


<b>UNITED STATES BANKRUPTCY COURT</b> Southern District of New York		<b>PROOF OF CLAIM</b>
Name of Debtor: <b>JENNIFER CONVERTIBLES, INC.</b>		Case Number: <b>10-13779 ALG</b>
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>AMB-SGP CIF-I, LLC, a Delaware limited liability company</b>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent: <b>AMB-SGP CIF-I, LLC, a Delaware limited liability company c/o Thomas R. Cave, Esq., Groom &amp; Cave, LLP 1570 The Alameda, Suite 100, San Jose, California 95126</b>		
Telephone number: <b>(408) 286-3300</b>		
Name and address where payment should be sent (if different from above): <b>AMB Property Corporation, c/o Matthew Drury 1360 Willow Road, Suite 100, Menlo Park, California 94025</b>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
Telephone number: <b>(650) 330-9000</b>		
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>0.00</u>  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.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  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 \$10,950*) 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 \$2,425* 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)( ).  <b>Amount entitled to priority:</b> \$ _____  <small>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
<b>2. Basis for Claim:</b> <u>Commercial Lease</u> (See Attachment No. 1) (See instruction #2 on reverse side.)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____  <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)		
<b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other Describe: <u>Security Deposit under Commercial Lease (see Attachment No. 1).</u>  Value of Property: \$ <u>10,300.00</u> Annual Interest Rate _____ %  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____   Basis for perfection: _____  Amount of Secured Claim: \$ <u>10,300.00</u> Amount Unsecured: \$ <u>0.00</u>		
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
<b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		
Date: <u>9-29-10</u>  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.  <b>Thomas R. Cave, Esq., Attorney for Creditor</b>		<b>FOR COURT USE ONLY</b>  <div style="border: 1px solid black; padding: 5px; text-align: center;">             Jennifer Convertibles                00139           </div>

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

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

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

**Creditor's Name and Address:**

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

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

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

**2. Basis for Claim:**

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

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

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

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

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

**4. Secured Claim:**

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

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

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

**Offers to Purchase a Claim**

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

CERTIFICATE OF SERVICE

CASE NAME: In Re Jennifer Convertibles, Inc., Chapter 11  
BKTCY CASE NO.: 10-12779 ALG  
COURT: United States Bankruptcy Court, Southern District of New York

I am over the age of eighteen and not a party to the within action. I am employed in the County of Santa Clara, State of California, in the office of a member of the Bar of this court, at whose direction the service described below was made. My business address is 1570 The Alameda, Suite 100, San Jose, CA 95126.

On September 29, 2010, I served a copy of the Proof of Claim of Creditor AMB-SGP CIF-I, LLC, and supporting documents, on each of the undernoted individuals at the addresses shown:

Jordana L. Nadritch, Esq.  
Michael S. Fox, Esq.  
Olshan Grundman Fomre Resenzweig &  
Wolosky, LLP  
Park Avenue Tower  
65 E. 55<sup>th</sup> Street  
New York, New York 10022

Attorneys for Debtor  
Jennifer Convertibles, Inc.

Naza Khodorovsky, Esq.  
Office of the United States Trustee  
33 Whitehall Street, 21<sup>st</sup> Floor  
New York, New York 10004

Attorney for  
United States Trustee

James S. Carr, Esq.  
Eric R. Wilson, Esq.  
Kelley Drye & Warren, LLP  
101 Park Avenue  
New York, New York 10178

Attorney for  
Creditors Committee

by the service method indicated, as follows:

X First-Class Mail

If service was by personal delivery, I caused the envelope to be delivered by hand to the addressee. If service was by first-class mail, I caused the envelope to be placed in the United States mail with postage fully prepaid thereon, at San Jose, California. If service was by express mail, I caused the envelope to be placed in the United States Post Office mailbox for express mail, with postage fully prepared thereon, at San Jose, California. If service was by other overnight courier service, I caused the envelope to be deposited in a box or other facility regularly maintained by such overnight courier service, or to be delivered to an authorized courier or driver authorized by such overnight courier service to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on the above-mentioned date at San Jose, California.

  
Maggie Hannah

1 Thomas R. Cave, Esq. (State Bar No. 106995)  
2 Groom & Cave, LLP  
3 1570 The Alameda, #100  
4 San Jose, California 95126  
5 Tel: (408) 286-3300  
6 Fax: (408) 286-3423

7 Attorneys for AMB-SGP CIF-I, LLC, Creditor

8 UNITED STATES BANKRUPTCY COURT  
9 SOUTHERN DISTRICT OF NEW YORK

10  
11 In Re: ) Case No.: 10-13779 ALG  
12 Jennifer Convertibles, Inc. ) Chapter 11  
13 Tax ID No.: 11-2824646 ) ATTACHMENT NO. 1 TO  
14 Debtor, ) PROOF OF CLAIM  
15 )  
16 )  
17 )

18 This Proof of Claim is based on the commercial real property lease for approximately  
19 8,038 rentable square feet of space located at 2960 Alvarado Street, Unit C and D, San  
20 Leandro, California, as amended. As of the date of the filing of this Proof of Claim, the  
21 Debtor has not made its election to accept or to reject the Lease. At such time as Debtor  
22 assumes or rejects the Lease, Claimant shall file an amended Proof of Claim.

23 A. Attached as **Exhibit "A"** is the lease for the premises located at 2960 Alvarado  
24 Street, Unit C and D, San Leandro, California, dated June 4, 2003, with addendum(s) ("**Lease**").

25 B. Attached as **Exhibit "B"** is the Assignment and Assumption of Lease Agreement  
26 from Jennifer-CA Warehouse, Inc. to Jennifer Convertibles, Inc., for the premises located at 2960  
27 Alvarado Street, Unit C and D, San Leandro, California, dated May 31, 2005 ("**Assignment &**  
28 **Assumption**").

1 C. Attached as **Exhibit "C"** is the Consent to Assignment of Lease for the premises  
2 located at 2960 Alvarado Street, Unit C and D, San Leandro, California, dated June15, 2005  
3 (**"Consent to Assignment"**).

4 D. Attached as **Exhibit "D"** is the First Amendment to Lease, dated September 3, 2008  
5 (**"First Amendment"**).  
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**Industrial Net Lease**

**2960 Alvarado Street, Unit C and D  
San Leandro, California**

**AMB-SGP CIF-I, LLC,  
a Delaware limited liability company,**

**as Landlord,**

**and**

**JENNIFER-CA WAREHOUSE, INC.,  
a California corporation,**

**as Tenant**

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**AMB Property Corporation  
Industrial Net Lease**

**1. Basic Provisions ("Basic Provisions").**

**1.1 Parties.** This Lease ("Lease") dated June 4, 2003, is made by and between AMB-SGP CIF-I, LLC, a Delaware limited liability company ("Landlord"), and JENNIFER-CA WAREHOUSE, INC., a California corporation ("Tenant") (collectively, the "Parties" or individually, a "Party").

**1.2 Premises.** The premises ("Premises"), which are the subject of this Lease, are located in the industrial center commonly known as Alvarado Center (the "Industrial Center"). The Premises are approximately 8,038 square feet of space located at 2960 Alvarado Street, Unit C and D, San Leandro, California, as depicted on Exhibit A. This space is a part of the building ("Building") which is also identified on Exhibit A. Tenant shall have nonexclusive rights to the Common Areas (as defined in Paragraph 2.2 below) but shall not have any rights to the roof, exterior walls, or utility raceways of the Building or to any other buildings in the Industrial Center. The Industrial Center consists of the Premises, the Building, the Common Areas, the land upon which they are located, and all other buildings and improvements within the boundaries of the Industrial Center.

**1.3 Term.** Five (5) years ("Term") commencing August 1, 2003 ("Commencement Date"), and ending July 31, 2008 ("Expiration Date").

**1.4 Base Rent.** Monthly Base Rent ("Base Rent") for the initial term of the Lease is as follows:

August 1, 2003 – July 31, 2004	\$3,713.56 NNN (\$0.462 sq. ft.)
August 1, 2004 – July 31, 2005	\$3,826.09 NNN (\$0.476 sq. ft.)
August 1, 2005 – July 31, 2006	\$3,938.62 NNN (\$0.490 sq. ft.)
August 1, 2006 – July 31, 2007	\$4,059.19 NNN (\$0.505 sq. ft.)
August 1, 2007 – July 31, 2008	\$4,179.76 NNN (\$0.520 sq. ft.)

**1.5 Tenant's Share of Operating Expenses ("Tenant's Share").**

(a) Common Area Operating Expenses	1.15%
(b) Building Operating Expenses	Not applicable

**1.6 Tenant's Estimated Monthly Rent Payment.** Following is the estimated monthly Rent payment to Landlord pursuant to the provisions of this Lease. This estimate is made at the inception of the Lease and is subject to adjustment pursuant to the provisions of this Lease:

(a) Base Rent (Paragraph 4.1)	\$3,713.56
(b) Operating Expenses (Paragraph 4.2, including Property Management Fee and excluding Real Property Taxes, Landlord Insurance, and HVAC)	\$404.04
(c) Landlord Insurance (Paragraph 8.3)	\$144.68
(d) Real Property Taxes (Paragraph 10)	\$474.24
(e) HVAC maintenance (Paragraph 4.2)	\$21.97
(f) Systems Replacement Fee (Paragraph 4.3)	\$160.76
Estimated Total Monthly Payment	\$4,919.25

**1.7 Security Deposit.** Ten Thousand Three Hundred and 00/100 Dollars (\$10,300.00) ("Security Deposit").

**1.8 Permitted Use ("Permitted Use").** The Premises shall be used solely for warehouse and distribution of furniture and other related products, but only to the extent permitted by the City of San Leandro and all agencies and governmental authorities having jurisdiction thereof.

**1.9 Guarantor.** Not applicable.

**1.10 Addenda.** Attached hereto are the following Addenda, all of which constitute a part of this Lease:

None.

**1.11 Exhibits.** Attached hereto are the following Exhibits, all of which constitute a part of this Lease:

Exhibit A:	Diagram of Premises.
Exhibit B:	Intentionally Omitted.
Exhibit C:	Tenant Move-in and Lease Renewal Environmental Questionnaire.
Exhibit D:	Move-out Standards.
Exhibit E:	Sign Criteria.
Exhibit F:	Rules and Regulations.

**1.12 Address for Rent Payments.** All amounts payable by Tenant to Landlord shall until further notice from Landlord be paid to AMB-SGP CIF-I, LLC at the following address:

odc:\cases\jennifer\_r\0.doc 6/4/03  
AMB v. Jennifer-CA Warehouse, Inc.

2. **Premises and Common Areas.**

2.1 **Letting.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises upon all of the terms, covenants, and conditions, set forth in this Lease. Any statement of square footage set forth in this Lease or that may have been used in calculating Base Rent and/or Operating Expenses is an approximation which Landlord and Tenant agree is reasonable, and the Base Rent and Tenant's Share based thereon is not subject to revision whether or not the actual square footage is more or less.

2.2 **Common Areas - Definition.** "Common Areas" are all areas and facilities outside the Premises and within the exterior boundary line of the Industrial Center and interior utility raceways within the Premises that are provided and designated by the Landlord from time to time for the general nonexclusive use of Landlord, Tenant, and other tenants of the Industrial Center and their respective employees, suppliers, shippers, tenants, contractors, and invitees.

2.3 **Common Areas - Tenant's Rights.** Landlord hereby grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, contractors, customers, and invitees, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or covenants, conditions, and restrictions governing the use of the Industrial Center.

2.4 **Common Areas - Rules and Regulations.** Landlord shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend, and enforce reasonable Rules and Regulations with respect thereto in accordance with Paragraph 16.19.

