



This claim arises out of a Sublease Agreement dated August 18, 2009 by and between TMCC, Inc. and Hartsdale Convertibles, Inc., as the same may have been amended from time to time. A copy of the Sublease Agreement and the Amended Exhibit "B" thereto is attached.

The following payments were due and owing pursuant to Amended Exhibit "B" of the Sublease Agreement as of the filing of the Debtor's bankruptcy case:

- Fixed Rent – May, 2010: \$52,000
- Fixed Rent – June, 2010: \$52,000
- Fixed Rent – July 1 through July 17, 2010: \$28,516.13
- Late Charges: \$4,680.00
- Interest on Arrears: \$11,310.00
- Legal Fees: \$2,500.00

The Claimants reserve the right to amend and supplement this claim to include any damages by virtue of the rejection or termination of the Sublease Agreement by the Debtor, none of which damages are waived by Claimants.

**SUBLEASE AGREEMENT**

**THIS SUBLEASE AGREEMENT**, dated as of this 18th day of August, 2009 ("Sublease"), between, TMCC, Inc., a New York corporation having an address at 55 Price Parkway, Farmingdale, New York, 11735 ("Sublandlord"), and Hartsdale Convertibles, Inc., a New York Corporation, having an address at 417 Crossways Park Drive, Woodbury, New York 11797 ("Subtenant").

**WITNESSETH:**

**WHEREAS**, Sublandlord is the tenant under that certain Agreement of Lease dated September 29, 2007, a true and complete copy of which, together with any Amendments, Extensions and Modifications is attached hereto and made a part hereof as **Exhibit "A"** ("Overlease"), between JOSALCO, INC., a New York corporation, as landlord ("Overlandlord"), and Sublandlord, as tenant, covering approximately 20,000 square feet (outside dimensions) of space commonly known as 1821 Route 110, E. Farmingdale, New York 11735 ("Premises"); and

**WHEREAS**, Subtenant is desirous of subletting the Premises from Sublandlord ("Subleased Premises"), subject to a Non Disturbance and Attornment Agreement in form satisfactory to Subtenant and Overlandlord's unconditional consent and Sublandlord is desirous of subletting the Subleased Premises to Subtenant, upon the terms, covenants, conditions, provisions and agreements hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

1. **Premises.** Sublandlord sublets the Subleased Premises to Subtenant, and Subtenant sublets the Subleased Premises from Sublandlord, upon the terms, covenants, conditions, provisions and agreements and conditions set forth.

2. **Term.** The term of this Sublease ("Term") shall be for a period of approximately ONE HUNDRED TWENTY (120) months, or such lesser Term, commencing on October 15, 2009, or forty five (45) days from Subtenant's receipt of Overlandlord's unconditional consent, whichever last occurs, and terminating on October 31, 2019, unless sooner terminated as provided herein or in the Overlease. The Premises shall be delivered in its "as-is", "where-is" condition, without representation or warranty, except the Subleased Premises shall be delivered empty, vacant and broom clean, free of all tenancies other than as provided in the Overlease attached hereto and made a part hereof.

3. **Use.** Subtenant agrees to use and occupy the Subleased Premises solely for the retail sale of all types of furniture, furnishings, accessories, mattresses, and all related and collateral products to the general public, and for no other purposes, and otherwise in accordance with the terms, covenants, conditions, provisions and agreements of the Overlease.

4. **Rent.**

A. Subtenant covenants and agrees to pay to Sublandlord, during the Term, Fixed Rent in accordance with **Exhibit "B"** attached hereto and made a part hereof ("Fixed Rent").

B. Subtenant agrees to pay said Fixed Rent in lawful money of the United States, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, which shall be due in advance on the first (1st) day of each and every

month during the Term, but not considered late if received by the tenth (10<sup>th</sup>) of each month, at the office of Sublandlord or such other place as Sublandlord may designate from time to time, without demand or any set-off or deduction whatsoever, except that Subtenant shall pay the first monthly installment of Fixed Rent on the execution hereof by Subtenant.

C. All sums whatsoever not included within Fixed Rent and payable by Subtenant under this Sublease or the Overlease except such sums constituting Additional Rent pursuant to the Overlease as a result of a default under the Overlease by the Sublandlord, shall constitute additional rent ("Additional Rent"), and shall be payable without set-off or deduction, whether or not so specified elsewhere in this Sublease, and in the event of non-payment thereof by Subtenant, Sublandlord shall have all of the same rights and remedies with respect thereto as in the case of non-payment of Fixed Rent.

D. All sums in arrears under this Sublease or Fixed Rent not received by the tenth (10<sup>th</sup>) of the month in which same is due, will bear interest, at the lesser of: (i) the then maximum annual rate of interest chargeable to individuals in the State of New York; or (ii) four (4%) percent per annum above the then current prime rate charged by Citibank, N.A., or its successors ("Interest Rate"), from their respective due dates until received by Sublandlord, but the foregoing shall in no way limit any claim for damages or any other rights and remedies available to Sublandlord for any breach or default by Subtenant. Subtenant's obligations under this Sublease, including, but not limited to, the payment of Fixed Rent and Additional Rent, shall survive the expiration or sooner termination of the Term.

E. Supplementing the foregoing provisions of subparagraph D hereof, but not in limitation thereof, in the event Sublandlord does not receive payment of any installment of Fixed Rent and/or Additional Rent within ten (10) days of the date same is due and payable, then Subtenant shall pay to Sublandlord as a "late charge" for additional costs incurred by Sublandlord for administration, an amount equal to three and 00/100 (\$3.00) Dollars for each One Hundred and 00/100 (\$100.00) Dollars of Fixed Rent and/or Additional Rent so overdue, and such "late charge" shall be collectible as Additional Rent by Sublandlord.

