from Tenant for the payment of basic annual rent, additional rent and/or any other charge(s) due under this lease, and such check is uncollectible by Landlord due to insufficient funds in Tenant's account or for any other reason, Tenant shall pay to Landlord a service charge in the sum of \$50.00 for Landlord's expense in processing such uncollectible check, as additional rent under this lease together with Tenant's next monthly rent installment due under this lease. The provisions of this Article shall not be deemed to limit Landlord from enforcing any other rights Landlord may have under this lease in the event of Landlord's receipt of any such uncollectible check and Landlord's right herein to collect a service charge, as provided above, shall be in addition to all other rights of Landlord contained in this lease.



65. ELECTRICITY.

(A) The parties herein acknowledge that Tenant shall, as part of its Initial Work at the Demised Premises, install new electric meters in the Demised Premises. Tenant shall purchase and receive electrical energy for the Demised Premises directly from the public utility corporation servicing the Demised Premises, and Landlord shall permit Landlord's conduits and electrical conductors to the extent available, suitable and safely capable, to be used for such purpose.

(B) Landlord shall not in any way be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if either the quality or character of electrical service is changed by the public utility company supplying electrical service to the Building or is no longer available or suitable for Tenant's requirements. Interruption or curtailment of any such services shall not constitute a constructive or partial eviction, nor entitle Tenant to any compensation or abatement of fixed rent and/or additional rent.

(C) Tenant covenants and agrees that at no time shall its use of electrical current exceed the capacity of existing feeders or wiring installations serving the Demised Premises. Tenant shall make no alterations or additions to the electrical equipment, conduits, feeders or risers without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld or delayed. If Tenant shall request in writing that additional feeders or risers be installed to supply Tenant's electric requirements and if in Landlord's reasonable judgment determines that such additional feeders or risers are necessary and will not cause permanent damage or injury to the Demised Premises or cause or create a dangerous or hazardous condition, and if Tenant complies with the conditions set forth below in this subparagraph (C), Landlord shall, at Tenant's sole but reasonable cost and expense, install such additional feeders or risers and all other equipment required in connection therewith.

(D) If Tenant shall require or request to use or make any connection to any lines, feeders, cables, end boxes, distribution boxes or other electrical, plumbing or heating equipment servicing the Demised Premises, Landlord makes no warranty as to fitness for use or other warranties concerning the physical condition of such lines, feeders, cables, end boxes, distribution boxes, or other electrical, plumbing or heating equipment servicing the Demised Premises. If any repairs are required to be made to said electrical, plumbing or heating equipment in order that electrical current, plumbing or heating be supplied to the Demised Premises, then said repair shall be done at Tenant's sole cost and expense. If any work, replacement or repair is required to be performed, then said work shall be performed at Tenant's sole cost and expense (which work, at Landlord's election, may be undertaken by Landlord, at Landlord's convenience, but at Tenant's sole cost and expense) and Tenant shall not be entitled to any set-off, allowance or claim for diminution of rental value and Landlord shall have no liability to Tenant for any inconvenience, annoyance, or injury to Tenant if said work is not performed timely.

66. Intentionally Deleted.

67. LEGAL RENT RESTRICTIONS. If any of the rent payable under the terms of this lease shall be or become uncollectible, reduced or required to be refunded because of any applicable law, ordinance, order, rule, requirement or regulation, Tenant shall enter into such agreement(s) and take such other steps (without additional expense to Tenant) as Landlord may request and as may be legally permissible to permit Landlord to collect the maximum rents which from time to time during the continuance of such legal rent restriction may be legally permissible (and not in excess of the amounts reserved therefor under this lease). Upon the termination of such legal rent restriction, (a) the rents shall become and thereafter be payable in accordance with the amounts reserved herein for the periods following such termination and (b) Tenant shall pay to Landlord, to the maximum extent legally permissible, an amount equal to (i) the rents which would have been paid pursuant to this lease but for such legal rent restriction less (ii) the rents paid by Tenant during the period such legal rent restriction was in effect.

68. PLUMBING. Supplementing the provisions of Article 4 of this lease, Tenant may maintain the existing connections, if any, to utility waste lines in the Building, sidewalk or streets, but agrees not to use the plumbing for any purpose other than that for which it was constructed and agrees further not to permit any food, waste, or other foreign substance to be thrown or drawn into the pipes. Tenant agrees to maintain the plumbing in good repair and condition and to repair any damage resulting from any violation of this Article. Tenant agrees to make any repairs to other plumbing in the Demised Premises if the damage results from Tenant's improper use of the plumbing.

69. NO ACCORD. No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of rent shall be considered an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this lease or Tenant's right to possession of the Demised Premises shall reinstate, continue or extend the term of this lease. Landlord may allocate payments received from Tenant to outstanding account balances of Tenant under this lease in the manner determined by Landlord and Landlord shall not be bound by any allocation such payments made by Tenant by notation or endorsement on checks or otherwise.

70. EXHAUST TO STREET. If Tenant's installation requires any exhaust to the street, the entire installation of such exhaust shall be paid for by Tenant and shall be subject to Landlord's prior written approval as to the location and esthetics thereof which approval shall not be unreasonably withheld or delayed.

71. HAZARDOUS SUBSTANCES.

(A) For purposes of this Article, "Hazardous Substance" means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which is restricted, prohibited, regulated or penalized by any and all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect (collectively hereinafter referred to as "Requirements"), including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), as these laws have been amended or supplemented.