2.5 **Common Area Changes.** Landlord shall have the right, in Landlord's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the locations, size, shape, and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways, and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Industrial Center to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs, or alterations to the Industrial Center, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to, or with respect to the Common Areas and Industrial Center as Landlord may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date, and Term of this Lease are as specified in Paragraph 1.3.

3.2 **Delay in Possession.** Intentionally Omitted.

3.3 **Commencement Date Certificate.** Intentionally Omitted.

4. **Rent.**

4.1 **Base Rent.** Tenant shall pay to Landlord Base Rent and other monetary obligations of Tenant to Landlord under the terms of this Lease (such other monetary obligations are herein referred to as "Additional Rent") in lawful money of the United States, without offset or deduction, in advance on or before the first day of each month. Base Rent and Additional Rent for any period during the term hereof which is for less than one full month shall be prorated based upon the actual number of days of the month involved. Payment of Base Rent and Additional Rent shall be made to Landlord at its address stated herein or to such other persons or at such other addresses as Landlord may from time to time designate in writing to Tenant. Base Rent and Additional Rent are collectively referred to as "Rent." All monetary obligations of Tenant to Landlord under the terms of this Lease are deemed to be Rent.

4.2 **Operating Expenses.** Tenant shall pay to Landlord on the first day of each month during the term hereof, in addition to the Base Rent, Tenant's Share of all Operating Expenses in accordance with the following provisions, with the understanding that Landlord shall not include in the Operating Expenses, any expenses that are actually covered by the Systems Replacement Fee paid by Tenant pursuant to Paragraph 4.3 below.

(a) Except as excluded by Paragraph 4.3 below, "Operating Expenses" are all costs incurred by Landlord relating to the ownership, management, maintenance, repair, replacement and/or operation of the Industrial Center, Building, and Premises including, but not limited to, the following:

(i) Expenses relating to the Common Areas, including, without limitation, parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, rail spurs, landscaped areas, striping, bumpers, irrigation systems, drainage systems, lighting facilities, fences and gates, exterior signs, and/or tenant directories.

(ii) Water, gas, electricity, telephone, and other utilities servicing the Common Areas or not paid for directly by other tenants of the Industrial Center.

(iii) Trash disposal, snow removal, janitorial, security and property management.

(iv) Intentionally Omitted.

(v) Real Property Taxes.

(vi) Premiums for the insurance policies maintained by Landlord under Paragraph 8 below.

(vii) Environmental monitoring and insurance programs.

(viii) Monthly amortization of capital improvements to the Common Areas the Building, or any other portion of the Industrial Center. The monthly amortization of any given capital improvement shall be the sum of the (a) quotient obtained by dividing the cost of the capital improvement by Landlord's commercially reasonable estimate of the number of months of useful life of such improvement plus (b) an amount equal to the cost of the capital improvement times 1/12 of the lesser of 12% or the maximum annual interest rate permitted by law.

(ix) Maintenance of the Building, as well as the other portions of the Industrial Center, including, but not limited to, painting, caulking, and repair and replacement of Building components, including, but not limited to, roof, elevators, and fire detection and sprinkler systems.

(x) Heating, ventilating, and air conditioning systems ("HVAC").

(b) Tenant's Share of Operating Expenses that are not specifically attributed to the Premises or Building ("Common Area Operating Expenses") shall be that percentage shown in Paragraph 1.5(a). Tenant's Share of Operating Expenses that are attributable to the Building ("Building Operating Expenses") shall be that percentage shown in Paragraph 1.5(b). Landlord in its sole discretion shall determine which Operating Expenses are Common Area Operating Expenses, Building Operating Expenses, or expenses to be entirely borne by Tenant.

(c) The inclusion of the improvements, facilities, and services set forth in Subparagraph 4.2(a) shall not impose any obligation upon Landlord either to have said improvements or facilities or to provide those services.

(d) Tenant shall pay monthly in advance, on the same day that the Base Rent is due, Tenant's Share of estimated Operating Expenses and HVAC maintenance costs in the amount set forth in Paragraph 1.6. Landlord shall deliver to Tenant within 90 days after the expiration of each calendar year a reasonably detailed statement showing Tenant's Share of the actual Operating Expenses incurred during the preceding year. If Tenant's estimated payments under this Paragraph 4(d) during the preceding year exceed Tenant's Share as indicated on said statement, Tenant shall be credited the amount of such overpayment against Tenant's Share of Operating Expenses next becoming due. If Tenant's estimated payments under this Paragraph 4.2(d) during said preceding year were less than Tenant's Share as indicated on said statement, Tenant shall pay to Landlord the amount of the deficiency within 10 days after delivery by Landlord to Tenant of said statement. At any time Landlord may adjust the amount of the estimated Tenant's Share of Operating Expenses and HVAC maintenance costs to reflect Landlord's estimate of such expenses for the year.

(e) The term "Operating Expenses" shall not include costs included in Operating Expenses representing an amount paid to Landlord or to subsidiaries or affiliates of Landlord which is in excess of the amount which would have been paid in the absence of such relationship.

**4.3 Systems Replacement Fee.** Commencing on the Commencement Date of this Lease and continuing for the Term of this Lease, Tenant shall pay to Landlord, as part of Additional Rent, a non-variable monthly fee ("Systems Replacement Fee") in the amount set forth in Section 1.6 f above, to compensate Landlord for the useful life depletion of the following systems (the "Systems"): replacement of the roof membrane, but not maintenance and repairs, which are part of Operating Expenses herein; asphalt for the parking lot, roadways, parkways and driveways (including asphalt replacement or overlay) but excluding repairs, patching and slurry sealing, which are part of Operating Expenses herein; complete HVAC unit replacement, but not repairs, maintenance, or replacement of components, which are part of Operating Expenses herein; and exterior painting or re-painting of an entire Building, but not touch up painting. The Systems Replacement Fee does not include insurance deductibles with respect to the foregoing because of casualty or other insurable event, and such deductibles shall remain a part of Operating Expenses herein. The Systems Replacement Fee shall not be subject to reconciliation by Landlord pursuant to Paragraph 4.2 (d) herein. Therefore, Tenant shall not be liable for the costs and expenses incurred by Landlord for such Systems replacement which are in excess of the Systems Replacement Fee, nor shall Landlord be liable for reimbursements to Tenant to the extent the Systems Replacement Fee paid is more than the costs and expenses actually incurred by Landlord to replace such Systems.

5. **Security Deposit.** Tenant shall deposit with Landlord upon Tenant's execution hereof the Security Deposit set forth in Paragraph 1.7 as security for Tenant's faithful performance of Tenant's obligations under this Lease. If Tenant fails to pay Base Rent or Additional Rent or otherwise defaults under this Lease (as defined in Paragraph 13.1), Landlord may use the Security Deposit for the payment of any amount due Landlord or to reimburse or compensate Landlord for any liability, cost, expense, loss, or damage (including attorneys' fees) which Landlord may suffer or incur by reason thereof. Tenant shall on demand pay Landlord the amount so used or applied so as to restore the Security Deposit to the amount set forth in Paragraph 1.7. Landlord shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Landlord shall, at the expiration or earlier termination of the Term hereof and after Tenant has vacated the Premises, return to Tenant that portion of the Security Deposit not used or applied by Landlord. No part of the Security Deposit shall be considered to be held in trust, to bear interest, or to be prepayment for any monies to be paid by Tenant under this Lease.

6. **Use.**

6.1 **Permitted Use.** Tenant shall use and occupy the Premises only for the Permitted Use set forth in Paragraph 1.8. Tenant shall not commit any nuisance, permit the emission of any objectionable noise or odor, suffer any waste, make any use of the Premises which is contrary to any law or ordinance, or which will invalidate or increase the premiums for any of Landlord's insurance. Tenant shall not service, maintain, or repair vehicles on the Premises, Building, or Common Areas. Tenant shall not store foods, pallets, drums, or any other materials outside the Premises.

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 by 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 potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil, or any products or by-products thereof. Tenant shall not engage in any activity in or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Landlord and compliance in a timely manner (at Tenant's sole cost and expense) with all Applicable Requirements (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, and (iii) the presence in, on, or about the Premises of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Tenant may, without Landlord's prior consent, but upon notice to Landlord and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by Tenant in the normal course of the Permitted Use, 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 Landlord to any liability therefor. In addition, Landlord may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Tenant upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises, and the environment against damage, contamination, injury, and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit.

(b) **Duty to Inform Landlord.** If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance is located in, under, or about the Premises or the Building, Tenant shall immediately give Landlord written notice thereof, together with 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 concerning the presence, spill, release, discharge of, or exposure to such Hazardous Substance. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

(c) **Indemnification.** Tenant shall indemnify, protect, defend, and hold Landlord, Landlord's affiliates, Lenders, and the officers, directors, shareholders, partners, employees, managers, independent contractors, attorneys, and agents of the foregoing ("Landlord Entities") and the Premises harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance on or brought onto the Premises by or for Tenant or by any of Tenant's employees, agents, contractors, servants, visitors, suppliers, or invitees (such employees, agents, contractors, servants, visitors, suppliers, and invitees as herein collectively referred to as "Tenant Entities"). Tenant's obligations under this Paragraph 6.2(c) shall include, but not be limited to, the effects of any contamination or injury to person, property, or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved. Tenant's obligations under this Paragraph 6.2(c) shall survive the Expiration Date or earlier termination of this Lease.

6.3 **Tenant's Compliance with Requirements.** Tenant shall, at Tenant's sole cost and expense, fully, diligently, and in a timely manner comply with all "Applicable Requirements," which term is used in this Lease to mean 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 Landlord's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (a)

industrial hygiene, (b) environmental conditions on, in, under, or about the Premises, including soil and groundwater conditions, and (c) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill, or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Tenant shall, within 5 days after receipt of Landlord's written request, provide Landlord with copies of all documents and information evidencing Tenant's compliance with any Applicable Requirements, and shall immediately upon receipt notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint, or report pertaining to or involving failure by Tenant or the Premises to comply with any Applicable Requirements.

**6.4 Inspection: Compliance with Law.** In addition to Landlord's environmental monitoring and insurance program, the cost of which is included in Operating Expenses, Landlord and the holders of any mortgages, deeds of trust, or ground leases on the Premises ("Lenders") shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Requirements. Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord with respect to Tenant's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The cost and expenses of any such inspections shall be paid by the party requesting same unless a violation of Applicable Requirements exists or is imminent, or the inspection is requested or ordered by a governmental authority. Tenant shall upon request reimburse Landlord or Landlord's Lender, as the case may be, for the costs and expenses of such inspections.

**6.5 Tenant Move-in Questionnaire.** Prior to executing this Lease, Tenant has completed, executed and delivered to Landlord Tenant's Move-in and Lease Renewal Environmental Questionnaire (the "Tenant Move-in Questionnaire"), a copy of which is attached hereto as Exhibit C and incorporated herein by this reference. Tenant covenants, represents and warrants to Landlord that the information on the Tenant Move-in Questionnaire is true and correct and accurately describes the use(s) of Hazardous Substances which will be made and/or used on the Premises by Tenant.

## **7. Maintenance, Repairs, Trade Fixtures and Alterations.**

**7.1 Tenant's Obligations.** Subject to the provisions of Paragraph 7.2 (Landlord's Obligations), Paragraph 9 (Damage or Destruction), and Paragraph 14 (Condemnation), Tenant shall, at Tenant's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition, and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonable or readily accessible to Tenant and whether or not the need for such repairs occurs as a result of Tenant'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 specifically serving the Premises, such as plumbing, heating, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire hose connectors if within the Premises, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, but excluding any items which are the responsibility of Landlord pursuant to Paragraph 7.2 below. Tenant'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.