F. In the event the Term shall commence on a day other than the first (1st) day of any calendar month, the Fixed Rent and Additional Rent for such calendar month shall be prorated.

**5. Additional Rent.**

A. In addition to the aforementioned Fixed Rent, Subtenant covenants and agrees to pay to Sublandlord, as Additional Rent, without set-off or deduction the full amount of any "Additional Rent" (as such term is defined in the Overlease), or any other sums and charges payable by Sublandlord to Overlandlord under the Overlease, including but not limited to all taxes and assessments but excepting any such sums constituting Additional Rent pursuant to the Overlease as a result of a default under the Overlease by the Sublandlord, .

B. Additional Rent payable under the provisions of this Paragraph shall be billed to Subtenant and shall be due and payable not later than five (5) days prior to the date that Sublandlord's payments are due and payable to Overlandlord under the Overlease, provided further same has been billed to Subtenant in a timely manner so as to

allow not less than five (5) days notice that same is due. At all times during the Term, Subtenant shall be permitted to challenge or ask for support for the amounts payable pursuant to the provisions of the Overlease for the purposes of this Paragraph.

**6. Overlease.**

A. This Sublease is expressly made subject and subordinate to all of the terms, covenants, conditions, provisions and agreements contained in the Overlease but not to any and amendments, modifications, revisions, supplements or additions now or hereafter made thereto, unless expressly agreed to in writing by Subtenant. The restrictions, limitations and conditions imposed upon Sublandlord by the terms of said Overlease are imposed upon Subtenant with the same force and effect as if specifically set forth herein at length, and Subtenant assumes and agrees to perform all of the obligations of Sublandlord under said Overlease insofar as such obligations pertain to the Subleased Premises and/or subtenants in general, except as otherwise expressly provided herein or to the extent inconsistent with, or inapplicable to any of the provisions of this Sublease. Each party hereto covenants and agrees to indemnify and hold the other harmless from and against any and all losses, damages, claims or expenses (including, without limitation, attorneys' fees and disbursements), in any way arising out of, or in connection with: (i) any act or omission of the other or its agents, servants, employees, contractors, licensees or invitees; or (ii) any actual or threatened breach, default or failure on the part of the other with respect to any of the terms, covenants, conditions, provisions and agreements of this Sublease and/or said Overlease.

B. Subtenant covenants and agrees that Subtenant will not use said Subleased Premises or any part thereof, or permit said Subleased Premises or any part

thereof, to be used in such manner as to be inconsistent with any of the obligations of Sublandlord to Overlandlord under the Overlease, nor will either party at any time do anything or omit to do anything or permit anything to be done which shall or may violate said Overlease, or result in a violation by either party of any of its obligations under said Overlease. An uncured violation following notice with opportunity to cure by either party of any of the provisions of this Paragraph shall be deemed a default by such party under the terms, covenants, conditions, provisions and agreements of this Sublease, and in the event of a material default by Subtenant, Sublandlord shall have and be entitled to the same rights and remedies under and with respect to this Sublease as if such material default were with respect to obligations originally reserved hereunder.

C. (1) Notwithstanding anything to the contrary contained herein, Sublandlord shall have the same obligations to Subtenant as Overlandlord has to Sublandlord with respect to the maintenance or repair of the Subleased Premises, or the maintenance or repair of the facilities and equipment of said Subleased Premises, or the supplying of any services or utilities, and the obligations of Sublandlord, and the services and utilities provided by Sublandlord to Subtenant, shall be strictly limited to the obligations of Overlandlord, and the services and utilities which are provided by Overlandlord to Sublandlord under the Overlease, respectively, as the case may be. Overlandlord hereby agrees to assist the Subtenant in connection with any filing to amend the Certificate of Occupancy, if same is required, to permit occupancy of the Premises by the Subtenant named herein.

(2) In the event of any default on the part of Overlandlord or failure to perform any of its obligations under the Overlease, Subtenant shall submit, in



writing, a statement outlining how the Overlandlord has failed to perform Overlandlord's obligations under the Overlease. Within five (5) days thereof, Sublandlord shall state to Subtenant, in writing, whether or not the Sublandlord will take action on behalf of the Subtenant. If Sublandlord does not choose to take any action, then the Subtenant may proceed to rectify the situation with the Overlandlord directly (i.e., Subtenant may communicate/negotiate directly with Overlandlord or pursue any legal course of action).

D. Sublandlord shall be liable for damages to Subtenant in the event: (i) the Overlease is canceled or terminated as a result of Sublandlord's breach thereunder; or (ii) this Sublease becomes invalid as a result of any foreclosure or other proceedings against Sublandlord; or (iii) Subtenant suffers any damage as a result of any act committed or omitted to be performed by Overlandlord.

7. **Termination of Overlease.** In the event of cancellation or termination of the Overlease for any reason whatsoever or of the surrender of said Overlease whether voluntary, involuntary or by operation of law, prior to the expiration date of this Sublease, Subtenant agrees to make full and complete attornment to Overlandlord for the balance of the Term, pursuant to Non Disturbance and Attornment Agreement at any time during Subtenant's occupancy of the Subleased Premises, which attornment shall be evidenced by an agreement in form and attached hereto, which Subtenant agrees to execute and deliver at any time within five (5) days after request of Overlandlord, its successors and assigns, and Subtenant waives the provisions of any law now or hereafter in effect which may give Subtenant any right of election to terminate this Sublease or to surrender possession of the Subleased Premises in the event any proceeding is brought by Overlandlord under said Overlease to terminate said Overlease.