(B) Tenant agrees that no part of the Demised Premises will be used for, and Tenant shall not suffer or allow the treatment, generation, manufacture, use, refining, production, storage, disposal, burial, dispersal, release, or placement of any Hazardous Substance, and that Tenant shall not release, suffer or permit the release of any Hazardous Substance onto the Demised Premises or into the subsurface thereof or onto any property whatsoever, including without limitation, surface water and ground waters, unless in compliance with all applicable law(s) permit(s), order(s), or other valid governmental approval(s), whether now in effect or hereafter enacted. Furthermore, Tenant shall not cause or permit to occur any violation of any federal, state or local law, ordinance, regulation or order now or hereafter enacted, related to environmental conditions on, under or about the Demised Premises, or arising from Tenant's use or occupancy of the Demised Premises, including, but not limited to, soil and ground water conditions. Tenant shall, at Tenant's own expense, comply with all laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances. Furthermore, Tenant shall, at Tenant's own expense, make all submissions to, provide all information required by, and comply with all requirements of all

governmental authorities under all present and future laws. Tenant shall provide all information regarding the use, generation, storage or disposal of Hazardous Substances that is requested by Landlord. The provisions of this paragraph shall survive the termination of this lease.

(C) The failure of Tenant to abide by each and every of the foregoing obligations shall be a material default under this lease which if not cured within five (5) days of Landlord's notice, or sooner if an emergency, dangerous, or hazardous condition exists in, at, on or upon, or about the Demised Premises, shall entitle Landlord to pursue all remedies available in law, at equity and/or under this lease.

(D) Tenant shall indemnify and save Landlord and its successors and assigns and their respective officers, directors, shareholders, partners, agents and employees and the Demised Premises and the Building harmless against any and all claims, obligations, liabilities, violations, penalties, fines, suits, governmental orders, causes of actions, judgments, damages, whether civil or criminal or both, of any and all kind or nature which result from or are in any way connected with a breach or default by Tenant of the foregoing agreement and/or which Landlord may be subject in connection with any Hazardous Substances resulting from or in connection with the discharge, despoiler, release or escape of smoke, vapors, soot fumes, acids, alkalis, toxic chemicals, liquids or gases, volatile organics, waste materials or other irritants, contaminants or pollutants or otherwise at the Demised Premises, caused by or resulting from the use and operation of the Demised Premises by Tenant, its successors and assigns and/or by reason of Tenant's invitees, licensees, employees, officers, agents, servants, etc. in any case whether or not Tenant has complied with its obligations pursuant to this Article. This indemnification and save harmless agreement shall also cover any and all liens for hazardous waste clean up expenses in favor of the United States, New York State, or any political subdivision thereof, and any governmental department of any of the foregoing. This indemnification shall include, but not be limited to, legal fees and other charges to which Landlord may be put, including clean up costs, in defending against any proceeding in connection with the foregoing.

(E) (1) Landlord hereby notifies Tenant, in accordance with the Occupational Safety and Health Administration asbestos rule (1995), 59 Fed. Reg. 40964, 29 CFR 1910.1001, 1926.1101, clarification 60 Fed. Reg. 33974 ("OSHA Asbestos Rule"), of the possible presence of asbestos containing materials ("ACMs") and/or presumed asbestos containing materials ("PACMs"), as such term is defined in the OSHA Asbestos Rule, in the Demised Premises.

(2) By the execution hereof, Tenant acknowledges receipt of such notification in paragraph (E)(1) hereof and understands, after having consulted with its legal counsel, that the purpose of such notification is to make Tenant, its agents, employees, and contractors aware of the presence of ACMs and/or PACMs in the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs.

(F) Tenant shall advise each of its contractors, agents and employees of the contents of the disclosure set forth in (E)(1) above, prior to commencement of any of the following activities within or about the Premises:

(1) Removal of thermal system insulation (TSI) and surfacing ACMs and PACMs (i.e., sprayed-on or troweled-on material, e.g., textured ceiling paint or fireproofing material);

(2) Removal of ACMs or PACMs that are not TSI or surfacing ACMs and PACMs;

(3) Repair and maintenance of operations that are likely to disturb ACMs or PACMs; and

(4) Custodial and housekeeping activities where even minimal contact

with ACMs or PACMs may occur.

72. TENANT IMPROVEMENTS. All improvements upon the Demised Premises and any replacements therefor, including, but not limited to, all air-conditioning or heating systems, electrical and plumbing systems, drop ceiling, elevators, lighting systems, HVAC system, alarm system, sprinklers, paneling, decorations, partitions, storefront, storefront gates, railings, affixed to the realty, except furniture or movable trade fixtures installed at the expense of Tenant, shall become the property of the Landlord and shall remain upon, and be surrendered with, the Demised Premises as a part thereof at the termination of this lease, without compensation to Tenant.

73. COMPLIANCE WITH LAWS. Tenant shall comply with all federal, state, county, municipal, and other governmental laws, ordinances, rules and regulations now or hereafter affecting the Demised Premises, Tenant's business, or any activity or condition on or about the Demised Premises, including, without limitation, the Americans With Disabilities Act, and all environmental laws and any other laws relating to the improvements on the Demised Premises or the air in and around the Demised Premises (collectively, the "Laws"). Notwithstanding the generality of any of this Article, and following the completion of Tenant's Initial Work, Tenant shall in no event be obligated to perform or bear the cost of any work or repair within the Demised Premises of a structural nature in order to comply with any Laws applicable to the Demised Premises, unless the necessity therefore arises solely by reason of Tenant's work, installations or alterations made by Tenant, Tenant's specific use or occupancy or any other cause created by Tenant or by Tenant's employees, contractors, or agents. Tenant warrants that its business and all activities to be conducted or performed in, on, or about the Demised Premises shall comply with all of the Laws. Tenant agrees to change, reduce, or stop any such activity, or install necessary equipment, safety devices, pollution control systems, or other installations at any time during the lease to so comply. If, during the lease, Landlord or Tenant is required to alter, convert, or replace the HVAC system serving the Demised Premises in order to comply with any of the Laws concerning indoor air pollution or quality, or in order to meet any applicable limitation on, standard for, or guideline relating to indoor air quality or the emission of any indoor air pollutant, including, without limitation, those adopted by the Occupational Safety and Health Administration, the American Society of Heating, Refrigeration, and Air Conditioning Engineers, or the Environmental Protection Agency, Tenant shall be responsible for paying the costs of any such conversion or replacement, including, without limitation, the purchase and installation of new equipment, and the alteration of existing HVAC equipment in the Demised Premises to accommodate any new equipment.