**7.2 Landlord's Obligations.** Landlord, at its sole cost and expense, shall deliver the Premises in good operating condition, including, but not limited to, the roof. Subject to the provisions of Paragraph 6 (Use), Paragraph 7.1 (Tenant's Obligations), Paragraph 9 (Damage or Destruction), and Paragraph 14 (Condemnation), Landlord, at its expense and not subject to the reimbursement requirements of Paragraph 4.2, shall keep in good order, condition, and repair the roof structure, foundations and exterior walls of the Building and utility systems within the Industrial Center. Landlord, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition, and repair the air conditioning systems servicing the Premises, Building roof membrane, and Common Areas. Whenever Landlord enters or performs work in or about the Premises, Landlord shall use commercially reasonable efforts to minimize the inconvenience to Tenant.

**7.3 Alterations.** Tenant shall be permitted to make in accordance with all Laws, at its sole cost and expense and after receipt of all necessary permits and approvals, non-structural alterations and additions to the Premises without obtaining Landlord's prior written consent, provided the cost of same does not exceed \$15,000 cumulatively during each calendar year so long as any such non-structural alteration or addition does not affect the Building systems or the structural integrity or structural components of the Premises or the Building (the "Permitted Improvements"). Tenant, however, shall first notify Landlord of such alterations or additions so that Landlord may post a Notice of Non-Responsibility on the Premises. Within fifteen (15) business days of Landlord's receipt of Tenant's written notice of any item comprising the Permitted Improvements, Landlord shall notify Tenant, in writing, whether or not Landlord will require Tenant to remove such item from the Premises upon the expiration or earlier termination of this Lease. Except for the Permitted Improvements, Tenant shall not install any signs, fixtures, improvements, nor make or permit any other alterations or additions (individually, an "Alteration", and collectively, the "Alterations") to the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld so long as any such Alteration does not affect the Building systems or the structural integrity or structural components of the Premises or the Building. If any such Alteration is expressly permitted by Landlord, Tenant shall deliver at least ten (10) days prior notice to Landlord, from the date Tenant intends to commence construction, sufficient to enable Landlord to post a Notice of Non-Responsibility. In all events, Tenant shall obtain all permits or other governmental approvals prior to commencing any of such work and deliver a copy of same to Landlord. All Alterations shall be at Tenant's sole cost and expense in accordance with plans and specifications which have been previously submitted to and approved in writing by Landlord, and shall be installed by a licensed, insured (and bonded, at Landlord's option) contractor (reasonably approved by Landlord) in compliance with all applicable Laws (including, but not limited to, the ADA), Development Documents, Recorded Matters, and Rules and Regulations. In addition, all work with respect to any Alterations must be done in a good and workmanlike manner. Landlord's approval of any plans, specifications or working drawings for Tenant's Alterations shall not create nor impose any responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with any laws, ordinances, rules and regulations of governmental agencies or

authorities. In performing the work of any such Alterations, Tenant shall have the work performed in such a manner as not to obstruct access to the Project, or the Common Areas for any other tenant of the Project, and as not to obstruct the business of Landlord or other tenants in the Project, or interfere with the labor force working in the Project. As Additional Rent hereunder, Tenant shall reimburse Landlord, within thirty (30) days after receipt of written demand, for actual legal, engineering, architectural, planning and other reasonable expenses incurred by Landlord in connection with Tenant's Alterations, plus Tenant shall pay to Landlord a fee equal to five percent (5%) of the total cost of the Alterations. If Tenant makes any Alterations, Tenant agrees to carry "Builder's All Risk" insurance, in an amount approved by Landlord and such other insurance as Landlord may require, it being understood and agreed that all of such Alterations shall be insured by Tenant in accordance with Section 8 of this Lease immediately upon completion thereof. Tenant shall keep the Premises and the property on which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Tenant shall, prior to construction of any and all Alterations, cause its contractor(s) and/or major subcontractor(s) to provide insurance as reasonably required by Landlord, and Tenant shall provide such assurances to Landlord, including without limitation, waivers of lien, surety company performance bonds as Landlord shall require to assure payment of the costs thereof to protect Landlord and the Project from and against any loss from any mechanic's, materialmen's or other liens.

**7.4 Surrender/Restoration.** Tenant shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, clean and free of debris and in good operating order, condition, and state of repair, ordinary wear and tear excepted. Without limiting the generality of the above, Tenant shall remove all tenant improvements designated by Landlord in Landlord's sole discretion, personal property, trade fixtures, and floor bolts, patch all floors, and cause all lights to be in good operating condition as outlined in Exhibit D of the Lease.

**8. Insurance; Indemnity.**

**8.1 Payment of Premiums.** The cost of the premiums for the insurance policies maintained by Landlord under this Paragraph 8 shall be a Common Area Operating Expense reimbursable pursuant to Paragraph 4.2 hereof. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement Date and Expiration Date.

**8.2 Tenant's Insurance.**

(a) At its sole cost and expense, Tenant shall maintain in full force and effect during the Term of the Lease the following insurance coverages insuring against claims which may arise from or in connection with the Tenant's operation and use of the Premises.

(i) Commercial General Liability insurance with minimum limits of \$1,000,000 per occurrence and \$3,000,000 general aggregate for bodily injury, personal injury, and property damage. If required by Landlord, liquor liability coverage will be included. Such insurance shall be endorsed to include Landlord and Landlord Entities as additional insureds, shall be primary and noncontributory with any Landlord insurance, and shall provide severability of interests between or among insureds.

(ii) Workers' Compensation insurance with statutory limits and Employers Liability with a \$1,000,000 per accident limit for bodily injury or disease.

(iii) Automobile Liability insurance covering all owned, nonowned, and hired vehicles with a \$1,000,000 per accident limit for bodily injury and property damage.

(iv) Property insurance against "all risks" at least as broad as the current ISO Special Form policy, including earthquake and flood, for loss to any tenant improvements or betterments, floor and wall coverings, and business personal property on a full insurable replacement cost basis with no coinsurance clause, and Business Income insurance covering at least six months of loss of income and continuing expense.

(b) Tenant shall deliver to AMB certificates of all insurance reflecting evidence of required coverages prior to initial occupancy, and annually thereafter.

(c) If, in the opinion of Landlord's insurance advisor, the amount or scope of such coverage is deemed inadequate at any time during the Term, Tenant shall increase such coverage to such reasonable amounts or scope as Landlord's advisor deems adequate.

(d) All insurance required under Paragraph 8.2 (i) shall be issued by insurers licensed to do business in the state in which the Premises are located and which are rated A:VII or better by Best's Key Rating Guide and (ii) shall be endorsed to provide at least 30-days prior notification of cancellation or material change in coverage to said additional insureds.

**8.3 Landlord's Insurance.** Landlord may, but shall not be obligated to, maintain "all risks" coverage as broad as the current ISO Special Form policy, including earthquake and flood, covering the buildings within the Industrial Center, Commercial General Liability insurance, and such other insurance in such amounts and covering such other liability or hazards as deemed appropriate by Landlord. The amount and scope of coverage of Landlord's insurance shall be determined by Landlord from time to time in its sole discretion and shall be subject to such deductible amounts as Landlord may elect. Landlord shall have the right to reduce or terminate any insurance or coverage.

**8.4 Waiver of Subrogation.** To the extent permitted by law and with permission of their insurance carriers, Landlord and Tenant each waive any right to recover against the other on account of any and all claims Landlord or Tenant may have against the other with respect to property insurance actually carried, or required to be carried hereunder, to the extent of the proceeds realized from such insurance coverage.

**8.5 Indemnity.** Tenant shall protect, defend, indemnify, and hold Landlord and Landlord Entities harmless from and against any and all loss, claims, liability, or costs (including court costs and attorneys' fees) incurred by reason of:

(a) any damage to any property (including but not limited to property of any Landlord Entity) or death, bodily, or personal injury to any person occurring in or about the Premises, the Building, or the Industrial Center to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault, or omission by or of Tenant, its agents, servants, employees, invitees, contractors, suppliers, subtenants, or visitors;

(b) the conduct or management of any work or anything whatsoever done by the Tenant on or about the Premises or from transactions of the Tenant concerning the Premises;

(c) Tenant's failure to comply with any and all governmental laws, ordinances, and regulations applicable to the condition or use of the Premises or its occupancy; or

(d) any breach or default on the part of Tenant in the performance of any covenant or agreement to be performed pursuant to this Lease.

The provisions of this Paragraph 8.5 shall, with respect to any claims or liability accruing prior to such termination, survive the Expiration Date or earlier termination of this Lease.

**8.6 Exemption of Landlord from Liability.** Except to the extent caused by the gross negligence or willful misconduct of Landlord, Landlord shall not be liable for and Tenant waives any claims against Landlord for injury or damage to the person or the property of Tenant, Tenant Entities, or any other person in or about the Premises, Building, or Industrial Center from any cause whatsoever, including, but not limited to, damage or injury which is caused by or results from (a) fire, steam, electricity, gas, water, or rain, or from the breakage, leakage, seepage, back up of sewers or drains, obstruction, or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures or (b) from the condition of the Premises, other portions of the Building, or Industrial Center. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of Landlord nor from the failure by Landlord to enforce the provisions of any other lease in the Industrial Center. Notwithstanding Landlord's negligence or breach of this Lease, Landlord shall under no circumstances be liable for injury to Tenant's business, for any loss of income or profit therefrom, or any indirect, consequential, or punitive damages.

## **9. Damage or Destruction.**

**9.1 Termination Right.** Tenant shall give Landlord immediate written notice of any damage to the Premises. Subject to the provisions of Paragraph 9.2, if the Premises or the Building shall be damaged to such an extent that there is substantial interference for a period exceeding 90 consecutive days with the conduct by Tenant of its business at the Premises, Tenant, at any time prior to commencement of repair of the Premises and following 10 days written notice to Landlord, may terminate this Lease effective 30 days after delivery of such notice to Landlord. Such termination shall not excuse the performance by Tenant of those covenants which under the terms hereof survive termination. Rent shall be abated in proportion to the degree of interference during the period that there is such substantial interference with the conduct of Tenant's business at the Premises. Abatement of rent and Tenant's right of termination pursuant to this provision shall be Tenant's sole remedy for failure of Landlord to keep in good order, condition, and repair the foundations and exterior walls of the Building, Building roof, utility systems outside the Building, the Common Areas, and HVAC.

**9.2 Damage Caused by Tenant.** Tenant's termination rights under Paragraph 9.1 shall not apply if the damage to the Premises or Building is the result of any act or omission of Tenant or of any of Tenant's agents, employees, customers, invitees, or contractors ("Tenant Acts"). Any damage resulting from a Tenant Act shall be promptly repaired by Tenant. Landlord at its option may at Tenant's expense repair any damage caused by Tenant Acts. Tenant shall continue to pay all rent and other sums due hereunder and shall be liable to Landlord for all damages that Landlord may sustain resulting from a Tenant Act.

## **10. Real Property Taxes.**

**10.1 Payment of Real Property Taxes.** Landlord shall pay the Real Property Taxes due and payable during the term of this Lease and, except as otherwise provided in Paragraph 10.3, such payments shall be a Common Area Operating Expense reimbursable pursuant to Paragraph 4.2.

**10.2 Real Property Tax Definition.** As used herein, the term "Real Property Taxes" is any form of tax or assessment, general, special, ordinary, or extraordinary, imposed or levied upon (a) the Industrial Center or Building, (b) any interest of Landlord in the Industrial Center or Building, (c) Landlord's right to rent or other income from the Industrial Center or Building, and/or (d) Landlord's business of leasing the Premises. Real Property Taxes include (a) any license fee, commercial rental tax, excise tax, improvement bond or bonds, levy, or tax; (b) any tax or charge which replaces or is in addition to any of such above-described "Real Property Taxes," and (c) any fees, expenses, or costs (including attorneys' fees, expert fees, and the like) incurred by Landlord in protesting or contesting any assessments levied or any tax rate. Real Property Taxes for tax years commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement Date and Expiration Date.

