

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK (MANHATTAN)		PROOF OF CLAIM		 YOUR CLAIM IS SCHEDULED AS: Schedule/Claim ID s362 Amount/Classification \$23,225.81 Unsecured	
In re: Jennifer Convertibles, Inc.		Case Number: 10-13779			
<small>NOTE: See Reverse for List of Debtors/Case Numbers/ important details. This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>				The amounts reflected above constitute your claim as scheduled by the Debtor or pursuant to a filed claim. If you agree with the amounts set forth herein, and have no other claim against the Debtor, you do not need to file this proof of claim EXCEPT as stated below. If the amounts shown above are listed as Contingent, Unliquidated or Disputed, a proof of claim must be filed. If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again. THIS SPACE IS FOR COURT USE ONLY	
Name of Creditor and Address: the person or other entity to whom the debtor owes money or property <div style="display: flex; align-items: center;"> <div> 25239790001647 CJ REALTY L P C/O SPIEGEL ASSOCIATES 375 NORTH BROADWAY JERICO, NY 11753 </div> </div>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.			
Creditor Telephone Number () (516) 935-1100 ext. 210 Name and address where payment should be sent (if different from above):					
Payment Telephone Number ()		RECEIVED OCT 07 2010 BMC GROUP		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Claim Number (if known): Filed on:	
1. AMOUNT OF CLAIM AS OF DATE CASE FILED \$ 27,847.68 <small>If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim qualifies as an administrative expense under 11 U.S.C. § 503(b)(9), complete item 6.</small> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.					
2. BASIS FOR CLAIM: Lease for premises: 325 N. Broadway, Jericho, New York		<small>(See instructions #2 and #3a on reverse side.)</small>		3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR: 3a. Debtor may have scheduled account as:	
4. SECURED CLAIM <small>(See instruction #4 on reverse side.)</small> Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information Nature of property or right of setoff: Describe: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Value of Property: \$ Annual Interest Rate: % if any: \$ Basis for Perfection:					
5. PRIORITY CLAIM <input type="checkbox"/> 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. You MUST specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (). <small>* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>					
6. AMOUNT OF CLAIM THAT QUALIFIES AS AN ADMINISTRATIVE EXPENSE UNDER 11 U.S.C. § 503(b)(9): \$ 4,064.52 <small>See instruction #6 on reverse side</small>					
7. CREDITS: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.					
8. SUPPORTING DOCUMENTS: <u>Attach redacted copies of supporting documents</u> , such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See instruction 8 and definition of "redacted" on reverse side.) If the documents are not available, please explain. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.					
The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before 5:00 pm, prevailing Eastern Time on October 25, 2010 for Non-Governmental Claimants OR on or before 5:00 pm, prevailing Eastern Time on January 18, 2011 for Governmental Units BY MAIL TO: BMC Group, Inc Attn: Jennifer Convertibles Claims Processing PO Box 3020 Chanhassen, MN 55317-3020				THIS SPACE FOR COURT USE ONLY <div style="border: 1px solid black; padding: 5px; text-align: center;"> Jennifer Convertibles 00187 </div>	
BY HAND OR OVERNIGHT DELIVERY TO: BMC Group, Inc Attn: Jennifer Convertibles Claims Processing 18750 Lake Drive East Chanhassen, MN 55317					
DATE October 5, 2010		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. C.J. Realty, L.P., By: Jason General Corp., By: Clifford Sondock, President			

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 (IF NOT ALREADY PROPERLY FILLED IN)

<p>Court, Name of Debtor, and Case Number: Fill in the name of the federal judicial district where the bankruptcy case was filed (for example Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the Claims Agent, BMC Group, some or all of this information may have been already completed.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Debtor Name</td> <td style="width: 50%;">Case No</td> </tr> <tr> <td>See attached sheet</td> <td></td> </tr> </table> <p>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).</p> <p>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 item, 4, 5 and 6. Check the box if interest or other charges are included in the claim.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	Debtor Name	Case No	See attached sheet		<p>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.</p> <p>6. Amount of Claim that qualifies as an Administrative Expense under 11 U.S.C. §503(b)(9): State the value of any goods received by the debtor within 20 days before the date of commencement for which the goods have been sold to the debtor in the ordinary course of the debtor's business.</p> <p>7. 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.</p> <p>8. Supporting 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). Do not send original documents, as attachments may be destroyed after scanning.</p> <p>Date and Signature: The person filing this proof of claim <u>must</u> 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.</p> <p>Date-Stamped Copy Return claim form and attachments, if any. If you wish to receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and a second copy of the proof of claim form with any attachments to the Claims Agent, BMC Group, at the address on the front of this form.</p> <p><i>Please read – important information: upon completion of this claim form, you are certifying that the statements herein are true.</i></p> <p>Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."</p>
Debtor Name	Case No				
See attached sheet					

DEFINITIONS

INFORMATION

<p>DEBTOR A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p> <p>CREDITOR A creditor is any person, corporation, or other entity, to whom the debtor owed a debt on the date that the bankruptcy case was filed.</p> <p>CLAIM A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.</p> <p>PROOF OF CLAIM A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court-appointed Claims Agent, BMC Group, at the address listed on the reverse side of this page.</p> <p>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.</p>	<p>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.</p> <p>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).</p> <p>UNSECURED NONPRIORITY CLAIM If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.</p> <p>UNSECURED PRIORITY CLAIM 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.</p> <p>Evidence of Perfection Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other</p>	<p>document showing that the lien has been filed or recorded.</p> <p>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.</p> <p>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.</p>
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ONCE YOUR CLAIM IS FILED YOU CAN OBTAIN OR VERIFY YOUR CLAIM NUMBER BY VISITING www.bmcgroup.com

JENNIFER CONVERTIBLES
027-132-0325-0007

Filing date 7/18/2010

<u>Billed</u>				
<u>Date</u>	<u>Description</u>	<u>Amount</u>	<u>Pre-Petition</u>	<u>Post-Petition</u>
5/1/2010	RENT	9,000.00	9,000.00	
6/1/2010	RENT	9,000.00	9,000.00	
7/1/2010	RENT	9,000.00	4,935.48	4,064.52
7/23/2010	Legal Fees	<u>847.68</u>	<u>847.68</u>	<u>-</u>
	A/R balance @ 8/6/10	27,847.68	23,783.16	4,064.52

010610;011210;012810

LEASE

C.J. REALTY, L.P.

TO

JENNIFER CONVERTIBLES, INC.

Tenant Index No.
027-132-0325-0006 7

THIS LEASE, made this 31st day of December, 2009, between C.J. Realty, L.P. ("Landlord"), and Jennifer Convertibles, Inc. ("Tenant").

In consideration of the mutual covenants and agreements herein contained, Landlord and Tenant agree as follows:

1. **BASIC PROVISIONS AND DEFINITIONS:** This Paragraph 1 is an integral part of this Lease and all of the terms hereof are incorporated into this Lease in all respects. In addition to the other provisions which are elsewhere defined in this Lease, the following capitalized terms, whenever used in this Lease, shall have the meanings set forth in this Paragraph, and only such meanings unless expressly contradicted, limited or expanded elsewhere herein:

- (a) **DATE OF LEASE:** as of December 31, 2009
 - (b) **TENANT'S MAILING ADDRESS:** 417 Crossways Park Drive, Woodbury, New York 11797
 - (c) **TENANT'S TRADE NAME (Par. 21):** Jennifer Convertibles
 - (d) **GUARANTOR:** None
 - (e) **LOCATION (Par. 2):** The land and building known as 325 North Broadway, Jericho, County of Nassau, State of New York and more particularly described in Exhibit A, if any.
 - (f) **SHOPPING CENTER (Par. 2):** The Location
 - (g) **GROSS LEASABLE AREA:** Approximately 3,171 square feet
 - (h) **LEASE TERM (Par. 3):** One (1) Lease Year plus one (1) month commencing on January 1, 2010 and terminating on January 31, 2011.
 - (i) **RENT COMMENCEMENT DATE (Par. 4):** January 1, 2010
 - (j) **SECURITY DEPOSIT (Par. 15):** None
 - (k) **FIXED MINIMUM RENT OR MINIMUM RENT (Par. 6):** For the Lease Term of 13 months is One Hundred Seventeen Thousand and 00/100 Dollars (\$117,000.00), (\$9,000.00) per month.
 - (l) **INTENTIONALLY OMITTED.**
 - (m) **TENANT'S WORK COMPLETION DATE (Exhibit B):** INTENTIONALLY OMITTED.
 - (n) **PERMITTED USE (Par. 21):** Sale of furniture (excluding mattresses other than for convertible sofas) provided such use is in accordance with the Certificate of Occupancy for the building, if any, and for no other purpose.
 - (o) **INTENTIONALLY OMITTED.**
 - (p) **COMMON AREA CHARGE:** INTENTIONALLY OMITTED.
 - (q) **INSURANCE CHARGE (Par. 38B):** INTENTIONALLY OMITTED
- MINIMUM LIMIT OF COMPREHENSIVE GENERAL LIABILITY INSURANCE (Par. 37):** \$2,000,000.00 annual aggregate limit and \$1,000,000.00 limit per occurrence, written on an industry standard form. (The Limit specified herein is subject to change by Landlord if the underlying limit of Landlord's blanket policy shall increase.)

MINIMUM LIMIT OF BOILER AND MACHINERY INSURANCE (Par. 37): Not Applicable

INCLUSIVE LIMITS OF COMPREHENSIVE AUTOMOBILE LIABILITY
INSURANCE (Par. 37): Not Applicable

MINIMUM LIMIT OF LIQUOR LIABILITY INSURANCE (Par. 37): Not Applicable

- (r) WATER AND UTILITIES CHARGE (Par. 31) INTENTIONALLY OMITTED.
 - (s) LATE PAYMENT ADMINISTRATIVE FEE (Par. 13): \$25.00 per day.
 - (t) BROKER (Par. 59): None
 - (u) TENANT'S FEDERAL TAXPAYER IDENTIFICATION NUMBER:
 - (aa) LANDLORD'S MAILING ADDRESS: c/o Spiegel Associates
375 North Broadway
Jericho, New York 11753
 - (bb) DEMISED PREMISES (Par. 2): See Paragraph 2.
 - (cc) TENANT'S PROPORTIONATE SHARE (Par. 32): One Hundred Percent (100%) for Article 1. (r).
 - (dd) COMMENCEMENT DATE: January 1, 2010
 - (ee) DELIVERY OF POSSESSION DATE: The date hereof, Tenant accepts delivery in as is condition and including subject to the occupancy of the current tenant, Jara Enterprises, Inc. and any subtenants of Jara Enterprises, Inc.
 - (ff) LEASE YEAR (Par. 7): The thirteenth (13) full month period commencing on January 1, 2010 and terminating on January 31, 2011.
 - (gg) STATE: The State of New York.
 - (hh) INTENTIONALLY OMITTED.
 - (ii) OVERHEAD AMOUNT: A sum equal to fifteen (15%) percent of the amounts expended by Landlord for overhead, and a sum equal to ten (10%) percent of the amounts expended by Landlord for profit. This provision is limited to Paragraph 29, 80(a) and (b) and 40.
 - (jj) RENT: All amounts payable by Tenant under this Lease.
2. DEMISED PREMISES: (a) Landlord hereby leases to Tenant and Tenant hereby rents from Landlord those certain demised premises consisting of the Gross Leasable Area and currently occupied by Jara Enterprises, Inc. (exclusive of the space sublet to Gawisori, Inc. consisting of approximately 1,000 square feet) in the Shopping Center (the "Demised Premises"), which is now

The remainder of this page is intentionally left blank

known or will be known as the Shopping Center, situated at the Location, which premises are more particularly described in Exhibit A, if any, annexed hereto and made a part hereof. The Demised Premises shall be measured from the outside of all exterior walls and to the middle of any interior demising walls for the purpose of determining the Gross Leasable Area of the Demised Premises. (b) ~~The approximate location and boundaries of the Demised Premises are outlined in Exhibit A, annexed hereto and made a part hereof. Exhibit A shall not be deemed to be a warranty, representation or agreement on the part of Landlord that said Shopping Center will be as indicated on said Exhibit A.~~ Landlord reserves the right at any time and from time to time (i) to increase, reduce or change the number, size, height, layout or location of the buildings, walks, parking and/or other common areas and facilities now or at any time hereafter forming a part of the Shopping Center, (ii) to make alterations or additions to, and to build additional stores on, the building of which the Demised Premises forms a part, and to add buildings or additions to buildings adjoining the same or elsewhere in the Shopping Center, (iii) to change the nature and identity of the occupants of the adjoining premises, the building and the Shopping Center, and (iv) to change the information contained in Exhibit A. Landlord, as in its sole option, shall have the right to construct and/or renovate the Shopping Center in phases as it shall so determine. (c) Tenant's right to use and occupy the Demised Premises during the Lease Term shall include a license to use, in common with others, the common areas and facilities of the Shopping Center, as hereinafter more fully set forth. (d) Nothing herein contained shall be construed as a letting by Landlord to Tenant of (i) the roof or exterior walls of the building of which the Demised Premises forms a part, (ii) the space above the Demised Premises and below the underside of the roof slab of the building of which the Demised Premises forms a part, (iii) the land below the sub-base of, or air rights above, the Demised Premises, or (iv) the common areas and facilities of the Shopping Center. (e) ~~Except as specifically set forth on Exhibit B as and for Landlord's Work, if any, Tenant shall otherwise accept~~ possession of the Demised Premises on the Delivery of Possession Date in an "as is" condition, as same then exists without any warranty or representation, express or implied, on the part of Landlord and Landlord shall not be otherwise obligated to do any other work nor make any other installation nor furnish any labor or materials to the Demised Premises as a condition of the occurrence of the Delivery of Possession Date, and all other work thereto, including, without limitation, Tenant's Work (as expressly set forth in Exhibit B), shall be performed by Tenant at its own cost and expense. The taking of occupancy of the whole or any part of the Demised Premises by Tenant shall be conclusive evidence, as against Tenant, that Tenant accepts possession of the same and that the Demised Premises so occupied and the building of which the same form a part were in good and satisfactory condition at the time such occupancy was so taken.

3. LEASE TERM: The Demised Premises are leased hereby, ^{January 1, 2010} ~~commencing on the first day of the month in which the Delivery of Possession Date occurs and terminating on the last day of the 59th month following the month in which the Delivery of Possession occurs. August 31, 2012.~~ ^{as of March 1, 2002}
January 31, 2011, January 1, 2010, September 1, 2002

4. RENT COMMENCEMENT DATE: ~~July 1, 2009.~~ ^{January 1, 2010} In the event Tenant is delayed in obtaining building permits required in order to commence business operations solely by reason of Landlord's intentional acts or omissions, the Rent Commencement Date shall be delayed one (1) day for each day of such delay, provided, however, that (i) the expiration date of the term of this Lease shall not be extended thereby and (ii) Tenant shall pay all rent on the dates required hereunder and the parties will in good faith and expeditiously seek to resolve any disputes as to such delay. ~~Tenant shall diligently and expeditiously apply for any and all such building permits.~~ At any time after the Rent Commencement Date, Tenant, upon request of Landlord, shall execute and deliver to Landlord, without charge, a written declaration, duly acknowledged confirming the Rent Commencement Date and expiration date of the Lease Term and setting forth such other information pertaining to the Lease as Landlord shall request. Any failure by Tenant to execute or deliver such written declaration shall not affect Landlord's determination of the foregoing. Tenant further agrees to execute and deliver similar declarations at Tenant's sole cost and expense, from time to time as and when requested by Landlord, Landlord's mortgage lenders, ground or underlying lessors and/or purchasers, and that each of such parties shall be entitled to rely upon any such written declaration made by Tenant. Tenant hereby waives any right to rescind this Lease which Tenant might otherwise have pursuant to Section 223-a of the Real Property Law of the State or pursuant to any other law of like import now or hereafter in force.

