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| UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK (MANHATTAN) | | PROOF OF CLAIM | |
| In re: <div style="font-size: 1.2em; font-family: cursive;">JENNIFER CONVERTIBLES, INC</div> | | Case Number: <div style="font-size: 1.2em; font-family: cursive;">10-13779</div> | |
| NOTE: See Reverse for List of Debtors/Case Numbers/ important details. 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. | | <input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case. | |
| Name of Creditor and Address: the person or other entity to whom the debtor owes money or property <div style="font-family: cursive;"> ESCALLIER / GOODMAN CTO, 1000 DAKS c/o JEFFREY W. BROKER, ESQ BROKER & ASSOCIATES PC 18191 VAN KARMAN, SUITE 470 IRVINE, CA 92612-7114 </div> | | <div style="border: 1px solid black; padding: 5px; display: inline-block;"> RECEIVED SEP 27 2010 BMC GROUP </div> | |
| Creditor Telephone Number (949) 222-2000 | | | |
| Name and address where payment should be sent (if different from above): <div style="font-family: cursive;"> c/o JANE YOUNG 27569 ETHAN ALLEN WAY SUN CITY, CA 92585-9149 </div> | | | |
| Payment Telephone Number (951) 679-8810 | | If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again. THIS SPACE IS FOR COURT USE ONLY <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Claim Number (if known): _____ Filed on: _____ | |
| 1. AMOUNT OF CLAIM AS OF DATE CASE FILED \$ 40,254.00 <small>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. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim qualifies as an administrative expense under 11 U.S.C. § 503(b)(9), complete item 6.</small> <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. | | | |
| 2. BASIS FOR CLAIM: <div style="font-family: cursive; border: 1px solid black; padding: 2px;">UNPAID RENT, UNPAID PROPERTY TAXES</div> | | 3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR: 3a. Debtor may have scheduled account as: _____ | |
| 4. SECURED CLAIM (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information Nature of property or right of setoff: Describe: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Property: \$ _____ Annual Interest Rate: _____ % if any: \$ _____ Basis for Perfection: _____ Secured Claim Amount: \$ _____ DO NOT include the priority portion of your claim here. Unsecured Claim Amount: \$ _____ Amount of arrearage and other charges as of time case filed included in secured claim, _____ | | | |
| 5. PRIORITY CLAIM <input type="checkbox"/> Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). Include ONLY the priority portion of your unsecured claim here. If any portion of your claim falls in one of the following categories, check the box and state the amount. Unsecured Priority Claim Amount: \$ _____ You MUST specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <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). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <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). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (_____). <small>* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small> | | | |
| 6. AMOUNT OF CLAIM THAT QUALIFIES AS AN ADMINISTRATIVE EXPENSE UNDER 11 U.S.C. § 503(b)(9): \$ _____ <small>See instruction #6 on reverse side</small> | | | |
| 7. CREDITS: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. | | | |
| 8. SUPPORTING DOCUMENTS: <u>Attach redacted copies of supporting documents</u> , such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See instruction 8 and definition of "redacted" on reverse side.) If the documents are not available, please explain. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. | | | |
| The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before _____:00 pm, prevailing Eastern Time on _____, 2010 for Non-Governmental Claimants OR on or before _____, 2010 for Governmental Units. <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> BY MAIL TO: BMC Group, Inc Attn: Jennifer Convertibles Claims Processing PO Box 3020 Chanhassen, MN 55317-3020 </div> <div style="width: 45%;"> BY HAND OR OVERNIGHT DELIVERY TO: BMC Group, Inc Attn: Jennifer Convertibles Claims Processing 18750 Lake Drive East Chanhassen, MN 55317 </div> </div> | | | THIS SPACE FOR COURT USE ONLY <div style="border: 1px solid black; padding: 5px; display: inline-block;"> Jennifer Convertibles  00120 </div> |
| DATE 9-27-10 SIGNATURE: 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. <div style="font-family: cursive; font-size: 1.2em;">Jeffrey Broker, attorney for claimants</div> | | | |

EXTENSION AGREEMENT

LANDLORD NAME: BARBARA C. ESCALLIER, Trustee of the Charles R. Escallier Testamentary Trust as to an undivided 3/7 interest; JEFFREY V. ESCALLIER, an unmarried man, as to an undivided 1/7 interest; and GOODMAN FAMILY PARTNERS, a Texas Limited Partnership, ADRIAN B. GOODMAN, General Partner, as to an undivided 3/7 interest.

ADDRESS: C/O Jane Young, Owners Representative
27569 Ethan Allen Way
Sun City, CA 92585-9149

TENANT NAME AND ADDRESS: JENNIFER CONVERTIBLES, INC.
417 Crossways Park Drive
Woodbury, New York 11797

DATE OF LEASE: December 1, 1993 as extended through exercise of option terms

EXTENDED TERM: Commencement date: March 1, 2009
Termination Date: February 28, 2013

OPTION TERM: None

PREMISES: 125 North Moorpark Road
Thousand Oaks, CA 91360-4417

EFFECTIVE DATE: February 28, 2009

R E C I T A L

Landlord and Tenant have agreed to extend the Lease in the manner hereinafter set forth.

NOW, THEREFORE, for and in consideration of the covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are confessed and acknowledged by each of the parties hereto, it is agreed as follows:

1. The Term of the Lease shall be extended for four (4) years commencing on the 1st day of March, 2009 and ending at midnight on the 28th day of February, 2013
2. During the Term, Tenant shall pay Basic Annual Rent to the Landlord in monthly installments as follows:

| Period | Annual | Monthly |
|-------------------------|-------------|------------|
| 03/01/2009 - 02/28/2013 | \$84,000.00 | \$7,000.00 |

3. Except as otherwise provided for herein, in addition to Basic Annual Rent, Tenant shall pay additional Rent as provided for at Article 7.1, 10 and 53 of the Lease, including but not limited to Maintenance and Real Estate Taxes.

4. Provided Tenant is current with all rent and additional obligations under the Lease beyond any applicable notice and cure periods, Tenant shall have the right to terminate this Lease on twelve (12) months prior written notice given no earlier than March 1, 2010.
5. All notices to the Tenant shall be addressed to:

Jennifer Convertibles, Inc.
417 Crossways Park Drive
Woodbury, NY 11797

Attention: Edward B. Seidner

with a copy to the Law Offices of:

Wincig & Wincig
137 Fifth Avenue
New York NY 10036

Attention: Owen Wincig, Esquire

6. Except as expressly modified in this Agreement, all the terms, covenants and conditions of said Lease shall remain in full force and effect, shall be binding on the parties hereto and are ratified and affirmed.

IN WITNESS WHEREOF, the parties hereto have set their hand and seal the day and year first above written and declare this First Modification of Lease Agreement to be binding on them, their respective successors and permitted assigns.

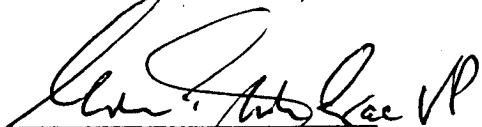
TENANT:

LANDLORD:

JENNIFER CONVERTIBLES, INC


BARBARA C. ESCALLIER, Trustee

By:


Edward B. Seidner
Executive Vice President


JEFFREY V. ESCALLIER

GOODMAN FAMILY PARTNERS,
a Texas Limited Partnership

By:


Adrian B. Goodman,
General Partner

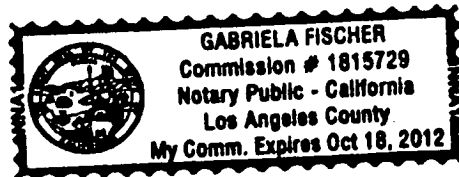
STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

On the 19th day of February before me, Gabriela Fischer, Notary Public, personally appeared BARBARA C. ESCALLIER, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public *Gabriela Fischer* (Seal)



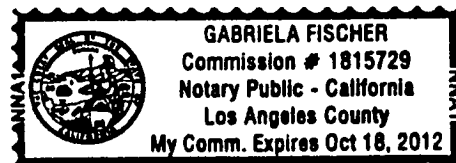
STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

On the 19th day of February before me, Gabriela Fischer, Notary Public, personally appeared JEFFREY V. ESCALLIER, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public *Gabriela Fischer* (Seal)



STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

On the 12th day of February before me, Vivian A. Patel Notary Public, personally appeared ADRIAN B. GOODMAN, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Vivian A. Patel (Seal)



STATE OF NEW YORK)
) ss.:
COUNTY OF New York)

On the 3 day of February before me, _____, personally appeared EDWARD B. SEIDNER, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Owen Wincig (Seal)

OWEN WINCIG
NOTARY PUBLIC, State of New York
No. 02WM4714599
Qualified in New York County
Commission Expires Feb. 28, 2011



STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE—NET

(Do not use this form for Multi-Tenant Property)

Basic Provisions ("Basic Provisions")

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only, December 1, 1993, is made and between Barbara C. Escallier, Trustee of the Charles R. Escallier Testamentary Trust, as to an undivided 3/7 interest; Jeffrey V. Escallier, an unmarried man as to a 1/7 undivided interest; and Adrian Goodman and Ann A. Goodman, co-trustees of the Adrian and Ann Goodman Trust, as to a 3/7 undivided interest (Lessor) and Unifer Convertibles, Inc., a Delaware Corporation ("Lessee"), collectively the "Parties," or individually a "Party".

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this lease, and commonly known by the street address of 125 N. Moorpark Road, Thousand Oaks, CA 91360 located in the County of Ventura State of California and generally described as (describe briefly the nature of the property) a two-story retail building with 3,200 sq. ft. the ground floor and a 2,050 sq. ft. mezzanine.

("Premises"). (See Paragraph 2 for further provisions.)

1.3 **Term:** Five years and months ("Original Term") commencing December 1, 1993 ("Commencement Date") and ending November 30, 1998 ("Expiration Date"). (See Paragraph 3 for further provisions.)