**10.3 Additional Improvements.** Operating Expenses shall not include Real Property Taxes attributable to improvements placed upon the Industrial Center by other tenants or by Landlord for the exclusive enjoyment of such other tenants. Tenant shall, however, pay to Landlord at the time Operating Expenses are payable under Paragraph 4.2,



the entirety of any increase in Real Property Taxes if assessed by reason of improvements placed upon the Premises by Tenant or at Tenant's request.

**10.4 Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed.

**10.5 Tenant's Property Taxes.** Tenant shall pay prior to delinquency all taxes assessed against and levied upon Tenant's improvements, fixtures, furnishings, equipment, and all personal property of Tenant contained in the Premises or stored within the Industrial Center.

**11. Utilities.** Tenant shall pay directly for all utilities and services supplied to the Premises, including but not limited to electricity, telephone, security, gas, and cleaning of the Premises, together with any taxes thereon.

**12. Assignment and Subletting.**

**12.1 Landlord's Consent Required.**

(a) Tenant shall not assign, transfer, mortgage, or otherwise transfer or encumber (collectively, "assign") or sublet all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld. Relevant criteria in determining reasonability of consent include, but are not limited to, credit history of a proposed assignee or sublessee, references from prior landlords, any change or intensification of use of the Premises or the Common Areas, and any limitations imposed by the Internal Revenue Code and the Regulations promulgated thereunder relating to Real Estate Investment Trusts. Assignment or sublet shall not release Tenant from its obligations hereunder. Tenant shall not (i) sublet, assign, or enter into other arrangements in which the amounts to be paid by the sublessee or assignee thereunder would be based, in whole or in part, on the income or profits derived by the business activities of the sublessee or assignee; (ii) sublet the Premises or assign this Lease to any person or entity in which Landlord owns an interest, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d)(5) of the Internal Revenue Code (the "Code")); or (iii) sublet the Premises or assign this Lease in any other manner which could cause any portion of the amounts received by Landlord pursuant to this Lease or any sublease to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or which could cause any other income received by Landlord to fail to qualify as income described in Section 856(c)(2) of the Code. Notwithstanding anything to the contrary contained herein, so long as Tenant delivers to Landlord (1) at least thirty (30) days prior written notice of its intention to assign or sublease the Premises to any Permitted Transferee, which notice shall set forth the name of the Permitted Transferee, (2) a copy of the assignment or sublease agreement, if any, to be executed in connection therewith, and (3) such other information concerning the Related Entity as Landlord may reasonably require, including without limitation, information regarding any change in the proposed use of any portion of the Premises and any financial information with respect to such Related Entity, and so long as Landlord, if necessary, approves in writing, of any change in the proposed use of the subject portion of the Premises and such financial information, then Tenant may assign this Lease or sublease any portion of the Premises (X) to any Related Entity, or (Y) in connection with any merger, consolidation or sale of substantially all of the assets of Tenant, without having to obtain the prior written consent of Landlord thereto (the entities described in subparts (X) and (Y) are referred to individually as a "Permitted Transferee" and collectively as "Permitted Transferees"). For purposes of this Lease the term "Related Entity" shall mean and refer to any corporation or entity which is a wholly owned subsidiary of Tenant, which Tenant is a wholly owned subsidiary of, or which is a Franchisee or Licensee of Tenant. In all cases, the Permitted Transferee must have a net worth of equal to or greater than the net worth of Tenant as of the proposed transfer date and Tenant shall not be released from liability under this Lease.

The requirements of this Section 12.1 shall apply to any further subleasing by any subtenant. Notwithstanding the foregoing, in the event of any assignment or subletting to which Landlord consents, Landlord shall receive fifty percent (50%), in the event of a sublease, of any rent received by Tenant above the rent then being paid by Tenant to Landlord less any commissions or marketing expense paid by Tenant for such sublease. In addition, Landlord shall receive fifty percent (50%), in the event of an assignment, of any profit derived by Tenant from such assignment less any commissions or marketing expense paid by Tenant for such assignment. Together the aforementioned provisions relating to the Landlord's right to fifty percent (50%) of the amounts paid in connection with an assignment or subletting, as hereinabove set forth, shall be referred to as the "Landlord's Profit Sharing Amount". In the event of any assignment or subletting, Tenant shall pay to Landlord or its authorized managing agent (as directed by Landlord) a fee of \$750.00 to cover Landlord's costs of review, negotiation, preparation or execution of any documentation regarding such assignment or subletting. In the event this Lease is transferred to a Related Party, as defined above, Landlord shall not be entitled to receive the Landlord's Profit Sharing Amount, but Tenant shall pay to Landlord the fee of \$750.00 as hereinabove set forth.

(b) A change in the control of Tenant shall constitute an assignment requiring Landlord's consent. The transfer, on a cumulative basis, of 49% or more of the voting or management control of Tenant shall constitute a change in control for this purpose.

**12.2 Rent Adjustment.** If, as of the effective date of any permitted assignment or subletting, the then remaining term of this Lease is less than 3 years, Landlord may, as a condition to its consent: (a) require that the amount of the Rent payable under this Lease be adjusted to what is then the market value for property similar to the Premises as then constituted, as determined by Landlord; or (b) terminate the Lease as of the date of assignment or subletting, subject to the performance by Tenant of those covenants which under the terms hereof survive termination.

**13. Default; Remedies.**

**13.1 Default.** The occurrence of any one of the following events shall constitute an event of default on the part of Tenant ("Default"):

- (a) The abandonment of the Premises by Tenant;
- (b) Failure to pay any installment of Base Rent, Additional Rent, or any other monies due and payable hereunder, said failure continuing for a period of 5 days after the same is due;
- (c) A general assignment by Tenant or any guarantor for the benefit of creditors;
- (d) The filing of a voluntary petition of bankruptcy by Tenant or any guarantor; the filing of a voluntary petition for an arrangement; the filing of a petition, voluntary or involuntary, for reorganization; or the filing of an involuntary petition by Tenant's creditors or guarantors;
- (e) Receivership, attachment, or other judicial seizure of the Premises or all or substantially all of Tenant's assets on the Premises;
- (f) Failure of Tenant to maintain insurance as required by Paragraph 8.2;
- (g) Any breach by Tenant of its covenants under Paragraph 6.2;
- (h) Failure in the performance of any of Tenant's covenants, agreements, or obligations hereunder (except those failures specified as events of Default in other Paragraphs of this Paragraph 13.1 which shall be governed by such other Paragraphs), which failure continues for 20 days after written notice thereof from Landlord to Tenant; provided that, if Tenant has exercised reasonable diligence to cure such failure and such failure cannot be cured within such 20-day period despite reasonable diligence, Tenant shall not be in default under this subparagraph unless Tenant fails thereafter diligently and continuously to prosecute the cure to completion;
- (i) Any transfer of a substantial portion of the assets of Tenant, or any incurrence of a material obligation by Tenant, unless such transfer or obligation is undertaken or incurred in the ordinary course of Tenant's business, or in good faith for equivalent consideration, or with Landlord's consent; and
- (j) The default of any guarantors of Tenant's obligations hereunder under any guaranty of this Lease, or the attempted repudiation or revocation of any such guaranty.

**13.2 Remedies.** In the event of any Default by Tenant, Landlord shall have any or all of the following remedies:

(a) **Termination.** In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

(1) the worth at the time of award of any unpaid Rent and any other sums due and payable which have been earned at the time of such termination; plus

(2) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(3) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom, including, without limitation, any costs or expenses incurred by Landlord (i) in retaking possession of the Premises; (ii) in maintaining, repairing, preserving, restoring, replacing, cleaning, the Premises or any portion thereof, including such acts for reletting to a new lessee or lessees; (iii) for leasing commissions; or (iv) for any other costs necessary or appropriate to relet the Premises; plus

(5) such reasonable attorneys' fees incurred by Landlord as a result of a Default, and costs in the event suit is filed by Landlord to enforce such remedy; and plus

(6) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law. As used in subparagraphs (1) and (2) above, the "worth at the time of award" is computed by allowing interest at an annual rate equal to twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less. As used in subparagraph (3) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%). Tenant waives redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other present or future law, in the event Tenant is evicted or Landlord takes possession of the Premises by reason of any Default of Tenant hereunder.

(b) Continuation of Lease. In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, provided tenant has the right to sublet or assign, subject only to reasonable limitations).

(c) Re-entry. In the event of any Default by Tenant, Landlord shall also have the right, with or without terminating this Lease, in compliance with applicable law, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.

(d) Reletting. In the event of the abandonment of the Premises by Tenant or in the event that Landlord shall elect to re-enter or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease as provided in Paragraph a, Landlord may from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises. In the event that Landlord shall elect to so relet, then rentals received by Landlord from such reletting shall be applied in the following order: (1) to reasonable attorneys' fees incurred by Landlord as a result of a Default and costs in the event suit is filed by Landlord to enforce such remedies; (2) to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; (3) to the payment of any costs of such reletting; (4) to the payment of the costs of any alterations and repairs to the Premises; (5) to the payment of Rent due and unpaid hereunder; and (6) the residue, if any, shall be held by Landlord and applied in payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

(e) Termination. No re-entry or taking of possession of the Premises by Landlord pursuant to this Addendum shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of any Default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such Default.

(f) Cumulative Remedies. Without modifying any other specific provisions herein (including without limitation, limitations on Landlord's liability and no offset to the payment of rent), the remedies herein provided are not exclusive and Landlord and Tenant shall have any and all other remedies provided herein or by law or in equity.

(g) No Surrender. No act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the Premises by Tenant prior to the expiration of the Term, and such acceptance by Landlord of surrender by Tenant shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender signed by Landlord. The surrender of this Lease by Tenant, voluntarily or otherwise, shall not work a merger unless Landlord elects in writing that such merger take place, but shall operate as an assignment to Landlord of any and all existing subleases, or Landlord may, at its option, elect in writing to treat such surrender as a merger terminating Tenant's estate under this Lease, and thereupon Landlord may terminate any or all such subleases by notifying the sublessee of its election so to do within five (5) days after such surrender.

(h) Notice Provisions. Tenant agrees that any notice given by Landlord pursuant to Paragraph 13.1 of the Lease shall satisfy the requirements for notice under California Code of Civil Procedure Section 1161, and Landlord shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding. Should Landlord prepare any notice to Tenant for failure to pay rent, additional rent or perform any other obligation under the Lease, Tenant shall pay to Landlord, without any further notice from Landlord, the additional sum of \$75.00 which the parties hereby agree represents a fair and reasonable estimate of the costs Landlord will incur by reason of preparing such notice.