5. FAILURE TO DO BUSINESS: The parties covenant and agree that should Tenant

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* including without limitation, subject to the occupancy by Jara Enterprises, Inc. and its subtenants of the Premises.

(a) subject to Paragraphs 4 and 51 hereof, fail to take possession of and open for business in the Demised Premises fully fixtured, stocked and staffed on the Rent Commencement Date or (b) vacate, abandon or desert the Demised Premises, or (c) cease operating or conducting its business therein, (except where the Demised Premises are rendered untenable by reason of fire, casualty, permitted repairs or alterations or other causes beyond Tenant's control mentioned under Paragraph 51 hereof) or (d) subject to Paragraph 51 hereof, fail or refuse to maintain business hours on such days or nights or any part thereof as provided in Paragraph 22 hereof, then and in any of such events (hereinafter collectively referred to as "failure to do business"), Landlord shall have the right to treat such failure to do business as an "Event of Default" within the meaning of Paragraph 43 of this Lease. Landlord's claim that Tenant has vacated, abandoned or deserted the Demised Premises shall not be defeated solely because Tenant may have left all or any part of its trade fixtures or other personal property in the Demised Premises.

6. **MINIMUM RENT:** Tenant shall pay to Landlord during the Lease Term, without any prior demand therefor and without any offsets or deductions whatsoever, the Fixed Minimum Rent, in equal monthly installments, in advance, on the first day of each and every calendar month throughout the Lease Term. Notwithstanding the foregoing, ~~the Fixed Minimum Rent shall abate and shall not be payable until the Rent Commencement Date.~~ In the event the Rent Commencement Date is other than the first day of a calendar month, the Fixed Minimum Rent (as well as all additional rent and other charges and sums reserved hereunder) for the portion of the then current calendar month shall be prorated and shall be paid immediately upon the Rent Commencement Date. Simultaneously with the execution of this Lease, Tenant shall pay to Landlord the first month's Fixed Minimum Rent, and the estimated monthly ~~Tax Charge, Common Area Charge, Insurance Charge and Wastewater Charge and Water Charge.~~

7. INTENTIONALLY OMITTED.

8. INTENTIONALLY OMITTED.

9. INTENTIONALLY OMITTED.

10. INTENTIONALLY OMITTED.

11. INTENTIONALLY OMITTED.

12. **ADDITIONAL RENT:** In addition to the Fixed Minimum Rent, all other payments to be made by Tenant hereunder, shall be deemed for the purpose of securing the collection thereof to be additional rent hereunder, whether or not the same be designated as such, and shall be due and payable on demand or together with the next succeeding installment of the Fixed Minimum Rent, whichever shall first occur; and Landlord shall have the same rights and remedies upon Tenant's failure to pay the same as for the non-payment of the Fixed Minimum Rent. Landlord, at its election, shall have the right (but not the obligation), to pay for or perform any act which requires the expenditure of any sum of money by reason of the failure or neglect of Tenant to perform any of the provisions of this Lease within the applicable grace period, if any, provided herein, and in the event Landlord shall at its election pay such sums or perform such acts requiring the expenditure of monies, Tenant agrees to reimburse and pay Landlord, upon demand, such sum, which shall be deemed for the purpose of securing the collection thereof to be additional rent hereunder. For purposes of this Lease, the term "rent" or "Rent" shall be deemed to include all Fixed Minimum Rent, additional rent and all other sums and charges payable hereunder.

13. **PAST DUE RENTS:** If Tenant shall fail to pay any rents, charges or other sums, within five ^{ten (10)} ~~(5)~~ days after the same become due and payable more often than ~~once in any twelve~~ ^{once in any twelve} (12) month period, then Tenant shall also pay to Landlord additional rent to cover Landlord's additional overhead and administrative costs and expenses arising out of such late payment in the amount of the Late Payment Administrative Fee per day for each calendar day or part thereof from the due date thereof to the date of payment. The provisions herein for additional rent shall not be construed to extend the date for payment of any sums required to be paid by Tenant hereunder or to relieve Tenant of its obligation to pay all such sums at the time or times herein stipulated. Notwithstanding the imposition of such additional rent pursuant to this paragraph, Tenant shall be

beyond the applicable cure period
in default under this Lease if any or all payments required to be made by Tenant are not made at the time herein stipulated, and neither the demand for, nor collection by Landlord of, such additional rent shall be construed as a curing of such default on the part of the Tenant.

14. **PLACE OF PAYMENTS AND DELIVERY OF STATEMENTS:** All payments required to be paid by Tenant to Landlord shall be made to Landlord or as Landlord may otherwise direct, and all such payments and all statements and reports required to be rendered by Tenant to Landlord shall be delivered to Landlord's Mailing Address or as Landlord may otherwise direct.

15. INTENTIONALLY OMITTED.

16. INTENTIONALLY OMITTED.

17. INTENTIONALLY OMITTED.

18. INTENTIONALLY OMITTED.

19. **OWNERSHIP OF IMPROVEMENTS:** (a) All betterments and improvements in or upon the Demised Premises, made by either party (except Tenant's personal property, furniture and furnishings, interior signs and movable trade fixtures not constituting a permanent part of the Demised Premises) including all affixed lighting fixtures, beads and attachments, heating, ventilating and air conditioning equipment, pipes, ducts, conduits, wiring, paneling, partitions, railings, mezzanine floors, galleries and the like, shall remain upon and be surrendered with the Demised Premises as a part thereof at the expiration or sooner termination of the Lease Term and shall become the property of Landlord at such time, unless Landlord otherwise elects (which election shall be made by Landlord not less than five (5) days prior to the expiration or sooner termination of the Lease Term except that if this Lease shall terminate pursuant to Paragraph 42 hereof, election shall be made by Landlord not more than five (5) days after such termination). Tenant shall not remove any exterior signage without Landlord's prior consent. (b) Tenant shall not assign, lien, encumber, hypothecate, pledge, chattel mortgage or create a security interest in and to or upon the Demised Premises without first obtaining in each instance the prior consent of Landlord. Any violation of the terms of this provision by Tenant shall be without force and effect and shall not be binding upon Landlord.

20. **TENANT'S INSTALLATIONS:** Tenant shall fully equip the Demised Premises with all trade fixtures and equipment necessary for the proper operation of Tenant's business.

21. **PERMITTED USE:** Tenant agrees to and shall use the Demised Premises solely for the purpose of conducting the Permitted Use and for no other purpose. Tenant further agrees not to conduct any catalogue, mail or telephone order sales in or from the Demised Premises, except of merchandise which Tenant is permitted to sell "over the counter" to customers in the Demised Premises pursuant to this Paragraph. Tenant agrees to conduct Tenant's business in the Demised Premises only under Tenant's Trade Name, which Tenant represents that it has the right to use. Provided that Tenant shall not then be in default under this Lease and further provided that no violation of federal anti-trust laws, orders or regulations shall result thereby, Landlord shall not lease space in the Shopping Center to any tenant which has as its primary business the sale of convertible sofas.

22. **OPERATION OF BUSINESS:** Tenant agrees (a) subject to Paragraph 51 hereof, to continuously and uninterruptedly occupy and use during the Lease Term the entire Demised Premises for the Permitted Use, and to conduct Tenant's business therein in a reputable manner; (b) to remain open for business at least from 10:00 a.m. to 6:00 p.m. Monday through Sunday** except for federal holidays; (c) to adequately staff its store with sufficient employees to handle the maximum business possible therein and carry sufficient stock of seasonal merchandise of such size, character and quality to accomplish the same; ~~(d) to maintain displays of merchandise in the display windows, if any; (e) to keep the display windows, if any, and signs well lighted from dusk until such hour and on such days during which the majority of stores in the Shopping Center are open for business;~~ (f) to warehouse, store or stock in the Demised Premises only such goods, wares and merchandise as Tenant intends to offer for sale, at retail; (g) to apply for, secure, maintain and

comply with all licenses or permits which may be required for the conduct by Tenant of the Permitted Use and to pay, if, as and when due all license and permit fees and charges of a similar nature in connection therewith; (h) to use exclusively the logo, insignia or other identifying mark of the Shopping Center designated by Landlord in Tenant's local advertising of the Demised Premises, whether printed or visual; (i) not to conduct any real or fictitious "going-out-of-business", auction, distress, fire or bankruptcy or similar sale, but nothing contained herein shall restrict Tenant from determining the selling price of its own merchandise or preclude the conducting of periodic seasonal, promotional or clearance sales; (j) not to operate its business under this Lease so as to breach or violate any restrictive covenant contained in any other lease entered into by Tenant, or violate any restrictive agreement contained in any contract entered into by Tenant, or violate any restrictive agreement contained in any judgment or decree imposed upon Tenant; (k) to promptly comply with all laws, ordinances, rules and regulations of governmental authorities (including zoning laws and building codes) (hereinafter collectively referred to as "Legal Requirements") and insurers, underwriters and insurance rating and service organizations affecting the Demised Premises (whether the same require structural or non-structural, interior or exterior, ordinary or extraordinary changes, alterations, additions or other requirements); (l) to pay before delinquency any and all taxes, assessments and public charges levied, assessed or imposed upon Tenant's business or upon Tenant's fixtures, furnishings or equipment in the Demised Premises; ~~(m) not to subject any fixtures, furnishings or equipment on the Demised Premises and affixed to the realty, to any mortgages, liens, conditional sales agreements, security interests or encumbrances;~~ (n) not to perform any act or carry on any practice which may alter or damage, mar or deface the Demised Premises ~~or any other part of the Shopping Center or cause any violation of any Legal Requirements affecting the Shopping Center or otherwise;~~ (o) not to place or install any security gates; (p) ~~If Tenant remains open after 9:00 p.m., Tenant will pay Landlord its proportionate share of the cost of lighting the Parking Lot after 9:00 p.m. Tenant's proportionate share will be based on other Tenants who are open after 9:00 p.m. but excluding any supermarket, if any, in the Center,~~ and (q) not to operate its business under this lease so as to breach or violate any restrictive covenant affecting the Demised Premises. ~~Landlord agrees that it will use commercially reasonable efforts to ensure that, at all times during the Lease Term, there shall be (i) direct and reasonably unencumbered access between the public ways and the sidewalk on either side thereof on the one hand and the Demised Premises on the other hand and (ii) no additional buildings, structures, obstructions, barriers and the like constructed upon, attached or placed adjacent to the Building and/or the Premises, which shall materially adversely affect the access to or visibility of the Building and/or the Premises and/or Tenant's sign(s).~~

~~**See Article 31:~~

23. **LAWS, WASTE OR NUISANCE:** (a) Tenant agrees not to do or permit any act to be done in or to the Demised Premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at anytime carried by or for the benefit of Landlord. (b) Tenant further agrees not to suffer, permit or commit any waste, nor to allow, suffer or permit any odors, vapors, steam, water, vibrations, noises or undesirable effects to emanate from the Demised Premises or any apparatus, equipment or installation therein into other portions of the building of which the Demised Premises forms a part, or otherwise to allow, suffer or permit the Demised Premises or any use thereof to constitute a nuisance or to interfere unreasonably with the safety, comfort or enjoyment of the Shopping Center by Landlord or any other occupants of the Shopping Center or their customers, invitees or any others lawfully in or upon the Shopping Center. Tenant hereby further agrees to indemnify and save Landlord free and harmless of and from all fines, claims, demands, actions, proceedings, judgment and damages (including reasonable attorneys' fees) of any kind or nature by anyone whomsoever, arising or growing out of any breach or non-performance by Tenant of the covenants contained in this Paragraph, which agreement by Tenant shall survive the expiration or sooner termination of this Lease.

24. **COMPETITION:** ~~Tenant agrees (to the extent that it is lawful so to agree) that neither Tenant nor any affiliate or subsidiary of Tenant, directly or indirectly, nor any of Tenant's officers, directors, stockholders (if not a publicly traded corporation) nor any members of their immediate families, shall operate, manage or have any interest in any other competing or similar store or business for the sale of merchandise, at retail, including a department or concession in another store, within two and one-half (2½) miles from any point on the perimeter of the Shopping Center. If Tenant should violate this covenant, Landlord, at its option (in addition to Landlord's~~

other remedies), may include the Gross Sales of such other competing or similar store or business in the Gross Sales transacted in the Demised Premises for the purpose of computing Percentage Rent due hereunder, if any, as though said sales had actually been made from the Demised Premises, and Tenant shall comply with the provisions of Paragraphs 9 and 10 hereof in respect of such other competing store or business. However, any such store or business existing as of the Date of Lease may continue to be operated, managed, conducted and owned in the same manner as on the Date of Lease, provided, however, there is no increase in the size of such other store or business.

25. **CONCESSIONAIRES AND LICENSEES:** In no event shall Tenant suffer, permit, install or operate in the Demised Premises any coin-operated vending machines or similar or other devices for the sale of goods, wares, merchandise, food and beverages, including, but not limited to, machines for the sale of candy, gum, cigarettes or other edibles, except in areas restricted to and for Tenant's employees and for the sole and exclusive use of such employees.

26. **SIGNS:** Tenant, at its own cost and expense, shall provide a suitable identification sign of such size, design and character as Landlord shall first approve in writing and shall install the same at a place or places designated by Landlord. Tenant shall maintain any such sign or other installation in good condition and repair. Other than such permitted sign, Tenant shall not place or install or suffer to be placed or installed or maintain any sign upon or outside the Demised Premises or in the Shopping Center. Tenant shall not place or install or suffer to be placed or installed or maintain on the exterior of the Demised Premises any awning, canopy, banner, flag, pennant, aerial, antenna, satellite dish, or the like; nor shall Tenant place or maintain on the glass of any window or door of the Demised Premises any sign, decoration, lettering, advertising matter, shade or blind or other thing of any kind, without Landlord's prior written consent. Landlord shall have the right, with or without notice to Tenant, to remove any of the foregoing installed by Tenant in violation of this Paragraph and to charge Tenant for the cost of such removal and any repairs necessitated thereby, without liability to Tenant for such removal. Landlord approves existing signage.

27. **ASSIGNMENT AND SUBLETTING:**

(a) Tenant shall not voluntarily, involuntarily or by operation of law assign, transfer, mortgage or otherwise encumber this Lease or any interest of Tenant therein, in whole or in part, nor sublet the whole or any part of the Demised Premises or permit the Demised Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord, which may be unreasonably withheld. The consent by Landlord to an assignment or subletting shall not in any way be construed to relieve Tenant from obtaining the express consent of Landlord to any further assignment or subletting for the use of any part of the Demised Premises, nor shall the collection of rent by Landlord from any assignee, sublessee or other occupant, after default by Tenant, be deemed a waiver of this covenant or the acceptance of assignee, sublessee or occupant as Tenant or a release of Tenant from the further performance by Tenant of the covenants in this Lease on Tenant's part to be performed. Landlord's consent to any subletting shall be subject to and conditioned upon the following: (i) at the time of any proposed subletting, Tenant shall not be in default under any of the terms, provisions or conditions of this Lease; (ii) the sublessee shall occupy only the Demised Premises and conduct its business in accordance with the Permitted Use; (iii) that if the rents, charges or other sums required to be paid by any such sublessee exceed the rents, charges or other sums reserved hereunder, then Tenant shall pay to Landlord monthly the entire amount of such excess, which shall be deemed additional rent; (iv) prior to occupancy, Tenant and its sublessee shall execute, acknowledge and deliver to Landlord a fully executed counterpart of a written sublease, duly consented to by Guarantor, if any, by the terms of which the sublease in all respects will be subject and subordinate to all of the terms, covenants and conditions of this Lease and the sublessee thereunder will agree to be bound by and to perform all of the terms, covenants and conditions of this Lease on the Tenant's part to be performed, except the payment of rents, charges and other sums reserved hereunder, which Tenant shall continue to be obligated to pay and shall pay to Landlord; (v) notwithstanding any such assignment or subletting under the terms of this Paragraph, neither Tenant nor Guarantor, if any, will be released or discharged from any liability whatsoever under this Lease and both will continue liable with the same force and effect as though no sublease had been made; (vi) Tenant shall pay to Landlord the sum of One Thousand (\$1,000.00) Dollars to cover Landlord's administrative costs and overhead, plus any reasonable

attorneys', architects', engineers' or other similar fees incurred in connection with such subletting.