8. **Incorporation of Overlease.** Notwithstanding anything to the contrary contained in this Sublease, and solely for the purpose of incorporation herein, the terms, covenants, conditions, provisions and agreements of the Overlease are subject to the following modifications:

A. In all provisions of the Overlease requiring the approval or consent of Overlandlord, except for Overlandlord unconditional consent to this Sublease, which Overlandlord shall secure, Subtenant shall be required to obtain the approval or consent of both Sublandlord and Overlandlord; provided, however, that if Overlandlord shall have withheld its approval or consent, Sublandlord's refusal to give its approval or consent in such instances shall not be deemed unreasonable.

B. In all provisions of the Overlease requiring tenant to submit, exhibit to, supply or provide Overlandlord with evidence, certificates, or any other matter or thing, Subtenant shall be required to supply the same to both Sublandlord and Overlandlord. In any such instance, such evidence, certificate or other matter or thing shall be deemed to be reasonably satisfactory to Sublandlord if Overlandlord shall deem such evidence, certificate or other matter or thing satisfactory; provided, however, if Overlandlord shall deem such evidence, certificate or other matter or thing unsatisfactory, Sublandlord's refusal to accept same shall not be deemed unreasonable.

C. (1) In all provisions of the Overlease requiring tenant to give notice to Overlandlord, such notice shall be simultaneously sent to both Overlandlord and Sublandlord.

(2) In all provisions of the Overlease referring to notice given by Overlandlord to tenant, notice to Subtenant by either Sublandlord or Overlandlord shall be effective.

(3) Any time period defined with reference to such notice shall commence by the earlier of notice to Subtenant by Sublandlord or Overlandlord.

D. In all provisions of the Overlease requiring tenant to take any action within a certain period of time after notice from Overlandlord, then upon notice from Sublandlord to Subtenant, Subtenant shall take such action two (2) days earlier than the date on which tenant under the Overlease is required to act.

E. The liability of Sublandlord with respect to compliance with any laws, rules, regulations, or requirements, shall be strictly limited and relate only to the acts and omissions and conduct of Sublandlord or Sublandlord's agents, servants, employees, contractors, licensees and subtenants (other than Subtenant).

F. Intentionally deleted.

G. Subtenant shall have the right to resort to self-help in all such matters as self help was available to Sublandlord under the Overlease.

H. No right of offset or abatement of Fixed Rent and/or Additional Rent shall exist on the part of Subtenant against Sublandlord for any act, conduct or omission of Overlandlord, except to the extent that a corresponding right of offset or abatement shall actually exist in favor of Sublandlord under the Overlease and be availed of by Sublandlord with respect to the portion(s) of the Subleased Premises so affected thereby.

I. Intentionally deleted.

J. Sublandlord shall not be required to maintain any insurance required to be maintained by Overlandlord under the Overlease.

K. This Sublease is subject to a separate non-disturbance agreement with respect to this Sublease.

L. Sublandlord shall be bound by any representation or warranty made by Overlandlord under the Overlease to Sublandlord.

M. Sublandlord shall insure that any work required by Overlandlord under the Overlease shall be done in accordance with the Overlease.

N. Sublandlord shall extend to Subtenant any rent concession or improvement allowance given by Overlandlord under the Overlease from the commencement of this Sublease forward.

O. Except as otherwise expressly provided herein, in all provisions of the Overlease:

(1) the term "Landlord" shall mean "Sublandlord";

(2) the term "Tenant" shall mean "Subtenant";

(3) the term "Lease" shall mean "Sublease";

(4) the term "Term" shall mean "Term";

(5) the term "Premises" or "Demised Premises" shall mean "Subleased Premises";

(6) the words "this date", "the date hereof", "the date of this Lease" and similar references shall mean "the date of this Sublease";

(7) references in the Overlease to "this Lease", "the Lease" and similar references shall mean "this Sublease", except when such reference in the Overlease

is, by its terms (unless otherwise expressly provided herein), to any other section of the Overlease, in which event such reference shall be deemed to refer to the particular section of the Overlease; and

(8) references to "Rent" obligations in the Overlease shall mean the Fixed Rent obligations as modified hereunder.

P. Provided Subtenant is not in default of any its obligations under this Sublease, Sublandlord shall not be permitted to cancel or terminate the Overlease, and any provisions in the Overlease to such effect are hereby deleted.

Q. The following provisions of the Overlease shall be inapplicable to this Sublease:

(1) any concessions of any nature in the Overlease relating to rentals or rent free periods prior to the commencement date of the Sublease;

(2) any options for renewals or;

(3) Intentionally deleted.;

(4) any improvement allowances or reimbursements to be given by Overlandlord; and

(5) any options for expansion, or rights of first offer or refusal.

9. **Overlandlord's Consent.** Subtenant assumes to perform all of the terms and conditions of the Overlease to be performed by Sublandlord, as tenant, other than the payment of Fixed Rent, and as otherwise provided for herein, and Overlandlord's unconditional consent to this Sublease and Non disturbance and attornment Agreement, agreeing to recognize Subtenant as Overlandlord's tenant in the event of a default by

Sublandlord under the Overlease. Each party agrees to pay their own costs, expenses and fees which may be incurred by them in connection with such consents.

**10. Assignment/Subletting.**

A. Subtenant shall have the same rights, privileges, and obligations to sublet and or assign as the Sublandlord under the Overlease.