1.4 **Early Possession:** Lessor grants Lessee an option to commence lease at any "Early Possession Date". (See Paragraphs 3.2 and 3.3 for further provisions.) earlier date if this lease is fully executed.

1.5 **Base Rent:** \$6,250.00 per month ("Base Rent"), payable on the first day of each month commencing with rent of \$3,125.00 for the four months commencing February 1, 1994 through January 31, 1994. There shall be free rent for the two months commencing December 1, 1993 through January 31, 1994. (See Paragraph 4 for further provisions.)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 **Base Rent Paid Upon Execution:** \$18,750.00 which shall apply to the months of June, 1994, November 1996 and November, 1998.

1.7 **Security Deposit:** \$18,750 to be applied per Paragraph 1.6 ("Security Deposit"). (See Paragraph 5 for further provisions.)

1.8 **Permitted Use:** Retail sales of convertible sofas and related accessories.

(See Paragraph 6 for further provisions.)

1.9 **Insuring Party:** Lessor is the "Insuring Party" unless otherwise stated herein. (See Paragraph 8 for further provisions.)

1.10 **Real Estate Brokers:** The following real estate brokers (collectively, the "Brokers") and brokerage relationships exist in this transaction and are consented to by the Parties (check applicable boxes):

Lessor shall be responsible for real estate commission due Grubb & Ellis represents ☒ Lessor exclusively ("Lessor's Broker"); ☐ both Lessor and Lessee, and

represents

☐ Lessee exclusively ("Lessee's Broker"); ☐ both Lessee and Lessor. (See Paragraph 15 for further provisions.)

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by See See "Guaranty of Lease" American Industrial Real Estate Association. ("Guarantor"). (See Paragraph 37 for further provisions.)

1.12 **Addenda.** Attached hereto is an Addendum or Addenda consisting of Paragraphs 49 through 85 and Exhibits all of which constitute a part of this Lease.

Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of square footage set forth in this Lease, or that may have been used in calculating rental, is an approximation which Lessor and Lessee agree is reasonable and the rental based thereon is not subject to revision whether or not the actual square footage is more or less.

2.2 **Condition.** Lessor shall deliver the Premises to Lessee clean and free of debris on the Commencement Date and warrants to Lessee that the existing plumbing, fire sprinkler system, lighting, air conditioning, heating, and loading doors, if any, in the Premises, other than those constructed by Lessee, shall be in good operating condition on the Commencement Date. If a non-compliance with said warranty exists as of the Commencement Date, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within thirty (30) days after the Commencement Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.

2.3 **Compliance with Covenants, Restrictions and Building Code.** Lessor warrants to Lessee that the improvements on the Premises comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances in effect on the Commencement Date. Said warranty does not apply to the use to which Lessee will put the Premises or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made to be made by Lessee. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within six (6) months following the Commencement Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.

2.4 **Acceptance of Premises.** Lessee hereby acknowledges: (a) that it has been advised by the Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical and fire sprinkler systems, security, environmental aspects, compliance with Applicable Law, as defined in Paragraph 6.3) and the present and future suitability of the Premises for Lessee's intended use, (b) that Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to Lessee's occupancy of the Premises under the term of this Lease, and (c) that neither Lessor, nor any of Lessor's agents, has made any oral or written representations or warranties with respect to the said matters other than as set forth in this Lease.

3.3 Delay In Possession. If for any reason Lessor cannot deliver possession of the Premises to Lessee as agreed herein by the Early Possession Date, no is specified in Paragraph 1.4, or, if no Early Possession Date is specified, by the Commencement Date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease, or the obligations of Lessee hereunder, or extend the term hereof, but in such case, Lessee will not, except as otherwise provided herein, be obligated to pay rent or perform any other obligation of Lessee under the terms of this Lease until Lessor delivers possession of the Premises to Lessee. If possession of the Premises is not delivered to Lessee within sixty (60) days after the Commencement Date, Lessee may, at its option, by notice in writing to Lessor within ten (10) days thereafter, cancel this Lease, in which event the Parties shall be discharged of all obligations hereunder; provided, however, that if such written notice by Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease shall terminate and be of no further force or effect. Except as may be otherwise provided, and regardless of when the term actually commences, if possession is not tendered to Lessee when required by this Lease and Lessee does not terminate this Lease, as aforesaid, the Lessee shall be deemed free of the obligation to pay Base Rent, if any, that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts, omissions or omissions of Lessee.

Rent.

4.1 Base Rent. Lessee shall cause payment of Base Rent and other rent or charges, as the same may be adjusted from time to time, to be received by Lessor in lawful money of the United States, without offset or deduction, on or before the day on which it is due under the terms of this Lease. Base Rent and all other rent and charges for any period during the term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of the calendar month involved. Payment of Base Rent and other charges shall be made to Lessor at its address stated herein to such other persons or at such other addresses as Lessor may from time to time designate in writing to Lessee.

Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit set forth in Paragraph 1.7 as security for Lessee's faithful performance of Lessee's obligations under this Lease. If Lessee fails to pay Base Rent or other rent or charges due hereunder, or otherwise defaults under this Lease (as defined in Paragraph 13.1), Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, cost, expense, loss or damage (including attorneys' fees) which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of said Security Deposit, Lessee shall within ten (10) days after written request therefor deposit moneys with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Any time the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional moneys with Lessor sufficient to maintain the same ratio between the Security Deposit and the Base Rent as those amounts are specified in the Basic Provisions. Lessor shall not be required to keep or any part of the Security Deposit separate from its general accounts. Lessor shall, at the expiration or earlier termination of the term hereof and after Lessee has vacated the Premises, return to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest herein), that portion of the Security Deposit not used or applied by Lessor. Unless otherwise expressly agreed in writing by Lessor, no part of the Security Deposit shall be considered as held in trust, to bear interest or other increment for its use, or to be prepayment for any moneys to be paid by Lessee under this Lease. Security Deposit is to be applied to rent as set forth in Paragraph 1.6.

6.1 Use. Lessee shall use and occupy the Premises only for the purposes set forth in Paragraph 1.8, or any other use which is comparable thereto, for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that creates waste or a nuisance, or that disturbs owners of or occupants of, or causes damage to, neighboring premises or properties. Lessor hereby agrees to not unreasonably withhold or delay its consent to any use requested by Lessee, Lessee's assignees or subtenants, and by prospective assignees and subtenants of the Lessee, its assignees and subtenants, for a modification of said permitted purpose for which the premises may be used or occupied, so long as the same will not impair the structural integrity of the improvements on the Premises, the mechanical or electrical systems therein, is not significantly more burdensome to the Premises and the improvements thereon, and is otherwise permissible pursuant to this Paragraph 6. If Lessor elects to withhold such consent, Lessor shall within five (5) business days give a written notification of same, which notice shall include an explanation of Lessor's reasonable objections to the change in use.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for liability of Lessor to any governmental agency third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, solvents, crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in, on or about the Premises which constitutes Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Lessor and compliance in a timely manner with Lessee's sole cost and expense) with all Applicable Law (as defined in Paragraph 6.3). "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority. Reportable Use shall also include Lessee's being responsible for the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Law requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may, without Lessor's prior consent, but in compliance with all Applicable Law, use any ordinary and customary materials reasonably required to be used by Lessee in the normal course of Lessee's business permitted on the Premises, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may (but without any obligation to do so) condition its consent to the use or presence of any Hazardous Substance, activity or storage tank by Lessee upon Lessee's giving to Lessor such additional assurances as Lessor, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefrom or therefor, including, but not limited to, the installation (and removal on or before Lease termination or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of additional Security Deposit under Paragraph 5 hereof.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance, or a condition involving or resulting from same, has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor. Lessee shall also immediately give Lessor a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from, any governmental authority or private party, or persons entering or occupying the Premises, concerning the presence, spill, release, discharge of, or exposure to, any Hazardous Substance or contamination in, on, or about the Premises, including but not limited to all such documents as may be involved in any Reportable Uses involving the Premises.

(c) **Indemnification.** Lessee shall indemnify, protect, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorney's and consultant's fees arising out of or involving any Hazardous Substance or storage tank brought onto the Premises by or for Lessee or under Lessee's control. Lessee's obligations under this Paragraph 6 shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation (including consultant's and attorney's fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances or storage tanks, unless specifically so agreed by Lessor in writing at the time of such agreement.

6.3 Lessee's Compliance with Law. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Law," which term is used in this Lease to include all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance or storage tank), now in effect which may hereafter come into effect, and whether or not reflecting a change in policy from any previously existing policy. Lessee shall, within five (5) days after receipt of Lessor's written request, provide Lessor with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing Lessee's compliance with any Applicable Law specified by Lessor, and shall immediately on receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or port pertaining to or involving failure by Lessee or the Premises to comply with any Applicable Law.

6.4 Inspection; Compliance. Lessor and Lessor's Lender(s) (as defined in Paragraph 9.2(a)) shall have the right to enter the Premises at any time

7.2 (Lessor's obligations to repair), 9 (damage and destruction), and 14 (condemnation), Lessee shall, at Lessee's sole cost and expense and at all times keep the Premises and every part thereof in good order, condition and repair, structural and non-structural (whether or not such portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occur as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, without limiting the generality of the foregoing, all equipment or facilities serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, including fire alarm and/or smoke detection systems and equipment, fire hydrants, fixtures, walls (interior and exterior), foundations, ceilings, roofs, floors, windows, doors, plate glass, skylight landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, about, or adjacent to the Premises. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises, the elements surrounding same, or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance and/or storage tank brought onto the Premises by or for Lessee or under its control. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. If Lessee occupies the Premises for seven (7) years or more, Lessor may require Lessee to repaint the exterior of the buildings on the Premises as reasonably required, but not more frequently than once every seven (7) years.

(b) Lessee shall, at Lessee's sole cost and expense, procure and maintain contracts, with copies to Lessor, in customary form and substance and with contractors specializing and experienced in, the inspection, maintenance and service of the following equipment and improvements, if located on the Premises: (i) heating, air conditioning and ventilation equipment, (ii) boiler, fired or unfired pressure vessels, (iii) fire sprinkler and standpipe and hose or other automatic fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drain maintenance and (vi) asphalt and parking lot maintenance.