74. ATTORNEYS' FEES. In the event that: (a) Landlord institutes summary or other proceedings to recover possession of the Demised Premises, (b) Landlord institutes a lawsuit to recover rent, additional rent or other payments due under this lease, (c) Landlord or Tenant institutes a lawsuit to recover damage for the breach of any of the terms of this lease, (d) Landlord or Tenant institutes a lawsuit to determine the obligations of Landlord or Tenant under this lease, or (e) Landlord or Tenant institutes any arbitration or mediation, and Landlord or Tenant, as the case may be, is successful in any of such matters, it is specifically agreed that the prevailing party shall recover from the other party, in addition to all items which such party may be entitled to recover in law or in equity, reasonable attorneys' fees, and the costs and disbursements of said proceeding. Said payments, if due and payable to Landlord, shall be due as additional rent hereunder.

75. RIGHT TO CURE DEFAULTS. If Tenant shall fail to comply with any of its obligations under this lease, Landlord, without thereby waiving such default and without liability to Tenant, may, but shall not be obligated to, perform the same for the account and at the expense of Tenant without notice in case of emergency and upon ten (10) days' prior notice in all other cases, provided, however, if the default is of a nature that it cannot with due diligence be cured within such ten (10) day period, then such ten (10) day period shall be extended for a reasonable period provided Tenant has commenced to cure during such ten (10) day period and is diligently and in good faith continuing to cure such default as determined by Landlord. Landlord may enter the Demised Premises at any time to cure any default. Bills for

all costs and expenses incurred by Landlord in connection with any such performance (including, without limitation, bills for any property, material, labor or services provided, furnished or rendered, and reasonable attorneys' fees and disbursements) shall be paid by Tenant as additional rent upon demand, and if Tenant's lease term shall have expired at the time of incurring such costs and expenses, such costs and expenses shall be recoverable by Landlord as damages.

76. USE AND OCCUPANCY. Tenant agrees to use, occupy, operate and maintain the Demised Premises throughout the term as a dignified first-class commercial retail store for the purposes set forth in paragraph 2 of the printed portion of this lease, and in a manner which shall not detract from the character, appearance or dignity of the Demised Premises, or which shall in anyway interfere with other tenants peaceful enjoyment of their occupancy. Tenant shall not cause any unusual or excessive sound to emanate from the Demised Premises. Tenant further agrees to discontinue and remove immediately after demand by Landlord, and as often as such demand shall be made, any exhibition, display (window or otherwise), or advertisement in or with respect to the Demised Premises or any parts thereof, of any article or material or the manner of exhibition, display or advertisement of same to which Landlord shall reasonably object (window or otherwise), (but nothing contained herein shall be deemed to grant to Tenant any right to install or maintain any such sign, advertisement, poster, exhibit or display). Any matter or object visible from the street and/or exterior of the Demised Premises deemed reasonably objectionable by Landlord shall be corrected or removed, as required by Landlord, to Landlord's satisfaction. All window displays shall be kept neat, orderly and fresh in appearance. All window and exterior elements of the Demised Premises shall be maintained (including, without limitation, frequent cleaning as directed by Landlord) by Tenant at Tenant's sole expense. Tenant covenants and agrees to remain open and fully lighted during the entire lease term during all business hours on all business days. Tenant acknowledges that Landlord's damages resulting from any breach of the provisions of this Article are difficult, if not impossible to ascertain and concedes that, among other remedies for such breach permitted by law or the provisions of this lease, Landlord shall be entitled to enjoin Tenant from any violation of said provisions.

77. Intentionally Deleted.

78. BANKRUPTCY. Without limiting any of the provisions of Articles 16, 17 or 18 hereof, if pursuant to the Bankruptcy Code of 1984, as the same may be amended, Tenant is permitted to assign this lease in disregard of the obligations contained in Articles 11 and 46 hereof, Tenant agrees that adequate assurance of future performance by the assignee permitted under such Code shall mean the deposit of cash security with Landlord in an amount equal to the sum of one year's base minimum rent then reserved hereunder plus an amount equal to all additional rent payable under this lease for the calendar year preceding the year in which such assignment is intended to become effective, which deposit shall be held by Landlord, without interest, for the balance of the Term as security for the full and faithful performance of all of the obligations under this lease on the part of Tenant yet to be performed. If Tenant receives or is to receive any valuable consideration for such an assignment of this lease, such consideration, after deducting therefrom (A) the brokerage commissions, if any, and other expenses reasonably incurred by Tenant for such assignment and (B) any portion of such consideration reasonably designated by the assignee as paid for the purchase of Tenant's property in the Demised Premises, shall be and become the sole and exclusive property of Landlord and shall be paid over to Landlord directly by such assignee. In addition, adequate assurance shall mean that any such assignee of this lease shall have a net worth, exclusive of good will, equal to at least fifteen (15) times the aggregate of the base minimum rent reserved hereunder plus all additional rent for the preceding calendar year as aforesaid.

79. PLAN SUBMISSIONS.

(A) Not later than twenty (20) days after the date of execution of this lease, Tenant shall notify Landlord of the identity and mailing address of the licensed architect engaged by Tenant for the preparation of plans for the Initial Work.

(B) Not later than thirty (30) days after the date of execution of this lease,

Tenant, at Tenant's expense, shall deliver to Landlord for Landlord's approval one (1) set of preliminary plans illustrating Tenant's design concept for the Initial Work. For purposes of this lease, the term "Initial Work" shall mean without limitation, the work set forth on Exhibit C annexed hereto and forming a part hereof. In this connection Tenant acknowledges that a major inducement for Landlord entering into this Lease has been Tenant's agreement and representation that it will fully and timely perform the Initial Work and Tenant agrees that its breach of this provision shall entitle Landlord to the remedies set forth in this Lease. Tenant covenants and agrees with Landlord that Tenant will diligently prosecute the Initial Work to completion and complete the Initial Work and open for business at the Demised Premises within ninety (90) days following the Commencement Date.