**11. Alterations; Restoration; Mechanics' Liens.**

A. Subtenant shall make no alterations, additions or improvements in and to the Subleased Premises, without the prior written consent of Sublandlord and Overlandlord. Subtenant's plans shall be preapproved prior to execution.

B. Subtenant shall permit no mechanics' liens or other construction liens to be placed against the Subleased Premises, or any portion thereof. If any mechanics' lien or other construction lien is filed against the Subleased Premises, or any portion thereof, for work performed or claimed to have been performed for, or materials furnished to Subtenant, the same shall be discharged by Subtenant, at its sole cost and expense, within ten (10) days thereafter.

**12. Insurance.**

A. Subtenant covenants and agrees that, during the Term, it will provide and keep in force, in responsible insurance companies licensed to do business in the State of New York, such policies of insurance and in such amounts not less than the amounts specified in the Overlease, naming Overlandlord and Sublandlord as additional insureds. Upon the execution of this Sublease by Subtenant, Subtenant shall deliver to Sublandlord either a duplicate original of the aforesaid policies or certificates evidencing that such insurance is in full force and effect.

B. Subtenant understands and agrees that Sublandlord will not be obligated to carry insurance of any kind on any personal property in the Subleased Premises owned by Subtenant (including, but not limited to, Subtenant's furnishings; furniture and equipment). Subtenant waives any and all right of recovery which it might otherwise have against Sublandlord for loss or damage to such property or any part thereof, to the same extent that Subtenant's insurer's right of subrogation would be waived if insurance coverage with waiver of subrogation provisions were being maintained by Subtenant upon all of such property, whether or not caused by the act, omission or negligence of Sublandlord or its agents, servants, employees, contractors, licensees or invitees.

13. Electric.

A. Subtenant shall be responsible for all utilities consumed by it at the Subleased Premises, including, without limitation, electric, heat, sewer rent, water and any other utility

B. Sublandlord shall not in any way be liable or responsible to Subtenant for any loss or damage or expense which Subtenant may sustain or incur if either the quantity or character of any utility service is changed or is no longer available or suitable for Subtenant's requirements.

C. No diminution or abatement of Fixed Rent or Additional Rent or other compensation or claim of constructive eviction shall or will be claimed by Subtenant as a result of any interruption, curtailment or suspension of any utility services, nor shall this Sublease or any of the obligations of Subtenant be affected, impaired, modified, altered, or reduced by reason of such interruption, curtailment or suspension.

14. **Condition of Subleased Premises.** Subtenant understands and agrees that no materials whatever are to be furnished by Sublandlord and no work whatever is to be performed by Sublandlord in connection with the Subleased Premises or any part thereof, and Subtenant agrees to accept the Subleased Premises in its "as-is" and "where-is" condition as of the commencement date of the Term, except that Sublandlord agrees to deliver the Subleased Premises to Subtenant in vacant and "broom-clean" condition, and all plumbing, heating, cooling and electric shall be in good working order, and roof free of leaks on commencement of this Sublease to best of Sublandlord's knowledge.

15. **Damages.** If the Overlease shall be terminated by reason of a default on the part of Subtenant with respect to any of the terms, covenants, conditions, provisions and agreements of this Sublease, Sublandlord shall be entitled to recover from Subtenant, as liquidated damages (and not as a penalty), the sum of: (i) such amount or amounts as will be equal to the damages which Overlandlord shall be entitled to recover from Sublandlord in connection with such termination of the Overlease; (ii) the expenses incurred by Sublandlord in collecting the amounts referred to in (i) hereinabove (including, without limitation, attorneys' fees and disbursements); and (iii) any and all other amounts incurred by Sublandlord as a result thereof.

16. **Indemnity.**

A. Subtenant covenants and agrees to indemnify and hold Sublandlord and Overlandlord and their respective agents, servants, employees, contractors, licensees and invitees, harmless from and against any and all liability (statutory or otherwise), claims, suits, demands, damages, judgments, costs, interest and expenses (including, without limitation, attorneys' fees and disbursements incurred in the defense of any action



or proceeding), to which they may be subject or which they may suffer by reason of, any injury to person or persons (including, but not limited to, Sublandlord, its agents, servants, employees, contractors, licensees and invitees) or damage to property (including any loss of use thereof), arising from, or in connection with any negligence, ordinary negligence, recklessness, wanton, willful or intentional misconduct on the part of the Subtenant or its agents, servants, employees, contractors, licensees or invitees; or, (ii) any condition of the Subleased Premises that causes injury or damage that was erected or omitted to be rectified by the Subtenant; or, (iii) any default by Subtenant in the performance of Subtenant's obligations under this Sublease.

B. Sublandlord covenants and agrees to indemnify and hold Subtenant and its respective agents, servants, employees, contractors, licensees and invitees, harmless from and against any and all liability (statutory or otherwise), claims, suits, demands, damages, judgments, costs, interest and expenses (including, without limitation, attorneys' fees and disbursements incurred in the defense of any action or proceeding), to which they may be subject or which they may suffer by reason of, any injury to person or persons (including, but not limited to, Sublandlord, its agents, servants, employees, contractors, licensees and invitees) or damage to property (including any loss of use thereof), arising from, or in connection with any negligence, ordinary negligence, recklessness, wanton, willful or intentional misconduct on the part of the Sublandlord or its agents, servants, employees, contractors, licensees or invitees.