7.2 Lessor's Obligations. Except for the warranties and agreements of Lessor contained in Paragraphs 2.2 (relating to condition of the Premises), 2.3 (relating to compliance with covenants, restrictions and building code), 9 (relating to destruction of the Premises) and 14 (relating to condemnation of the Premises), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, improvements located thereon, or the equipment therein, whether structural or non structural, all of which obligations are intended to be that of the Lessee under Paragraph 7.1 hereof. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises. Lessee and Lessor expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease with respect to, or which affords Lessee the right to make repairs at the expense of Lessor or to terminate this Lease by reason of any needed repairs.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions; Consent Required.** The term "Utility Installations" is used in this Lease to refer to all carpeting, window coverings, air lines, power panels, electrical distribution, security, fire protection systems, communication systems, lighting fixtures, heating, ventilating, and air conditioning equipment, plumbing, and fencing in, on or about the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements on the Premises from that which provided by Lessor under the terms of this Lease, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor as defined in Paragraph 7.4(a). Lessee shall not make any Alterations or Utility Installations in, on, under or about the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof), as long as they are not visible from outside, do not involve puncturing, relocating or removing the roof or any existing walls, and the cumulative cost thereof during the term of this Lease extended does not exceed \$25,000.

(b) **Consent.** Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with proposed detailed plans. All consents given by Lessor, whether by virtue of Paragraph 7.3(a) or by subsequent specific consent, shall be deemed conditioned upon: (i) Lessee's acquiring all applicable permits required by governmental authorities, (ii) the furnishing of a copy of such permits together with a copy of the plans and specifications for the Alteration or Utility Installation to Lessor prior to commencement of the work thereon, and (iii) the compliance by Lessee with all conditions of said permits in a prompt and expeditious manner. Any Alterations or Utility Installations by Lessee during the term of this Lease shall be done in a good and workmanlike manner, with good and sufficient materials, and in compliance with Applicable Law. Lessee shall promptly upon completion thereof furnish Lessor with as-built plans and specifications therefor. Lessor may (but with no obligation to do so) condition its consent to any requested Alteration or Utility Installation that costs \$10,000 or more upon Lessee's providing Lessor with a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alteration or Utility Installation and/or upon Lessee posting an additional Security Deposit with Lessor under Paragraph 36 hereof.

(c) **Indemnification.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee for use on the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises. If Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to one and one-half times the amount of such contested lien claim or demand indemnifying Lessor against liability for the same, as required by law for the holding of the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorney's fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require their removal or become the owner thereof as hereinafter provided in this Paragraph 7.4, all Alterations and Utility Additions made to the Premises by Lessee shall be the property of and owned by Lessee, but considered a part of the Premises. Lessor may, at any time and at its option, elect in writing to Lessee to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per subparagraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or earlier termination of this Lease, become the property of Lessor and remain upon and be surrendered by Lessee with the Premises.

(b) **Removal.** Unless otherwise agreed in writing, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or earlier termination of this Lease, notwithstanding their installation may have been consented to by Lessor. Lessor may require removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent of Lessor.

(c) **Surrender/Restoration.** Lessee shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice by Lessee performing all of its obligations under this Lease. Except as otherwise agreed or specified in writing by Lessor, the Premises, as surrendered, shall include the Utility Installations. The obligation of Lessee shall include the repair of any damage occasioned by the installation, maintenance, removal of Lessee's Trade Fixtures, furnishings, equipment, and Alterations and/or Utility Installations, as well as the removal of any storage tank installed by or for Lessee, and the removal, replacement, or remediation of any soil, material or ground water contaminated by Lessee, all as may then be required by Applicable Law and/or good service practice. Lessee's Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee subject to obligation to repair and restore the Premises per this Lease.

8. Insurance; Indemnity.

8.1 Payment For Insurance. Regardless of whether the Lessor or Lessee is the Insuring Party, Lessee shall pay for all insurance required under this Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor in excess of \$1,000,000 per occurrence. Premiums policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within ten (10) days following receipt of an invoice for any amount due.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force during the term of this Lease a Commercial General Liability policy of insurance

8.3 Property Insurance—Building, Improvements and Rental Value.

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and to the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lender(s)"), insuring to or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by Lenders, but in no event more than the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost. If Lessor is the Insuring Party, however Lessee Owned Alterations and Utility Installations shall be insured by Lessee under Paragraph 8.4 rather than by Lessor. If the coverage is available at commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered cause of loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss, as defined in Paragraph 9.1(c).

(b) **Rental Value.** The Insuring Party shall, in addition, obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and Lender(s), insuring the loss of the full rental and other charges payable by Lessee to Lessor under this Lease for one (1) year (including all real estate taxes, insurance costs, and any scheduled rental increases). Said insurance shall provide that in the event the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of rental revenues from the date of any such loss. Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected net income, property taxes, insurance premium costs and other expenses, if any, otherwise payable by Lessee, for the next twelve (12) month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or if the Premises are part of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if such increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Tenant's Improvements.** If the Lessor is the Insuring Party, the Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease. If Lessee is the Insuring Party, the policy carried by Lessee under this Paragraph 8.3 shall insure Lessee Owned Alterations and Utility Installations.

8.4 Lessee's Property Insurance. Subject to the requirements of Paragraph 8.5, Lessee at its cost shall either by separate policy or, at Lessor's option by endorsement to a policy already carried, maintain insurance coverage on all of Lessee's personal property, Lessee Owned Alterations and Utility Installations in, on, or about the Premises similar in coverage to that carried by the Insuring Party under Paragraph 8.3. Such insurance shall be replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property or the restoration of Lessee Owned Alterations and Utility Installations. Lessee shall be the Insuring Party with respect to the insurance required by this Paragraph 8.4 and shall provide Lessor with written evidence that such insurance is in force.

8.5 Insurance Policies. Insurance required hereunder shall be in companies duly licensed to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B +, V, or such other rating as may be required by a Lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide." Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Paragraph 8. If Lessee is the Insuring Party, Lessee shall cause to be delivered to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insureds and loss payable clauses as required by this Lease. No such policy shall be cancellable or subject to modification except after thirty (30) days prior written notice to Lessor. Lessee shall at least thirty (30) days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. If the Insuring Party shall fail to procure and maintain the insurance required to be carried by the Insuring Party under this Paragraph 8, the other Party may, but shall not be required to, procure and maintain the same, but at Lessee's expense.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor ("Waiving Party") each hereby release and relieve the other, and waive their entire right to recover damages (whether in contract or in tort) against the other, for loss of or damage to the Waiving Party's property arising out of or incident to the perils required to be insured against under Paragraph 8. The effect of such releases and waivers of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

8.7 Indemnity. Except for Lessor's negligence and/or breach of express warranties, Lessee shall indemnify, protect, defend and hold harmless Lessor, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, and against any and all claims, loss of rents and damages, costs, liens, judgments, penalties, permits, attorney's and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with the occupancy of the Premises by Lessee, the conduct of Lessee's business, any act, omission or neglect of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on Lessee's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Lessor) litigated and/or reduced to judgment, and whether well founded or not. In case any action or proceeding be brought against Lessor by reason of any of the foregoing matters, Lessee upon notice from Lessor shall defend the same at Lessee's expense, and shall reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be so indemnified.

8.8 Exemption of Lessor from Liability. Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wiring, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

9. Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, the repair cost of which damage or destruction is less than 50% of the then Replacement Cost of the Premises immediately prior to such damage or destruction, excluding from such calculation the value of the land and Lessee Owned Alterations and Utility Installations.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations, the repair cost of which damage or destruction is 50% or more of the then Replacement Cost of the Premises immediately prior to such damage or destruction, excluding from such calculation the value of the land and Lessee Owned Alterations and Utility Installations.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of applicable building codes, ordinances or laws, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises.

9.2 Partial Damage—Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall

any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3 rather than Paragraph 9.2, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage—Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 13), Lessor may at Lessor's option, either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage of Lessor's desire to terminate this Lease as of the date sixty (60) days following the giving of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage totally at Lessee's expense and without reimbursement from Lessor. Lessee shall provide Lessor with the required funds or satisfactory assurance thereof within thirty (30) days following Lessee's said commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible and the required funds are available. If Lessee does not give such notice and provide the funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs (including any destruction required by a authorized public authority), this Lease shall terminate sixty (60) days following the date of such Premises Total Destruction, whether or not the damage or destruction is an Insured Loss or was caused by a negligent or willful act of Lessee. In the event, however, that the damage or destruction was caused by Lessee, Lessor shall have the right to recover Lessor's damages from Lessee except as released and waived in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last six (6) months of the term of this Lease there is damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessor may, at Lessor's option, terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within thirty (30) days after the date of occurrence of such damage. Provided, however, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, within twenty (20) days following the occurrence of the damage, or before the expiration of the time provided in such option for its exercise, whichever is earlier ("Exercise Period"), (i) exercising such option and (ii) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs. If Lessee duly exercises such option during said Exercise Period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's expense repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during said Exercise Period, then Lessor may at Lessor's option terminate this Lease as of the expiration of said sixty (60) day period following the occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within ten (10) days after the expiration of the Exercise Period, notwithstanding any term or provision in the grant of option to the contrary.