(b) Notwithstanding anything in this Lease to the contrary, subject to Landlord's consent which shall not be unreasonably withheld, Tenant may assign this Lease on the following terms and conditions: (i) Tenant shall not be in default of any of the terms, covenants and conditions of the Lease at the time of such assignment; (ii) Tenant shall submit to Landlord: (1) the name and business address of the proposed assignee, (2) the home address and telephone number(s) of the principals of the proposed assignee, (3) a fully executed duplicate original (for Landlord's retention) of the instrument of assignment (which shall, without limitation, provide for the proposed assignee's assumption of all of Tenant's obligations under this Lease) and a consent thereto by Guarantor, and (4) information demonstrating the proposed assignee's financial condition and credit worthiness to Landlord's reasonable satisfaction (but, without limitation, in no event less than Tenant's financial condition and credit worthiness at the time of execution of this Lease or at the time of the proposed assignment, whichever is greater); (iii) the assignment shall be for the same occupancy and use set forth in this Lease; (iv) if the instrument of assignment provides for the payment of Rent, on a per square foot basis, or any other consideration in excess of that provided for in this Lease, Tenant shall immediately pay over such excess to Landlord as Rent upon Tenant's receipt of the same; (v) Tenant's right to assign this Lease is personal to Park Avenue Convertibles, Inc., and shall, after being exercised once by said entity, expire and be of no further force or effect; and (vi) Tenant shall pay to Landlord the sum of One Thousand (\$1,000.00) Dollars to cover Landlord's administrative costs and overhead.

(c) If Tenant shall at any time during the Term be in default of any material obligation of Tenant under this Lease, then Tenant's assignment right under Section 27(b) shall immediately be null and void and of no further force and effect.
beyond any applicable cure period
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(d) Not less than forty-five (45) days prior to the effective date (the "Effective Date") of any assignment of this Lease, Tenant shall deliver to the Landlord executed counterparts of all agreements with the proposed assignee and copies of all instruments of assignment or transfer of this Lease. Notwithstanding any provisions to the contrary, Landlord shall have the right to terminate this Lease on the effective date, as if it were the date for the expiration of the Term. Landlord shall exercise such right by written notice to Tenant given within thirty (30) days after the Landlord's receipt of the foregoing documents and any other documents or information in connection therewith which Landlord shall request. If the Landlord exercises its right under this Section, Landlord may then lease the Demised Premises, or any portion thereof, to Tenant's proposed assignee without any liability whatsoever to the Tenant.
*** (except Section 27(1))

(e) Nothing herein contained shall be deemed to release or discharge Tenant of any past, present or future obligations or duties under or in connection with the Lease, all of which shall continue in full force and effect for all purposes.

(f) Notwithstanding anything to the contrary contained in this Section, Tenant is strictly prohibited from assigning to any other tenant of Landlord or to any other tenant of Landlord's affiliates, subsidiaries, or related entities or to any tenant in a location that is managed by Spiegel Associates as managing agent.

(g) The consent by Landlord to an assignment shall not in any way be construed to relieve Tenant from obtaining the express consent of Landlord to any further assignment for the use of any part of the Demised Premises, nor shall the collection of rent by Landlord from any assignee, after default by Tenant, be deemed a waiver of this covenant or the acceptance of assignee, as Tenant or a release of Tenant from the further performance by Tenant of the covenants in this Lease on Tenant's part to be performed.

(h) If Tenant or Guarantor, if any, is a corporation or partnership the terms "assign" and "assignment" shall, for purposes of this Lease, be deemed to include the transfer of a majority of the stock or controlling interests of Tenant or Guarantor, or such assignee of Tenants. If Tenant intends to assign this Lease, sublet or part with possession of all or any part of the Demised Premises, or to transfer this Lease in any other manner, in whole or in part or any estate or interest hereunder, then and so often as such event shall occur, Tenant shall give prior written notice to Landlord of such intent, specifying therein the proposed assignee, subtenant or transferee and

Landlord shall, within thirty (30) days after receipt of a fully executed duplicate original assignment and assumption agreement or sublease agreement as the case may be, notify Tenant in writing either, that (i) it consents or does not consent in accordance with the provisions and qualifications in this Paragraph or (ii) it elects to cancel this Lease. If Landlord elects to cancel this Lease as aforesaid, Tenant shall notify Landlord in writing within fifteen (15) days thereafter of Tenant's intention either to refrain from such assignment, subletting or transfer, or to accept the cancellation of this Lease. If Tenant fails to deliver such notice within such period, the Lease will thereby be terminated upon the expiration of the said fifteen (15) day period. If Tenant advises Landlord it intends to refrain from such assignment, subletting or transfer, then Landlord's right to cancel this Lease as aforesaid is null and void in such instance. Notwithstanding anything to the contrary contained in this Article 27, Tenant is strictly prohibited from assigning or subletting to any other tenant of Landlord or any of Landlord's affiliates, subsidiaries, or related entities or to any tenant in a location that is managed by Spiegel Associates as managing agent. Any sublease is subject and subordinate to this Lease and if at any time this Lease is terminated or Tenant surrenders possession to Landlord the sublease shall immediately end and terminate.

(i) ~~Notwithstanding anything stated to the contrary, Tenant shall be permitted to assign this Lease to Jennifer Convertibles, Inc., provided said assignee is then a publicly traded company and further provided that Tenant shall have complied with Sections 22(b), (c), (d), (e) and (f).~~ See Article 97.

28. ~~REPAIRS, MAINTENANCE AND ALTERATIONS:~~ (a) ~~Landlord shall make all necessary structural repairs to the Demised Premises including necessary repairs to the foundations and roof thereof and structural repairs to the exterior of the building of which the Demised Premises forms a part and the sewer and water lines servicing the Demised Premises that are located outside of the Demised Premises. If the necessity for any of such repairs shall have been occasioned by any action, omission to act or negligence of Tenant, or any Agents of Tenant, Landlord shall make such repairs and Tenant upon demand by Landlord shall pay to Landlord as additional rent an amount equal to the cost of such repairs plus the Overhead Amount as compensation for the cost of supervising such repairs. (b) Tenant agrees at Tenant's own cost and expense to otherwise keep and maintain the Demised Premises and each and every part thereof using union labor, if required by Landlord, in good repair, order and condition and to make all repairs and replacement thereto, and to the fixtures and equipment therein and the appurtenances thereto. (c) Tenant shall not enter upon the roof for any purpose without Landlord's prior written consent, other than to perform maintenance to its HVAC unit or in the event of emergency. In the event that Tenant or Agents of Tenant enter upon the roof and penetrate the roof or perform any work thereon without Landlord's prior written consent, in addition to any other rights that Landlord may have under this Lease, Landlord shall thereafter have no further repair obligations with respect to the roof. (d) Tenant shall have the right to make non-structural alterations to the interior of the Demised Premises without obtaining Landlord's prior written consent provided the same does not affect the structural integrity of the building or any mechanical or utility installation, fixture or equipment, and does not require any governmental approval or permits, provided, however, that, in all events, if the aggregate cost of any alteration made by Tenant to the interior of the Demised Premises shall exceed the sum of Fifteen Thousand (\$15,000.00) Dollars then, in such event, Tenant shall obtain Landlord's prior written approval thereto and Tenant shall submit plans and specifications therefor to the Landlord, which shall contain the identity of the contractor(s) or subcontractor(s) engaged to perform such work, for its approval and consent. After having obtained Landlord's approval and consent, as aforesaid, if required and prior to the commencement of any work in the Demised Premises, Tenant agrees to deliver to Landlord a policy or certificate of worker's compensation insurance in statutory limits from Tenant's contractor as well as evidence of the maintenance by Tenant of the insurance coverages to be maintained by Tenant pursuant to this Lease. Such work may thereupon be commenced and shall be diligently prosecuted to completion in accordance with such approved plans and specifications, applicable rules and regulations of Landlord, the requirements of Exhibit B with respect to Tenant's Work and in accordance with all applicable laws and ordinances and rules and requirements of Landlord's insurance carriers, subject, however, to the terms of Tenant's indemnity set forth under Paragraph 36 hereof and Tenant's obligation to insure such assumed liability under Tenant's Comprehensive General Liability policy. (e) Tenant shall indemnify, and save harmless Landlord from and against all costs, expenses, liabilities, losses, damages, suits, fines, penalties, claims and demands, including reasonable counsel fees and disbursements, due to~~

~~without Landlord's prior consent,~~ 10

~~and Landlord's right to terminate this Lease under Section 27(d) shall not apply to such permitted assignment,~~

~~**27(b)(1), (11)(1), (3) and (4), (11), (v) and (vi)~~

~~***Twenty-Five Thousand. (\$25,000.00)~~

Tenant's failure to comply with this Paragraph, and Tenant hereby expressly releases and discharges Landlord of and from any liability thereof. Tenant's obligation pursuant to the foregoing sentence shall survive the expiration or sooner termination of this Lease. See Article 80 and 98.

29. **TENANT'S FAILURE TO REPAIR:** If Tenant shall fail, refuse or neglect to make repairs in accordance with the terms and provisions of this Lease or if Landlord is required to make any repairs by reason of any act, omission to act or negligence of Tenant, or any subtenant, concessionaire or licensee of Tenant, or their respective employees, agents, invitees, guests, or contractors, Landlord shall have the right, at its option, after Landlord shall have given to Tenant ten (10) days' notice (except in case of an emergency), to make such repairs on behalf of and for the account of Tenant and to enter upon the Demised Premises for such purposes, and to add the cost and expense thereof, together with the Overhead Amount, to the next installment of the Fixed Minimum Rent due and Tenant agrees to pay such amount, as additional rent, but nothing contained in this Paragraph shall be deemed to impose any duty upon Landlord or affect in any manner the obligations assumed by Tenant hereunder. Repairs made by Landlord on behalf of and for the account of Tenant pursuant to this Paragraph shall be without liability to Landlord for any loss or damage that may result to Tenant's merchandise, fixtures or other property or to Tenant's business by reason thereof.

30. **COVENANT AGAINST LIENS:** Tenant shall do all things necessary to prevent the filing of any mechanic's or other lien against the Demised Premises or any other portion of the Shopping Center or the interest of Landlord or any ground or underlying lessors therein or the interest of any mortgagees or holders of any deeds of trust covering any portion of the Shopping Center by reason of any work, labor, services or materials performed or supplied or claimed to have been performed for or supplied to Tenant, or anyone holding the Demised Premises, or any part thereof, through or under Tenant. If any such lien shall at any time be filed, Tenant shall cause the same to be vacated and cancelled of record within thirty (30) days after the date of the filing thereof.

31. **WATER AND UTILITIES:** (a) Tenant agrees to pay promptly, as and when the same become due and payable, all ~~rents, rates and charges, any and all taxes and~~ charges for electricity, gas, heat, fuel and other utilities supplied to the Demised Premises after entry by Tenant (whether prior to or after delivery of possession of the Demised Premises to Tenant) and thereafter during the Lease Term and subsequent thereto if relating to Tenant's use of the Demised Premises. ~~If any of such utilities are not separately metered or assessed or are only partially separately metered or assessed and are used in common with other tenants of the Shopping Center, Tenant will pay to Landlord on a monthly basis, in advance, an appropriate share of such charges for utilities used in common based on the Gross Leasable Area of the space leased to each tenant using such common utilities ("Water and Utilities Charges"), in addition to Tenant's payments of the separately metered charges. Landlord shall estimate Tenant's annual share of the Water and Utilities Charges and one-twelfth (1/12th) of the amount so estimated shall be paid by Tenant as additional rent, on the first day of each calendar month in advance. Landlord may increase such amount at the end of the first Lease Year and from time to time during each succeeding Lease Year. Notwithstanding anything to the contrary, within ninety (90) days after the end of each calendar year, Landlord shall furnish Tenant with a statement of the charges, whereupon there shall be an adjustment between Landlord and Tenant, with payment to or credit by Landlord as the case may require within ten (10) days after the furnishing of such statement. Notwithstanding the foregoing, if at any time during any Lease Year Landlord shall determine that the monthly amount will be insufficient to pay Tenant's share of the Water and Utilities Charges as they come due, Landlord may, at its election, require Tenant to pay the amount of the deficiency in one payment and increase the monthly payments.~~ (b) Notwithstanding the foregoing provisions of this Paragraph or anything else contained in this Lease to the contrary, Landlord shall have the right, at any time and from time to time, to cause one or more utilities (including, without limitation, any heating, ventilating, air-conditioning, and/or lighting systems serving the Demised Premises and/or any other area(s)) to be furnished by means of an on-site energy system operated by one or more parties pursuant to contract with Landlord and/or to provide some other alternative energy system (whether so-called "total energy" or otherwise) in lieu of the direct furnishing of the same to Tenant and other occupants of the Shopping Center from the appropriate utility company directly and to pay Landlord and/or such alternative source or other designee as Landlord shall determine the costs and

charges therefor. Landlord shall not be liable in damages or otherwise for any interruption in the supply of any utility to the Demised Premises nor shall any such interruption constitute any ground for an abatement of any of the rents reserved hereunder.† Landlord reserves the right to stop or reduce the level of the service of any or all of the utilities when necessary by reason of accident or emergency, or mechanical breakdown, or requirement of law or any cause beyond Landlord's reasonable control or for repairs, alterations, replacements or improvements, which, in the judgment of Landlord, are desirable or necessary until the reason for such stoppage shall have been eliminated. Tenant shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits or other facilities by which such utilities are supplied to, distributed in or serve the Demised Premises. (c) Landlord may install re-registering meters and collect any and all charges aforesaid from Tenant, making returns to the proper public utility company or governmental unit, provided that Tenant shall not be charged more than the rates it would be charged for the same services if furnished directly to the Demised Premises by such companies or governmental units. Should Landlord elect or be required to supply electrical energy or water to the Demised Premises, Tenant agrees to purchase and pay Landlord for the same at a cost not to exceed that which the utility company would have charged Tenant for furnishing such utilities. If Landlord is furnishing Tenant any utility or utilities hereunder, Landlord, at any time, at Landlord's option and upon not less than thirty (30) days' prior notice to Tenant, may discontinue such furnishing of any such utility to the Demised Premises; and in such case, Tenant shall contract with the public service company supplying such utility service for the purchase and obtaining by Tenant of such utility directly from such public service company. (d) Tenant shall at its own expense comply with all Legal Requirements with respect to any water conservation or control requirement and Tenant shall bear and pay, as additional rent under this Lease, all fines, penalties, charges and impositions which may be imposed upon Landlord or Tenant or the Demised Premises or the Shopping Center as a result thereof or as a result of the non-compliance therewith.