(C) Not later than fifteen (15) days after receiving Landlord's consent to Tenant's preliminary plans, Tenant, at Tenant's expense, shall prepare and deliver to Landlord for Landlord's approval two (2) sets of final plans for the Initial Work plus one (1) set.

(D) Landlord shall endeavor and make good faith efforts to review Tenant's plans within ten (10) business days after receipt thereof and notify Tenant of the matters, if any, in which said plans fail to meet with Landlord's approval. Tenant shall cause said plans to be revised in such manner as to comply with Landlord's requirements within ten (10) days after Landlord's notice to Tenant and Tenant shall submit revised plans for Landlord's approval. When Landlord has approved Tenant's plans or revised plans, as the case may be, Landlord shall initial and return one (1) set of approved plans to Tenant showing the date of Landlord's approval. Tenant shall not commence any work within the Demised Premises until Landlord has approved Tenant's final plans, unless Landlord's prior approval has been obtained in writing. Notwithstanding anything to the contrary contained herein, Landlord's approval of any plans submitted by Tenant pursuant to this lease or otherwise is not intended and shall not be deemed to constitute a representation, warranty or assurance of any kind that such plans and the Initial Work shown thereon comply with applicable laws or that the same are structurally sound and Tenant shall be solely responsible for causing such compliance and for the quality and structural integrity of any Initial Work and Tenant acknowledges that it is not relying on Landlord or any of its agents for the same.

80. CONSTRUCTION. It is understood and agreed that all contractors performing work on behalf of Tenant, and all contracts entered into by Tenant, shall provide the following:

(A) All contractors will perform any Tenant improvements and furnish the required materials on the sole credit of Tenant; that no lien for labor or materials will be filed or claimed by any contractor or sub-contractor against the Demised Premises, and following the completion of the performance of all work at the Demised Premises, Tenant shall furnish to Landlord lien waivers from all contractors, subcontractors and materialmen who have performed work or supplied materials to the Demised Premises. In the event that a lien is filed, the Tenant will immediately discharge any such lien filed or claimed by any suppliers, laborers or subcontractors, and Tenant and the contractor will indemnify and save Landlord harmless from any and all costs and expenses, including reasonable attorney's fees suffered or incurred as a result of any such lien that may be filed or claimed in connection with or arising out of work undertaken by said contractor.

(B) All contractors shall furnish and pay for: (1) a bond of a bonding company, licensed to do business in the State of New York, assuring the performance of the contract and payment of all obligations arising thereunder, in such form and in such amount as Landlord may require and wherein Landlord is named as co-obligee; or (2) a guarantee of such construction in such form, and guaranteed by such party, as Landlord may require; or (3) a letter of credit in an amount equivalent to 125% of the contract sum, issued by a banking organization operating under Federal or State laws, in such form as may be satisfactory to Landlord.

81. COMMENCEMENT DATE.

(A) The parties hereto acknowledge and agree that the commencement date of this lease (the "Commencement Date") shall be May 1, 1999, at which time Landlord shall be

deemed to have tendered occupancy of the Demised Premises to Tenant. On the Commencement Date, the Demised Premises shall be delivered in broom clean condition, free and clear of all leases and tenancies. Landlord shall not be required to perform any work in order to effectuate delivery of possession of the Demised Premises to Tenant; provided, however, that promptly following the Commencement Date of this lease, Landlord agrees to commence to perform the work (the "Landlord Work") set forth on Exhibit D annexed hereto and forming a part hereof, and diligently prosecute same to completion.

(B) Notwithstanding anything to the contrary contained herein, Tenant's obligation to pay base annual rent shall not commence or begin to accrue until July 1, 1999.

(C) Provided Tenant is not in material default of any of the terms, covenants or conditions to be performed or observed under this lease after notice and expiration of the applicable cure period; (x) Tenant completes, to Landlord's reasonable satisfaction, Tenant's Initial Work; (y) Tenant has paid the sum of \$100,000.00 in hard costs for work, labor and materials incorporated into the Initial Work, as certified to Landlord by the licensed architect supervising the Initial Work; and (z) Tenant has opened for business at the Demised Premises (herein, collectively, the "Opening Requirements"), Tenant shall be entitled to a concession of \$20,833.33 per month against the base annual rent otherwise payable under this lease for each of the thirteenth and fourteenth months following the month in which the Opening Requirements have been met.

(D) When the Commencement Date of the lease term has been determined, Landlord and Tenant shall execute, acknowledge and deliver a written statement, in recordable form, stating: (i) the Commencement Date and expiration dates of the term, (ii) that Tenant is in possession of the Demised Premises and is paying rent and all other charges hereunder (to the extent such statement is true and correct); and (iii) that Tenant and Landlord have no claims, defenses, offsets or counter-claims against the other party (or if so, specifying the nature and amount thereof).

82. DIAGRAM. Tenant acknowledges that it has been informed by Landlord that any diagram or architectural plan, either attached to this lease or previously forwarded to Tenant or hereinafter provided to Tenant by Landlord, or by Tenant to Landlord, is solely for the purpose of identifying the Demised Premises and Landlord has made no representation and is unwilling to make any representation and nothing in this lease shall be deemed or construed to be a representation or covenant as to the dimensions of and/or the square foot area contained in the Demised Premises.

83. LIENS.

(A) In the event any notice of mechanic's lien shall be filed against the Demised Premises by reason of work, labor, and services alleged to have been rendered and/or materials alleged to have been furnished to Tenant or to any person on behalf of Tenant, Tenant shall cause such notice of lien to be discharged, by either payment or by bond, within ten (10) days after the filing thereof. If Tenant shall fail or refuse to discharge such lien within said period, Landlord may cause the said notice of lien to be removed or vacated, by the filing of a bond pursuant to court order, and Tenant agrees to pay, as additional rent and on demand, all provable out-of-pocket costs and expenses, including reasonable attorneys' fees, that Landlord has incurred by virtue of the removal of the lien on the Demised Premises.