9.6 Abatement of Rent; Lessee's Remedies.

(a) In the event of damage described in Paragraph 9.2 (Partial Damage—Insured), whether or not Lessor or Lessee repairs or restores the Premises, the Base Rent, Real Property Taxes, insurance premiums, and other charges, if any, payable by Lessee hereunder for the period during which such damage, its repair or the restoration continues (not to exceed the period for which rental value insurance is required under Paragraph 8.3(b)), shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for abatement of Base Rent, Real Property Taxes, insurance premiums, and other charges, if any, as aforesaid, all other obligations of Lessee hereunder shall be performed by Lessee, and Lessee shall have no claim against Lessor for any damage suffered by reason of any such repair or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence, in a substantial and meaningful way, the repair or restoration of the Premises within ninety (90) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice to Lessor and such Lenders and such repair or restoration is not commenced within thirty (30) days after receipt of such notice, this Lease shall terminate as of the date specified in said notice. If Lessor or a Lender commences the repair or restoration of the Premises within thirty (30) days after receipt of such notice, this Lease shall continue in full force and effect. "Commence" as used in this Paragraph shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Hazardous Substance Conditions. If a Hazardous Substance Condition occurs, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by Applicable Law and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 13), Lessor may at Lessor's option either (i) investigate and remediate such Hazardous Substance Condition, if required as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to investigate and remediate such condition exceeds twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition of Lessor's desire to terminate this Lease as of the date sixty (60) days following the giving of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the investigation and remediation of such Hazardous Substance Condition totally at Lessee's expense and without reimbursement from Lessor except to the extent of an amount equal to twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with the funds required of Lessee or satisfactory assurance thereof within thirty (30) days following Lessee's said commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such investigation and remediation as soon as reasonably possible and the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination. If a Hazardous Substance Condition occurs for which Lessee is not legally responsible, there shall be abatement of Lessee's obligations under this Lease to the same extent as provided in Paragraph 9.6(a) for a period of not to exceed twelve (12) months.

9.8 Termination—Advance Payments. Upon termination of this Lease pursuant to this Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor under the terms of this Lease.

9.9 Waive Statutes. Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

10. Real Property Taxes.

10.1 (a) Payment of Taxes. Lessee shall pay the Real Property Taxes, as defined in Paragraph 10.2, applicable to the Premises during the term of this Lease. Subject to Paragraph 10.1(b), all such payments shall be made at least ten (10) days prior to the delinquency date of the applicable installment. Lessee shall promptly furnish Lessor with satisfactory evidence that such taxes have been paid. If any such taxes to be paid by Lessee shall cover a period of time prior to or after the expiration or earlier termination of the term hereof, Lessee's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year this Lease is in effect, and Lessor shall reimburse Lessee for any overpayment after such proration. If Lessee shall fail to pay any Real Property Taxes required by this Lease to be paid by Lessee, Lessor shall have the right to pay the same, and Lessor shall reimburse Lessor therefor upon demand.

(b) **Advance Payment.** In order to insure payment when due and before delinquency of any or all Real Property Taxes, Lessor reserves the right at Lessor's option, to estimate the current Real Property Taxes applicable to the Premises, and to require such current year's Real Property Taxes to be paid in advance to Lessor by Lessee, either: (i) in a lump sum amount equal to the installment due, at least twenty (20) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent. If Lessor elects to require payment monthly in advance, the monthly payment shall be that equal monthly amount which, over the number of months remaining before the month in which the applicable tax installment would become delinquent (and without interest thereon), would provide a fund large enough to fully discharge before delinquency the estimated installment taxes to be paid. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payment shall be adjusted required to provide the fund needed to pay the applicable taxes before delinquency. If the amounts paid to Lessor by Lessee under the provisions of this Paragraph are insufficient to discharge the obligations of Lessee to pay such Real Property Taxes as the same become due, Lessee shall pay to Lessor upon Lessor's demand, such additional sums as are necessary to pay such obligations. All moneys paid to Lessor under this Paragraph may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of the obligations of Lessee under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may, subject to proration as provided in Paragraph 10.1, at the option of Lessor, be treated as an additional Security Deposit under Paragraph 8.5.

assigned in the assessor's work sheets or such other information as may be reasonably available. Less. A reasonable determination thereof, in good faith, shall be conclusive.

10.4 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause its Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property or, at Lessor's option, as provided in Paragraph 10.1(b).

11. Utilities. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered with other premises.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or otherwise transfer or encumber (collectively, "assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent given under and subject to the terms of Paragraph 36, except Jennifer Convertibles may assign this lease as set forth in Paragraph 57.

(b) A change in the control of Lessee shall constitute an assignment requiring Lessor's consent. The transfer, on a cumulative basis, of twenty-five percent (25%) or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, refinancing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee, as hereinafter defined, by an amount equal to or greater than twenty-five percent (25%) of such Net Worth of Lessee as it was represented to Lessor at the time of the execution by Lessor of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, at whichever time said Net Worth of Lessee was or is greater, shall be considered an assignment of this Lease by Lessee to which Lessor may reasonably withhold its consent. "Net Worth of Lessee" for purposes of this Lease shall be the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles consistently applied.

(d) An assignment or subletting of Lessee's interest in this Lease without Lessor's specific prior written consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unconsented to assignment or subletting as a noncurable Breach, Lessor shall have the right to either: (i) terminate this Lease, or (ii) upon thirty (30) days written notice ("Lessor's Notice"), increase the monthly Base Rent to fair market rental value or one hundred ten percent (110%) of the Base Rent then in effect, whichever is greater. Pending determination of the new fair market rental value, if disputed by Lessee, Lessee shall pay the amount set forth in Lessor's Notice, with any overpayment credited against the next installment(s) of Base Rent coming due, and any underpayment for the period retroactively to the effective date of the adjustment being due and payable immediately upon the determination thereof. Further, in the event of such Breach and market value adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to the then fair market value (without the Lease being considered an encumbrance or any deduction for depreciation or obsolescence, and considering the Premises at its highest and best use and in good condition), or one hundred ten percent (110%) of the price previously in effect, whichever is greater, (ii) any index-oriented rental or price adjustment formulas contained in this Lease shall be adjusted to require that the base index be determined with reference to the index applicable to the time of such adjustment, and (iii) any fixed rental adjustments scheduled during the remainder of the Lease term shall be increased in the same ratio as the new market rental bears to the Base Rent in effect immediately prior to the market value adjustment.

(e) Lessee's remedy for any breach of this Paragraph 12.1 by Lessor shall be limited to compensatory damages and injunctive relief.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee to the payment of Base Rent and other sums due Lessor hereunder or for the performance of any other obligations to be performed by Lessee under this Lease. See Paragraph 57 for right of assignment to J.C. Thousand Oaks California IV.

(b) Lessor may accept any rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of any rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for the Default or Breach by Lessee of any of the terms, covenants or conditions of this Lease.

(c) The consent of Lessor to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Lessor or to any subsequent or successive assignment or subletting by the sublessee. However, Lessor may consent to subsequent sublettings and assignment: of the sublease or any amendments or modifications thereto without notifying Lessee or anyone else liable on the Lease or sublease and without obtaining their consent, and such action shall not relieve such persons from liability under this Lease or sublease.

(d) In the event of any Default or Breach of Lessee's obligations under this Lease, Lessor may proceed directly against Lessee, any Guarantor or any one else responsible for the performance of the Lessee's obligations under this Lease, including the sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor or Lessee.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a non-refundable deposit of \$1,000 or ten percent (10%) of the current monthly Base Rent, whichever is greater, as reasonable consideration for Lessor's considering and processing the request for consent. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested by Lessor.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed for the benefit of Lessor, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented in writing.

(g) The occurrence of a transaction described in Paragraph 12.1(c) shall give Lessor the right (but not the obligation) to require that the Security Deposit be increased to an amount equal to six (6) times the then monthly Base Rent, and Lessor may make the actual receipt by Lessor of the amount required to establish such Security Deposit a condition to Lessor's consent to such transaction.

(h) Lessor, as a condition to giving its consent to any assignment or subletting, may require that the amount and adjustment structure of the rent payable under this Lease be adjusted to what is then the market value and/or adjustment structure for property similar to the Premises as then constituted.

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all rentals and income arising from any sublease of all or a portion of the Premises heretofore or hereafter made by Lessee, and Lessor may collect such rent and income and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach (as defined in Paragraph 13.1) shall occur in the performance of Lessee's obligations under this Lease Lessee may, except as otherwise provided in this Lease, receive, collect and enjoy the rents accruing under such sublease. Lessor shall not, by reason of this or any other assignment of such sublease to Lessor, nor by reason of the collection of the rents from a sublessee, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee under such sublease. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor the rents and other charges due and to become due under the sublease. Sublessee shall rely upon any such statement and request from Lessor and shall pay such rents and other charges to Lessor without any obligation or right to inquire as to whether such Breach exists and notwithstanding any notice from or claim from Lessee to the contrary. Lessee shall have no right or claim against said sublessee or, until the Breach has been cured, against Lessor, for any such rents and other charges so paid by said sublessee to Lessor.

(b) In the event of a Breach by Lessee in the performance of its obligations under this Lease, Lessor, at its option and without any obligation to do so, may require any sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from

is defined as the occurrence of any one or more of the following Defaults, and, where a grace period is specified herein, the failure by Lessee to cure such Default prior to the expiration of the applicable grace period, shall entitle Lessor to pursue the remedies set forth in Paragraph 13.2 and/or 13.3:

- (a) The vacating of the Premises without the intention to reoccupy same, or the abandonment of the Premises.
- (b) Except as expressly otherwise provided in this Lease, the failure by Lessee to make any payment of Base Rent or any other monetary payment required to be made by Lessee hereunder, whether to Lessor or to a third party, as and when due, the failure by Lessee to provide Lessor with reasonable evidence of insurance or surety bond required under this Lease, or the failure of Lessee to fulfill any obligation under this Lease which endangers, threatens life or property, where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Lessor to Lessee.
- (c) Except as expressly otherwise provided in this Lease, the failure by Lessee to provide Lessor with reasonable written evidence (in duly executed original form, if applicable) of (i) compliance with Applicable Law per Paragraph 6.3, (ii) the inspection, maintenance and service contracts required under Paragraph 7.1(b), (iii) the recission of an unauthorized assignment or subletting per Paragraph 12.1(b), (iv) a Tenancy Statement per Paragraphs 16 or 37 the subordination or non-subordination of this Lease per Paragraph 30, (vi) the guaranty of the performance of Lessee's obligations under this Lease required under Paragraphs 1.11 and 37, (vii) the execution of any document requested under Paragraph 42 (easements), or (viii) any other documentation information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice by or on behalf of Lessor to Lessee.
- (d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 here that are to be observed, complied with or performed by Lessee, other than those described in subparagraphs (a), (b) or (c), above, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of Lessor to Lessee; provided, however, that if the nature of Less Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by Les if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.
- (e) The occurrence of any of the following events: (i) The making by lessee of any general arrangement or assignment for the benefit of credit (ii) Lessee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, s provision shall be of no force or effect, and not affect the validity of the remaining provisions.
- (f) The discovery by Lessor that any financial statement given to Lessor by Lessee or any Guarantor of Lessee's obligations hereunder is materially false.
- (g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a guarantor, (ii) the termination of a guarant liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a guarantor's becoming insolvent or the subject bankruptcy filing, (iv) a guarantor's refusal to honor the guaranty, or (v) a guarantor's breach of its guaranty obligation on an anticipatory breach b and Lessee's failure, within sixty (60) days following written notice by or on behalf of Lessor to Lessee of any such event, to provide Lessor with wri alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resour of Lessee and the guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any affirmative duty or obligation of Lessee under this Lease, within ten (10) days after written notice to Les (or in case of an emergency, without notice), Lessor may at its option (but without obligation to do so), perform such duty or obligation on Lessee's bel including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs expenses of any such performance by Lessor shall be due and payable by Lessee to Lessor upon invoice therefor. If any check given to Lessor by Les shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require all future payments to be made under this Lease by Les to be made only by cashier's check. In the event of a Breach of this Lease by Lessee, as defined in Paragraph 13.1, with or without further notice demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach, Lessor may:

- (a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate. Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the worth the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee pro could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the t of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compens Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of thi would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including neces renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of the leasing commission paid by Lessor applicable to the unexp term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the prior sentence shall be computed by discounting s amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Efforts by Lessor to mitigate dama caused by Lessee's Default or Breach of this Lease shall not waive Lessor's right to recover damages under this Paragraph. If termination of this Le is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding the unpaid rent and damage: are recoverable therein, or Lessor may reserve therein the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a nc and grace period required under subparagraphs 13.1(b), (c) or (d) was not previously given, a notice to pay rent or quit, or to perform or quit, as the c may be, given to Lessee under any statute authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for gr period purposes required by subparagraphs 13.1(b), (c) or (d). In such case, the applicable grace period under subparagraphs 13.1(b), (c) or (d) and ur the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Lessee to cure the Default within the greates the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Le and/or by said statute.

- (b) Continue the Lease and Lessee's right to possession in effect (in California under California Civil Code Section 1951.4) after Lessee's Bre and abandonment and recover the rent as it becomes due, provided Lessee has the right to sublet or assign, subject only to reasonable limitations. Paragraphs 12 and 36 for the limitations on assignment and subletting which limitations Lessee and Lessor agree are reasonable. Acts of maintena or preservation, efforts to relet the Premises, or the appointment of a receiver to protect the Lessor's interest under the Lease, shall not constitu termination of the Lessee's right to possession.

- (c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises located.

- (d) The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability ur any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture In Event Of Breach. Any agreement by Lessor for free or abated rent or other charges applicable to the Premises, o the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of w concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all o terms, covenants and conditions of this Lease to be performed or observed by Lessee during the term hereof as the same may be extended. Upon occurrence of a Breach of this Lease by Lessee, as defined in Paragraph 13.1, any such inducement Provision shall automatically be deemed deleted f this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Le: under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, and recoverable by Lessor as additional rent due ur this Lease, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initi: the operation of this Paragraph shall not be deemed a waiver by Lessor of the provisions of this Paragraph unless specifically so stated in writing Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessc incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limit: processing and accounting charges, and late charges which may be imposed upon Lessor by the terms of any ground lease, mortgage or trust d covering the Premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's desig within five (5) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equ:

title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of land area not occupied by any building, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the building located on the Premises. No reduction of Base Rent shall occur if the only portion of the Premises taken is land on which there is no building. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any compensation separately awarded to Lessee for Lessee's relocation expenses and/or loss of Lessee's Trade Fixtures in the event that this Lease is not terminated by reason of such condemnation. Lessor shall to the extent of its net severance damages received, over and above the legal and other expenses incurred by Lessor in the condemnation matter, repair any damage to the Premises caused by such condemnation, except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall be responsible for the payment of any amount in excess of its net severance damages required to complete such repair.

15. Broker's Fee.

15.1 The Brokers named in Paragraph 1.10 are the procuring causes of this Lease.

15.2 Upon execution of this Lease by both Parties, Lessor shall pay to said Brokers jointly, or in such separate shares as they may mutually design in writing, a fee as set forth in a separate written agreement between Lessor and said Brokers (or in the event there is no separate written agreement between Lessor and said Brokers, the sum of \$ 21,708.50) for brokerage services rendered by said Brokers to Lessor in this transaction.

15.3 Unless Lessor and Brokers have otherwise agreed in writing, Lessor further agrees that: (a) if Lessee exercises any Option (as defined in Paragraph 39.1) or any Option subsequently granted which is substantially similar to an Option granted to Lessee in this Lease, or (b) if Lessee acquires any rights to the Premises or other premises described in this Lease which are substantially similar to what Lessee would have acquired had an Option herein granted to Lessee been exercised, or (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of term of this Lease after having failed to exercise an Option, or (d) if said Brokers are the procuring cause of any other lease or sale entered into between the Parties pertaining to the Premises and/or any adjacent property in which Lessor has an interest, or (e) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then as to any of said transactions, Lessor shall pay said Brokers a fee in accordance with the schedule set forth in said Brokers in effect at the time of the execution of this Lease.

15.4 Any buyer or transferee of Lessor's interest in this Lease, whether such transfer is by agreement or by operation of law, shall be deemed to have assumed Lessor's obligation under this Paragraph 15. Each Broker shall be a third party beneficiary of the provisions of this Paragraph 15 to the extent of its interest in any commission arising from this Lease and may enforce that right directly against Lessor and its successors.

15.5 Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than Brokers, if any named in Paragraph 1.10) in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereunder and that no broker or other person, firm or entity other than said named Brokers is entitled to any commission or finder's fee in connection with this transaction. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

15.6 Lessor and Lessee hereby consent to and approve all agency relationships, including any dual agencies, indicated in Paragraph 1.10.

16. Tenancy Statement.

16.1 Each Party (as "Responding Party") shall within ten (10) days after written notice from the other Party (the "Requesting Party") execute and deliver to the Requesting Party a statement in writing in form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

16.2 If Lessor desires to finance, refinance, or sell the Premises, any part thereof, or the building of which the Premises are a part, Lessee and Guarantors of Lessee's performance hereunder shall deliver to any potential lender or purchaser designated by Lessor such financial statement: Lessee and such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Lessor's Liability.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if it is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or in this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor at the time of such transfer or assignment. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Interest on Past-Due Obligations.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor within thirty (30) days following the date on which it was due, shall bear interest from the thirty-first (31st) day after it was due at the rate of ~~10%~~ 6% per annum, but not exceed the maximum rate allowed by law, in addition to the late charge provided for in Paragraph 13.4.

20. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

21. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease are deemed to be rent.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned here and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the other that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notice purposes. Either Party may by written notice to the other specify a different address for notice purposes, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for the purpose of mailing notices to Lessee. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such parties at such addresses as Lessor may from time to time hereafter designate by written notice to Lessee.

23.2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the United States Postal Service or courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon telephone confirmation of receipt of the transmission thereof, provided a copy is also delivered via delivery or mail. If notice is received on a Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.** No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, where possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the court in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or hypothecation or security device (collectively, "Security Device"), now or hereafter placed by Lessor upon the real property of which the Premises are a part, to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions of the Security Device. Lessee agrees that the Lenders holding any such Security Device shall have no duty, liability or obligation to perform any of the obligations of Lessee under this Lease, but that in the event of Lessor's default with respect to any such obligation, Lessee will give any Lender whose name and address have been furnished to Lessee in writing for such purpose notice of Lessor's default and allow such Lender thirty (30) days following receipt of such notice to cure said default before invoking any remedies Lessee may have by reason thereof. If any Lender shall elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device and shall give written notice thereof to Lessee, this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** Subject to the non-disturbance provisions of Paragraph 30.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be bound for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor, or (iii) be bound by prepayment of more than one (1) month's rent.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving assurance (a "non-disturbance agreement") from the Lender that Lessee's possession and this Lease, including any Option, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, attornment or non-disturbance agreement as is provided for herein.

31. **Attorney's Fees.** If any Party or Broker brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) or Broker in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney's fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorney's fees award shall be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorney's fees reasonably incurred. ~~Lessee shall be entitled to attorney's fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or recurring Breach.~~

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of emergency, and otherwise at reasonable times for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making alterations, repairs, improvements or additions to the Premises or to the building of which they are a part, as Lessor may reasonably deem necessary. Lessor may at any time place on or about the Premises or building any ordinary "For Sale" signs and Lessor may at any time during the last one hundred (100) days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Lessor shall be without abate of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.

34. **Signs.** ~~Lessee shall not place any sign upon the Premises, except that Lessee may, with Lessor's prior written consent, install (but not on the roof) signs as are reasonably required to advertise Lessee's own business. The installation of any sign on the Premises by or for Lessee shall be subject to the provisions of Paragraph 7 (Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations). Unless otherwise expressly agreed herein, Lessee reserves all rights to the use of the roof and the right to install, and all revenues from the installation of, such advertising signs on the Premises, including the roof, as do not unreasonably interfere with the conduct of Lessee's business.~~ All signs shall conform with the Sign Ordinance of the City of Thousand Oaks.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, Lessor shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or more of any existing subtenancies. Lessor's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.**

(a) Except for Paragraph 33 hereof (Auctions) or as otherwise provided herein, wherever in this Lease the consent of a Party is required for an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' or other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for Lessor's consent pertaining to this Lease or the Premises, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, practice or storage tank, shall be paid by Lessee to Lessor upon receipt of an invoice and supporting documentation therefor. Subject to Paragraph 12.2(e) (applicable to assignment or subletting), Lessor may, as a condition to considering any such request by Lessee, require Lessee to deposit with Lessor an amount of money (in addition to the Security Deposit held under Paragraph 5) reasonably calculated by Lessor to reimburse the cost Lessor will incur in considering and responding to Lessee's request. Except as otherwise provided, any unused portion of said deposit shall be refunded to Lessee without interest. Lessor's consent to any act, assignment of this Lease or subletting of the Premises by Lessee shall not constitute an acknowledgement that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent.