32. TAXES: (a) Tenant shall, in all instances, pay Tenant's Proportionate Share of all Taxes ("Tax Charge") (which may be levied, assessed or imposed against, or become a lien upon, the land, buildings and all other improvements and betterments in the Shopping Center). The term "Taxes" shall mean and include all real estate taxes, assessments (special or otherwise), and other governmental levies and charges of every kind and nature whatsoever, and all costs and fees (including reasonable attorneys' and appraisers' fees) incurred by Landlord in contesting Taxes and negotiating with the public authorities as to the same. If at any time after the Date of Lease the methods of taxation prevailing at the Date of Lease shall be altered so that in addition to, or in lieu of, or as a substitute for the whole or any part of the Taxes now levied, assessed or imposed on real estate as such there shall be levied, assessed or imposed a tax or assessment based on the rents received from such real estate, or real property and pertaining to the Shopping Center, then the same shall be included in the computation of Taxes. (b) Tenant's Tax Charge shall be paid to Landlord in equal monthly installments, in advance (as the same may be subsequently increased or decreased). Landlord shall have the right from time to time, to estimate and subsequently adjust the estimated monthly installments of the Tax Charge. If the aggregate amount of such monthly payments paid by Tenant exceeds the actual amount thereafter due, the overpayment shall be credited to Tenant's next succeeding Tax Charge payment or, during the last Lease Year, Landlord will refund such excess to Tenant within thirty (30) days following the expiration of the Lease Term, provided Tenant is not then in default of any of its obligations under this Lease. If the aggregate amount of such monthly payments paid by Tenant shall be less than the actual amount due, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, within ten (10) days after demand from Landlord. The foregoing provisions shall survive the expiration of the Lease Term. (c) If any mortgagee or ground lessor of Landlord should require any tax escrow deposits, in advance of the due date, then Tenant shall deposit with Landlord, in advance, its share of such deposits. Subparagraphs (d) through (g) Intentionally Omitted. (h) Landlord shall have the sole right to contest the validity or amount of any Tax by appropriate proceedings. (i) ~~Any amount payable by Tenant to Landlord under this Paragraph shall be paid by Tenant to Landlord within ten (10) days after receipt by Tenant from Landlord of a bill setting forth such amount.~~ (j) In the event of any dispute, Tenant shall pay the Tax Charge in accordance with the applicable bill or statement, and such payment shall be without prejudice to Tenant's position. (k) ~~Any such bill or statement shall be deemed binding and conclusive on Tenant if Tenant fails to object thereto (stating the reasons therefor) within thirty (30) days after the date thereof or if Tenant fails to comply with the provisions of subparagraph (j) of this Paragraph.~~

Landlord covenants and agrees that Tenant shall not be obligated for any interest or penalty imposed by reason of Landlord's late payment of the real estate taxes and assessments levied against the Building, including the Premises and all improvements therein. (1) If Landlord shall obtain any abatement, refund or rebate in Taxes as to which Tenant has paid Tenant's Proportionate Share, Landlord shall promptly pay or credit to Tenant, Tenant's Proportionate Share of such abatement, refund or rebate (less Tenant's Proportionate Share of the reasonable cost and reasonable expense of obtaining them).

33. ~~COMMON AREAS:~~ All common areas and other common facilities (hereinafter collectively called "common areas") made available by Landlord in or about the Shopping Center shall be subject to the exclusive control and management of Landlord, expressly reserving to Landlord, without limitation, the right to erect, install, replace and remove kiosks, planters, pools, sculpture and free-standing buildings. Common areas (as initially constructed or as the same may at any time thereafter be enlarged, reduced, altered, replaced or removed) shall mean all areas, spaces, facilities, equipment, signs and special services from time to time made available by Landlord for the common and joint use and benefit of Landlord, Tenant and other tenants and occupants of the Shopping Center, and their respective employees, agents, subtenants, concessionaires, licensees, customers and invitees (collectively, "Agents"), which may include, without limitation (but shall not be deemed a representation as to their availability), the sidewalks, parking areas, access roads, driveways, landscaped areas, truck serviceways, tunnels, loading docks, pedestrian malls (enclosed or open), courts, stairs, ramps, elevators, escalators, comfort and first aid stations, public washrooms, community hall or auditorium and parcel pick-up stations. Landlord hereby expressly reserves the right, from time to time, to construct, maintain, replace, remove and operate lighting and other facilities, equipment and signs on all of said common areas; to police the same; to change the area, level, location and arrangement of the parking areas and other facilities forming a part of said common areas; to build multi-story parking facilities; to restrict parking by Tenant and other tenants and occupants of the Shopping Center and their respective Agents; to enforce parking charges (by operation of meters or otherwise) mandated by governmental authorities; to close temporarily all or any portion of the common areas for the purpose of making repairs or changes thereto or to effect construction, repairs or changes within the Shopping Center, and to discourage non-customer parking; and to establish, modify, revoke and enforce reasonable rules and regulations with respect to the common areas and the use to be made thereof, including, without limitation, the designation of the days and hours the common areas shall be open. Tenant shall make no claim against Landlord by reason of Landlord's failure to uniformly enforce such rules and regulations against all tenants and occupants of the Shopping Center. Tenant is hereby given a non-exclusive and non-transferable license (in common with all others to whom Landlord has or may hereafter grant rights) to use, during the Lease Term, the common areas of the Shopping Center as they may now or at any time during the Lease Term exist, provided, however, that if the size, location or arrangement of such common areas or the type of facilities at any time forming a part thereof be changed or diminished, Landlord shall not be subject to any liability therefor, nor shall Tenant be entitled to any compensation or diminution or abatement of rent therefor, nor shall such change or diminution of such areas be deemed a constructive or actual eviction. Tenant agrees that Landlord may, at any time and from time to time, increase, reduce or change the number, type, size, location, elevation, nature and use of any of the common areas, make installations therein, move and remove the same, erect and lease or sell advertising space and erect buildings anywhere in the Shopping Center. In order to establish that all or any portion of the Shopping Center is and will continue to remain private property and to prevent a dedication thereof or the accrual of any rights to any person or to the public therein, Landlord hereby reserves the unrestricted right to close to the general public all or any portion of the Shopping Center owned, leased or controlled by Landlord to the extent and for the period necessary to prevent such dedication or accrual, and, in connection therewith, to seal off all entrances to the Shopping Center, or any portion thereof. Tenant hereby acknowledges, consents and agrees that any and all services, facilities and access by the public to the Demised Premises or to the Shopping Center may be suspended in whole or in part on legal holidays, on such other days as may be declared by local, State or Federal authorities or employees' unions, if any, as days of observance, and during any periods of actual or threatened civil commotion, insurrection or other circumstances beyond Landlord's control when Landlord, in Landlord's reasonable judgment, shall deem the suspension of such services, facilities and access necessary for the protection or preservation of persons or property or otherwise as required by law. ~~Common areas shall not be used for solicitations, distributions of handbills or other advertising~~

~~matter, demonstrations or any other activities that would in Landlord's judgment interfere with the use of the common areas or with the conduct of business or the rights of other tenants. Landlord shall operate, manage, equip, light, repair, replace and maintain the common areas and keep order and security therein all in such manner as Landlord, in its reasonable discretion, may from time to time determine, and Landlord shall have the right and exclusive authority to employ and discharge all personnel connected therewith. Landlord shall be responsible for any latent defects as to the Demised Premises or the Shopping Center.~~

34. **COST OF MAINTENANCE OF COMMON AREAS:** (a) Tenant agrees to pay Landlord in the manner provided in subparagraph (b) of this Paragraph a share ("Common Area Charge"), as hereafter computed, of the operating costs (as hereafter defined) of maintaining the common areas in the Shopping Center, the costs incurred by Landlord in performance of its obligations pursuant to Paragraph 28 and similar costs in respect of similar obligations to other tenants, and of providing certain services and facilities to tenants. "Operating costs" shall mean the costs incurred by Landlord in the performance of its obligations pursuant to Paragraph 28 and similar costs in respect of similar obligations to other tenants and all costs and expenses (and taxes thereon, if any) paid or incurred by Landlord or on behalf of Landlord with respect to the operation, management, equipping, cleaning, lighting, repair, replacement, improvements, safety, security and maintenance of the common areas, and with respect to services and facilities provided tenants, including, without limitation; surcharges levied upon or assessed against parking spaces or areas, payments toward mass transit or car pooling facilities or otherwise as required by Federal, State or local governmental authorities; costs and expenses in connection with maintaining Federal, State or local governmental ambient air and environmental standards; the cost of all material, supplies and services purchased or hired therefor; the cost and expenses of landscaping, gardening and planting, cleaning, removal of snow and ice, painting (including line painting), decorating, paving, lighting, sanitary control, and removal of trash, garbage and other refuse; operation of loudspeakers and any other equipment supplying music and/or public address announcements to the common areas or any parts thereof; public address systems; operation of public toilets; installing and renting of signs; maintenance, repair, and replacement of utility systems including water, sanitary sewer and storm water lines and other utility lines, pipes and conduits; water, sanitation, sewerage and other utility charges to the extent not separately paid for, reimbursed by, or charged to a tenant; smoke detection or sprinkler devices, fire protection services or burglar alarm services' costs; sprinkler supervisory fees; promotional and/or advertising expenses; materials, equipment, supplies and services purchased, leased or otherwise expended for the maintenance, repair and replacement of the common areas; charges for reserves established by Landlord for future replacements or improvements to the common areas (inclusive of periodic new blacktopping of the parking areas); depreciation of heating, ventilating and air conditioning equipment; depreciation of machinery, apparatus, and equipment owned and used in the operation, maintenance and repair of the common areas, or the rental charges for such machinery and equipment; maintenance and repair of the roofs of all buildings in the Shopping Center; management fee; the cost of personnel (including applicable payroll taxes, worker's compensation insurance and disability insurance) to implement all of the foregoing, including the policing of the common areas and the directing of traffic and parking of automobiles on the parking areas thereof; licenses and permit fees; administrative costs attributable to the common areas and an overhead cost equal to fifteen percent (15%) of the total operating costs (but there shall be excluded the initial costs of equipment properly chargeable to capital account under generally accepted real estate practices and the original cost of constructing the common areas). Landlord may, however, cause any or all of said services to be provided by independent contractors. Common Area Charges shall not include (i) expenses for any capital improvements made to Land or Building, (except that capital expenses which are replacements of capital improvements or are improvements which result in savings of labor or other costs shall be included at the cost of such improvements amortized over the useful life of the improvements); (ii) expenses for repairs or other work occasioned by fire, windstorm or other insured casualty to the extent proceeds are received by Landlord; (iii) expenses incurred in leasing or procuring new tenants (i.e. lease commissions, tenant inducements, advertising expenses and expenses of renovating space for new tenants); (iv) legal expenses in enforcing the terms of any lease; (v) interest or amortization payments on any mortgage or mortgages and/or capital improvements; (vi) reserve funds in excess of an amount equal to ten (10%) percent of annual Common Area Charges for the applicable time period; (vii) administrative expenses of Landlord in excess of fifteen (15%) percent; (viii) removal of hazardous material; (ix) earthquake insurance—unless such

~~coverage is reasonably available at a commercially reasonable cost and (x) direct settlement~~ payments by Landlord in personal injury or property claims. (b) Tenant's Common Area Charge shall be in an amount equal to the product obtained by multiplying the operating costs paid or incurred by Landlord during each calendar year by Tenant's Proportionate Share. Tenant's Common Area Charge shall be payable as follows:

(1) During that portion of the first Lease Year falling within the first calendar year of the Lease Term (subject to adjustment as hereafter in subparagraph (b)(3) set forth) Tenant shall pay Landlord monthly, in advance, on the first day of each month, a sum in such amount as is billed to Tenant by Landlord, as an estimate of Tenant's initial Common Area Charge.

(2) The foregoing estimated sum under subparagraph (b)(1) hereof, shall be adjusted and revised by Landlord as of the end of the first calendar year and from time to time during each subsequent calendar year during the Lease Term on the basis of the actual operating costs during the immediately preceding first or subsequent calendar year, as the case may be, plus reasonably anticipated increases or decreases in such costs. Upon Landlord's furnishing to Tenant a written statement setting forth such revised estimated operating costs, Tenant shall pay Landlord Tenant's Common Area Charge in monthly installments, in advance, on the first day of each month until the next succeeding revision in such estimate. If a statement is furnished to Tenant after the commencement of the first or any subsequent calendar year, Tenant shall pay to Landlord, within ten (10) days after the receipt of such statement an amount equal to the deficiency.

(3) Within a reasonable period following the end of the calendar year and each subsequent calendar year, Landlord shall furnish Tenant a written statement covering the calendar year just expired, showing in reasonable detail a general breakdown of the total operating costs, the amount of Tenant's Common Area Charge for such calendar year and the payments made by Tenant with respect to such calendar year. If Tenant's Common Area Charge exceeds Tenant's payments with respect to such calendar year, Tenant shall pay Landlord the deficiency within twenty (20) days after the furnishing of said statement; and if said payments exceed Tenant's Common Area Charge, Tenant shall be entitled to a credit for such excess against payments next thereafter to become due Landlord on account of Tenant's Common Area Charge, or during the last Lease Year, Landlord will refund such excess to Tenant within thirty (30) days following the expiration of the Lease Term provided Tenant is not then in default of any of its obligations under this Lease.

(4) As to the first calendar year or any subsequent calendar year, a portion only of which is contained in the Lease Term, Tenant's obligation for a share of the operating costs shall be calculated on the basis of actual days elapsed, based on a 360-day year. Tenant's obligation to pay Tenant's Common Area Charge shall survive the expiration or sooner termination of the Lease Term.

(5) In the event of any dispute, Tenant shall pay the amount of Landlord's bill or statement hereunder and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, by agreement or otherwise, Landlord shall pay to Tenant the amount of Tenant's overpayment resulting from such compliance by Tenant. Any such bill or statement shall be deemed binding and conclusive if Tenant fails to comply with the provisions of this subparagraph. Notwithstanding the foregoing, any such bill or statement rendered by Landlord to Tenant shall be deemed acceptable by Tenant unless, within two (2) years after the receipt of such statement, Tenant shall notify Landlord in writing of the items it disputes ("Notice of Dispute"). In connection with determining and resolving such dispute, Tenant may upon reasonable prior written notice, at Tenant's sole expense and at Landlord's home office, audit and review the books of Landlord kept in connection with Landlord's Common Area Charges, no more often than once annually. Any third party engaged by Tenant to conduct an audit shall not be compensated on a contingency basis.

35. INTENTIONALLY OMITTED.

36. INDEMNITY: (a) Tenant hereby agrees to defend, pay, indemnify and save free and harmless Landlord, and any fee owner or ground or underlying lessors of the Shopping Center,

(collectively, "owner or lessors") to the full extent permitted by law, from and against any and all claims, demands, liabilities, fines, suits, actions, proceedings, orders, decrees and judgments of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including reasonable attorneys' fees, resulting from or in connection with loss of life, bodily or personal injury or damage to property arising, directly or indirectly, out of or from or on account of any occurrence in, upon, at or from the Demised Premises or occasioned wholly or in part through the use and occupancy of the Demised Premises or any improvements therein or appurtenances thereto, or by any act or omission or negligence of Tenant or any subtenant, concessionaire or licensee of Tenant, or their respective employees, agents, invitees, customers or contractors in, upon, at or from the Demised Premises or its appurtenances or any common areas of the Shopping Center, together with the property adjoining the Shopping Center or by any default by Tenant under this lease, including any failure by Tenant to comply with any legal requirement or to bond or discharge any lien; (b) Tenant and all those claiming by, through or under Tenant hereby release Landlord and any owner or lessors of the Shopping Center, to the full extent permitted by law, from all claims of every kind, including loss of life, bodily or personal injury, damage to merchandise, equipment, fixtures or other property, or damage to business or for business interruption, arising directly or indirectly out of or from or on account on such occupancy and use or resulting from any present or future condition or state of repair thereof; (c) Landlord shall not be responsible or liable for damages at any time to Tenant, or to those claiming by, through or under Tenant, for any loss of life, bodily or personal injury, or damage to property or business, or for business interruption, that may be occasioned by or through the acts, omissions or negligence of any other persons, or any other tenants or occupants of any portion of the Shopping Center; (d) Neither Landlord nor owner or lessors of the Shopping Center shall be responsible or liable for damages at any time for any defects, latent or otherwise, in any buildings or improvements in the Shopping Center or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Landlord be responsible or liable for damages at any time for loss of life, or bodily or personal injury or damage to property, or for business interruption, to any person or to any property or business of Tenant, or those claiming by, through or under Tenant caused by or resulting from the bursting, breaking, leaking, running, seeping, overflowing or backing up of water, steam, gas or sewage in any part of the Demised Premises or caused by or resulting from acts of God or the elements or resulting from any defect or negligence in the occupancy, construction, operation or use of any buildings or improvements in the Shopping Center, including the Demised Premises, or any of the equipment, fixtures, machinery, appliances or apparatus in the Shopping Center; (e) After any litigation or proceeding between the parties hereto the successful party shall be entitled to all costs, expenses and reasonable attorneys' fees that it may actually incur in enforcing the terms of this Lease against the other party; (f) Landlord shall in no event be liable for consequential damages, special damages or loss of profits under this Lease; (g) Tenant expressly acknowledges that all of the foregoing provisions of this Paragraph shall apply and become effective from and after the commencement date and shall survive the expiration or earlier termination of this Lease.