(B) With respect to any improvements or alterations made by Tenant under this lease, if the same shall require a new Certificate of Occupancy, Tenant shall make prompt application therefor at its expense and pursue the same diligently and deliver it to Landlord when issued. Notwithstanding anything to the contrary contained herein, Tenant warrants and represents that it will obtain, within six (6) months of the Commencement Date of this lease, a new Certificate of Occupancy for the Demised Premises, authorizing Tenant to conduct business for the purposes set forth in this lease. In addition thereto, Tenant shall have sole responsibility and at Tenant's sole cost for obtaining all municipal licenses in order to commence business operations at the Demised Premises. Failure by Tenant to obtain a new Certificate of Occupancy or receive necessary licenses shall have no effect on its obligation to

make all of the payments required hereunder. Tenant further acknowledges and agrees to indemnify Landlord and hold Landlord harmless from any liability which Landlord may incur by reason of Tenant's failure to obtain any permit or certificate of occupancy for the Demised Premises.

#### 84. OPTION TO CANCEL.

(A) If Landlord or any successor landlord shall determine to demolish or substantially rehabilitate the Building in which the Demised Premises is located at any time during the term of this lease, and has filed plans and obtained all necessary permits to undertake such demolishing or rehabilitation, as the case may be, then and in such event, Landlord shall have the option to cancel this lease, provided Landlord notifies Tenant in writing of its intention to cancel; and such notice shall specify a cancellation date which shall be at least 180 days after the date of such notice (the "Cancellation Date").

(B) The parties acknowledge that Landlord have possession of the Demised Premises free of tenancies and all other rights of occupancy on the Cancellation Date. Tenant covenants and agrees (i) that this lease shall terminate on the Cancellation Date with the same force and affect as though said date were initially set forth as the expiration date of this lease, (ii) to vacate the Demised Premises at the close of business on the Cancellation Date and agrees that time shall be of the essence with respect to such time and date and (iii) Tenant shall remain responsible for all of Tenant's obligations under this lease accruing prior to the Cancellation Date.

(C) If Tenant fails for any reason to vacate the Demised Premises by the close of business on Cancellation Date, then Tenant agrees the measure of damages to be sustained by Landlord as a result thereof are substantial, but unascertainable as of date of execution of this lease and Tenant agrees to pay for use and occupancy of the Demised Premises \$2,500.00 for each and every day that Tenant shall remain in possession of the Demised Premises beyond the Cancellation Date; and if Landlord institutes a summary proceeding to evict Tenant, Tenant consents to the issuance of a final judgment in said summary proceeding, waives any stay of the issuance or execution of the warrant, and consents to an order by the court fixing use and occupation in the sum of \$2,500.00 per day, and in addition, Tenant hereby agrees to pay Landlord's attorneys fees in the sum of \$10,000.00. Nothing herein contained shall be deemed to constitute consent of Landlord to Tenant remaining in possession of the Demised Premises beyond the Cancellation Date.

(D) In the event that (i) Landlord elects to terminate this lease pursuant to paragraph (A) hereof; and (ii) Tenant shall have vacated the Demised Premises in accordance with the provisions of paragraph (B) hereof, and shall not otherwise be in default of any of the terms and conditions of this lease at the time the premises are so vacated, then and in such event, Landlord, within ninety (90) days after the Cancellation Date, shall pay to Tenant an amount equal to the unamortized value of Tenant's Leasehold Improvements (as hereinafter defined) paid for and actually incurred by Tenant in connection with Tenant's Initial Work at the Demised Premises. Said amortization shall be determined on the straight-line depreciation method allowed by the Internal Revenue Code of 1986 (as amended) assuming a depreciation period commencing with the placement in service of such Tenant's Leasehold Improvements and ending on December 31, 2009. For purposes of this lease, Tenant's Leasehold Improvements shall mean the lesser of: (x) \$150,000.00; and (y) the cost incurred by Tenant in connection with the Initial Work attributable to partitioning, electrical wiring, plumbing (other than plumbing fixtures), painting, wallpaper, and other permanent improvements installed, affixed or attached in or to the Premises, but shall not include (x) Tenant's inventory or stock in trade, (y) such trade fixtures, electrical fixtures equipment or apparatus as are removable by Tenant at the expiration of the term pursuant to this lease, or (z) Landlord's fixtures or other improvements installed by or at the expense of Landlord. In order for Tenant to be entitled to payment of the unamortized value of the Tenant's Leasehold Improvements as set forth in this Article, Tenant shall, within sixty (60) days after the date Tenant first opens for business at the Demised Premises, furnish to Landlord a statement, signed by an independent certified public accountant, setting forth in detail the cost of Tenant's Leasehold Improvements.



85. CASUALTY. Supplementing the provisions of Article 9 hereof, in the event Landlord elects to complete any repairs or restoration at the Demised Premises resulting from a casualty, Landlord shall not be obligated to commence any such repairs or restorations until and unless Landlord has received sufficient proceeds of all fire insurance policies to complete such repairs and/or restoration.

86. PAYMENT OF RENT. All charges, costs and sums required to be paid by Tenant under this lease shall be payable without demand, notice, offset or deduction. All charges, costs and sums required to be paid by Tenant under this lease shall be paid by checks payable to the order of Landlord, which checks shall be mailed or delivered to Landlord at the address hereinbefore set forth, or in such other manner or at such other place as Landlord may from time to time designate to Tenant in writing. Tenant's covenant to pay all charges, including rent and additional rent, due under this lease shall be independent of every other covenant in this lease. The obligations and liabilities of Tenant hereunder in no way shall be released, discharged or otherwise affected (except as expressly provided herein) by reason of: any damage to or destruction of, or any taking by condemnation or eminent domain of, the Building or the Demised Premises or any part thereof; any restriction on or interference with any use of the Building or the Demised Premises or any part thereof, including, but not limited to, any zoning restrictions or regulations; any title defect or encumbrance or any eviction from the Building or the Demised Premises or any part thereof by paramount title or otherwise; any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other similar proceeding relating to Landlord, or any action taken with respect to this lease by any trustee or receiver of Landlord, or by any court, in any such proceeding; any claim which Tenant has or might have against Landlord; any failure on the part of Landlord to comply with or perform any provision hereof or of any other agreement with Tenant; or any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Tenant shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Tenant waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this lease or the Demised Premises or any part thereof, or to receive any abatement, suspension, deferment, diminution or reduction of any rent payable by Tenant hereunder.