(b) All conditions to Lessor's consent authorized by this Lease are acknowledged by Lessee as being reasonable. The failure to specify any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given.

37. **Guarantor.**

37.1 If there are to be any Guarantors of this Lease per Paragraph 1.11, the form of the guaranty to be executed by each such Guarantor shall be the form most recently published by the American Industrial Real Estate Association, and each said Guarantor shall have the same obligations as Lessee under this Lease, including but not limited to the obligation to provide the Tenancy Statement and information called for by Paragraph 16.

37.2 It shall constitute a Default of the Lessee under this Lease if any such Guarantor fails or refuses, upon reasonable request by Lessor to (a) evidence of the due execution of the guaranty called for by this Lease, including the authority of the Guarantor (and of the party signing on Guarantor's behalf) to obligate such Guarantor on said guaranty, and including in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, together with a certificate of incumbency showing the signature of the persons authorized to sign on its behalf, (b) current financial statements of Guarantor as may from time to time be requested by Lessor, (c) a Tenancy Statement, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Upon payment by Lessee of the rent for the Premises and the observance and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession of the Premises for the entire term of the Lease.

39.3 Multiple Options. In the event that Lessor has any Multiple Options to extend or renew this Lease, a later Option cannot be exercised unless prior Options to extend or renew this Lease have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option, notwithstanding any provision in the grant of Option to the contrary: (i) during the period commencing with the giving of any notice of Default under Paragraph 13.1 and continuing until the noticed Default is cured, or (ii) during the period time any monetary obligation due Lessor from Lessee is unpaid (without regard to whether notice thereof is given Lessee), or (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessor has given to Lessee three (3) or more notices of Default under Paragraph 13.1, whether or the Defaults are cured, during the twelve (12) month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise Option because of the provisions of Paragraph 39.4(a).

(c) All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and during the term of this Lease, (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of thirty (30) days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee), or (ii) Lessor gives to Lessee three (3) or more notices of Default under Paragraph 13.1 during any twelve (12) month period, whether or not the Defaults are cured, or (i) Lessee commits a Breach of this Lease.

40. Multiple Buildings. If the Premises are part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by, keep and observe reasonable rules and regulations which Lessor may make from time to time for the management, safety, care, and cleanliness of the grounds, the part and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of such other buildings their invitees, and that Lessee will pay its fair share of common expenses incurred in connection therewith.

41. Security Measures. Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. Reservations. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights, dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

44. Authority. If either Party hereto is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such Party represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. If Lessee is a corporation, trust or partnership, Lessee shall, within thirty (30) days after request by Lessor, deliver to Lessor evidence satisfactory to Lessor of such authority.

45. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by Lessor or Lessor's agent and submission of same to Lessee shall not be deemed an offer to lease to Lessee. Lease is not intended to be binding until executed by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. The parties shall amend Lease from time to time to reflect any adjustments that are made to the Base Rent or other rent payable under this Lease. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by an institutional, insurance company, or pension plan Lender in connection with the obtaining of normal financing or refinancing of the property of which Premises are a part.

48. Multiple Parties. Except as otherwise expressly provided herein, if more than one person or entity is named herein as either Lessor or Lessee, the obligations of such Multiple Parties shall be the joint and several responsibility of all persons or entities named herein as such Lessor or Lessee.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSES OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN, IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS APPROVAL. FURTHER, EXPERTS SHOULD BE CONSULTED TO EVALUATE THE CONDITION OF THE PROPERTY AS TO THE POSSIBLE PRESENCE OF ASBESTOS, STORAGE TANKS OR HAZARDOUS SUBSTANCES. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKER(S) OR THEIR AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE. IF THE SUBJECT PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, AN ATTORNEY FROM THE STATE WHERE THE PROPERTY IS LOCATED SHOULD BE CONSULTED.

The parties hereto have executed this Lease at the place on the dates specified above to their respective signatures.

| | |
|---|---|
| Executed at _____ | Executed at _____ |
| on _____ | on _____ |
| by LESSOR: Barbara C. Escallier, Trustee of the | by LESSEE: |
| Charles R. Escallier Testamentary Trust; Jeffrey V. Escallier; and Adrian and Ann A. Goodman; | Jennifer Convertibles, Inc., a Delaware |
| co-Trustees of the Adrian and Ann Goodman Trust | corporation |
| By <u>Barbara C. Escallier, ITF</u> | By <u>[Signature]</u> |
| Name Printed: Barbara C. Escallier | Name Printed: Harley Greenfield |
| Title: Trustee | Title: President, Jennifer Convertibles, Inc. |

OPTIONS TO EXTEND
ADDENDUM TO STANDARD LEASE

Dated: December 1, 1993

By and Between (Lessor) BARBARA C. ESCALLIER, Trustee of the Charles R. Escallier Testamentary Trust, as to an undivided 3/7 interest; JEFFREY V. ESCALLIER, an unmarried man, as to a 1/7 undivided interest; and ADRIAN GOODMAN and ANN. A. GOODMAN, co-Trustees of the Adrian and Ann Goodman Trust, as to a 3/7 undivided interest

(Lessee) JENNIFER CONVERTIBLES, INC., a Delaware corporation.

Property Address: 125 North Moorpark Road
Thousand Oaks, California 91360

Paragraph 50

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease by five (5) additional twelve (12) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions.

(i) Lessee gives to Lessor, and Lessor actually receives on a date which prior to the date that the option period would commence (if exercised) at least 180 and not more than 210 days, a written notice of the exercise of the option(s) to extend this Lease for said additional term(s), time being of the essence, if said notification of the exercise of said option is (are) not so given and received, the option(s) shall automatically expire. Said option(s) may (if more than one) only be exercised consecutively;

(ii) The provisions of paragraph 39, including the provision relating to default of Lessee set forth in paragraph 39.4 of this Lease are conditions of this Option;

(iii) All of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:

(v) Fixed Rental Adjustment(s) (FRA). The monthly rent payable under paragraph 1.5 ("Base Rent") of the attached Lease shall be increased to the following amounts on the dates set forth below:

| On | The New Base Rental will be: |
|------------------|------------------------------|
| December 1, 1996 | \$6,615.00 |
| December 1, 1998 | \$7,022.50 |

B. NOTICE: Unless specified otherwise herein, notice of any escalation other than Fixed Rental Adjustment(s) shall be made as specified in paragraph 23 of the attached Lease.

C. BROKER'S FEE:

The Real Estate Brokers specified in paragraph 1.10 of the attached Lease shall be paid a Brokerage Fee for each adjustment specified above.

ADDENDUM TO LEASE AGREEMENT DATED DECEMBER 1, 1993, BETWEEN BARBARA C. ESCALLIER, Trustee of the Charles R. Escallier Testamentary Trust, as to an undivided 3/7 interest; JEFFREY V. ESCALLIER, an unmarried man, as to an undivided 1/7 interest; and ADRIAN GOODMAN and ANN A. GOODMAN, co-Trustees of the Adrian and Ann Goodman Trust as to a 3/7 undivided interest, LESSOR

AND

JENNIFER CONVERTIBLES, INC., a Delaware corporation, LESSEE

51.

52. Lessor shall provide a Tenant Improvement Allowance in the amount of \$35,000 to Lessee upon opening and Lessor's receipt of all lien releases. Improvements shall be subject to Lessor's approval. In the event of a material default prior to November 30, 1996, Lessee or Jennifer Convertibles Inc. shall reimburse said \$35,000 to Lessor.

53. Percentage Rent.

- (a) In addition to the Minimum Rent and all other sums designated in this Lease to be paid as rent, Lessee shall pay to Lessor as Percentage Rent for each calendar year during the term, or fractional period thereof a sum equal to the amount, if any, by which five percent (5%) of the Gross Receipts exceed the Minimum Rent during each calendar year (the "Percentage Rent Break Point") or a pro rata portion thereof with respect to a fractional year, whichever shall apply. In the event that Lessee commences business in the Premises prior to January 1, but after the preceding December 1, the period prior to January 1 and after December 1 shall be added to and included in the first full calendar year of the Term, and Lessee's Minimum Rent for that month or partial month shall be included in the Minimum Rent figure for such full calendar year.
- (b) If Lessee actually commenced business in the Premises prior to January 1 for more than one month, then Percentage Rent shall be based on such partial year. If the Term expires on a day other than December 31, then Lessee's Percentage Rent shall be computed based on such partial calendar year.
- (c) Within thirty (30) days following the end of each month of the Term, Lessee shall deliver to Owner the written statement required by Paragraph 60 of this Lease showing Lessee's Gross Receipts from the beginning of that calendar year to the end of the preceding calendar month. If by the end of any such preceding calendar month the Gross Receipts during such calendar year shall have exceeded the Percentage Rent Break Point with respect to the then current calendar year, Lessee shall pay Lessor at the time of delivery of the written statement the percentage specified in Section 1.09 of the amount by which the Gross Receipts exceeded the Percentage Rent Break Point, less any Percentage Rent previously paid with respect to that calendar year. In addition, if any rent tax is required by governing City, State or County in which the Premises are located, payment of such tax will be made by Lessee to Lessor at the time such Percentage Rent is paid.

LESSEE:

JENNIFER CONVERTIBLES, INC.

By:

Harley Greenfield, President

LESSOR:

Barbara C. Escallier TTE
Barbara C. Escallier, Trustee of the
Charles R. Escallier Testamentary Trust

Jeffrey V. Escallier

Rider attached to Lease dated December 1, 1993.