37. **INSURANCE:** (a) **Landlord's Insurance:** On or after the Delivery of Possession Date all the construction work described as Landlord's Work in Exhibit B hereof shall be insured by Landlord against fire and such other risks as are, from time to time, included in standard extended coverage endorsements, vandalism and malicious mischief and special broad form coverages in the locality in which the Shopping Center is located, and with such deductibles as Landlord from time to time may determine, such insurance to be in an amount equal to at least ninety percent (90%) of the replacement value (exclusive of the cost of excavations, footings below floor level and foundations) including any increase in value thereof resulting from increased construction costs and/or new building or other applicable code requirements. Such insurance shall not cover any property with respect to which Tenant or other tenants are obliged to insure. Landlord shall have the right to insure and maintain the insurance coverages set forth herein under blanket insurance policies covering other properties owned, leased or operated by Landlord. Landlord may carry such other insurance coverages with respect to the Shopping Center as Landlord shall in its discretion determine to be appropriate or necessary, including but not limited to all liability, fire, casualty, rental value and environmental hazard or other pollution insurance. (b) **Tenant's Insurance:** Tenant agrees to secure and keep in force from and after the date Landlord shall deliver possession of the Demised Premises to Tenant and throughout the Lease Term at Tenant's own cost and expense (i) Comprehensive General Liability Insurance on an occurrence basis with a minimum limit of liability in commercially reasonable amounts set by Landlord and in no event less than the amount

set forth in Paragraph 1, including contractual liability, and owner's and contractor's protective liability and which insurance shall contain (y) a contractual liability endorsement covering the matters set forth in Paragraph 36 hereof and (z) a "personal injury" endorsement covering claims arising out of false arrest, false imprisonment, defamation of character, libel and slander, wrongful eviction, invasion of privacy, and product liability without exclusion of coverage for claims of personal injury brought by employees, agents or contractors of an insured; (ii) ~~insurance upon~~ property of every kind and description owned by Tenant, or for which Tenant is legally liable, or installed by or on behalf of Tenant and which is located within the Shopping Center including without limitation, stock-in-trade, furniture, fixtures, installations, alterations, additions, partitions, fixtures and anything in the nature of a leasehold improvement in an amount equal to the full replacement value thereof, including any increase in value resulting from increased costs, with coverage against the perils of fire and such other risks as are, from time to time included in standard extended coverage endorsements, vandalism, malicious mischief, sprinkler leakage, earthquake, flood and collapse and special broad form coverages in the locality in which the Shopping Center is located; ~~(iii) Broad Form Boiler and Machinery Insurance on all air conditioning equipment,~~ miscellaneous electrical apparatus, boilers and other pressure vessels or systems, whether fired or unfired adjoining, above or beneath the Demised Premises; and if said equipment, vessels or systems and the damage that may be caused by or result from them are not covered by Tenant's extended coverage insurance mentioned in subparagraph (b)(ii) of this Paragraph, such Boiler and Machinery Insurance shall be in amounts set by Landlord and in no event less than the amount set forth in Paragraph 1; (iv) except as otherwise provided under Paragraph 37(a) hereof, ~~Plate Glass Insurance covering all plate glass in the Demised Premises;~~ (v) Comprehensive Automobile Liability Insurance, including non-owned auto and hired car coverage, providing third party liability insurance with inclusive limits as set forth in Paragraph 1, covering all licensed vehicles owned or operated by or on behalf of Tenant; ~~(vi) business interruption insurance in such amounts as will reimburse Tenant for direct and indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Demised Premises or the Shopping Center as a result of such perils;~~ (vii) Worker's Compensation Insurance and Disability Benefits Insurance, as required by law; (viii) if any alcoholic beverage is to be sold in, at or from the Demised Premises (whether for on-premises or off-premises consumption) then Tenant shall carry a policy of so-called "Liquor Liability Insurance" with limits of liability of not less than the amount set forth in Paragraph 1; (ix) full plate glass (which may be self-insured by Tenant) and (x) such other insurance in such amounts as Landlord or Landlord's mortgagee may reasonably require from time to time. Landlord shall have the right, from time to time, to increase the limits of all insurance required to be maintained by Tenant hereunder as Landlord may deem reasonably necessary. (c) Intentionally Omitted. (d) Tenant agrees, at its own cost and expense, to comply with all of the rules and regulations of the Fire Insurance Rating Organization and/or any similar body having jurisdiction over the Shopping Center. If at any time and from time to time, as a result of or in connection with any failure by Tenant to comply with the foregoing sentence or any act or omission or commission by Tenant, its employees, agents, contractors, subtenants or licensees, or as a result of or in connection with the use to which the Demised Premises are put (notwithstanding that such use may be for the purposes heretofore permitted or that such use may have been consented to by Landlord), the fire or other casualty insurance rate(s) applicable to the Demised Premises, or the building in which same are located, or to the Shopping Center and/or the land upon which the Shopping Center is situated shall be higher than that which would otherwise be applicable thereto, then Tenant shall pay to Landlord, on demand, as additional rent, such portion of the premiums for all such insurance policies in force with respect to the aforesaid properties as shall be attributable to such higher rate(s). For the purposes of this Paragraph, any finding or schedule of the Fire Insurance Rating Organization having jurisdiction thereof shall be deemed to be conclusive. (e) If gas is used in the Demised Premises, Tenant shall install gas cut-off devices (manual and automatic). In the event that this Lease so permits and Tenant engages in the preparation of food or packaged foods or engages in the use, sale or storage of inflammable or combustible material, Tenant shall install chemical extinguishing devices (such as Ansul) approved by the Fire Insurance Rating Organization having jurisdiction and shall keep such devices under service as required by such organization. ~~(f) Tenant shall install such sprinkler and/or smoke detection or other fire protection services (such as "ADT") or burglar alarm detection services as Landlord shall from time to time reasonably request to the extent commercially reasonable.~~

38. INSURANCE REQUIREMENTS: A. (a) All policies of insurance procured by

Tenant shall be issued in form acceptable to Landlord by insurance companies carrying a General Policyholder's Service Rating of not less than "A/X" as rated in the most current Best's Insurance Reports (or by other insurance companies acceptable to Landlord), and licensed to do business in the State and authorized to issue such policy or policies; (b) Intentionally Omitted; (c) all insurance procured by Tenant under subparagraph 37(b) hereof shall be issued in the names and for the benefit of Landlord, Landlord's principals, Landlord's managing agent, Tenant and, at Landlord's request, its mortgagee and ground lessor, as their respective interests may appear, and shall contain an endorsement that Landlord, although named as an insured, nevertheless shall be entitled to recover under said policies for any loss or damage occasioned to it, its servants, agents, employees and contractors by reason of the negligence of Tenant, its servants, agents, employees and contractors; (d) all policies of insurance procured by Tenant shall contain endorsements that such policies may not be materially changed, amended or cancelled with respect to Landlord or any mortgagee except after thirty (30) days' prior notice from the insurance company to Landlord and any mortgagee, sent by registered or certified mail; (e) all policies procured by Tenant under subparagraphs 37(b)(ii), (iii) and (vi) shall contain an endorsement containing an express waiver of any right of subrogation by the insurance company against Landlord and any ground lessor (whether named as an insured or not); (f) duly executed certificates of insurance on Landlord's form or, if required by Landlord or any mortgagee, original policies, together with reasonably satisfactory evidence of payment of the premiums therefor, shall be delivered to Landlord on or before the day Tenant begins Tenant's Work and, upon renewals of such policy or policies, not less than twenty (20) days prior to the expiration of the term of any coverage thereunder. The minimum limits of any insurance coverage required herein to be carried by Tenant shall not limit Tenant's liability under Paragraph 36 hereof; (g) all insurance procured by Tenant shall name Landlord as loss payee as respects the improvements and betterments of the Demised Premises and the property; (h) If Tenant fails to take out or to keep in force any insurance required to be taken out and kept in force by Tenant, Landlord shall have the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost and expense of Tenant and all outlays by Landlord shall be paid by Tenant to Landlord forthwith as additional rent.

~~-B. Throughout the Lease Term, Tenant shall pay to Landlord, as additional rent, Tenant's Proportionate Share ("Insurance Charge") of all premiums for all insurance coverage which Landlord shall carry with respect to the Shopping Center with such companies and for such limits and coverage as Landlord shall determine with respect thereto. All of such payments from Tenant hereunder shall be due and payable to Landlord as additional rent. Landlord shall estimate Tenant's annual share and one-twelfth (1/12th) of the amount so estimated shall be paid by Tenant as additional rent, on the first day of each calendar month in advance. Landlord may increase such amount at the end of the first Lease Year and each succeeding Lease Year. If any insurance maintained by Landlord with respect to the Shopping Center is under blanket insurance policies covering other properties, Landlord's insurance broker's or agent's allocation of the premiums paid under such policy with respect to the Shopping Center shall be deemed conclusive. Notwithstanding anything to the contrary, within ninety (90) days after the end of each calendar year, Landlord shall furnish Tenant with a statement of the charges for insurance, including a reasonable administrative charge with respect thereto, whereupon there shall be an adjustment between Landlord and Tenant, with payment to or credit by Landlord against next due Insurance Charges, as the case may require within ten (10) days after the furnishing of such statement.~~

~~Twenty (20).~~

39. INTENTIONALLY OMITTED.

40. DESTRUCTION: Tenant shall give prompt notice to Landlord in case of any fire or other damage to the Demised Premises or the building of which it forms a part. If the Demised Premises shall be partially damaged by fire or other casualty required to be insured under Landlord's insurance policies, then upon Landlord's receipt of insurance proceeds for such damage, Landlord, except as otherwise provided herein, shall proceed with so much of the repair and restoration of the same as was included in Landlord's Work pursuant to Exhibit B; limited, however, to the extent of the insurance proceeds actually received by Landlord therefor, such repair and restoration not to exceed Two Hundred Forty (240) days in duration subject to the provisions of Paragraph 51 after the receipt by Landlord of the insurance proceeds and all necessary governmental approvals. All repairs or restoration of the Demised Premises not included in Landlord's Work pursuant to Exhibit B, at Landlord's option shall be performed by Landlord, or by

Tenant, at Tenant's sole cost and expense. Tenant shall perform any such repairs and restoration promptly and with due diligence. If Landlord shall perform such repairs and restoration, Tenant shall reimburse Landlord, upon demand, as additional rent, for any sums expended by Landlord, together with the Overhead Amount. All repairs or restoration by either party shall be done in conformity and in accordance with the procedures specified in Exhibit B. If Tenant shall fail to proceed with the repairs and restoration which it is obligated to make under this Paragraph, Tenant shall have no right or claim to said insurance proceeds which shall then be disposed of as Landlord, in its sole discretion, shall determine. If (a) the Demised Premises ~~and the building of which it forms a part and buildings containing Gross Leasable Area (taken in the aggregate) in the Shopping Center~~ shall be damaged to the extent of twenty-five percent (25%) or more of the cost of replacement thereof, or (b) the Demised Premises ~~or the building of which the Demised Premises forms a part~~ shall be destroyed or substantially damaged as a result of a risk not required to be insured by Landlord pursuant to the provisions of subparagraph 37(a) hereof, or (c) the Demised Premises shall be damaged to the extent of twenty percent (20%) or more of the cost of replacement thereof during the last two (2) years of the Lease Term (or any renewal term), or (d) ~~the buildings constituting the Shopping Center shall be damaged to the extent of fifty percent (50%) or more of the cost of replacement thereof, whether or not the Demised Premises shall be damaged~~, then or in any of such events, Landlord may elect either to repair the damage as aforesaid or to cancel this Lease by written notice of cancellation given to Tenant within ninety (90) days after the date of (i) an occurrence as specified in subparagraphs (a), (b), (c) or (d) of this Paragraph, and thereupon this Lease shall cease and terminate with the same force and effect as though the date set forth in the Landlord's said notice were the date herein fixed for the expiration of the Lease Term; and Tenant shall vacate and surrender the Demised Premises to Landlord. Upon the termination of this Lease, as aforesaid, except if such damage, or destruction is caused by Tenant or its Agents, Tenant's liability for the rents and other charges and sums reserved hereunder shall cease as of the date of such damage or destruction and Landlord shall make an equitable refund of any rents and other charges paid by Tenant in advance and not earned. Unless this Lease is terminated by Landlord, as aforesaid, this Lease shall remain in full force and effect. If by reason of such fire or other casualty not caused by Tenant or its Agents the Demised Premises is rendered wholly untenable, the Fixed Minimum Rent shall be fully abated or if only partially damaged, such Fixed Minimum Rent shall be abated proportionately as to that portion of the Demised Premises rendered untenable, in either event (unless Landlord shall elect to terminate this Lease as aforesaid) until fifteen (15) days after notice by Landlord to Tenant that the Demised Premises have been substantially repaired and restored or until Tenant's business operations are restored in the entire Demised Premises whichever shall occur sooner. Tenant shall continue the operation of Tenant's business in the part of the Demised Premises so damaged or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management. Tenant shall not be entitled to and hereby waives all claims against Landlord for any compensation or damage for loss of use of the whole or any part of the Demised Premises and for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration.

41. CONDEMNATION. If the whole or any part of the Demised Premises or Shopping Center shall be acquired or taken by eminent domain or similar proceedings for any public or quasi-public use or purpose or by private purchase in lieu thereof, then this Lease and the Lease Term hereof shall at Landlord's option cease and terminate as of the date of title vesting in such proceedings. Landlord shall be entitled to receive the entire award, if any, without any payment to Tenant. Rent shall be apportioned as of the date of such termination. Any sale, grant, dedication or taking of peripheral or perimeter parts or portions of the parking area of the Shopping Center for road widening or road improvement purposes or for the installation of utilities shall not be deemed a condemnation or taking within the meaning of this Paragraph and Tenant shall not, in any such event, be entitled to any compensation, diminution or abatement of any rents, charges or other sums reserved hereunder. See Page 19A.