87. AUTHORITY. This writing contains the entire agreement between the parties hereto, and no agent, representative, salesman, or officer of either Landlord or Tenant hereto has authority to make or has made any statement, agreement or representation, either oral or written, in connection herewith, or modifying, adding or changing the terms and conditions herein set forth. No dealings between the parties or custom shall be permitted to contradict or modify any of the terms hereof. No modification or waiver of this lease or any of the terms hereof shall be valid or be binding unless such modification or waiver shall be in writing and signed by duly authorized officers of both of the parties hereto.

88. CONSTRUCTION OF LEASE. This lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this lease to be drafted. If any words or phrases in this lease shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this lease shall be construed as if the words or phrase so stricken out or otherwise eliminated were never included in this lease and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. All terms and words used in this lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

89. SECURITY AGREEMENTS. In the event that any of the machinery, fixtures, furniture and equipment installed by Tenant in the Demised Premises are purchased or acquired by Tenant subject to a chattel mortgage, conditional sale agreement or other title retention or security agreement, Tenant undertakes and agrees (i) that no such chattel mortgage, conditional sale agreement or other title retention or security agreement or Uniform Commercial Code filing statement shall be permitted to be filed as a lien against the Building and real property, of which the Demised Premises form a part, and (ii) to cause to be inserted in any of the above described title retention, chattel mortgage or security agreements the

following provision:

"Notwithstanding anything to the contrary herein, this chattel mortgage, conditional sale agreement, title retention agreement or security agreement shall not create or be filed as a lien against the land, building and improvements comprising the real property in which the goods, machinery, equipment, appliances or other personal property covered hereby are to be located or installed. It is further understood that if the machinery, fixtures, furniture or equipment for which this chattel mortgage, or the like, is not removed from the Demised Premises within fifteen (15) days following the termination of this lease, it shall be understood and agreed that such personalty shall be presumed to be of no value and Landlord shall be authorized to remove such property, at the Demised Premises, at Tenant's sole cost and expense, or retain such property as Landlord's property without payment to Tenant or any third party."

90. NOTICES. Any notice from Landlord to Tenant or from Tenant to Landlord shall be sent by certified mail, return receipt requested, or recognized overnight courier. All notices shall be addressed or delivered, if to:

To Landlord: 181<sup>st</sup> Washington Heights Associates LLC  
1000 Pennsylvania Avenue  
Brooklyn, New York 11207  
Attn: Joseph Chehebar

With a Copy To: Seltzer Sussman & Habermann LLP  
Attn: Glenn I. Habermann, Esq.  
100 Jericho Quadrangle  
Jericho, New York 11753

To Tenant: Washington Heights Convertibles, Inc.  
c/o Jennifer Convertibles, Inc.  
419 Crossways Park Drive  
Woodbury, New York 11797

With a Copy To: Law Offices Wincig & Wincig  
Attn: Bernard Wincig, Esq.  
574 Fifth Avenue  
New York, New York 10036

All notices shall be deemed given when received, or if delivery is refused, when delivery is attempted. Notwithstanding the foregoing, Tenant shall be entitled to designate only one (1) address for submission of notices to Tenant, which may be either its home office or the Demised Premises. The attorneys for both Landlord and Tenant may submit notices on behalf of their respective clients.

91. CONTINUOUS OPERATIONS. Recognizing the difficulty or impossibility of determining Landlord's damages for loss of value of the Demised Premises because of diminished salability, mortgagability, adverse publicity or appearance which may result from any one or more of the events hereinafter enumerated, Landlord and Tenant covenant and agree that in the event that Tenant (i) fails to take possession of, construct, and perform all of the Initial Work and open the Demised Premises for business fully fixtured, stocked and staffed within one hundred twenty (120) days after the Commencement Date, or (ii) vacates or abandons the Demised Premises for reasons within its reasonable control, or (iii) ceases to operate Tenant's business within the Demised Premises in full compliance with the use and business hours requirements set forth below, then and in any of such events, Landlord shall have the right, at its option, to (a) collect not only the base annual rent and additional rent reserved, but also an amount equal to twenty-five (25%) percent of the base annual rent reserved for the period or periods during which any of the aforementioned events shall continue, prorated on a daily basis for each and every day during such period, such additional amount to constitute liquidated damages, and/or (b) to treat such action or omission by Tenant

as an event of default as hereinabove described and to exercise any remedy therefor, whether reserved in this lease or available at law or in equity, including, without limitation, specific performance or termination of this Lease or Tenant's right to possession. For purposes of this paragraph, the terms "vacate(s)" and "abandon(s)" shall not be abrogated because Tenant may have left all or any part of its trade fixtures, furniture, furnishings or stock-in-trade within the Demised Premises. Notwithstanding anything to the contrary contained in this lease, Tenant agrees to operate its business within the Demised Premises in the same manner as Tenant operates a majority of its other stores located in the New York City metropolitan area; and Tenant shall keep the Demised Premises open for business during the same days and hours that a majority of Tenant's other stores located in the New York City metropolitan area are also open, but not less than sixty (60) hours per week. However, in no event shall Tenant be obligated to open the Demised Premises for business on legal holidays or to the extent Tenant is prevented from opening its business because of strikes, fires, casualty or other causes beyond Tenant's reasonable control, or during reasonable periods of repairing, remodeling, cleaning or decorating the Demised Premises and for up to four (4) days a year for the purpose of performing physical inventories at the Demised Premises. Notwithstanding anything in the lease to the contrary, in the event Tenant discontinues business operations at the Demised Premises for a period of thirty (30) days or longer, then Landlord may treat such condition as a default under this lease, and in addition to all remedies available to Landlord under this lease, terminate this lease upon fifteen (15) days prior notice to Tenant, provided Landlord may not terminate this lease if the closing of Tenant's business is due to strikes, required repairs, casualty or remodeling, provided Tenant is proceeding with any repair work for which Tenant is responsible or with any remodeling with diligence and good faith.