17. **Default.**

A. If either party shall receive a notice of default from Overlandlord, which default arises out of, or is in connection with, the other parties actions or failure to

act under this Sublease, then, after five (5) days' written notice to the other and without waiving or releasing the other from any obligation contained in this Sublease, may, but shall be under no obligation to, make any such payment or perform any such act on the other parties part to be made or performed as provided in this Sublease in order to cure the default under the Overlease, and may enter upon the Subleased Premises for that purpose and or take all such other actions as may be necessary therefor.

B. All sums so paid by either party and all costs and expenses incurred by either party in connection with the performance of any such act, together with interest thereon at the Interest Rate, from the respective dates of such party making of each such payment or incurring of each such cost and expense, shall constitute Additional Rent payable by Subtenant under this Sublease, without set-off or deduction, and shall be paid by Subtenant to Sublandlord within five (5) days after demand therefore, or shall be paid by Sublandlord to Subtenant, as the case may be.

**18. Compliance With Laws.** Subtenant covenants and agrees that it will not use or suffer or permit any person to use the Subleased Premises for any unlawful purpose. Subtenant further covenants and agrees to comply with applicable laws, resolutions, codes, rules and regulations of any governmental or quasi-governmental agency, authority, board, body, bureau, department or official having jurisdiction over the occupancy, maintenance and use of the Subleased Premises for the purposes set forth herein. Subtenant covenants and agrees to indemnify and hold Sublandlord harmless from and against any claims, penalties, losses, damages or expenses imposed by reason of a violation of any of the foregoing.

19. **Entry.** Sublandlord and/or its agents may enter the Subleased Premises at reasonable hours upon reasonable prior notice to Subtenant, which notice may be telephonic (except in the event of an emergency, in which event no notice shall be required), in order to repair, inspect, install or perform other work that Sublandlord deems necessary or desirable or in order for Overlandlord to inspect, repair, install or perform other work in accordance with the terms, covenants, conditions, provisions and agreements of the Overlease.

20. **Holding Over.**

A. In the event Subtenant remains in possession of the Subleased Premises after the expiration or sooner termination of the Term without the execution of a new sublease, Subtenant, at the option of Sublandlord, shall be deemed to be occupying the Subleased Premises as a tenant from month-to-month and such tenancy shall not be deemed to extend or renew the Term, and Subtenant shall pay Sublandlord for use and occupancy of the Subleased Premises an amount equal to the greater of: (i) one and one half (1 1/2) times the monthly installment of the Fixed Rent and Additional Rent which had been payable by Subtenant to Sublandlord during the last month of the Term; or (ii) the then fair market value of the Subleased Premises as determined by Sublandlord, for each month or any part thereof, subject to all of the other terms, covenants, conditions, provisions and agreements of this Sublease insofar as the same are applicable to a month-to-month tenancy. Neither the billing nor collection of such amounts for use and occupancy as hereinabove provided during such holdover shall be deemed a waiver of any right of Sublandlord to collect damages for Subtenant's failure to vacate the Subleased Premises on or before the expiration or sooner termination of the Term.

B. In the event the Subleased Premises are not surrendered upon the expiration or sooner termination of the Term, Subtenant indemnifies and holds Sublandlord harmless from and against all liability and damages resulting from delay by Subtenant in failing to timely surrender the Subleased Premises (including, but not limited to, any claims made by Overlandlord or any succeeding subtenant or prospective subtenant founded upon such delay).

21. **End of Term.** At the expiration or sooner termination of the Term, Subtenant shall deliver the Subleased Premises to Sublandlord in good order and "broom-clean" condition, and Subtenant shall remove all of Subtenant's personal property therefrom.

22. **Taxes.** If, and to the extent required by the Overlease, Subtenant shall pay to the appropriate governmental or quasi-governmental agency or authority, the full amount of any commercial rent tax or other tax charged by the State of New York, Suffolk County, or any other governmental or quasi-governmental agency or authority by reason of this Sublease.

23. **Broker.** Each party represents and warrants to the other that: (i) each has not dealt with any agents or brokers in connection with this Sublease and/or the Subleased Premises; and (ii) this Sublease was not brought about or procured through the use, negotiation and/or instrumentality of any other agents or brokers. Each party covenants and agrees to pay, indemnify and hold the other harmless from and against any and all claims for commissions and other compensation made by any other agent or agents and/or any other broker or brokers arising from or related to this Sublease based on any dealings between such party and any such other agent or agents and/or any such other broker or

brokers, together with all costs and expenses incurred by said party in resisting such claims (including, without limitation, attorneys' fees and disbursements).

24. **Estate.** Sublandlord cannot grant or convey any greater estate, right or interest by virtue of this Sublease than Sublandlord has received under the terms of the Overlease, and Subtenant acknowledges that it has not received and cannot receive any greater estate, right or interest pursuant to this Sublease than Sublandlord has received under the Overlease.

25. **Limitation of Liability.** Subtenant agrees that, notwithstanding any contrary provision of this Sublease, Subtenant will look solely to the interest of Sublandlord or its successor in the Subleased Premises for the satisfaction of any judgment or other judicial process requiring the payment of money as a result of any negligence or breach of this Sublease by Sublandlord or such successor, and no other property or assets of Sublandlord or any partner, member, officer, director or shareholder (disclosed or undisclosed) or such successor will be subject to levy, execution or other enforcement procedure for the satisfaction of Subtenant's remedies under or with respect to this Sublease in any of such events.

26. **Definition of Sublandlord.** Intentionally deleted.