Lessor: BARBARA C. ESCALLIER, Trustee of the Charles R. Escallier Testamentary Trust, as to an undivided 3/7 interest; JEFFREY V. ESCALLIER, an unmarried man, as to an undivided 1/7 interest; and ADRIAN GOODMAN and ANN A. GOODMAN, co-Trustees of the Adrian and Ann Goodman Trust as to an undivided 3/7 interest.

Lessee: JENNIFER CONVERTIBLES, INC., a Delaware corporation

Relating to property known as: 125 North Moorpark Road
Thousand Oaks, California

Consisting of provisions numbered:

54. Rider Controls: The printed part of this Lease is hereby modified and supplemented as follows, it being agreed that wherever there is any conflict between this Rider and the printed part of this Lease and/or other riders to this Lease (if any), the provisions of this Rider are paramount and shall govern, and this Lease shall be construed accordingly.
55. Terms Used: The use of the following terms shall be interchangeable: Landlord and Lessor; Tenant and Lessee. The use of the following terms shall be interchangeable: Premises, demised premises, Demised Premises, and Leased Premises.
56. Commencement of Term and Rent Commencement Date: (a) The first "lease year" during the term hereof shall be the period commencing on the rent commencement date if it occurs on the first day of a calendar month, or the first day of the next succeeding calendar month if the rent commencement date occurs on any date other than the first day of a calendar month, and shall terminate twelve (12) full calendar months thereafter.

(b) Notwithstanding anything in this lease to the contrary, all payments under this Lease shall not commence or begin to accrue until sixty (60) days after delivery to Lessee of the Premises in the condition called for under this Lease.

(c) Within five (5) days of the date of the tendered possession of the leased premises to the Lessee, both Lessor and Lessee agree to execute a certificate in form annexed herewith marked as Possessor Agreement.
57. Special Right of Assignment: Lessee is granted the "one time" right of assignment of this Lease to J.C. Thousand Oaks, CA IV, Inc., a California corporation, provided that Lessee has completed the tenant improvements, lien free, which will be funded in part by a \$35,000 allowance by Lessor. The original Lessee, Jennifer Convertibles, Inc., shall then have no further obligation under this Lease other than as set forth in the "Guaranty of Lease" (American Industrial Real Estate Association form) which is attached as an exhibit to this Lease.
58. Delivery of Possession: Delivery of possession of the Building and the Premises to Lessee shall in no event be deemed to have occurred until actual and exclusive physical possession of the Building and the Premises shall have been delivered to Lessee in a broom-clean condition. The parties agree that compliance with delivery of the property free and clear of all violations of Title 24 Handicap Access shall be completed not later than completion of tenant improvements. Lessee agrees to allow Lessor to remove fixtures now in place which were specifically designed for a financial institution, provided that, in Lessee's sole judgment, such removal will not interfere with Lessee's installation of tenant improvements. Warranties and representations contained in this Lease being true and fulfilled as

hereunder by February 1, 1994, Lessee shall have the option of terminating this Lease within thirty (30) days thereof by notice to Lessor.

60. Percentage Rent: The Percentage Rent shall be paid annually, on or before the forty-fifth (45th) day after the end of each Lease Year. Within forty-five (45) days after the end of each Lease Year, Lessee shall furnish Lessor with a statement certified by Lessee of Lessee's Gross Sales during the preceding Lease Year. Lessor shall have the right, not more than once every twelve (12) month period, to have its accountants or representatives audit all statements of Gross Sales and, in connection with such audit, to examine all of Lessee's records (including supporting data) of Gross Sales. Any information obtained by Lessor pursuant to the provision of this Section shall be treated as confidential.
61. Real Estate Taxes: (a) Lessor covenants and agrees that it shall timely and fully pay the real estate taxes and assessments levied against the Building, including the Premises and all improvements therein; however, Lessee acknowledges its obligation to reimburse Lessor for real estate taxes and assessments timely paid by Lessor.

(b) Abatements: If Lessor shall obtain any abatement, refund or rebate in Real Estate Taxes, Lessor shall promptly forward to Lessee its share of such abatement, refund or rebate (less Lessee's share of the reasonable cost and reasonable expense of obtaining them). This paragraph shall not apply to real estate taxes abated for period prior to the commencement of this Lease.
62. Alterations: Lessee shall have the right, without consent of Lessor, to make non-structural repairs and alterations provided disbursements do not exceed \$85,000.00 per annum for the first Lease Year and \$25,000.00 per annum per Lease Year thereafter.
63. Use of the Premises: Lessee shall use the Premises for the purpose of conducting the business of the sale of convertible sofas, furniture, home furnishings and related items and ancillary items.
64. Yield Up: Lessee agrees, at no later than the expiration date, to remove all trade fixtures and personal property, to repair any damage caused by such removal, to remove all Lessee's signs wherever located and to surrender all keys to the Premises and yield up the Premises in the same good order and repair in which Lessee is obliged to keep and maintain the Premises by the provisions of this Lease, reasonable wear and tear and damage by fire, casualty or taking excepted. Any property not so removed shall be deemed abandoned and may be removed and disposed of by Lessor in such manner as Lessor shall determine, without any obligation on the part of Lessor to account to Lessee for any proceeds therefrom, all of which shall become the property of Lessor.
65. Maintenance: Lessor agrees to transfer or enforce for the benefit of Lessee the unexpired portions, if any, of any warranties relating to the Premises, the equipment that is a part thereof, the HVAC system and the like.
66. Total or Partial Destruction: If the Premises shall be damaged by fire, the elements, accident, or other cause or casualty, but are not thereby rendered untenable or unusable for its intended purpose, Lessor shall at its own expense, cause such damage to be promptly repaired and the Premises restored. If the Premises shall be damaged by fire, the elements, accident or other cause or casualty, such that the Premises shall be rendered untenable or unusable for its intended purposes only in part, Lessor shall at its own expense

Lease and the tenancy hereby created by giving to Lessee, within sixty (60) days following the date of said occurrence, written notice of Lessor's election to do so, and in the event of such termination, rent shall be adjusted as of the date of said occurrence; provided however, if within four (4) months after the occurrence, Lessor shall not have fully restored the Premises and enabled Lessee to lawfully occupy the Premises for the purposes permitted under this Lease, then, at Lessee's election, Lessee may terminate this Lease by written notice to that effect and in the event of such termination rent shall be adjusted as of the date of said occurrence.

67. Condemnation: Lessee may terminate this lease if there is any substantial impairment of ingress or egress from or to the Premises through condemnation or if the following property, or any interest in it, is condemned for public or quasi-public use:

(a) Any part of the Demised Premises;

Lessee will not have any claim or be entitled to any award for diminution in value of its rights under this Lease or for the value of any unexpired term of this Lease; however, Lessee may make its own claim for separate award that may be made by the condemner for Lessee's loss of business or for the taking of or injury to Lessee's improvements, or on account of any cost or loss Lessee may sustain in the removal of Lessee's trade fixtures, equipment and furnishings or as a result of any alterations, modifications, or repairs that may be reasonably required by tenant in order to place the remaining portion of the Premises not taken in a suitable condition for the continuance of Lessee's occupancy.

If this Lease is terminated pursuant to the provisions of this paragraph, then all rentals and other charges payable by Lessee to Lessor under this Lease will be paid to the date of the taking, and any rentals and other charges paid in advance and allocable to the period after the date of the taking will be repaid to Lessee by Lessor and Lessee will then be released from all further liability under this Lease.

68. Interior Signs: Lessee shall be entitled to place, maintain, and Lessor shall allow to be permitted, placed and maintained appropriate dignified displays of customary type for its display.

69. Right to Cure Defaults: With regard to any monetary default, Lessee shall have the right to cure said default within fifteen (15) days after notice and Lessor will impose late charges of four percent (4%).

70. 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.

71. Assignment, Subletting, etc.: (a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or otherwise transfer or encumber (collectively "assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior consent given under and subject to the terms of Paragraph 36, except Jennifer Convertibles, Inc. may assign this Lease as set forth in Paragraph 57.

(b) Notwithstanding the above, no consent shall be required for, and Lessee shall have the right to make, any assignment, transfer or subletting of the Premises, or any part thereof (i) to a parent,

(c) Lessee shall have the absolute right to assign, sublet or otherwise transfer its interest in this Lease to a Licensee, Franchisee or operating subsidiary of Lessee, without Lessor's approval, written or otherwise, as long as Lessee remains fully liable for full performance of all its obligations under this Lease, subject to the provisions of Paragraph 12.2(a).

72. Notice from One Party to the Other: Any notice from Lessor to Lessee or from Lessee to Lessor shall be sent by Certified Mail, return receipt requested. All notices shall be addressed or delivered, if to:

To Lessor: Mr. Joseph G. Leggett
301 East Wilbur Road
Thousand Oaks, CA 91360-5442

To Lessee: Jennifer Convertibles, Inc.
Re: J.C. Thousand Oaks California IV
245 Rogers Avenue
Inwood, N.Y. 11696

With Copy To: Law Offices of Bernard Wincig
Attention: Bernard Wincig, Esquire
574 Fifth Avenue
New York, New York 10036

73. Recording: Each party agrees not to record this Lease, but each party hereto agrees on request by the other, to execute a Notice or Short Form of this Lease in recordable form in accordance with applicable statutes, and reasonably satisfactory to Lessor's and Lessee's attorneys. In no event shall such document set forth the rental or other charges payable by Lessee under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.
74. Force Majeure: Except as otherwise specifically provided herein, in any case where either party hereto is required to do any act, delayed by or resulting from acts of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of labor, materials or equipment, government regulations, or other causes beyond such party's reasonable control shall not be counted in determining the time during which work shall be completed, whether such time be designated by a fixed date, a fixed time or "a reasonable time".
75. Subordination and Rights of Mortgagee: Lessee agrees at the request of Lessor to subordinate this Lease to any institutional first mortgage or deed of trust placed or to be placed upon the Premises by Lessor, provided that the holder of such mortgage enters into an agreement with Lessee in recordable form, binding upon the successor and assigns of the parties thereto by the terms of which such holder agrees not to disturb the possession and other rights of Lessee under or pursuant to this Lease during the Lease Term, so long as Lessee continues to perform its obligations hereunder and in the event of acquisition of title, or coming into possession, by said holder through foreclosure proceedings or otherwise, to accept Lessee as Tenant of the Premises under the terms and conditions hereunder and to assume and perform all of Lessor's obligations hereunder.
76. Consent: Where pursuant to the terms of this Lease, or in connection with the administration of the Lease, the consent, approval, judgment, satisfaction or similar exercise of discretion of or by one party shall be required, requested or appropriate, such party covenants and agrees that its consent, approval, judgment, satisfaction or

Lessor shall be responsible for complying and the cost of complying with any and all governmental regulation of environmental matters relating to substances in or about the Premises or the Building except for those substances placed there by Lessee. Specifically, without limiting the generality of the foregoing, Lessor shall be responsible for abating any and all hazards relating to lead paint or asbestos in or about the Premises or the Building, as may be required by governmental regulation including such abatement as may be required in connection with the issuance of any building permits or otherwise.