**13.3 Late Charges.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of Rent or other sum due from Tenant shall not be received by Landlord or Landlord's designee within 4 days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to 5% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's Default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. In addition, should Landlord be unable to negotiate any payment made by Tenant on the first attempt by Landlord and without any notice to Tenant, Tenant shall pay to Landlord a fee of \$50.00 per item which the parties hereby agree represents a fair and reasonable estimate of the costs Landlord will incur by reason of Landlord's inability to negotiate such item(s). Notwithstanding the foregoing, Landlord waives the late charge for the first two instance in any calendar year during the Term of this Lease in which Tenant fails to pay rent within 5 days of written notice to Tenant that rent is past due.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Premises, or more than 25% of the portion of the Common Areas designated for Tenant's parking, is taken by condemnation, Tenant may, at Tenant's option, to be exercised in writing within 10 days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession), terminate this Lease as of the date the condemning authority takes such possession. If Tenant 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 Premises. No reduction of Base Rent shall occur if the condemnation does not apply to any portion of the Premises. 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 Landlord; provided, however, that Tenant shall be entitled to any compensation, separately awarded to Tenant, for Tenant's relocation expenses and/or loss of Tenant's trade fixtures. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall to the extent of its net severance damages in the condemnation matter, repair any damage to the Premises caused by such condemnation authority. Tenant shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

15. **Estoppel Certificate and Financial Statements.**

15.1 **Estoppel Certificate.** Each party (herein referred to as "Responding Party") shall within 10 business days after written notice from the other Party (the "Requesting Party") execute, acknowledge, and deliver to the Requesting Party, to the extent it can truthfully do so, an estoppel certificate in a form reasonably acceptable to Landlord, or any of Landlord's lenders or any prospective purchasers of the Premises or the Industrial Center as the case may be, plus such additional information, confirmation, and statements as be reasonably requested by the Requesting Party. Should Tenant fail to deliver an executed and acknowledged estoppel certificate to Landlord as prescribed herein, Tenant hereby authorizes Landlord to act as Tenant's attorney-in-fact in executing such estoppel certificate or, at Landlord's option, Tenant shall pay a fee of \$100.00 per day ("Estoppel Delay Fee") for each day after the 10 days' written notice in which Tenant fails to comply with this requirement.

15.2 **Financial Statement.** If Landlord desires to finance, refinance, or sell the Building, Industrial Center, or any part thereof, Tenant and all Guarantors shall deliver to any potential lender or purchaser designated by Landlord such financial statements of Tenant and such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Tenant's financial statements for the past 3 years. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

16. **Additional Covenants and Provisions.**

16.1 **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall not affect the validity of any other provision hereof.

16.2 **Interest on Past-Due Obligations.** Any monetary payment due Landlord hereunder not received by Landlord within 10 days following the date on which it was due shall bear interest from the date due at 12% per annum, but not exceeding the maximum rate allowed by law in addition to the late charge provided for in Paragraph 13.3.

16.3 **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.

16.4 **Landlord Liability.** Tenant, its successors, and assigns shall not assert nor seek to enforce any claim for breach of this Lease against any of Landlord's assets other than Landlord's interest in the Industrial Center. Tenant agrees to look solely to such interest for the satisfaction of any liability or claim against Landlord under this Lease. In no event whatsoever shall Landlord (which term shall include, without limitation, any general or limited partner, trustees, beneficiaries, officers, directors, or stockholders of Landlord) ever be personally liable for any such liability.

16.5 **No Prior or Other Agreements.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and supersedes all prior or contemporaneous oral or written agreements or understandings.

16.6 **Notice Requirements.** All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand, 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 during normal business hours, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 16.6. The addresses set forth below 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 Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for the purpose of mailing or delivering notices to Tenant. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by written notice to Tenant.

To Landlord:      AMB-SGP CIF, LLC  
Pier 1, Bay 1  
San Francisco, CA 94111

with a copy to:

Legacy Partners Commercial, Inc.  
4000 East Third Avenue, Suite 600  
Foster City, CA 94404-4805

To Tenant: c/o Jennifer Convertibles, Inc.  
419 Crossways Park Drive  
Woodbury, NY 11797

with a copy to:

Law Offices of Wincig & Wincig  
Attn: Bernard Wincig, Esq.  
574 Fifth Avenue  
New York, NY 10036

**16.7 Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or an overnight courier that guarantees next day delivery shall be deemed given 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 or facsimile confirmation of receipt of the transmission thereof, provided a copy is also delivered via hand or overnight delivery or certified mail. If notice is received on a Saturday, Sunday, or legal holiday, it shall be deemed received on the next business day.

**16.8 Waivers.** No waiver by Landlord or Tenant of a Default under this Lease shall be deemed a waiver of any other term, covenant, or condition hereof, or of any subsequent Default by either party of the same or any other term, covenant, or condition hereof.

**16.9 Holdover.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. If Tenant holds over with the consent of Landlord: (a) the Base Rent payable shall be increased to 175% of the Base Rent applicable during the month immediately preceding such expiration or earlier termination; (b) Tenant's right to possession shall terminate on 30 days notice from Landlord; and (c) all other terms and conditions of this Lease shall continue to apply. Nothing contained herein shall be construed as a consent by Landlord to any holding over by Tenant. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims, demands, actions, losses, damages, obligations, costs, and expenses, including, without limitation, attorneys' fees incurred or suffered by Landlord by reason of Tenant's failure to surrender the Premises on the expiration or earlier termination of this Lease in accordance with the provisions of this Lease.

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

**16.11 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 county in which the Premises are located.

**16.12 Landlord.** The covenants and obligations contained in this Lease on the part of Landlord are binding on Landlord, its successors, and assigns only during their respective period of ownership of an interest in the Building. In the event of any transfer or transfers of such title to the Building, Landlord (and, in the case of any subsequent transfers or conveyances, the then grantor) shall be concurrently freed and relieved from and after the date of such transfer or conveyance, without any further instrument or agreement, of all liability with respect to the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed.

**16.13 Attorneys' Fees and Other Costs.** If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding shall be entitled to reasonable attorneys' fees. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought. Tenant shall reimburse Landlord on demand for all reasonable legal, engineering, and other professional services expenses incurred by Landlord in connection with all requests by Tenant or any lender of Tenant for consent, waiver or approval of any kind.

**16.14 Landlord's Access; Showing Premises; Repairs.** Landlord and Landlord's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times upon reasonable notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements, or additions to the Premises or to the Building, as Landlord may reasonably deem necessary. Landlord may at any time place on or about the Premises or Building any ordinary "For Sale" signs, and Landlord may at any time during the last 180 days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Landlord shall be without abatement of rent or liability to Tenant.

**16.15 Signs.** Tenant shall not place any signs at or upon the exterior of the Premises or the Building, except that Tenant may, with Landlord's prior written consent, install (but not on the roof) such signs as are reasonably required

to advertise Tenant's own business so long as such signs are in a location designated by Landlord and comply with sign ordinances and the signage criteria established for the Industrial Center by Landlord.

**16.16 Termination; Merger.** Unless specifically stated otherwise in writing by Landlord, the voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof, or a termination hereof by Landlord for Default by Tenant, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, Landlord shall, in the event of any such surrender, termination, or cancellation, have the option to continue any one or all of any existing subtenancies. Landlord's failure within 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 Landlord's election to have such event constitute the termination of such interest.

**16.17 Quiet Possession.** Upon payment by Tenant of the Base Rent and Additional Rent for the Premises and the performance of all of the covenants, conditions, and provisions on Tenant's part to be observed and performed under this Lease, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all of the provisions of this Lease.

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

(a) **Subordination.** This Lease shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or mortgage (collectively, "Mortgage") now or hereafter placed by Landlord 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 thereof. Tenant agrees that any person holding any Mortgage shall have no duty, liability, or obligation to perform any of the obligations of Landlord under this Lease. In the event of Landlord's default with respect to any such obligation, Tenant will give any Lender, whose name and address have previously been furnished in writing to Tenant, notice of a default by Landlord. Tenant may not exercise any remedies for default by Landlord unless and until Landlord and the Lender shall have received written notice of such default and a reasonable time (not less than 90 days) shall thereafter have elapsed without the default having been cured. If any Lender shall elect to have this Lease superior to the lien of its Mortgage and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such Mortgage. The provisions of a Mortgage relating to the disposition of condemnation and insurance proceeds shall prevail over any contrary provisions contained in this Lease.

(b) **Attornment.** Subject to the nondisturbance provisions of subparagraph (c) of this Paragraph 16.18, Tenant agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Mortgage. In the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior landlord or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Tenant might have against any prior Landlord, or (iii) be liable for security deposits or be bound by prepayment of more than one month's rent.

(c) **Non-Disturbance.** With respect to a Mortgage entered into by Landlord after the execution of this Lease, Tenant's subordination of this Lease shall be subject to receiving assurance (a "nondisturbance agreement") from the Mortgage holder that Tenant's possession and this Lease will not be disturbed so long as Tenant is not in default and attorns to the record owner of the Premises.

(d) **Self-Executing.** The agreements contained in this Paragraph 16.18 shall be effective without the execution of any further documents; provided, however, that upon written request from Landlord or a Lender in connection with a sale, financing, or refinancing of Premises, Tenant and Landlord shall execute such further writings as may be reasonably required to separately document any such subordination or nonsubordination, attornment, and/or nondisturbance agreement, as is provided for herein. Landlord is hereby irrevocably vested with full power to subordinate this Lease to a Mortgage.

**16.19 Rules and Regulations.** Tenant agrees that it will abide by, and to cause its employees, suppliers, shippers, customers, tenants, contractors, and invitees to abide by, all reasonable rules and regulations ("Rules and Regulations") which Landlord may make from time to time for the management, safety, care, and cleanliness of the Common Areas, the parking and unloading of vehicles, and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Industrial Center and their invitees. Landlord shall not be responsible to Tenant for the noncompliance with said Rules and Regulations by other tenants of the Industrial Center. Landlord shall apply its Rules and Regulations on a non-discriminatory basis.

**16.20 Security Measures.** Tenant acknowledges that the rental payable to Landlord hereunder does not include the cost of guard service or other security measures. Landlord has no obligations to provide same. Tenant assumes all responsibility for the protection of the Premises, Tenant, its agents, and invitees and their property from the acts of third parties.

**16.21 Reservations.** Landlord reserves the right to grant such easements that Landlord deems necessary and to cause the recordation of parcel maps, so long as such easements and maps do not unreasonably interfere with the use of the Premises by Tenant. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate any such easements or maps.

**16.22 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.

**16.23 Offer.** Preparation of this Lease by either Landlord or Tenant or Landlord's agent or Tenant's agent and submission of same to Tenant or Landlord shall not be deemed an offer to lease. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

**16.24 Amendments.** This Lease may be modified only in writing, signed by the parties in interest at the time of the modification.

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

**16.26 Authority.** Each person signing on behalf of Landlord or Tenant warrants and represents that she or he is authorized to execute and deliver this Lease and to make it a binding obligation of Landlord or Tenant.

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

**Landlord:**

AMB-SGP CIF-I, LLC,  
a Delaware limited liability company

By: AMB-SGP OPERATING PARTNERSHIP, L.P.,  
a Delaware limited partnership.  
Its: Member

By: AMB PROPERTY, L.P.,  
a Delaware limited partnership.  
Its: Managing General Partner

By: AMB PROPERTY CORPORATION,  
a Maryland corporation.  
Its: General Partner

By: Jonathan Hill  
~~Don L. Anderson~~ Jonathan Hill

Its: ~~Senior Vice President~~ Asset Manager

Executed at: San Francisco, CA  
on: 7-9-03

**Landlord's Address:**

Pier 1, Bay 1  
San Francisco, CA 94111

With a copy to:

Legacy Partners Commercial, Inc.  
4000 East Third Avenue, Suite 600  
Foster City, CA 94404-4805  
Attention: Alvarado Center  
Phone: (650) 571-2200  
Fax: (650) 571-2211

**Tenant:**

JENNIFER-CA WAREHOUSE, INC.,  
a California corporation

By: [Signature]  
Its: PRESIDENT

Executed at: Plainview, New York 11803

on: 6/11/03

**Tenant's Address:**

2960 Alvarado Street, Unit C and D  
San Leandro, CA 94577

If Tenant is a CORPORATION, the authorized officers must sign on behalf of the corporation and indicate the capacity in which they are signing. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be attached to this Lease.