27. **No Money Damages; No Consequential Damages.**

A. If it is provided in this Sublease or by law that Sublandlord shall not unreasonably withhold or delay its consent or approval, and except for a finding of a wilfull or contumacious withholding of consent it is established by a court or body having final jurisdiction thereover that Sublandlord had been unreasonable: (i) the only effect of such finding shall be that Sublandlord shall be deemed to have given its consent or approval;

(ii) Sublandlord shall not be liable to Subtenant therefor in any respect; and (iii) Subtenant shall in no event be entitled to make any claim for, and waives any claim for money damages by reason of Sublandlord unreasonably withholding or delaying its consent or approval. Subtenant's sole remedy shall be an action or proceeding to enforce any such provision, or for specific performance, injunction or declaratory judgment.

B. In no event shall Sublandlord be liable for any consequential, exemplary, punitive or special damages which may be incurred by Subtenant under this Sublease (including, without limitation, lost profits and loss of business).

**28. No Privity of Estate.**

A. Nothing contained in this Sublease shall be construed to create privity of estate or contract between Subtenant and Overlandlord.

B. Subtenant shall not pay Fixed Rent, Additional Rent, or any other sums or charges to Overlandlord, except in the event of a default by the Sublandlord under the Overlease, although Subtenant shall have no obligation to make any such payment.

**29. Force Majeure.** Sublandlord shall not be deemed in default in the performance of any obligation or undertaking provided herein, in the event and/or so long as the performance of any such obligation is prevented or delayed, retarded or hindered by Act of God, fire, earthquake, floods, explosion, action of the elements, war, hostilities, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of government or civil or military or naval authorities, or any other causes, whether

similar or dissimilar to the foregoing, not within the reasonable control of Sublandlord (collectively, "Force Majeure").

**30. Cumulative Remedies; Waiver.**

A. All rights and remedies of each party enumerated herein and in the Overlease shall be cumulative, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised and enforced concurrently.

B. No waiver by either party of any covenant or condition or the breach of any covenant or condition of this Sublease shall constitute a waiver of any subsequent breach of such covenant or condition or authorize the breach or non-observance on any other occasion of the same or any other covenant or condition hereof.

**31. Notices.**

A. Any notice, statement, demand, request or other communication required or permitted to be given pursuant to this Sublease shall be made as follows:

(1) If to Sublandlord, at the address first hereinabove given, Attention Gerald McCrystal with a copy to Brian A. Held, Esq., Lynch Law Firm, P.C., 45 Eisenhower Drive, Third Floor, Paramus, New Jersey 07652.

(2) If to Subtenant: (i) at the address first hereinabove given prior to the commencement date; and (ii) at the Subleased Premises from and after the commencement date, Attention: Edward B. Seidner, Executive Vice President of Leasing, with a copy to Owen Wincig, Esq., Wincig and Wincig, 137 5<sup>th</sup> Avenue - Ninth Floor, New York, NY 10010.

B. Such notices shall be sent by: (i) personal delivery, with a receipt provided therefor; or (ii) United States certified or registered mail, return receipt

requested, with postage prepaid; or (iii) nationally recognized overnight courier service, with a receipt provided therefor and charges prepaid. Notices shall be deemed effective upon receipt if personally served, forty-eight (48) hours after mailing if sent by United States mail, or the next business day if sent by overnight courier, respectively, as the case may be.

C. Sublandlord and Subtenant may, by notice as aforesaid, designate a different address or addresses for notices, statements, demands or other communications intended for the party giving such notice.

D. Attorneys for Sublandlord and Subtenant are authorized to render notices for and on behalf of the respective parties.

E. Sublandlord and Subtenant shall each deliver to the other, copies of any notices, correspondence or statements whatsoever relating to the Subleased Premises, promptly after receipt thereof.

32. **Further Instruments.** Sublandlord and Subtenant agree that each shall execute and deliver, on request by the other, such instruments as may be reasonably necessary to effectuate the provisions of this Sublease.

33. **Submission.** The submission of this Sublease to Subtenant shall not be construed as an offer, nor shall Subtenant have any rights with respect thereto, unless and until: (i) Sublandlord and Subtenant shall have executed a copy of this Sublease, and Sublandlord shall have unconditionally delivered the same to Subtenant; and (ii) Sublandlord shall have obtained Overlandlord's written unconditional consent to this Sublease and Subtenant's Initial Work, in accordance with the provisions of Paragraph 9 hereof.



34. **Counterparts.** This Sublease may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

35. **Facsimile Signatures.** This Sublease may be executed by facsimile transmission and shall be deemed to have been executed and delivered by each party on the date so transmitted to the other party, and in such event, each party will promptly furnish to the other party, an original counterpart hereof executed by such party.

36. **Partial Invalidity.** A determination that any provision of this Sublease is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Sublease to any person or to particular circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other person or circumstances.

37. **Entire Agreement.** This Sublease contains and is intended to contain the entire agreement between the parties with respect to the subject matter hereof, and there are no oral or collateral understandings, agreements, representations, warranties, promises, or undertakings of any nature whatsoever, express or implied, not expressly set forth herein.

38. **Modification.** This Sublease may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

39. **Successors.** The terms, covenants, conditions, provisions and agreements contained in this Sublease shall bind and inure to the benefit of the parties hereto and their

respective legal representatives and successors and, except as otherwise expressly provided herein, their assigns.

40. **No Presumption.** Subtenant acknowledges and agrees that this Sublease is the result of extensive negotiations between the parties. This Sublease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Sublease to be drafted or prepared.