78. Actions of Lessor: Whenever Lessor 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 practicable, without interfering with the conduct of Lessee's business.
79. Damages: In determining damages hereunder, Lessor shall use its best efforts to mitigate its damages.
80. Authority: The individuals executing this Lease hereby represent that they are empowered and duly authorized to so execute this Lease on behalf of the parties they represent.
81. Mutuality of Lease Provisions: All provisions of said Lease relating to (i) payment of attorneys' fees, (ii) effect of waivers (or lack of waivers), (iii) delays ("force majeure"), and (iv) indemnification and/or exculpation of Lessor, shall be deemed mutual, Lessee having the same rights with respect thereto as Lessor.
82. Payment for Services: In no event shall Lessee be required to pay with respect to any utility service or service provided or designated by Lessor, an amount in excess of the amount that Lessee would be required to pay if purchasing directly from such utility or other company.
83. Option to Extend: Lessee shall have an option if it is not then in material default under this Lease, to extend the term of this Lease for two additional five (5) year terms (the "extension terms"). The option to renew for the first five (5) years shall be self-executing unless the Lessee notifies the Lessor in writing of its intent not to exercise no less than one hundred eighty (180) days prior to the expiration of the initial lease term. Rents for the period of the first renewal shall be as follows:

| <u>Period</u> | <u>Annual Rental</u> | <u>Monthly Rental</u> |
|---------------|----------------------|-----------------------|
| Year 6 | \$ 84,270.00 | \$ 7,022.50 |
| Year 7 | 87,320.00 | 7,276.66 |
| Year 8 | 89,320.00 | 7,433.33 |
| Year 9 | 94,686.00 | 7,890.50 |
| Year 10 | 94,686.00 | 7,890.50 |

The option for the second five year renewal shall be affirmatively exercised by the Lessee, in writing, at least one hundred eighty (180) days prior to lease termination date. The rents for the second renewal shall be as follows:

| <u>Period</u> | <u>Annual Rental</u> | <u>Monthly Rental</u> |
|---------------|----------------------|-----------------------|
| Year 11 | \$100,367.00 | \$ 8,363.91 |
| Year 12 | 100,367.00 | 8,363.91 |
| Year 13 | 106,389.00 | 8,865.75 |
| Year 14 | 106,389.00 | 8,865.75 |
| Year 15 | 112,772.40 | 9,397.70 |

84. Lessor's Cash Contribution, Tenant's Inducement: As an inducement to enter into this Lease Agreement Lessor will pay Lessee a cash contribution of \$35,000.00. Said payments shall be made simultaneous with the opening of the store's retail business.
85. Execution: Lessor shall have seven (7) days from receipt of Lessee's executed copies of the Lease in which to execute and return this Lease to Lessee or this Lease shall be considered null and void and Lessor shall return any and all monies, if any, advanced by Lessee to Lessor in connection with this Lease.

LESSEE:

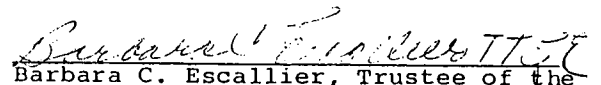
JENNIFER CONVERTIBLES, INC.

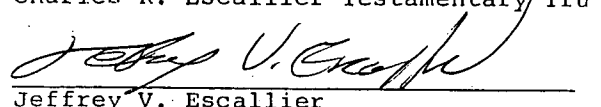
By: 

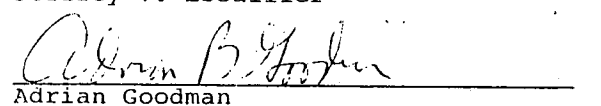
Harley Greenfield, President


By: _____

LESSOR:


Barbara C. Escallier, Trustee of the
Charles R. Escallier Testamentary Trust


Jeffrey V. Escallier


Adrian Goodman


Ann A. Goodman, Co-Trustees of the
Adrian and Ann Goodman Trust

Dated as of December 1, 1993

GUARANTY OF LEASE

American Industrial Real Estate Association

WHEREAS, JENNIFER CONVERTIBLES, INC., a Delaware corporation, hereinafter referred to as "Lessor", and BARBARA C. ESCALLIER, Trustee of the Charles R. Escallier Testamentary Trust, as to an undivided 3/7 interest; JEFFREY V. ESCALLIER, an unmarried man, as to a 1/7 undivided interest; and ADRIAN GOODMAN and ANN A. GOODMAN, co-Trustees of the Adrian and Ann Goodman Trust as to a 3/7 undivided interest, hereafter referred to as "Lessor", are about to execute a document entitled "Lease" dated December 1, 1993 concerning the premises commonly known as 125 N. Moorpark Road, Thousand Oaks, California wherein Lessor will lease the premises to Lessee and

WHEREAS, JENNIFER CONVERTIBLES, INC., as Assignor of Lease, hereinafter referred to as "Guarantors" have a financial interest in Lessee, and

WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guaranty of Lease,

NOW, THEREFORE, for and in consideration of the execution of the foregoing Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rentals and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed and understood that the terms of the foregoing Lease may be altered, affected, modified or changed by agreement between Lessor and Lessee or by a course of conduct and said Lease may be assigned by Lessor or any assignee of Lessor without consent or notice to Guarantors and that this Guaranty shall thereupon and thereafter guarantee the performance of said Lease as so changed, modified, altered or assigned

This Guaranty shall not be released, modified or affected by failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease whether pursuant to the terms thereof or at law or in equity.

No notice of default need be given to Guarantors, it being specifically agreed and understood that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed forthwith and immediately against Lessee or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee pursuant to or under the terms of the within Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors hereunder following any breach or default by Lessee without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations as to or relating to this Guaranty and the Lease, (d) any right to require Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security

Guaranty of Lease (Cont'd)

Any married woman who signs this Guaranty expressly agrees that reimbursement may be had against her separate property for all of her obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver estoppel statement and financial statements as therein provided shall be deemed to also require the Guarantors hereunder to do and provide the same relative to Guarantors.

The term "Lessor" whenever hereinabove used refers to and means the Lessor in the foregoing Lease specifically named and also any assignee of Lessor, whether by outright assignment or by assignment for security and also any successor to the interest of said Lessor or of any assignee in such Lease or any part thereof, whether by assignment or otherwise. So long as the Lessor's interest in or to the leased premises or the rents, issues and profits therefrom, or in, to or under said Lease are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest in the leased premises or under said Lease shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment, of any purchase at sale by judicial foreclosure or under private power of sale, and of the successors and assigns of any such mortgagee, beneficiary, trustee, assignee or purchaser.

The term "Lessee" whenever hereinabove used refers to and means the Lessee in the foregoing Lease specifically named and also any assignee or sublessee of said Lease and also any successor to the interests of said Lessee, assignee or sublessee of such Lease or any part thereof whether by assignment, sublease or otherwise.

In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee which shall be fixed by the court.

This Guaranty shall apply only to the lien free completion of improvements, the free rent for November and December of 1993 and the amount of the Lessor's tenant improvement contribution in the amount of \$35,000. This Guaranty shall expire and be of no force and effect as of November 1, 1996.

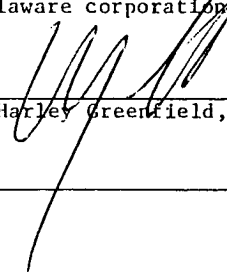
Executed at _____

on _____

Address: 245 Roger Avenue _____

Inwood, N.Y. 11696 _____

JENNIFER CONVERTIBLES, INC.,
a Delaware corporation

By:  _____
Harley Greenfield, President

By: _____

LAW OFFICES
**BROKER & ASSOCIATES
PROFESSIONAL CORPORATION**

TELEPHONE (949) 222-2000
FACSIMILE (949) 222-2022

SUITE 470
18191 VON KARMAN AVENUE
IRVINE, CALIFORNIA 92612-7114

WRITER'S E-MAIL:
jbroker@brokerlaw.biz

September 24, 2010

VIA OVERNIGHT DELIVERY

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

**Re: Jennifer Convertibles, Inc.;
Claims Processing**

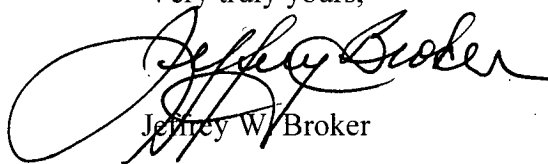
Dear Sirs:

You will find enclosed herewith an original and one copy of a proof of claim to be filed on behalf of the landlords at the Jennifer location in Thousand Oaks, California in the principal amount of **\$40,254.00**.

Please send by return mail a file stamped conformed copy of this proof of claim.

Thank you.

Very truly yours,



Jeffrey W. Broker

JWB/bjr
Enclosures
cc: clients