92. ACTIONS OF LANDLORD. Whenever Landlord shall enter, or perform any work in or about the Premises, such entry shall be made, and such work shall be performed, to the extent reasonably practicable, without intentionally and materially interfering with the conduct of Tenant's business, but nothing contained herein shall require Landlord to perform such work on an overtime basis.

93. IMPUTATION. For purposes of this lease, the negligence, affirmative act or violation of the provisions of this lease by an employee or agent of Landlord or Tenant, or by a contractor, employed by Landlord or Tenant, shall be the negligence, affirmative act or violation of the provisions of this lease of Landlord or Tenant, as the case may be.

94. INTERIOR SIGNS. Notwithstanding anything to the contrary contained herein, Tenant shall be entitled to place, maintain, and Landlord shall allow to be permitted, placed and maintained appropriate dignified displays of customary type for its display windows on the interior of the window area, or elsewhere on the Premises so as to be visible to the public as may be allowed by law; provided further that such signs are professionally made and neat in appearance. Tenant shall be permitted a "relocating sign" during the last sixty (60) days of this lease.

95. REMEDIES CUMULATIVE. Any and all rights and remedies that Landlord or Tenant may have under this lease, and at law and in equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two (2) or more of all such rights and remedies may be exercised at the same time insofar as permitted by law.

96. EFFECT OF WAIVERS ON DEFAULT. No consent or waiver, express or implied, by either party to or of any breach of any covenants, conditions or duty of the other shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty.

97. TERMS USED. The use of the following terms shall be interchangeable: Landlord and Owner. The use of the following terms shall be interchangeable: Premises, premises, demised premises, Demised Premises, and Leased Premises, unless the context requires otherwise.

98. MONETARY DEFAULT. Notwithstanding anything to the contrary contained

herein, Tenant shall not be in monetary default under any of the terms and conditions of this lease unless and until Landlord shall have given written notice to Tenant of such failure of non-payment, and such default continues for more than ten (10) days after the effective date of such notice as set forth in Article 90 hereof, but Landlord shall not be required to submit written notice of non-payment of rent and/or additional rent more than two (2) times in any consecutive twelve (12) month period.

99. **AUDIT RIGHTS.** Any statement rendered by Landlord to Tenant for Tenant's share of charges pursuant to Articles 41, 42, 44(I) and 45 of this lease, shall be deemed accepted by Tenant unless, within one (1) year after the receipt of such statement, Tenant shall notify Landlord in writing of the items it disputes. Pending the determination of such dispute, Tenant shall pay all amounts due as indicated on the statement and such payments shall be without prejudice to Tenant. If the dispute is not amicably settled between Landlord and Tenant within sixty (60) days after notice thereof, then Tenant may audit Landlord's records to verify the accuracy thereof, provided that: (a) Tenant specifically designates the year Tenant intends to audit, which shall be a year during the term that is also within one (1) year of the date of the audit; (b) such audit is conducted only during regular business hours at the office where Landlord maintains expense records; (c) Tenant gives Landlord a copy of the results of such audit within ten (10) days of its receipt by Tenant; (d) such audit must be conducted by Tenant's employees or an independent accounting firm that is not being compensated on a contingency fee basis; (e) no audit shall be conducted if Tenant has previously conducted an audit for the same time period; (f) such audit shall be at Tenant's sole cost and expense; (g) no more than one (1) audit per calendar year shall be conducted by Tenant and such audit, once commenced, shall be completed in a diligent and expeditious manner; (h) in the event Tenant exercises its audit rights to audit a period of time for which the books and records are held by another party, such information shall be obtained by Tenant, at Tenant's sole cost and expense, from the holder of such books and records; (i) no subtenant shall have any right to conduct an audit and no assignee shall conduct an audit for any period during which such assignee was not in possession of the Premises; and (j) any financial or other information provided by Landlord or obtained by Tenant as a result of such audit shall only be pursuant to duly executed confidentiality agreements between Landlord, Tenant and Tenant's agents and employees to whom disclosure is made. Tenant acknowledges that Landlord considers its financial and other operating information to be confidential and will not disclose such information to any third party without Landlord's prior written consent except to prospective buyers or lenders, Tenant's accountants and attorneys, or in the case of compliance with a subpoena or other legal process provided Tenant gives Landlord at least ten (10) days prior written notice of Tenant's receipt of such subpoena or legal process and Tenant's intent to disclose pursuant thereto. No such audit shall be conducted with respect to any items covered by an audit conducted by any other tenant within twelve (12) months preceding Tenant's request utilizing generally accepted accounting principles for the time period that Tenant intends to audit so long as Landlord furnishes Tenant with a copy of the results of such audit by such other tenant. Tenant shall have no right to conduct an audit at anytime that Tenant is in default of its obligations under this lease. Notwithstanding the fact that Tenant has elected to conduct such audit, Tenant shall not have the right to withhold or offset all or part of its share of Landlord's charges, which share Tenant shall pay to Landlord as and when due in accordance with the other terms of this lease. Should such audit disclose any deficiency, Tenant shall promptly pay the amount of such deficiency to Landlord. Should such audit disclose an excess, such excess shall be credited against Tenant's rent obligations hereunder, or of after the expiration of the term of this lease, such excess shall be promptly refunded to Landlord to Tenant so long as Tenant is not then in default hereunder beyond any applicable grace period.

## ADDITIONAL RULES AND REGULATIONS

Tenant expressly agrees as follows:

(a) All deliveries to or from the Premises shall be done only at such times, in the areas and through the entrances designated for such purposes by Landlord.