41. **Authority.** Subtenant represents and warrants to Sublandlord that: (i) the execution, performance and delivery of this Sublease by Subtenant does not violate any provision in its charter, or any indenture, document, agreement or other instrument which may be heretofore binding upon Subtenant, and has been duly and validly authorized and approved by any required corporate action of Subtenant; (ii) the obligations of Subtenant under this Sublease are legal, valid, binding and enforceable against Subtenant in accordance with its terms; and (iii) the person executing this Sublease on behalf of Subtenant has the requisite power and authority to so execute, perform and deliver same.

42. **Waiver of Jury Trial; Counterclaims.**

A. Subtenant waives all right to trial by jury in any summary or other action, proceeding or counterclaim arising out of, or in connection with, this Sublease, the relationship of Sublandlord and Subtenant, the Subleased Premises and the use and occupancy thereof, and any claim for injury or damages.

B. Subtenant waives all right to assert or interpose a counterclaim in any summary proceeding or other action or proceeding to recover or obtain possession of the Subleased Premises.

**43. Interpretation.**

A. The captions, headings and titles in this Sublease are solely for convenience and reference, and shall not affect its interpretation.

B. If any words or phrases in this Sublease shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Sublease shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Sublease and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

C. Each covenant, agreement, obligation or other provision of this Sublease shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making same, not dependent on any other provision of this Sublease, unless otherwise expressly provided herein.

D. (1) All terms and words used in this Sublease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

(2) The word "person" as used in this Sublease shall mean a natural person or persons, a partnership, a corporation or any other form of business or legal association or entity.

**44. Conflict.** In case of any conflict or inconsistency between the provisions of the Overlease and this Sublease, the provisions of this Sublease shall, as between Sublandlord and Subtenant, control.

45. **Governing Laws.** This Sublease shall be governed by, construed and enforced in accordance with the laws of the State of New York, without regard to conflicts of law principles.

IN WITNESS WHEREOF, the parties hereunto have respectively executed this  
Sublease Agreement as of the day and year first above written.

ATTEST: TMCC, INC. (Sublandlord)

By: \_\_\_\_\_ By: [Signature]  
Name: \_\_\_\_\_ Name: Gerald McCristal  
Title: \_\_\_\_\_ Title: President

ATTEST: Hartsdale Convertibles, Inc. (Subtenant)

By: \_\_\_\_\_ By: [Signature]  
Name: \_\_\_\_\_ Name: EMMA B. LEANER  
Title: \_\_\_\_\_ Title: EXECUTIVE V.P.

**RIDER TO SUBLEASE AGREEMENT**

Rider attached to Sublease dated: August ~~21~~, 2009  
Sublandlord: TMCC, INC.  
Subtenant: HARTSDALE CONVERTIBLES, INC.  
Relating to property known as: 1821 Route 110, E. Farmingdale, NY 11735  
Consisting of provisions numbered: R1 - R8

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**R1 Rider Controls**

The printed part of this Sublease is hereby modified and supplemented as follows, it being agreed that wherever there is any conflict between this Rider and the printed part of this Sublease and/or other riders to this Sublease (if any), the provisions of this Rider are paramount and shall govern, and this Sublease shall be construed accordingly.

**R2 Delivery of Possession**

Delivery of possession of the Building and the Premises to Subtenant shall in no event be deemed to have occurred until actual and exclusive physical possession of the Building and the Premises shall have been delivered to Subtenant in a broom-clean condition, free and clear of all violations, prior leases other than the Master Lease, Tenants and/or occupants and free and clear of all personal property of all prior Tenants and/or occupants, and with any warranties and representations contained in this Sublease being true and fulfilled as of such date.

**R3 Hazardous Materials**

Sublandlord represents that to the best of Sublandlord's knowledge, the Demised Premises, on the commencement date of this Sublease, will contain no Hazardous Materials. Under no circumstances shall Subtenant be responsible for any pre existing hazardous conditions or condition not caused by Subtenant or Subtenant's agents.

**R4 Yield Up**

Subtenant agrees, at no later than the Expiration Date, to remove all trade fixtures installed by Subtenant and personal property, to repair any damage caused by such removal and to surrender all keys to the Premises and yield up the Premises, in the same good order and repair in which Subtenant is obliged to keep and maintain the Premises by the provisions of this Sublease, reasonable wear and tear and damage by fire, casualty or taking excepted.

**R5 Assignment, Subletting, etc.**

(a) Subtenant shall have the right to make any assignment, transfer or subletting of the Premises, or any part thereof, upon the consent of Landlord and Sublandlord, which consent shall not be unreasonably withheld, conditioned, delayed or charged for to any other entity or person.

(b) Notwithstanding the above, no consent shall be required for, and Subtenant shall have the right to make, any assignment, transfer or subletting of the Premises, or any part thereof (i) to a parent, subsidiary or affiliated company, (ii) directly or indirectly, in any manner, in connection with a merger, or a consolidation or a combination, or a sale of substantially all of the assets constituting a portion and/or all of the retail chain of which the business in the Premises is a part in the state in which the Premises is located. Upon any assignment in accordance with the foregoing, the Subtenant named herein shall be relieved of any further liability hereunder.

R6 Sublandlord Express Waiver

Sublandlord hereby waives any lien on Subtenant's trade fixtures and other personal property which Sublandlord may have by virtue of statute, constitution, or otherwise. Upon request of Subtenant, Sublandlord will execute and deliver a reasonable and customary certificate or other instrument requested by Subtenant which evidences such waiver.

R7 Fixed Rent and Additional Rent

Anything to the contrary notwithstanding, Subtenant shall not be responsible to Sublandlord for Fixed Rent payable by Sublandlord to Landlord under the Master Lease, nor shall Subtenant be responsible for any Additional Rent pursuant to paragraph 72 of the Master Lease.