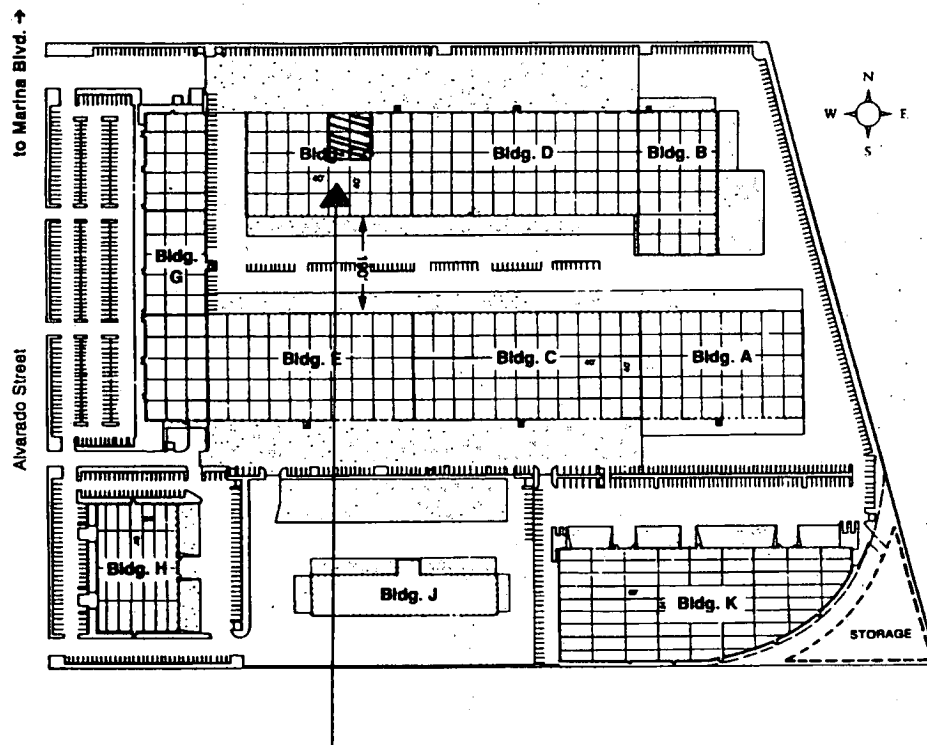
**Exhibit A**  
**Diagram of Premises**

This exhibit, entitled "Premises", is and shall constitute EXHIBIT A to that certain Lease Agreement dated June 4, 2003 (the "Lease"), by and between AMB-SGP CIF-I, a Delaware limited liability company ("Landlord"), and JENNIFER-CA WAREHOUSE, INC., a California corporation ("Tenant"), for the leasing of certain premises located in Alvarado Center at 2960 Alvarado Street, Unit C and D, San Leandro, California (the "Premises").

The Premises consist of the rentable square footage of space specified in the Basic Provisions and has the address specified in the Basic Provisions. The Premises are a part of and are contained in the Industrial Center specified in the Basic Provisions. The cross-hatched area depicts the Premises within the Industrial Center:

PREMISES: 8,038  
PARK: 698,794

## ALVARADO CENTER



**LEASED PREMISES:**

Approximately 8,038  
rentable square feet.

2960 Alvarado Street, Units C-D  
San Leandro, California



**Exhibit B**  
**Commencement Date Certificate**  
**Intentionally Omitted**

**Exhibit C**  
**Tenant Move-in and Lease Renewal Environmental Questionnaire**  
**for Commercial and Industrial Properties**

**Property Name: Alvarado Center**

**Property Address: 2960 Alvarado Street, Unit C and D**  
**San Leandro, California 94577**

**Exhibit C to the Lease Dated June 4, 2003**

**Between**

**JENNIFER-CA WAREHOUSE, INC.,**  
**a California corporation**  
**("Tenant"),**  
**and**

**AMB-SGP CIF-I, LLC,**  
**a Delaware limited liability company**  
**("Landlord")**

*Instructions: The following questionnaire is to be completed by the Tenant Representative with knowledge of the planned/existing operations for the specified building/location. A copy of the completed form must be attached to all new leases and renewals, and forwarded to the Owner's Risk Management Department. Please print clearly and attach additional sheets as necessary.*

**1.0 Process Information**

Describe planned use (new Lease) or existing operations (lease renewal), and include brief description of manufacturing processes employed.

WAREHOUSE FOR THE ALVARADO CENTER

**2.0 Hazardous Materials**

Are hazardous materials used or stored? If so, continue with the next question. If not, go to Section 3.0.

- 2.1** Are any of the following materials handled on the property? Yes \_\_\_ No \_\_\_  
(A material is handled if it is used, generated, processed, produced, packaged, treated, stored, emitted, discharged, or disposed.) If so, complete this section. If this question is not applicable, skip this section and go on to Section 5.0.

- |   |                                    |  |
|---|------------------------------------|--|
| <input type="checkbox"/> Explosives             | <input type="checkbox"/> Fuels     | <input type="checkbox"/> Oils                  |
| <input type="checkbox"/> Solvents               | <input type="checkbox"/> Oxidizers | <input type="checkbox"/> Organics/Inorganics   |
| <input type="checkbox"/> Acids                  | <input type="checkbox"/> Bases     | <input type="checkbox"/> Pesticides            |
| <input type="checkbox"/> Gases                  | <input type="checkbox"/> PCBs      | <input type="checkbox"/> Radioactive Materials |
| <input type="checkbox"/> Other (please specify) |                                    |  |

- 2.2** If any of the groups of materials checked in Section 2.1, please list the specific material(s), use(s), and quantity of each chemical used or stored on the site in the Table below. If convenient, you may substitute a chemical inventory and list the uses of each of the chemicals in each category separately.

Material	Physical State (Solid, Liquid, or Gas)	Usage	Container Size	Number of Containers	Total Quantity

- 2.3** Describe the planned storage area location(s) for these materials. Please include site maps and drawings as appropriate.

**3.0 Hazardous Wastes**

Are hazardous wastes generated? Yes \_\_\_ No ✓

If yes, continue with the next question. If not, skip this section and go to Section 4.0.

- 3.1** Are any of the following wastes generated, handled, or disposed of (where applicable) on the property?

- |   |  |
|---|--|
| <input type="checkbox"/> Hazardous wastes | <input type="checkbox"/> Industrial Wastewater |
| <input type="checkbox"/> Waste oils       | <input type="checkbox"/> PCBs                  |

- ☐ Air emissions  
☐ Regulated Wastes  
☐ Sludges  
☐ Other (please specify)

3.2 List and quantify the materials identified in Question 3-1 of this section. Attach separate pages as necessary.

Waste Generated	RCRA listed Waste?	Source	Approximate Monthly Quantity	Waste Characterization	Disposition

3.3 Please include name, location, and permit number (e.g. EPA ID No.) for transporter and disposal facility, if applicable). Attach separate pages as necessary.

Transporter/Disposal Facility Name	Facility Location	Transporter (T) or Disposal (D) Facility	Permit Number

3.4 Are pollution controls or monitoring employed in the process to prevent or minimize the release of wastes into the environment? Yes \_\_\_ No \_\_\_

If so, please describe.

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#### 4.0 USTS/ASTS

4.1 Are underground storage tanks (USTs), aboveground storage tanks (ASTs), or associated pipelines used for the storage of petroleum products, chemicals, or liquid wastes present on site (lease renewals) or required for planned operations (new tenants)? Yes \_\_\_ No \_\_\_

If not, continue with section 5.0. If yes, please describe capacity, contents, age, type of the USTs or ASTs, as well any associated leak detection / spill prevention measures. Please attach additional pages if necessary.

Capacity	Contents	Year Installed	Type (Steel, Fiberglass, etc)	Associated Leak Detection / Spill Prevention Measures*

\*Note: The following are examples of leak detection / spill prevention measures:

Integrity testing      Inventory reconciliation      Leak detection system  
 Overfill spill protection      Secondary containment      Cathodic protection

4.2 Please provide copies of written tank integrity test results and/or monitoring documentation, if available.

4.3 Is the UST/AST registered and permitted with the appropriate regulatory agencies? Yes \_\_\_ No \_\_\_

If so, please attach a copy of the required permits.

4.4 If this Questionnaire is being completed for a lease renewal, and if any of the USTs/ASTs have leaked, please state the substance released, the media(s) impacted (e.g., soil, water, asphalt, etc.), the actions taken, and all remedial responses to the incident.

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4.5 If this Questionnaire is being completed for a lease renewal, have USTs/ASTs been removed from the property? Yes \_\_\_ No \_\_\_

If yes, please provide any official closure letters or reports and supporting documentation (e.g., analytical test results, remediation report results, etc.).

- 4.6 For Lease renewals, are there any above or below ground pipelines on site used to transfer chemicals or wastes? Yes\_\_\_ No\_\_\_

For new tenants, are installations of this type required for the planned operations?

Yes\_\_\_ No\_\_\_

If yes to either question, please describe.

## 5.0 Asbestos Containing Building Materials

Please be advised that this property participates in an Asbestos Operations and Maintenance Program, and that an asbestos survey may have been performed at the Property. If provided, please review the information that identifies the locations of known asbestos containing material or presumed asbestos containing material. All personnel and appropriate subcontractors should be notified of the presence of these materials, and informed not to disturb these materials. Any activity that involves the disturbance or removal of these materials must be done by an appropriately trained individual/contractor.

## 6.0 Regulatory

- 6.1 For Lease Renewals, are there any past, current, or pending regulatory actions by federal, state, or local environmental agencies alleging noncompliance with regulations?

Yes\_\_\_ No\_\_\_

If so, please describe.

- 6.2 For lease renewals, are there any past, current, or pending lawsuits or administrative proceedings for alleged environmental damages involving the property, you, or any owner or tenant of the property?

Yes\_\_\_ No\_\_\_

If so, please describe.

- 6.3 Does the operation have or require a National Pollutant Discharge Elimination System (NPDES) or equivalent permit?

Yes\_\_\_ No\_\_\_

If so, please attach a copy of this permit.

- 6.4 For Lease renewals, have there been any complaints from the surrounding community regarding facility operations?

Yes\_\_\_ No\_\_\_

Have there been any worker complaints or regulatory investigations regarding hazardous material exposure at the facility?

Yes\_\_\_ No\_\_\_

If so, please describe status and any corrective actions taken. Please attach additional pages as necessary.

- 6.5 Has a Hazardous Materials Business Plan been developed for the site?

Yes\_\_\_ No\_\_\_

If so, please attach a copy.

- 6.6 Are any environmental documentation, chemical inventory, or management plan required by the local Fire Department or Health Department?

Yes\_\_\_ No\_\_\_

If so, please attach a copy.

## Certification

I am familiar with the real property described in this questionnaire. By signing below, I represent and warrant that the answers to the above questions are complete and accurate to the best of my knowledge. I also understand that the Owner will rely on the completeness and accuracy of my answers in assessing any environmental liability risks associated with the property.

Signature: [Signature]

Name: REV. J. H. HARRIS

Title: TRUSTEES

Date: 6/1/03

Telephone: 516.310.1000 ext. 2225

Please forward the completed questionnaire to:  
Mr. Steve Campbell

o:\eas\cases\jennifer\_r\0.doc: 6/4/03  
AMB v. Jenner-GA Warehouse, Inc.

AMB Property, L.P.  
Pier 1, Bay 1  
San Francisco, CA 94111

**Exhibit D  
Move Out Standards**

This "Move Out Standards" (Exhibit D) is dated for the reference purposes as June 4, 2003, and is made between AMB-SGP CIF-1, LLC, a Delaware limited liability company ("Landlord"), and JENNIFER-CA WAREHOUSE, INC., a California corporation ("Tenant"), to be a part of that certain lease (the "Lease") concerning a portion of the Industrial Center more commonly known as 2960 Alvarado Street, Unit C and D, San Leandro, California (the "Premises"). Landlord and Tenant agree that the Lease is hereby modified and supplemented as follows:

At the expiration of this Lease, Tenant shall surrender the Premises in the same condition as they were upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and shall deliver all keys to Landlord. Before surrendering the Premises, Tenant shall remove all of its personal property and trade fixtures and such alterations or additions to the Premises made by Tenant as may be specified for removal thereof. If Tenant fails to remove its personal property and fixtures upon the expiration of this Lease, the same shall be deemed abandoned and shall become the property of Landlord.