(b) All garbage and refuse shall be kept inside the Premises in the kind of container specified by Landlord, and shall be placed outside of the Premises prepared for collection in the manner and at the places specified by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's cost. Tenant shall pay the cost of removal of any of Tenant's refuse and garbage and maintain all common loading areas in a clean manner satisfactory to the Landlord. If any part of Tenant's business shall consist of the preparation and/or sale of food, including without limitation the operation of a restaurant, snack shop or food market, Tenant shall provide refrigerated garbage containers at Tenant's expense for the disposal of its food scraps and refuse.

(c) No radio or television aerial or other device shall be erected on the roof or exterior walls of the Premises or the building in which the Premises are located without first obtaining in each instance the Landlord's consent in writing. Any aerial or device installed without such written consent shall be subject to removal at Tenant's expense without notice at any time.

(d) No loud speakers, televisions, phonographs, radios, tape players or other devices shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of Landlord.

(e) Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures during all hours of the day and whether or not Tenant is open for business.

(f) The plumbing facilities shall not be used for any other purpose than that for which they are constructed; no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant.

(g) Tenant shall keep and maintain the Premises including, without limitation, exterior and interior portions, of all windows doors, and all other glass in a neat and clean condition.

(h) Tenant shall pay before delinquency all license or permit fees and charges of a similar nature for the conduct of any business in the Premises.

(i) Tenant shall store and/or stock in the Premises only such merchandise as Tenant is permitted to offer for sale in the Premises pursuant to this lease.

(j) Tenant shall not conduct or permit any fire, bankruptcy, auction or "going out of business" sale (whether real or fictitious) in the Premises, or utilize any unethical method of business operation.

(k) Tenant shall not perform any act or carry on any practice which may damage, mar or deface the Premises.

(l) Tenant shall not suffer, allow or permit any vibration, noise, light, odor or other effect to emanate from the Premises, or from any machine or other installation therein, or otherwise suffer, allow or permit the same to constitute a nuisance or otherwise interfere with the safety, comfort and convenience of Landlord or any of the other occupants of the Building or their customers, agents or invitees or any others lawfully in or upon the Building. Upon notice by Landlord to Tenant that any of the aforesaid is occurring, Tenant agrees forthwith remove or control the same.

(m) Tenant shall not store, display, sell or distribute any alcoholic beverages or any dangerous materials (including without limitation fireworks) unless specifically permitted in this lease.

(n) If the Premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalks and curb in front of said Premises clean and free from ice, snow, etc.

(o) The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed.

(p) Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Demised Premises, or permit or suffer the Demised Premises to be occupied or used in a manner offensive or objectionable to Landlord.

(q) Landlord shall have the right to prohibit any advertising by any Tenant which, in Landlord's opinion, tends to impair the reputation of Landlord or its desirability as a building for stores or offices, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

(r) Tenant shall not bring or permit to be brought or kept in or on the Demised Premises, any inflammable, combustible or explosive fluid, material, chemical or substance, or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the Demised Premises.

(s) Tenant shall not place a load on any floor of the Demised Premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Such installations shall be placed and maintained by Tenant at Tenant's expense in setting sufficient in Landlord's judgment to absorb and prevent vibration, noise and annoyance.

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CONFIDENTIAL

CONFIDENTIAL

American Society of Mechanical Engineers  
 345 Park Avenue, New York, N.Y. 10022-4193  
 Tel: 212 512 2000, Fax: 212 512 2099  
 Email: [info@asme.org](mailto:info@asme.org)

[illegible]

500 WEST 181 STREET

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ICB NO: 940110  
DATE 03/28/93  
CLASS BY: LA  
CLASS NO: 3  
FV. 0304

EXHIBIT B - BASE ANNUAL RENT

| <u>Term</u>          | <u>Base Annual Rent</u> | <u>Base Monthly Rent</u> |
|----------------------|-------------------------|--------------------------|
| 5/1/1999 - 4/30/2000 | \$250,000.00            | \$20,833.33              |
| 5/1/2000 - 4/30/2001 | \$250,000.00            | \$20,833.33              |
| 5/1/2001 - 4/30/2002 | \$250,000.00            | \$20,833.33              |
| 5/1/2002 - 4/30/2003 | \$275,000.00            | \$22,916.67              |
| 5/1/2003 - 4/30/2004 | \$275,000.00            | \$22,916.67              |
| 5/1/2004 - 4/30/2005 | \$275,000.00            | \$22,916.67              |
| 5/1/2005 - 4/30/2006 | \$302,500.00            | \$25,208.33              |
| 5/1/2006 - 4/30/2007 | \$302,500.00            | \$25,208.33              |
| 5/1/2007 - 4/30/2008 | \$302,500.00            | \$25,208.33              |
| 5/1/2008 - 4/30/2009 | \$332,750.00            | \$27,729.17              |
| 5/1/2009 - 4/30/2010 | \$332,750.00            | \$27,729.17              |
| 5/1/2010 - 4/30/2011 | \$332,750.00            | \$27,729.17              |



**Raymond A. Cohen**

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Email:  
RcohenEsq@aol.com

September 7, 2010

BMC Group, Inc.  
Attn.: Jennifer Convertibles Claims Processing  
18750 Lake Drive East  
Chanhassen, MN 55317

**Via Fed Ex**

**Re: Jennifer Convertibles, Inc. (Debtor); Case No.: 10-13779 (ALG), United States Bankruptcy Court, Southern District of New York**

Dear Sir/Madam:

Enclosed please find a completed and signed original Proof of Claim (with a summary and exhibits attached) of Unsecured Creditor, 181<sup>st</sup> Washington Heights Associates LLC. Per the Amended Notice of Chapter 11 Bankruptcy Case dated August 19, 2010, Claims may be submitted, via overnight mail, to the recipient and address noted above.

Please process the enclosed Proof of Claim and file with the Bankruptcy Court the enclosed Proof of Claim with the summary and exhibits attached.

If you require anything further, please call me.

Thank you.

Very truly yours,



Raymond A. Cohen