42. BANKRUPTCY AND INSOLVENCY: (a) Neither Tenant's interest in this Lease, nor any estate hereby created in Tenant nor any interest herein or therein, shall pass to any trustee, except as may specifically be provided pursuant to the Bankruptcy Code (11 USC (101 et. seq.), or to any receiver or assignee for the benefit of creditors or otherwise by operation of law. (b) In the event the interest or estate created in Tenant hereby shall be taken in execution or by other process of law, or if Tenant or Tenant's Guarantor, if any, or Tenant's executors, administrators, or assigns,

If more than twenty-five (25%) percent of the building or parking spaces of the Demised Premises shall be acquired or taken by eminent domain or similar proceedings for any public or quasi-public use or purpose or by private purchase in lieu thereof, then this Lease and the Lease Term hereof shall at Tenant's option cease and terminate as of the date of title vesting in such proceedings. Any sale, grant, dedication or taking of peripheral or perimeter parts or portions of the parking area of the Shopping Center for road widening or road improvement purposes or for the installation of utilities shall not be deemed a condemnation or taking within the meaning of this Paragraph and Tenant shall not, in any such event, be entitled to any compensation, diminution or abatement of any rents, charges or other sums reserved hereunder. Tenant may make a separate claim for its trade fixtures, equipment, furniture, improvements and moving costs so long as same does not affect or reduce Landlord's award.

if any, shall be adjudicated insolvent or bankrupt pursuant to the provisions of any state law or an order for the relief of such entity shall be entered pursuant to the Bankruptcy Code, or if a receiver or trustee of the property of Tenant or Tenant's Guarantor, if any, shall be appointed by reason of the insolvency or inability of Tenant or Tenant's Guarantor, if any, to pay its debts, or if any assignment shall be made of the property of Tenant or Tenant's Guarantor, if any, for the benefit of creditors, then and in any such events, this Lease and all rights of Tenant hereunder shall automatically cease and terminate with the same force and effect as though the date of such event were the date originally established herein and fixed for the expiration of the term, and Tenant shall vacate and surrender the Demised Premises but shall remain liable as herein provided. Notwithstanding the foregoing provisions of this Paragraph, in the event that such termination shall result solely from the bankruptcy or insolvency of, or such other described event relating to, Tenant's Guarantor, Landlord shall have the option to reinstate all of the provisions of this Lease upon written notice to Tenant. (c) Tenant or Tenant's Guarantor, if any, shall not cause or give cause for the appointment of a trustee or receiver of the assets of Tenant or Tenant's Guarantor, if any, and shall not make any assignment for the benefit of creditors, or become or be adjudicated insolvent. The allowance of any petition under any insolvency law except under the Bankruptcy Code or the appointment of a trustee or receiver of Tenant or Tenant's Guarantor, if any, or of the assets of either of them, shall be conclusive evidence that Tenant caused, or gave cause, therefor, unless such allowance of the petition, or the appointment of a trustee or receiver, is vacated within thirty (30) days after such allowance or appointment. Any act described in this subparagraph (c) shall be deemed a material breach of Tenant's obligations hereunder, and this Lease shall thereupon automatically terminate in the same manner and with the same force and effect as set forth in subparagraph (b) hereof. Landlord does, in addition, reserve any and all other remedies provided in this Lease or in law. Notwithstanding the foregoing provisions of this subparagraph (c), in the event that such termination shall result solely from the bankruptcy or insolvency of, or such other described event relating to, Tenant's Guarantor, Landlord shall have the option to reinstate all of the provisions of this Lease upon written notice to Tenant. (d) Intentionally Omitted. (e) No default of this Lease by Tenant, either prior to or subsequent to the filing of such a petition, shall be deemed to have been waived unless expressly done so in writing by Landlord. (f) It is understood and agreed that this is a Lease of real property in a shopping center and that, therefore, Section 365(b)(3) of the Bankruptcy Code is applicable to any proposed assumption of this Lease in a bankruptcy case. (g) Intentionally Omitted. (h) Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

43. **DEFAULT:** (a) If this Lease be assigned or the Demised Premises be sublet, either voluntarily or by operation of law, except as herein expressly provided, or if Tenant shall fail (i) to pay, when due, any rents, charges or other sums reserved hereunder; or (ii) to correct any default with respect to Paragraph 5 hereof within five (5) days after notice of such default shall have been given to Tenant; or (iii) to keep, observe or perform any of the other terms, covenants and conditions herein to be kept, observed and performed by Tenant for more than ~~ten~~(10) days after notice (or any shorter period expressly provided for under this Lease) shall have been given to Tenant specifying the nature of such default, or if said default so specified (other than a default under subparagraph (i) hereof shall be of such nature that the same cannot be reasonably cured or remedied within said ~~ten~~(10) days' period (or any shorter period expressly provided for under this Lease), if Tenant shall not in good faith have commenced the curing or remedying of such default within such ~~ten~~(10) days' period (or any shorter period expressly provided for under this Lease) and shall not thereafter continuously and diligently proceed therewith to completion; or (iv) if Tenant should make default with respect to any other lease or agreement between Landlord and Tenant, then and in any one or more of such events (herein referred to as an "Event of Default"), Landlord shall have the immediate right to re-enter the Demised Premises and to dispossess Tenant** and all other occupants therefrom and remove and dispose of all property therein or, at Landlord's election, to store such property in a public warehouse or elsewhere at the cost and for the account of Tenant, and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. Upon the occurrence of any such Event of Default, Landlord shall also have the right, at its option, in addition to and not in limitation of any other right or remedy, to terminate this Lease by giving Tenant three (3) days' notice of cancellation and

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*thirty (30)

**pursuant to a lawful proceeding

upon the expiration of said three (3) days, this Lease and the Lease Term shall cease and terminate as fully and completely as if the date of expiration of such three (3) day period were the date herein definitely fixed for the end and expiration of this Lease Term and thereupon, unless Landlord shall have theretofore elected to re-enter the Demised Premises, Landlord shall have the immediate right of re-entry, in the manner aforesaid, and Tenant and all other occupants shall quit and surrender the Demised Premises to Landlord, but Tenant shall remain liable as hereinafter mentioned. However, if Tenant shall default in the payment of any rents, charges or other sums reserved hereunder and any such default shall continue or be repeated for two (2) consecutive months, or for a total of four (4) months in any period of twelve (12) months, or in the performance of any other covenant of this Lease more than six (6) times, in the aggregate, in any period of twelve (12) months then, notwithstanding that such defaults shall have been cured within the period after notice as above provided, any further similar default shall be deemed to be deliberate and Landlord thereafter may serve said three (3) days' notice of termination without affording Tenant an opportunity to cure such default. (b) If by reason of the occurrence of any such Event of Default, the Lease Term shall end before the date thereof originally fixed herein for the expiration thereof, or Landlord shall re-enter the Demised Premises, or Tenant shall be ejected, dispossessed, or removed therefrom by summary proceedings or in any other manner, whether or not specifically enumerated in the Lease, or if the Demised Premises become vacant, deserted or abandoned, Landlord at any time thereafter may relet the Demised Premises, or any part of parts thereof, either in the name of Landlord or as agent for Tenant, for a term or terms which may, at Landlord's option, be less than or exceed the period of the remainder of the Lease Term, and at such rental or rentals and upon such other conditions, which may include concessions and free rent periods, as Landlord, in its sole discretion, shall determine. Landlord shall receive the rents from such reletting and shall apply the same first, to the payment of such expenses as Landlord may have incurred in connection with re-entering, ejecting, removing, dispossessing, reletting, altering, repairing, redecorating, subdividing, or otherwise preparing the Demised Premises for reletting, including brokerage and reasonable attorney's fees and expenses and sheriff fees; second, to the payment of any indebtedness other than rents, charges and other sums due hereunder from Tenant to Landlord; and the residue, if any, Landlord shall apply to the fulfillment of the terms, covenants and conditions of Tenant hereunder and Tenant hereby waives all claims to the surplus, if any. Tenant shall be and hereby agrees to be liable for and to pay Landlord any deficiency between: (i) the sum of all rents, rent concessions, unamortized construction allowances on a straight line basis and other concessions received by Tenant prior to such Event of Default, charges and other sums reserved hereunder; and (ii) the net rentals, as aforesaid, of reletting, if any, for each month of the period which otherwise would have constituted the balance of the Lease Term. Tenant hereby agrees to pay such deficiency in monthly installments on the rent days specified in this Lease, and any suit or proceeding brought to collect the deficiency for any month, either during the Lease Term or after any termination thereof, shall not prejudice or preclude in any way the rights of Landlord to collect the deficiency for any subsequent month by a similar suit or proceeding. Landlord shall in no event be liable in any way whatsoever for the failure to relet the Demised Premises or in the event of such reletting, for failure to collect the rents reserved thereunder. Landlord is hereby authorized and empowered to make such repairs, alterations, decorations, subdivisions or other preparations for the reletting of the Demised Premises as Landlord shall deem advisable, without in any way releasing Tenant from any liability hereunder, as aforesaid. (c) No such re-entry or taking possession of the Demised Premises by Landlord shall be construed as an election on its part to terminate this Lease unless the termination thereof shall result as a matter of law or be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous default. (d) In the event this Lease is terminated pursuant to the foregoing provisions of this Paragraph 43 or terminates pursuant to the provisions of Paragraph 42 hereof, Landlord may recover from Tenant all damages it may sustain by reason of Tenant's default, including the cost of recovering the Demised Premises and reasonable attorney's fees and expenses and sheriff fees and, upon so electing and in lieu of the damages that may be recoverable under subparagraph (b) above (measured by the monthly deficiency, if any), shall be entitled to recover from Tenant, as and for liquidated damages, and not as a penalty, an amount equal to the difference between: (i) the sum of all rents, rent concessions, unamortized construction allowances on a straight line basis and other concessions received by Tenant prior to such Event of Default, charges and other sums reserved hereunder for the period which otherwise would have constituted the balance of the Lease Term; and (ii) the rental value of the Demised Premises at the time of such election, for such period, both discounted at the rate of four percent (4%) per annum to

present worth, all of which shall immediately be due and payable by Tenant to Landlord. (e) Intentionally Omitted. (f) Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Tenant shall be evicted or dispossessed from the Demised Premises for any cause, or Landlord re-enters the Demised Premises following the occurrence of any Event of Default hereunder, or this Lease is terminated before the expiration date originally fixed herein. (g) In the event of any breach or threatened breach by Tenant of any of the terms and provisions of this Lease, Landlord shall have the right to injunctive relief and declaratory relief as if no other remedies were provided herein for such breach. In addition, Landlord shall have the right, but shall not be obligated to, cure any default by Tenant and Tenant shall be responsible for any costs and expenses, including attorneys' fees, incurred in curing such default. (h) The rights and remedies herein reserved by or granted to Landlord and Tenant are distinct, separate and cumulative, and the exercise of any one of them shall not be deemed to preclude, waive or prejudice Landlord's or Tenant's right to exercise any or all others. (i) Intentionally Omitted. (j) Intentionally Omitted. (k) The words "re-enter", "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings.

44. NOTICE TO MORTGAGEE: Tenant agrees that it will give prompt written notice of Landlord's default in the performance of its obligations under this Lease to the mortgagee or trustee under any mortgage or deed of trust and to the lessor under any ground or underlying lease, if the default is of such nature as to (i) give Tenant a right to cancel and terminate this Lease, or (ii) reduce the rents, charges or any other sums reserved hereunder, or (iii) credit or offset any amounts against future rents payable hereunder. Any such mortgagee and ground lessor shall have the right to cure any such Landlord's default within sixty (60) days after the receipt of any such notice, and no such rights or remedies shall be exercised by Tenant until the expiration of said sixty (60) days or such additional time as may be reasonably required to cure any such default. If, in connection with the obtaining, continuing or renewing of any mortgage, a mortgagee shall request reasonable modifications of this Lease as a condition of such financing, Tenant will not unreasonably withhold its consent thereto.

45. ACCESS TO PREMISES: Landlord and its authorized representatives shall have the right to enter upon the Demised Premises during all regular business hours for the purpose of inspecting or exhibiting the same to prospective purchasers, mortgagees and ~~tenants~~ ^{Landlord} and its authorized representatives shall have the right to enter upon the Demised Premises for the purpose of maintaining and repairing all utility equipment in, upon, above or under the Demised Premises as may be necessary for the servicing of the Demised Premises or other portions of the Shopping Center. Tenant shall permit Landlord and its authorized representatives to erect, use, maintain and repair pipes, cables, conduits, plumbing, vents and wires in, to and through the Demised Premises, as and to the extent that Landlord may now or hereafter deem to be necessary or appropriate for the proper operation and maintenance of the building in which the Demised Premises are located or any other portion of the Shopping Center. Landlord shall also have the right to enter upon the Demised Premises during all regular business hours (and in emergencies at all times), for the purpose of making any repairs thereto or thereon or to the building of which it forms a part as Landlord may deem necessary, and for any other lawful purpose, without the same constituting an actual or constructive eviction of Tenant from the Demised Premises or any part thereof. However, nothing herein shall be deemed to impose any duty upon Landlord to do any such work which, under any provisions of this Lease, Tenant shall be required to perform, and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord in no event shall be liable for any inconvenience, disturbance, loss of business or other damages to Tenant by reason of the performance by Landlord of any work in, upon, above or under the Demised Premises or for bringing or storing materials, tools and equipment in, through or above the Demised Premises during the course thereof, and the obligations of Tenant under this Lease shall not be affected thereby in any manner whatsoever, nor shall the same constitute any ground for an abatement of any rents, charges or other sums reserved hereunder. If Tenant or Tenant's employees shall not be personally present to permit an entry into the Demised Premises when an emergency or casualty occurs, Landlord may enter the same by the use of force or otherwise without rendering Landlord liable therefor and without in any manner affecting Tenant's obligations under this Lease. During the period commencing twelve (12) months prior to the expiration of the Lease Term (or any renewal term thereof), Landlord may place upon the exterior of the Demised Premises "For Lease", "To Let" or "For Rent" signs of reasonable size

which signs shall not be removed, obliterated or hidden by Tenant other than display windows and doors.

46. **EXCAVATION:** If any excavation shall be made upon land adjacent to the Demised Premises, Tenant shall permit the party authorized to cause such excavation to be made to enter upon the Demised Premises for the purpose of performing such work as may be necessary to preserve the wall of the building of which the Demised Premises forms a part from damages and to support the same by proper foundations and shoring, and Tenant hereby waives all claims for inconvenience, disturbance, loss of business or other damages, against Landlord therefor and without in any manner affecting Tenant's obligations under this Lease, nor shall the same constitute any ground for an abatement of any rents, charges or other sums reserved hereunder provided, however, that in the event that, solely as a result of said work, Tenant completely closes down its business operations for more than five (5) consecutive business days, Fixed Minimum Rent shall be abated for such period.

47. **SUBORDINATION:** Landlord and Tenant agree that this Lease is and all of Tenant's rights hereunder are and shall be subject and subordinate at all times to all covenants, restrictions, easements and encumbrances now or hereafter affecting the fee title of the Shopping Center and to all ground and underlying leases, and any mortgages, and all advances thereon, which may now or hereafter be placed against or attach to any or all of the land or the Demised Premises or any or all of the buildings and improvements now or at any time hereafter constituting a part of the Shopping Center, and to all renewals, modifications, consolidations, participations, replacements, spreaders and extensions thereof. The aforesaid provisions shall be self-operative and no further instrument of subordination shall be necessary. Should Landlord or any ground or underlying lessors or mortgagees desire confirmation of such subordination, Tenant, within ten (10) days following Landlord's request thereof, agrees to execute, acknowledge and deliver without charge, any and all documents, (in form acceptable to such ground or underlying lessors or mortgagees) subordinating this Lease and Tenant's rights hereunder.