Tenant shall surrender the Premises, at the time of the expiration of the Lease, in a condition that shall include, but is not limited to, addressing the following items:

- |   |   |
|---|---|
| 1. Lights:                              | Office and warehouse lights will be fully operational with all bulbs functioning.   |
| 2. Dock Levelers & Roll-Up Doors:       | Should be in good working condition.  |
| 3. Dock Seals:                          | Free of tears and broken backboards repaired.   |
| 4. Warehouse Floor:                     | Free of stains and swept with no racking bolts and other protrusions left in the floor. Cracks should be repaired with an epoxy or polymer.   |
| 5. Tenant-Installed Equipment & Wiring: | Removed and space returned to original condition when originally leased. (Remove air lines, junction boxes, conduit, etc.)  |
| 6. Walls:                               | Sheetrock (drywall) damage should be patched and fire-taped so that there are no holes in either office or warehouse.   |
| 7. Roof:                                | Any tenant-installed equipment must be removed and roof penetrations properly repaired by licensed roofing contractor. Active leaks must be fixed and latest landlord maintenance and repairs recommendation must have been followed. |
| 8. Signs:                               | All exterior signs must be removed and holes patched and paint touched up as necessary. All window signs should likewise be removed.  |
| 9. Heating & Air Conditioning System:   | A written report from a licensed HVAC contractor within the last three months stating that all evaporative coolers within the warehouse are operational and that the office HVAC system is also in good and safe operating condition. |
| 10. Overall Cleanliness:                | Clean windows, sanitize bathroom(s), vacuum carpet and remove any and all debris from office and warehouse. Remove all pallets and debris from exterior of Premises.  |
| 11. Upon Completion:                    | Contact Landlord's property manager to coordinate date of turning off power, turning in keys, and obtain final Landlord inspection of Premises which, in turn, will facilitate refund of security deposit.                            |

**Exhibit E**  
**Sign Criteria**

All signage is subject to Landlord's prior written consent not to be unreasonably withheld.

**Exhibit F**  
**Rules and Regulations**

1. No advertisement, picture or sign of any sort shall be displayed on or outside the Premises or the Building without the prior written consent of Landlord. Landlord shall have the right to remove any such unapproved item without notice and at Tenant's expense.
2. Tenant shall not regularly park motor vehicles in designated parking areas after the conclusion of normal daily business activity.
3. Tenant shall not use any method of heating or air conditioning other than that supplied by Landlord without the prior written consent of Landlord.
4. All window coverings installed by Tenant and visible from the outside of the Building require the prior written approval of Landlord.
5. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance or any flammable or combustible materials on or around the Premises, the Building or the Industrial Center.
6. Tenant shall not alter any lock or install any new locks or bolts on any door at the Premises without the prior consent of Landlord.
7. Tenant agrees not to make any duplicate keys without the prior consent of Landlord.
8. Tenant shall park motor vehicles in those general parking areas as designated by Landlord except for loading and unloading. During those periods of loading and unloading, Tenant shall not unreasonably interfere with traffic flow within the Industrial Center and loading and unloading areas of other tenants.
9. Tenant shall not disturb, solicit or canvas any occupant of the Building or Industrial Center and shall cooperate to prevent same.
10. No person shall go on the roof without Landlord's permission.
11. Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building, to such a degree as to be objectionable to Landlord or other Tenants, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration.
12. All goods, including material used to store goods, delivered to the Premises of Tenant shall be immediately moved into the Premises and shall not be left in parking or receiving areas overnight.
13. Tractor trailers which must be unhooked or parked with dolly wheels beyond the concrete loading areas must use steel plates or wood blocks under the dolly wheels to prevent damage to the asphalt paving surfaces. No parking or storing of such trailers will be permitted in the auto parking areas of the Industrial Center or on streets adjacent thereto.
14. Forklifts which operate on asphalt paving areas shall not have solid rubber tires and shall only use tires that do not damage the asphalt.
15. Tenant is responsible for the storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored behind screened enclosures at locations approved by Landlord.
16. Tenant shall not store or permit the storage or placement of goods, or merchandise or pallets or equipment of any sort outside of the Premises nor in or around the Building, the Industrial Center or any of the Common Areas of the foregoing. No displays or sales of merchandise shall be allowed in the parking lots or other Common Areas.
17. Tenant shall not permit any animals, including, but not limited to, any household pets, to be brought or kept in or about the Premises, the Building, the Industrial Center or any of the Common Areas of the foregoing.
18. Tenant shall not permit any motor vehicles to be washed on any portion of the Premises or in the Common Areas of the Industrial Center, nor shall Tenant permit mechanical work or maintenance of motor vehicles to be performed on any portion of the premises or in the Common Areas of the Industrial Center.



ORIGINAL  
Number 2 of  
3 execution  
counterparts

**ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT**

This Assignment and Assumption of Lease Agreement (the "Assignment") is made, effective as of the 3 day of May 2005, by and between Jennifer-CA Warehouse Inc., a California corporation with corporate offices at 1514 Northern Boulevard, Manhasset, New York 11030 (hereinafter referred to as "Assignor") and Jennifer Convertibles, Inc., a Delaware corporation, with corporate offices at 419 Crossways Park Drive, Woodbury, New York, 11797 (hereinafter referred to as "Assignee").

**WITNESSETH:**

**WHEREAS**, AMB-SGP CIF-I, LLC, a Delaware limited liability company, with address of Pier I, Bay I, San Francisco, CA 94111, as Landlord ("Landlord") demised certain premises consisting of approximately 8,038 square feet located at 2960 Alvarado Street, Unit C-D, San Leandro, CA, as more particularly described in the Lease (as defined herein) (the "Premises") to Assignor, as Tenant, pursuant to a certain written Lease Agreement dated June 4, 2003 (the "Lease"); and

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

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

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

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

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

(a) As of the date hereof, Assignor has not entered into any other agreement to assign or sublet all or any portion of the Premises for any period during any part of the term of the Lease from and after this Date and has not granted any rights or options to any third party

**EXHIBIT** A

with respect to the Premises which exist as of the date hereof;

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

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

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

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

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

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the 31 day of May 2005.

JENNIFER-CA WAREHOUSE, INC., Assignor

By: Jane Love

Jane Love, President

JENNIFER CONVERTIBLES, INC., Assignee

By: Edward B. Seidner

Edward B. Seidner, Executive Vice-President

COUNTY OF Nassau )  
 ) ss.:  
STATE OF NEW YORK )

On the 31 day of May 2005 before me, the undersigned personally appeared JANE LOVE personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

JANET DAWBER  
Notary Public, State Of New York  
No. 01DA003157  
Qualified in Nassau County  
Commission Expires November 12, 20 06

Janet Dawber  
NOTARY PUBLIC

COUNTY OF Nassau )  
 ) ss.:  
STATE OF NEW YORK )

On the 31 day of May 2005 before me, the undersigned personally appeared EDWARD B. SEIDNER personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

JANET DAWBER  
Notary Public, State Of New York  
No. 01DA003157  
Qualified in Nassau County  
Commission Expires November 12, 20 06

Janet Dawber  
NOTARY PUBLIC

## CONSENT TO ASSIGNMENT OF LEASE

THIS AGREEMENT ("Agreement") is dated June 15, 2005, for reference purposes only and is entered into by and between AMB-SGP CIF-I, LLC, a Delaware limited liability company ("Landlord"); JENNIFER-CA WAREHOUSE, INC., a California corporation ("Tenant"); and Jennifer Convertibles, Inc. a Delaware corporation ("Assignee").

### RECITALS

A. Landlord and Tenant entered into that certain Lease dated June 4, 2003 (the "Lease") whereby Tenant leased from Landlord certain premises commonly known as 2960 Alvarado Street, Units C and D, San Leandro, California ("Premises").

B. Tenant desires to assign the Lease to Assignee pursuant to the provisions of that certain Lease Assignment (the "Lease Assignment") attached hereto as Exhibit A.

C. Under the terms of Article 12 of the Lease, Tenant desires to obtain Landlord's consent to the Lease Assignment and Landlord provides such consent pursuant to the terms set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, Landlord, Tenant and Assignee hereby agree as follows:

Landlord hereby consents to the Lease Assignment subject to and upon the following terms and conditions, as to each of which Tenant and Assignee expressly agree:

1. Notwithstanding any provision of the Lease Assignment to the contrary, nothing contained in this Agreement or the Lease Assignment shall:

(a) operate as a consent to or approval or ratification by Landlord of any specific provisions of the Lease Assignment or as a representation or warranty by Landlord, or cause Landlord to be estopped or bound in any way by any of the provisions of the Lease Assignment; or

(b) be construed to modify, waive or affect (i) any of the provisions, covenants or conditions in the Lease, (ii) any of Tenant's obligations under the Lease, or (iii) any rights or remedies of Landlord under the Lease or otherwise; or to enlarge or increase Landlord's obligations or Tenant's rights under the Lease or otherwise; or

(c) be construed to waive any past, present or future breach or default on the part of Tenant under the Lease.

2. This consent is not assignable.

3. The Lease Assignment shall be subject and subordinate at all times to the Lease and to all of its provisions, covenants and conditions. Assignee shall perform faithfully and be bound by all the terms, covenants, conditions, provisions and agreements of the Lease and Assignee assumes, for the benefit of Landlord, all terms and conditions of the Lease. In case of any conflict between the provisions of the Lease and the provisions of the Lease Assignment, the provisions of the Lease shall prevail unaffected by the Lease Assignment.

4. Neither the Lease Assignment nor this consent thereto shall release or discharge the Tenant from any liability under the Lease. Tenant shall remain liable and responsible for the full performance and observance of all the provisions, covenants and conditions set forth in the Lease to be performed and observed by Tenant. Any breach or violation of any provision of the Lease by Assignee shall constitute a default by Tenant in fulfilling such provision.

5. This consent by Landlord shall not be construed as a consent by Landlord to any further assignment by Tenant or Assignee, whether or not the Lease Assignment purports to permit the same, and, without limiting the generality of the foregoing, both Tenant and Assignee agree that Assignee has no right whatsoever to assign, mortgage or encumber the Lease nor the Lease Assignment nor to sublet any portion of the Premises or permit any portion of the Premises to be used or occupied by any other party; further, in connection therewith, both Tenant and Assignee agree that an assignment by operation of law or a transfer of control of Assignee shall be deemed to be a prohibited assignment hereunder. In the event of any further assignment or sublease of the Premises, Assignee shall pay directly to Landlord 50% of all excess rent or assignment consideration (defined below) received by Assignee in connection with such Lease Assignment or subleasing (without any deduction or setoff whatsoever). This consent shall not be construed as a consent by Landlord to any modification, amendment, extension or renewal of the Lease or Lease Assignment. Tenant and Assignee acknowledge and agree that the modification of the Lease Assignment shall, for purposes of the Lease and this Agreement, constitute a further assignment subject to the provisions of this Section 5 and Article 12 of the Lease. For purposes of this Section 5, including any amendment to this Section by way of addendum or other writing, the term "assignment consideration" shall mean all consideration to be paid by the assignee to Assignee or to any other party on Assignee's behalf or for Assignee's benefit as consideration for such assignment, without deduction for any expenses, and the term "excess rentals" shall mean all consideration to be paid by the sub-sublessee to Assignee or to any other party on Assignee's behalf or for Assignee's benefit for the sublease of all or any portion of the Premises in excess of the rent due to Assignee under the Lease, without deduction for any expenses. Assignee agrees that the portion of any assignment consideration and/or excess rentals arising from any assignment or subleasing by Assignee which is to be paid to Landlord pursuant to this Section now is and shall then be the property of Landlord and not the property of Assignee.