R8 Landlord Consent

Anything to the contrary notwithstanding, the parties agree as follows:

- (i) Provided Landlord's unconditional consent shall be secured and delivered to Subtenant on or before August 28, 2009, on or before October 1, 2009, Subtenant shall pay to the Sublandlord all amounts due for the month of October (i.e. the one time up front payment as well as Fixed Rent and Additional Rent for the period October 16, 2009 through October 31, 2009) as set forth on Exhibit "B" attached to the Sublease Agreement. Subtenant acknowledges that this payment will be made prior to the Subtenant's occupation of any portion of the Premises;
- (ii) Subtenant shall have possession of the premises for the period October 1, 2009 through October 15, 2009 without any Fixed Rent or Additional Rent obligations to the Sublandlord;
- (iii) The nonpayment of the foregoing will not affect the enforceability of the Sublease Agreement.
- (iv) If for any reason the Landlord's Consent is delayed, the parties will discuss revised possession and rent commencement dates consistent with the above.

[Signature Page Follows]

Sublandlord:

TMCC, INC

By: 

Name: Gerald McCristal

Its: President

Subtenant:

HARTSDALE CONVERTIBLES, INC.

By: 

Name: Edward B. Sediner

Its: Executive Vice-President



**AMENDED EXHIBIT "B"**

**FIXED RENT SCHEDULE**

**Monthly Rent paid to TMCC:**

October 15, 2009 to October 31, 2009	\$	15,500.00
November 1, 2009 to October 31, 2010	\$	32,000.00
November 1, 2010 to October 31, 2011	\$	33,280.00
November 1, 2011 to October 31, 2012	\$	34,611.00
November 1, 2012 to October 31, 2013	\$	35,995.65
November 1, 2013 to October 31, 2014	\$	37,435.47
November 1, 2014 to October 31, 2015	\$	38,932.89
November 1, 2015 to October 31, 2016	\$	40,490.21
November 1, 2016 to October 31, 2017	\$	42,109.82
November 1, 2017 to October 31, 2018	\$	43,794.21
November 1, 2018 to October 31, 2019	\$	45,545.98

**Additional Monthly Rent paid to Roma FLI, Inc.:**

One time up front payment paid upon execution of Agreement:	\$	100,000.00
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**Additional Monthly Rent paid to GMM Consulting, Inc.:**

October 15, 2009 to October 31, 2009	\$	10,000.00
November 1, 2009 to September 30, 2010	\$	20,000.00
October 1, 2010 to October 31, 2010	\$	18,000.00
November 1, 2010 to October 31, 2011	\$	18,000.00
November 1, 2011 to October 31, 2012	\$	18,000.00
November 1, 2012 to October 31, 2013	\$	18,000.00
November 1, 2013 to October 31, 2014	\$	18,000.00
November 1, 2014 to November 30, 2014	\$	18,000.00
December 1, 2014 to October 31, 2015	\$	20,000.00
November 1, 2015 to October 31, 2016	\$	20,000.00
November 1, 2016 to October 31, 2017	\$	20,000.00
November 1, 2017 to October 31, 2018	\$	20,000.00
November 1, 2018 to October 31, 2019	\$	20,000.00

(signature page to follow)

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000 No. 2194 P. 3/4

Dec. 2, 2009 11:05AM ROMA FURNITURE

IN WITNESS WHEREOF, the parties hereunto have respectively executed this Amended Exhibit as of the \_\_\_\_\_ day of November 2009.

ATTEST: TMCC, INC. (Sublandlord)

By: Jessica Matthews  
Name: Jessica Matthews  
Title: Paralegal

By: Gerald M. Crystal  
Name: Gerald M. Crystal  
Title: President

ATTEST: Hartsdale Convertibles, Inc. (Subtenant)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Edward B. Seidner  
Name: EDWARD B. SEIDNER  
Title: EXECUTIVE V.P.



CULLEN and DYKMAN LLP

BONNIE L. POLLACK  
OF COUNSEL  
DIRECT DIAL: 516-296-9143  
EMAIL: BPOLLACK@CULLENANDDYKMAN.COM

Garden City Center  
100 Quentin Roosevelt Boulevard  
Garden City, New York 11530-4850  
Telephone (516) 357-3700 • Facsimile (516) 357-3792

October 4, 2010

**VIA FEDERAL EXPRESS**

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

Re: Hartsdale Convertibles, Inc.  
Case No. 10-13783 (ALG)

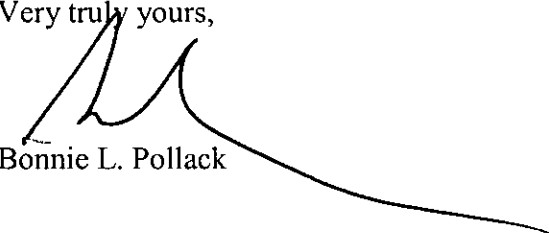
Dear Sir/Madam:

Pursuant to Order of the Court dated September 16, 2010 in the above case, enclosed herewith please find a claim filed on behalf TMCC, Inc. in the case of Hartsdale Convertibles, Inc., Case No. 10-13783 (ALG) in the amount of \$151,006.13.

Please stamp the enclosed copy of the Proof of Claim to show your receipt of same, and return same to our office in the envelope provided for your convenience.

Thank you for your cooperation in this matter. Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

  
Bonnie L. Pollack

BLP/jsu  
Enclosures

*Founded 1850*

BROOKLYN

LONG ISLAND

MANHATTAN

WASHINGTON, D.C.

NEW JERSEY