48. **ATTORNMEN:** Tenant agrees, that in the event of a sale, transfer (including, without limitation, a deed in lieu of foreclosure), or assignment of Landlord's interest in the Shopping Center or any part thereof, including the Demised Premises, or in the event any proceedings are brought for the foreclosure of or for the exercise of any power of sale under any mortgage constituting a lien upon the Shopping Center or any part thereof, including the Demised Premises, at the request of such transferee, purchaser, ground or underlying lessor or mortgagee (hereinafter "Successor Landlord") to attorn to and to recognize such Successor Landlord as Landlord under this Lease. The foregoing provisions of this Paragraph shall be self-operative and no further instrument shall be required to give effect to said provisions. Tenant, however, agrees, at the request of the party to whom it has attorned, to execute, acknowledge and deliver without charge, from time to time, instruments acknowledging such attornment. Landlord agrees to use reasonable efforts to obtain from any holder of any existing or future mortgages to which this Lease shall be subordinated covering the Building and Land, any extension of the existing or future mortgages and underlying leases, a non-disturbance agreement in a form acceptable to Landlord's mortgagee, providing in effect that so long as Tenant shall not be in default under this Lease beyond the expiration of any applicable grace period with respect to such default, that neither Tenant nor any party claiming through or under Tenant shall be named or joined as a party-defendant in any action or proceeding which may be instituted by the holder of any such mortgage to foreclose its mortgage, and that neither Tenant nor any party claiming through or under Tenant shall be evicted from the Demised Premises hereunder, nor shall Tenant's or such party's possession be affected or disturbed by any default under such fee mortgage. It is understood and agreed, however, that Landlord shall not be required to agree to any more onerous terms in any such mortgage, nor litigate the failure or refusal of a mortgagee to provide such non-disturbance agreement, nor refuse to accept any mortgage financing offered, in order to obtain such non-disturbance agreement in favor of Tenant hereunder. The cost and expense of attempting to obtain such non-disturbance agreements in favor of Tenant shall be borne by Tenant.

49. **INTENTIONALLY OMITTED**

50. **QUIET ENJOYMENT:** Tenant, upon paying the rents, charges and other sums reserved hereunder and performing the observing all of the other terms, conditions of this Lease on Tenant's part to be performed and observed, shall peaceably and quietly have, hold and enjoy the

Demised Premises during this Lease Term hereof, subject, nevertheless, to the terms of this Lease, and to any mortgages, ground or underlying leases, agreements and encumbrances to which this Lease is or may be subordinate.

51. **UNAVOIDABLE DELAYS:** The provisions of this Paragraph 51 shall be applicable if there shall occur, on and after the Date of Lease, any strikes, lockouts and labor disputes, inability to obtain labor or materials or reasonable substitutes thereof or acts of God, governmental restrictions, regulations or controls, enemy or hostile government actions, civil commotion, riot or insurrection, fire or other casualty or other events similar or dissimilar to those enumerated in this Paragraph beyond the reasonable control of the party obligated to perform. If Landlord or Tenant, as a result of any of the above mentioned events, shall fail punctually to perform any term, covenant or condition on its part to be performed under this Lease, then such failure shall be excused and not be a breach of this Lease by the party in question, but only to the extent and for the time occasioned by such event. Notwithstanding anything to the contrary herein contained, however, the provisions of this Paragraph 51 shall not be applicable to Tenant's obligation to pay, when due and payable, the rents, charges or other sums reserved hereunder; and in addition lack of funds and inability to procure financing shall not be deemed to be an event beyond the reasonable control of Tenant. In the event of any unavoidable delay as in this Paragraph provided and as a condition precedent of Tenant claiming or relying upon such delay, Tenant shall give notice of such unavoidable delay to Landlord within ten (10) days after the occurrence of the same.

52. **SURRENDER OF DEMISED PREMISES:** Upon the expiration or sooner termination of the Lease Term, Tenant agrees to quit and surrender the Demised Premises, broom-clean, in a good condition and repair as Tenant is required to maintain the same throughout the Lease Term, together with all keys and combinations to locks, safes and vaults and all improvements, alterations, additions, lighting fixtures, apparatus, equipment and decorations at any time made or installed in, upon or to the interior or exterior of the Demised Premises (except personal property, signs and trade fixtures put in at Tenant's expense), all of which shall thereupon become the property of Landlord without any claim by Tenant therefor, but the surrender of such property to Landlord shall not be deemed to be a payment of rent or in lieu of any rents, charges or other sums reserved hereunder. Before surrendering the Demised Premises, Tenant shall, subject to the provisions of Paragraph 19 hereof, also remove any improvements, alterations, additions, lighting fixtures, apparatus, equipment and decorations at any time made or installed by Tenant in, upon or to the interior or exterior of the Demised Premises, and Tenant further agrees to repair any damage caused thereby. If Tenant shall fail to remove any of Tenant's said personal property, signs and trade fixtures, said property shall, at the option of Landlord, either be deemed abandoned and become the exclusive property of Landlord, or Landlord shall have the right to remove and store said property, at the expense of Tenant, without further notice to or demand upon Tenant and hold Tenant responsible for any and all charges and expenses incurred by Landlord therefor. If the Demised Premises is not surrendered as and when required and after Landlord shall have given to Tenant three (3) days' notice to quit, Tenant shall indemnify Landlord against all loss, cost, expense (including reasonable attorneys' fees) or liability resulting from the delay by Tenant in so surrendering the same, including, without limitation, any claims made by any succeeding occupant founded on such delay. Tenant's obligations under this Paragraph shall survive the expiration or sooner termination of this Lease.

53. **HOLDING OVER:** If Tenant shall fail to vacate and surrender the Premises on the last day of the Term, Tenant, at Landlord's option, shall be deemed a month-to-month tenant and shall pay Landlord monthly rent at a rate equal to ^{150%} 150% of the Rent payable during the last month of the Term, subject to all of the other terms of this Lease insofar as they apply to a month-to-month tenancy. The application of this Section shall under no circumstances be deemed to establish a month-to-month or other form of tenancy in favor of Tenant.

54. **INTENTIONALLY OMITTED**

55. **NO WAIVER:** No provision of this Lease shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

56. **NOTICES AND CONSENTS:** (a) Every notice, demand, request or other

communication which may be or is required to be given under this Lease or by law shall be in writing and shall be sent by United States Certified or Registered Mail, postage prepaid, return receipt requested or by personal delivery, and shall be addressed: (i) if to Landlord, to the Landlord's Mailing Address and in the event of Landlord's default hereunder, a duplicate thereof to Landlord's Mailing Address marked for the attention of "General Counsel", and (ii) if to Tenant, to Tenant's Mailing Address, or Landlord, ~~as its agent, may direct any notice to Tenant at the Premises~~, and the same shall be deemed delivered when deposited in the United States Mail or when personally delivered, with a copy to ^{OVER} ~~Barth~~ Wincig, Esq., Wincig & Wincig, ¹³⁷ 574 Fifth Avenue, ¹⁰⁰¹⁰ 2nd Floor, New York, New York 10036. Either party may designate, by similar written notice to the other party, any substitute address for such purposes. Each of the parties hereto waives personal or any other service other than as provided for in this Paragraph. Notwithstanding the foregoing, either party hereby may give the other party telegraphic notice of the need for emergency repairs. Notwithstanding any other provision of this Lease, Landlord's service of notice by way of express mail or courier service shall be deemed sufficiently rendered, and shall be deemed given at the time when the same is mailed or delivered, respectively.

(b) Wherever in this Lease it is stated that Landlord's consent is required, such consent must be in writing and obtained prior to the commencement of the act for which such consent is requested. Wherever in this Lease Landlord's consent or approval is required, if Landlord shall delay or refuse such consent or approval, Tenant shall not be entitled to make nor shall Tenant make, and Tenant hereby waives, any claim for money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord unreasonably withheld or unreasonably delayed its consent or approval. Tenant's sole remedy in any such case shall be an action or proceeding for specific performance, injunction or declaratory judgment.

(c) Landlord's counsel and/or managing agent may give notice on behalf of Landlord.

57. RECORDING: Each party agrees not to record this Lease or any memorandum hereof.

58. PARTIAL INVALIDITY: If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held void, unenforceable or invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

59. BROKER'S COMMISSIONS: Tenant covenants, warrants and represents to Landlord that there was no broker, finder or similar person other than Broker entitled to a commission, fee or other compensation instrumental in consummating this Lease and that no conversations or prior negotiations were had by Tenant or any one acting on behalf of Tenant with any broker, finder or similar person other than Broker concerning the renting of the Demised Premises. Tenant agrees to indemnify and hold Landlord harmless against and from all costs, expenses, damages and liabilities, including reasonable attorneys' fees, arising from any claims for brokerage commissions, finder's fees or other compensation resulting from or arising out of a breach of the foregoing representation. The provisions of this Paragraph shall survive the expiration or earlier termination of this Lease. This provision is mutual.

60. PROVISIONS BINDING: Except as otherwise expressly provided in this Lease, all the terms, covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns. Each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition, and if there shall be more than one Tenant, they shall all be bound, jointly and severally, by the terms, covenants and conditions of this Lease.

61. ENTIRE AGREEMENT, ETC.: (a) This Lease, including the Exhibits and Riders, if any, attached hereto, sets forth the entire agreement between the parties with respect to the Demised Premises. (b) All prior conversations or writings between the parties hereto or their representatives with respect to the Demised Premises are merged herein and extinguished. (c) This

Lease shall not be modified except by a writing signed by the party to be charged, nor may this Lease be cancelled by Tenant or the Demised Premises surrendered except with the written express authorization of Landlord unless otherwise specifically provided herein. (d) Deleted (e) Deleted (f) If any provision contained in any Rider or Exhibit hereto is inconsistent or in conflict with any printed provision of this Lease, the provision contained in such Rider or Exhibit shall supersede said printed provision and shall be paramount and superior. (g) Intentionally Omitted (h) The paragraph numbers, captions and table of contents appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any Paragraph, nor in any way affect this Lease.

62. **WAIVER OF LIABILITY:** Anything contained in this Lease to the contrary notwithstanding, Tenant agrees that Tenant shall look solely to the estate and property of Landlord in the land and buildings comprising the Shopping Center of which the Demised Premises forms a part for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and performed by Landlord, subject, however, to the prior rights of any ground or underlying lessor or the holder of any mortgage covering the Shopping Center, and no other assets of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claims. In the event Landlord conveys or transfers its interest in the Shopping Center or in this Lease, except as collateral security for a loan, upon such conveyance or transfer Landlord (and in the case of any subsequent conveyance or transfer, the then grantor or transferor) shall be entirely released and relieved from all liability with respect to the performance of any terms, covenants and conditions on the part of Landlord to be performed hereunder from and after the date of such conveyance or transfer, provided that any amounts then due and payable to Tenant by Landlord (or by the then grantor or transferor) or any other obligations then to be performed by Landlord (or by the then grantor or transferor) for Tenant under any provisions of this Lease, shall either be paid or performed by Landlord (or by the then grantor or transferor) or such payment or performance assumed by the grantee or transferee; it being intended hereby that the covenants and obligations on the part of Landlord to be performed hereunder shall be binding on Landlord, its successors and assigns only during and in respect of their respective periods of ownership of an interest in the Shopping Center or in this Lease. This provision shall not be deemed, construed or interpreted to be or constitute an agreement, express or implied, between Landlord and Tenant that Landlord's interest hereunder and in the Shopping Center shall be subject to impressment of an equitable lien or otherwise.

63. **CORPORATE TENANT:** If Tenant is a corporation, the persons executing this Lease on behalf of Tenant hereby covenant, represent and warrant that Tenant is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the State where the Shopping Center is located (a copy of evidence thereof to be supplied to Landlord upon request); and that the person or persons executing this lease on behalf of Tenant is an officer or are officers of such Tenant, and that he or they as such officers are duly authorized to execute, acknowledge and deliver this Lease to Landlord (a copy of a resolution to that effect to be supplied to Landlord upon request).

64. **RULES AND REGULATIONS:** Tenant covenants and agrees to comply fully with all of the Rules and Regulations set forth herein and made a part hereof as though fully set forth herein. Landlord may modify or supplement such rules and regulations from time to time upon notice to Tenant. Tenant's failure to keep and observe said rules and regulations shall constitute a breach of the terms of this Lease in the same manner as if the rules and regulations were contained herein as covenants. All rules and regulations that Landlord may make shall be reasonable.

65. **INTENTIONALLY OMITTED:**

66. **APPLICABLE LAW:** Without regard to principles of conflicts of laws, the laws of the State in which the Shopping Center is located shall govern and control the validity, interpretation, performance and enforcement of this Lease.

67. **LABOR REGULATIONS:** Tenant covenants and agrees throughout the Lease Term and during any period prior or subsequent thereto when it shall be in possession of the Demised Premises that it shall take no action which would violate Landlord's union contracts, if

to insure Tenant's compliance with this Paragraph.

70. ~~Tenant is responsible to maintain, repair and replace the dry well, if any, located in the area where Tenant's trucks dock, load and unload.~~

71. INTENTIONALLY OMITTED

72. Landlord's acceptance at its option of the check of any third party in payment of rent or of any other money obligation under this lease shall not be deemed an acceptance by Landlord of the maker or any endorser of such check as tenant hereunder or assignee of the Tenant hereunder.

73. PERCENTAGE RENT: All references to percentage rent contained in this Lease shall be deemed deleted.

74. The headings and captions of articles or paragraphs contained in this Lease and Exhibits and Riders attached hereto are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such articles or paragraphs nor in any way effect this Lease.

75. LEASE FREELY NEGOTIATED: Both parties acknowledge and agree that this Lease has been freely negotiated by both parties, and that, in any dispute over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conditions, there shall be no presumption whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

76. If Landlord is unable to give possession of the Demised Premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupant, Landlord shall not be subject to any liability for failure to give possession on said date and the validity of the Lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this Lease. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

77. The submission of this Lease for examination or the negotiation of the transaction described herein or the execution of this Lease by only one of the parties will not in any way constitute an offer to lease on behalf of either Landlord or Tenant, and this Lease shall not be binding on either party until duplicate originals thereof, duly executed on behalf of both parties, have been delivered to each of the parties hereto.

78. Landlord shall have the right in its sole and absolute discretion to place a For Lease or For Rent sign in or on the Premises or the Building of which the Premises form a part at any time on or after the date that Tenant shall have vacated from the Premises or during the last six (6) months of the Term, except that no such signs shall be placed on doors or display windows unless the Term of the Lease shall have expired or shall have been sooner terminated.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

79 Subject to the terms and conditions set forth below, Landlord hereby grants Tenant the option to cancel ("Cancellation Option"):

(a) Tenant shall deliver to Landlord, by certified mail, return receipt requested, at least three hundred and sixty-five (365) days prior written notice ("Cancellation Notice") of Tenant's exercise of the Cancellation Option.

(b) Tenant may deliver its Cancellation Notice to Landlord after but not before August 31, 2005, therefore, the earliest this Lease could terminate pursuant to the within Cancellation Option would be on August 31, 2006.

(c) Tenant shall not be in default under any of the terms of this Lease beyond the applicable grace period, if any, at the time of its exercise of the Cancellation Option.

(d) Time shall be of the essence with regard to Tenant's delivery of the Cancellation Notice.

(e) Upon Tenant's exercise of the Cancellation Option in accordance with this Article, then upon the expiration of the three hundred and sixty-five (365) days following Tenant's Cancellation Notice, this Lease shall end and expire as if said termination date were originally provided in this Lease as the expiration date of the Term ("Cancellation Date").

(f) Landlord may accelerate the Cancellation Date to an earlier date at any time upon thirty (30) days notice to Tenant ("Acceleration Notice"). If Landlord sends Tenant such an Acceleration Notice, then this Lease shall end and expire on the expiration of 30 days after the Landlord's Acceleration Notice as if said date were originally provided in this Lease as the expiration date of the Term.

* nonstructural aspects of the exterior

80.(a)(i) Except as set forth below in Subparagraph (h), Tenant, at its sole cost and expense, shall keep and maintain the entire interior and exterior of the Premises, including, without limitation, all buildings and structures now or hereafter erected on the Premises, all walkways, sidewalks and parking areas on the Premises and all fixtures, machinery, plumbing lines, electrical wires (underground and above ground), systems (including, without limitation, heating and ventilating and air conditioning and sprinkler, if any) and other personal property of every nature now or hereafter attached to or used in connection with the operation of the Premises to keep same in good ^{working} order and condition. Tenant, without limiting the generality of the foregoing, shall make ^{only} all non-structural installations, modifications, alterations, repairs, and replacements to the foregoing as may be necessary to keep the same in good order and condition and shall perform all preventive maintenance and Tenant shall comply with all laws and requirements of utilities. Such repairs and replacements shall be done in a good and workmanlike manner with materials at least equal in quality (but no used materials) to the original construction materials and, in the case of structural repairs, subject to Landlord's prior written approval of the materials, methods and contractors to be used or engaged. See Article 98.