6. Tenant hereby assigns, and transfers, to Assignee all rights of Tenant in and to any security deposit and other security provided to Landlord to hold as security under the Lease.

7. Tenant and Assignee each covenants and agrees that under no circumstances shall Landlord be liable for any brokerage commission or other charge or expense in connection with the Lease Assignment.

8. Tenant and Assignee understand and acknowledge that Landlord's consent herein is not a consent to any improvement or alteration work to be performed in the Premises (including without limitation any improvement work contemplated in the Lease Assignment), that Landlord's consent for such work must be separately sought, and that any such work shall be subject to all the provisions of the Lease with respect thereto.

9. The Lease may be amended or modified, in any respect, between Landlord and Assignee without the consent of or notice to Tenant and such amendment or modification shall not release Tenant from any liability whatsoever.

10. In the event of any conflict between the provisions of this Agreement and the provisions of the Lease Assignment, the provisions of this Agreement shall prevail unaffected by the Lease Assignment.

11. Assignee's address for notices shall be the same as Tenant's unless and until Assignee provides written notice, under the terms of the Lease, as to a new address.

12. In the event of any arbitration or action or proceeding at law or in equity between or among the parties to this Agreement as a consequence of any controversy, claim or dispute relating to this Agreement or the breach thereof, or to enforce any of the provisions and/or rights hereunder, the unsuccessful party or parties to such arbitration, action or proceeding shall pay to the prevailing party or parties all costs and expenses, including reasonable attorney's fees incurred therein by such prevailing party or parties, and if such prevailing party or parties shall recover judgment in any such arbitration, action or proceeding, such costs, expenses and fees shall be included in and as part of such judgment.

13. This Agreement shall be construed in accordance with the laws of the State of California and, together with the Lease Assignment and the Lease, contains the entire agreement of the parties hereto with respect to the subject matter hereof and may not be changed or terminated orally or by course of conduct.

14. Pursuant to Section 16.13 of the Lease, Tenant and Assignee shall pay to Landlord, concurrently with the delivery of this consent, the sum of \$750.00 to reimburse to Landlord all costs and attorneys' fees incurred by Landlord in conjunction with the processing and documentation of the Lease Assignment and this consent.

15. Tenant and Assignee represent and warrant to Landlord that, except for the consideration expressly set forth in the Lease Assignment, no other consideration is transferring between Tenant and Assignee or to any other person or entity in any way relating to the Lease Assignment or with respect to any transaction as to which the Lease Assignment relates.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

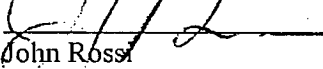
**Landlord:**

AMB-SGP CIF-I, LLC,  
a Delaware limited liability company

By: AMB-SGP OPERATING PARTNERSHIP, L.P.,  
a Delaware limited partnership,  
Its: Member

By: AMB PROPERTY, L.P.,  
a Delaware limited partnership,  
Its: Managing General Partner

By: AMB PROPERTY CORPORATION,  
a Maryland corporation,  
Its: General Partner

By:   
John Rossi

Its: Senior Vice President

**TENANT:**

JENNIFER-CA WAREHOUSE, INC.,  
a California corporation

By:   
JANE LOVE, PRESIDENT

**ASSIGNEE:**

Jennifer Convertibles, Inc.,  
a Delaware corporation

By:   
EDWARD B. SEIDNER  
EXECUTIVE VICE PRESIDENT

## First Amendment to Lease Agreement

This First Amendment to Lease Agreement (the "Amendment") is made and entered into as of September 3, 2008, by and between AMB-SGP CIF-I, LLC, a Delaware limited liability company ("Landlord"), and Jennifer Convertibles, Inc., a Delaware corporation successor in interest to Jennifer-CA Warehouse, Inc., a California corporation ("Tenant"), with reference to the following facts.

### Recitals

- A. Landlord and Tenant have entered into that certain Lease Agreement dated as of June 4, 2003 (hereinafter the "Lease"), for the leasing of certain premises consisting of approximately 8,038 rentable square feet located at 2960 Alvarado Street, Units C and D, San Leandro, California (the "Premises") as such Premises are more fully described in the Lease.
- B. Landlord and Tenant now wish to amend the Lease to provide for, among other things, the extension of the Term of the Lease, all upon and subject to each of the terms, conditions, and provisions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Recitals:** Landlord and Tenant agree that the above recitals are true and correct and are hereby incorporated herein as though set forth in full.
2. **Term:** The Term of the Lease shall be extended for a period commencing August 1, 2008, to and including July 31, 2011 (the "Extended Term").
3. **Base Rent:** The Basic Provisions and Section 4 of the Lease are hereby modified to provide that during the Extended Term of the Lease the monthly Base Rent payable by Tenant to Landlord, in accordance with the provisions of Section 4 of the Lease shall be in accordance with the following schedule:

Period	Monthly Base Rent
August 1, 2008 – July 31, 2009	\$ 4,019.00
August 1, 2009 – July 31, 2010	\$ 4,139.57
August 1, 2010 – July 31, 2011	\$ 4,263.76
4. **Condition of Premises:** Tenant acknowledges and agrees that its possession of the Premises after July 31, 2008 is a continuation of Tenant's possession of the Premises under the Lease. Tenant is familiar with the condition of the Premises, and agrees to accept the Premises in their existing condition "AS IS", without any obligation of Landlord to remodel, improve or alter the Premises, to perform any other construction or work of improvement upon the Premises, or to provide Tenant with any construction or refurbishing allowance.
5. **Brokers:** Tenant warrants that it has had no dealing with any real estate broker or agent in connection with the negotiation of this Amendment whose commission shall be payable by Landlord. If Tenant has dealt with any person, real estate broker or agent with respect to this Amendment, Tenant shall be solely responsible for the payment of any fee due to said person or firm, and Tenant shall indemnify, defend and hold Landlord free and harmless against any liability, claim, judgment, damages with respect thereto, including attorneys' fees and costs.
6. **Tenant Move-in and Lease Renewal Questionnaire:** Tenant is required to fill out a new Tenant Move-in and Lease Renewal Questionnaire with any renewal attached hereto as Exhibit A.
7. **Effect of Amendment:** Except as modified herein, the terms and conditions of the Lease shall remain unmodified and continue in full force and effect. In the event of any conflict between the terms and conditions of the Lease and this Amendment, the terms and conditions of this Amendment shall prevail.
8. **Definitions:** Unless otherwise defined in this Amendment, all terms not defined in this Amendment shall have the meaning set forth in the Lease.
9. **Authority:** Subject to the provisions of the Lease, this Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns. Each party hereto and the persons signing below warrant that the person signing below on such party's behalf is authorized to do so and to bind such party to the terms of this Amendment.



10. The terms and provisions of the Lease are hereby incorporated in this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written.

**Landlord:**

AMB-SGP CIF-I, LLC,  
a Delaware limited liability company

By: AMB-SGP Operating Partnership, L.P.,  
its Sole Member

By: AMB Property, L.P.,  
its Managing General Partner

By: AMB Property Corporation,  
its General Partner

By: \_\_\_\_\_

\_\_\_\_\_   
Doug McGregor  
Vice President, Regional Manager

Date: \_\_\_\_\_

9/24/08

**Tenant:**

Jennifer Convertibles, Inc.,  
a Delaware corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

EXHIBIT A

ENVIRONMENTAL MOVE-IN QUESTIONNAIRE

Property Name: Alvarado Business Center  
Property Address: 2960 Alvarado Street, Units C and D, San Leandro, California  
Lease Date: September 3, 2008  
Landlord: AMB-SGP, CIF-I, LLC  
Tenant: Jennifer Convertibles, Inc.

**Instructions:** The following questionnaire is to be completed at the time of Lease execution by the Tenant representative with knowledge of the planned operations for the specified building/location.

1.0 PLANNED USE/OPERATIONS

1-1. Describe planned use and include brief description of manufacturing processes employed. N/A

2.0 HAZARDOUS MATERIALS

2-1. Are Hazardous Materials as defined in the lease Agreement used, handled, or stored at the Premises? If so, continue with the next question. If not, go to Section 3.0. ☒ No ☐ Yes

2-2. Please attach a chemical inventory that identifies the type(s), use(s) and quantity of each chemical used or stored on the site and include Material Safety Data Sheets for each chemical. In addition, describe the proposed hazardous material storage area (preferably on a site plan or figure) and planned measures to manage potential releases to the environment (e.g., spill containment measures, Spill Response Plans, etc.).

3.0 HAZARDOUS WASTES

3-1. Are hazardous wastes generated? If so, continue with the next question. If not, skip this section and go to Section 4.0. ☒ No ☐ Yes

3-2. Are any wastes generated, handled, or disposed of (where applicable) on the property? If so, identify and describe on separate pages those wastes generated, handled or disposed of (disposition). Specify any wastes known to be regulated under the Resource Conservation and Recovery Act (RCRA) as "listed characteristic or statutory" wastes. Include total amounts generated monthly. Please include name, location, and permit number (e.g. EPA ID No.) for transporter and disposal facility, if applicable. NO.

3-3. Are pollution controls or monitoring employed in the process to prevent or minimize the release of wastes into the environment? If so, please describe on a separate page. N/A

4.0 USTS/ASTS

4-1. Are underground storage tanks (USTs), aboveground storage tanks (ASTs), clarifiers, or associated pipelines required for planned operations? If not, continue with Section 5.0. If yes, please describe on separate page the capacity, contents, design and construction of USTs or ASTs and provide copies of appropriate regulatory permits. ☒ No ☐ Yes

5.0 REGULATORY

5-1. Does the operation have or require any permits for Hazardous Materials or waste discharge including but limited to National Pollutant Discharge Elimination System (NPDES) or equivalent permit? If so, please provide a copy of this permit.

5-2. Has a Hazardous Materials Business Plan been developed for the site? If so, please provide a copy. N/A

TENANT CERTIFICATION

I am familiar with the real property and facility operations described in this questionnaire, and I am authorized to sign on behalf of the Tenant. By signing below, I represent and warrant that the answers to the above questions are complete and accurate to the best of my knowledge. I also understand that the Landlord will rely on the completeness and accuracy of my answers in assessing any environmental liability risks associated with the property.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone: \_\_\_\_\_

# GROOM & CAVE, LLP

ATTORNEYS AT LAW

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STEVEN B. HALEY

September 29, 2010

*VIA Federal Express*

BMC Group Inc.

Attn.: Jennifer Convertibles Claims Processing

18750 Lake Drive East

Chanhassen, MN 55317

Re: Case: *In re Jennifer Convertibles, Inc.*  
Case No.: *10-13779 ALG*  
Court: *Southern District of New York, Bankruptcy Court*  
Creditor: *AMB-SGP CIF-I, LLC*

Dear Sir or Madam:

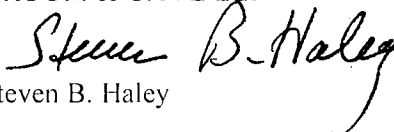
Enclosed herewith are the original and one copy of the Proof of Claim filed on behalf of AMB-SGP CIF-I, LLC, the landlord under the commercial real property lease for approximately 8,038 rentable square feet of space located at 2960 Alvarado Street, Unit C and D, San Leandro, California.

Please file the Proof of Claim and return the "Received" copy of the Proof of Claim in the enclosed stamped, addressed envelope enclosed for that purpose.

Should you have any questions, please feel free to contact the undersigned.

Sincerely,

GROOM & CAVE LLP

  
Steven B. Haley

SBH:mph

Encls.