(ii) Tenant shall not commit or suffer waste or injury to the Premises. All janitorial work in and about the Premises shall be done by Tenant at its own cost and expense. Tenant shall keep the grass, if any, trimmed, maintain the grounds in a neat and presentable condition, free of trash, weeds and loose debris, and keep the sidewalks, entranceways, driveways and parking areas unobstructed, clean and free of rubbish, ice and snow. Tenant shall place all of its refuse and rubbish in a dumpster which Tenant shall obtain and maintain at the Premises. No trash or other debris shall be permitted to remain on or about the Property, including, without limitation, the ground surrounding the dumpster. If, in Landlord's opinion, the dumpster maintained by Tenant is insufficient for Tenant's use, Tenant shall at its own cost and expense obtain either a larger or, if space permits, an additional dumpster.

(b) If Tenant shall fail to perform any repairs or maintenance work as required under this Lease or necessitated by any breach by Tenant of its covenants hereunder within thirty (30) days of Landlord's notice thereof to Tenant or immediately in the case of an emergency, or, if such work be of such nature that it cannot with due diligence be completed within thirty (30) days and Tenant shall not have commenced making such repair within such thirty (30) day period and

thereafter prosecuted the same in good faith with due diligence to completion within a reasonable period of time, Landlord, without any further notice to Tenant, may perform such work. In such event, Tenant shall pay as Rent the cost of such work, plus fifteen percent for overhead and supervision, on demand from Landlord. Receipted bills from contractors, materialmen and/or laborers shall be conclusive proof of the cost thereof.

(c) Except as otherwise specifically provided in this Lease, neither the rights or privileges reserved hereunder by Landlord, nor the exercise thereof by Landlord, nor any reference herein to repairs by Landlord, shall impose any maintenance or repair liability or obligation upon Landlord. Nor shall Landlord's performance of any such maintenance or repair work as provided under Subparagraph (b) above be deemed an assumption by Landlord of control over the Premises or any portion thereof.

(d) Tenant shall not cause or permit any person to enter upon the roof of the Building except for the purpose of performing maintenance and/or repair work on the roof as required by this Lease. If any such maintenance or repair work requires a penetration through the roof, Landlord, at its option and at Tenant's sole expense, may make such penetration. Tenant shall not allow any grease or other foreign substance of any nature to be deposited within the plumbing system or HVAC system servicing the Premises or elsewhere in or about the Premises. Nor shall Tenant cause or permit any materials or substances of any nature whatsoever to be poured or otherwise deposited in the storm drain(s) situated about the Property.

(e) Tenant, at its own expense, shall obtain and maintain a supervisory service for the Building's sprinkler system, if any, and shall make all necessary repairs to such system.

(f) During the Term, Tenant shall, at its sole cost and expense, maintain service agreements in form and substance reasonably acceptable to Landlord for the maintenance of all heating and air conditioning equipment in or on the roof of the Premises. Within thirty (30) days of the commencement of and during the Term, Tenant shall furnish Landlord with copies of all such agreements.

(g) Tenant shall at its own expense, comply with all applicable laws, ordinances and requirements for the sorting or separation of Tenant's garbage.

(h) Landlord shall: (i) make all repairs and replacements to the roof, foundation, floor slab, exterior walls, structural columns, structural walls, steel frame, underground utility lines outside of the Building, parking lot pavement (including potholes), and parking lot drywells; (ii) ~~restripe and re-seal the parking lot, if necessary, once after the end of the Fifth Lease Year, and (iii)~~ for one year after the Delivery of Possession but not thereafter, make all replacements and repairs to the heat exchanger and compressor units of the heating, air conditioning and ventilating system of the demised premises, (except at Landlord's option, those repairs necessitated by the acts or omissions of Tenant, its employees, agents and/or contractors). Notwithstanding the foregoing, Tenant shall bear the entire cost of any repair or maintenance work necessitated by any act or ~~omission of Tenant, its employees, agents and/or contractors.~~

81. Character of Shopping Center - Intentionally Omitted.

82. Supplementing Paragraph 64 (Rules and Regulations) - Rules and Regulations shall be uniformly applied on a non-discretionary basis to all Tenants.

83. Supplementing Paragraph 26 (Signs) - Tenant may place and maintain appropriate and dignified displays of a type customarily displayed in a majority of Jennifer Convertible stores for its display windows on the interior window areas or elsewhere of the building comprising a part of the Premises in compliance with all Legal Requirements.

84. Supplementing Paragraph 43 (Default) - Landlord shall ~~twice~~ ^{once twice} during any 12 month period provide five (5) days written notice of a default in the payment of Minimum Rent before exercising its remedies under Paragraph 43.

85. Supplementing Paragraph 38 (Insurance Requirements) - All policies of casualty insurance obtained by Landlord shall contain an endorsement containing an express waiver of any right of subrogation against Tenant.

86. ~~Intentionally omitted. Supplementing Paragraph 48 - Landlord will request a non-disturbance agreement in favor of Tenant from any mortgagee or superior Landlord on such entities' standard form at~~

87. In the exercise of its rights under Paragraphs 29 (Tenant's Failure to Repair), 31 (Water and Utilities), 45 (Access to Premises) and 80, Landlord shall use commercially reasonable efforts to avoid material disruption of Tenant's normal business operations conducted at the Premises, however Landlord shall not be required to perform any work other than during normal business hours.

88. Supplementing Paragraph 22(k) and 80 - Tenant shall not be required to make structural changes or alterations to comply with applicable law, including the American with Disabilities Acts 1990, unless such compliance is required due to the particular nature of Tenant's business or use of the Premises, or the location of Tenant's partitions, fixtures or property, or Alterations or changes made by Tenant or the acts or omissions of Tenant, its employees, agents and/or contractors or customers.

89. Supplementing Paragraph Article 31 (Water and Utilities) - If utilities are provided by Landlord instead of directly from the utility company to Tenant until Subparagraph (c) the charges shall not exceed those charged by the utility company for direct service.

90. The successful party in any litigation shall be entitled to be paid its reasonable attorney's fees.

91. Tenant hereby grants to Landlord the continuing right to relet the Premises in whole for the remainder of the term of the Lease to any tenant, and for any use and purpose acceptable to Landlord.

92. Landlord shall have access to the Premises during normal business hours for the purpose of showing same to prospective tenants. Landlord may from and after the date hereof show the Premises for rent and market same with realtors and newspaper advertising and other forms of advertising but shall not place a for rent sign in the window or on the exterior wall of the Premises until such time as permitted by the terms of the Lease.

93. Landlord may at any time and from time to time give Tenant not less than thirty (30) day written notice ("Landlord's Termination Notice") to vacate the Premises as of the last day of the month in which such thirty (30) day period shall expire ("Surrender Date"). If Landlord sends such a Landlord's Termination Notice, then on or before the Surrender Date, Tenant shall vacate and surrender the Premises and remove all and any personal property placed in the Premises by Tenant and/or by Tenant's employees, agents, and invitees. Any damage caused by Tenant will be repaired by Tenant at Tenant's sole cost and expense. Tenant covenants and agrees that the Premises will be left in a "broom-clean" condition with all trash removed and otherwise in the manner and condition required by the Lease as if the Surrender Date were the expiration date of the Lease. Any expense incurred by Landlord to cure any of the foregoing as well as any other repair obligation of Tenant under the Lease will be paid by Tenant within thirty (30) days of Landlord giving Tenant written notice of such expense.

94. The undertaking contained herein shall not be construed to obligate Landlord to lease the Premises in any fashion to any tenant or for any purpose except as Landlord, in its exclusive judgment, believes is in its best interest. Nothing contained herein shall render Landlord liable for any failure to relet or attempt to relet the Premises; and nothing contained herein shall be construed to establish any right of Tenant to assign or sublet the Premises not otherwise specifically set forth in the Lease.

95. In the event Landlord shall enter into a lease contract with a third-party tenant for the Premises, and Tenant shall thereafter refuse to vacate the Premises, or shall holdover in the Premises beyond the Surrender Date, Tenant shall be liable to Landlord for all costs and expenses, both direct and indirect, incurred by Landlord in reletting, or attempting to relet the Premises, and shall indemnify and hold Landlord harmless for any expenses or damages sustained by or awarded to any third-party tenant. In the event such costs and expenses are not paid to Landlord within thirty (30) days of submission to Tenant of Landlord's itemized statement for same, Landlord may treat such failure to pay as a default in the payment of rent under the Lease and shall be entitled to exercise any remedy available to Landlord for non-payment of rent.

96. (a) If Tenant has (i) vacated the Premises in accordance with the terms and conditions set forth herein, and (ii) paid all costs and expenses, if any, incurred by Landlord or third-party tenant as provided for herein, then, the Lease shall be terminated upon such Surrender Date.

(b) It is expressly agreed and understood that said termination, if and when effective, shall apply only to Tenant's obligations under the Lease which would have accrued after the such Surrender Date and that Tenant shall not be relieved of lease obligations accruing prior to or on such Surrender Date. Except as specifically provided to the contrary herein, all terms and conditions of the Lease shall remain in full force and effect.

97. The provisions of this Article 27 which requires Landlords consent, shall not be deemed to prohibit or to require consent to (i) an assignment or subletting to a parent, subsidiary or affiliated corporation of Tenant, (ii) transfers of stock among existing stockholders or among spouses, children or grandchildren of existing stockholders or inter vivos or testamentary transfers to trusts established for the benefit of such persons, (iii) a public offering of the stock of Tenant, (iv) the transfer of outstanding voting stock registered under applicable securities laws of Tenant which are traded on a recognized national securities exchange, (v) a private offering or transfer of stock in connection with a merger, sale, consolidation or joint venture so long as the net worth of the Tenant after such transfer shall be no less than the net worth of Tenant on the date hereof or at the time of such transfer, whichever is greater as determined in accordance with generally accepted accounting principles exclusive of goodwill.

98. Landlord will make all structural repairs except those caused by the acts or omissions of Tenant, its sublessees, employees, agents, contractors, and assigns. Structural repairs shall be limited to repairs and replacements of and to the structural steel, foundation, roof deck and bearing walls only.

THIS LEASE INCLUDES RIDERS AND EXHIBITS ANNEXED HERETO AND MADE A PART HEREOF.

SEE RIDERS ANNEXED HERETO.

IN WITNESS WHEREOF, the parties hereto have respectively signed this Lease as of the Date of Lease first above written.

CJ. REALTY, L.P.

By: Jason General Corp.

By:


Clifford B. Sondock, President

JENNIFER CONVERTIBLES, INC.

By:


Edward B. Seidner
Executive Vice President

EXHIBIT A

Land and Building known as 325 North Broadway, Jericho, N.Y.

EXHIBIT B

I. TENANT'S WORK CRITERIA

- DECLASSIFICATION POLICY**

4.

Legal Requirement and Insurance. (a) Tenant, at its expense, shall obtain (and furnish true and complete copies to Landlord of) all necessary governmental permits and certificates for the commencement and prosecution of Alterations and for final approval thereof upon completion, and shall cause Alterations to be performed in compliance therewith, with all applicable laws and requirements of public authorities, with all applicable requirements of insurance bodies and with the plans and specifications approved by Landlord. No approval of plans or specifications by Landlord or consent by Landlord allowing Tenant to make any Alterations in the Premises at any time during the Term shall in any way be deemed to be an agreement by Landlord that the contemplated alterations, installations, additions or improvements comply with any legal requirements or any certificate of occupancy for the Building nor shall it be deemed to be a waiver by Landlord of such compliance by Tenant or of any of the terms of this Lease. Alterations shall be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the better of (i) the original installations of the Building or (ii) the then standards for the Buildings established by Landlord and applicable to substantially all similarly situated tenants. Alterations shall be performed by contractors first approved by Landlord. Alterations shall be performed in such manner as not to unreasonably interfere with or delay and as not to impose any additional expense upon Landlord in the construction, maintenance, repair or operations of the Building; and if any such additional expense shall be incurred by Landlord as a result of Tenant's performance of any Alterations, Tenant shall pay such additional expense upon demand as Additional Rent.

reasonable

(b) Throughout the performance of Alterations, Tenant, at its expense, shall carry, or cause to be carried by Tenant's contractors and subcontractors all insurance, including without limitation, that required by Articles 37 and 38 of this Lease or as otherwise may be required by law. Tenant shall furnish Landlord with copies of the insurance policies required hereunder or certificates thereof that such insurance is in effect at or before the commencement of Alterations and, on request, at reasonable intervals thereafter during the continuance of Alterations. Such certificates shall comply with Articles 37 and 38 of the Lease.

5.

Indemnify. It is agreed that Tenant assumes the responsibility and liability for any and all injuries or death of any or all persons, including Tenant's contractors and subcontractors, and their respective employees and for any and all damages to property caused by, or resulting from or arising out of any act or omission on the part of Tenant, Tenant's contractors or subcontractors or their respective employees, in the prosecution of Alterations and with respect to such work agrees to indemnify and save free and harmless Landlord, Superior Lessor, Superior Mortgagee or any such mortgagee in and to the Premises or the Building from and against all losses and/or expenses, including reasonable legal fees and expenses, which they may suffer or pay as the result of claims or lawsuits due to, because of, or arising out of any and all such injuries or death and/or damage, whether real or alleged and Tenant and Tenant's contractors and/or subcontractors or their respective insurance companies shall assume and defend at their own expense all such claims or lawsuits. Tenant agrees to insure this assumed liability in its policy of Comprehensive General Liability Insurance and the copy of the policy that Tenant will present to Landlord shall so indicate such contractual coverage. Any contract with any contractor or subcontractor for Alterations shall include an indemnity of Landlord substantially similar to the indemnity set forth above, and shall be in form satisfactory to Landlord.

6.

Lien. Notice is hereby given that neither Landlord, Landlord's agent, Superior Lessor, Superior Mortgagee, nor any mortgagee of the Building shall be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for such labor or material shall attach to or affect any estate or interest of Landlord, Superior Lessor, Superior Mortgagee, or any such mortgagee in and to the Premises or the Building. Tenant, at its expense, and with diligence and dispatch, shall procure the cancellation or discharge of all notices of violation arising from or otherwise connected with any Alterations, or any other work, labor, services or materials done for or supplied to Tenant, or any person claiming through or under Tenant, which shall be issued by any public authority having or asserting jurisdiction, subject to Tenant's right to contest same in accordance with the provisions of this Lease. Tenant shall defend, indemnify and save harmless Landlord from and against any and all mechanic's and other liens and encumbrances filed in connection with Alterations, or any other work, labor, services or

- CONCLUSIONS**

RULES AND REGULATIONS

ГОМАСТРОСНИКЪ РОУИ (1990)

ODNA WCDONEKUF DOCVJ 1997XV



SPIEGEL ASSOCIATES

Via UPS Air Overnight Delivery

October 6, 2010

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

Re: Jennifer Convertibles, Inc. –Chapter 11, Case No. 10-13779(ALG)
United States Bankruptcy Court, Southern District of New York (Manhattan) –
Proof of Claim of C.J. Realty, L.P. (“Claimant”)
Premises: 325 North Broadway, Jericho, New York

To Whom It May Concern:

Enclosed please find the Proof of Claim of Claimant, together with a copy of the lease dated December 31, 2009 between Claimant and Jennifer Convertibles, Inc. for the Premises and the outstanding rent schedule for the subject claim.

Feel free to contact me for further assistance in this matter at (516) 935-1100 ext. 260.

Very truly yours,
SPIEGEL ASSOCIATES

By: 

Harry L. Szenieer
General Counsel

HLS:mmg