

UNITED STATES BANKRUPTCY COURT

PROOF OF CLAIM

Name of Debtor:
Jennifer Convertibles, Inc.Case Number:
10-13779(ALG)

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):
26 West 23rd Street LLCName and address where notices should be sent:
c/o Law Offices of Steven M. Nachman
675 Third Avenue, 29th Floor
New York, NY 10017Telephone number:
(212) 983-8490

RECEIVED

OCT 21 2010

BMC GROUP

☐ Check this box to indicate that this claim amends a previously filed claim.Court Claim Number: _____
(If known)

Filed on: _____

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.☐ Check this box if you are the debtor or trustee in this case.1. Amount of Claim as of Date Case Filed: \$ 63,657.51
(see addendum)
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.

☐ 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: Commercial Lease
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: \$ _____ Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: \$ _____ Basis for perfection: _____

Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).☐ 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).☐ Contributions to an employee benefit plan – 11 U.S.C. §507(a)(5).☐ 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).☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507(a)(8).☐ Other – Specify applicable paragraph of 11 U.S.C. §507(a)().

Amount entitled to priority:

\$ _____

*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.

Date:
10/19/2010

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor -- other person authorized to file this claim and state address and telephone number if different from the no address above. Attach copy of power of attorney, if any.

Marc Jacobowitz, Manager

FOR COURT USE ONLY

Jennifer Convertibles



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INSTRUCTIONS FOR PROOF OF CLAIM FORM

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

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

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

Creditor's Name and Address:

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

1. Amount of Claim as of Date Case Filed:

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

2. Basis for Claim:

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

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

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

3a. Debtor May Have Scheduled Account As:

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

4. Secured Claim:

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

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

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

6. Credits:

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

7. Documents:

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

Date and Signature:

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

DEFINITIONS**Debtor**

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

Creditor

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

Claim

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

Proof of Claim

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

Secured Claim Under 11 U.S.C. §506(a)

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

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

Unsecured Claim

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

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

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

Redacted

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

Evidence of Perfection

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

INFORMATION**Acknowledgment of Filing of Claim**

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

Offers to Purchase a Claim

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

Jennifer Convertibles, Inc.
Case No. 10-13779(ALG)

Addendum to Proof of Claim of 26 West 23rd Street LLC.

1. 26 West 23rd Street Realty Corp., the predecessor in interest to the Claimant 26 West 23d Street LLC ("Landlord"), entered into a lease (the "Lease") dated March 28, 2004 with Jara Enterprises, Inc., which Lease was assigned by Jara Enterprises, Inc. as of right to the Debtor Jennifer Convertibles, Inc. by Notice dated February 15, 2007. A copy of the Lease and of the February 15, 2007 Notice are attached hereto.
2. As shown by the Landlord's tenant ledger, a copy of which also is attached hereto, as of the commencement of this proceeding, the Debtor owed the Landlord \$63,657.51 in rent.
3. Pursuant to the terms of the Lease, additional amounts may become due to the Landlord as additional rent. The Landlord reserves its right to amend and supplement this Proof of Claim to account for all such additional amounts which may become due.
4. Further, the Debtor has not yet moved to assume or reject the Lease, not has a plan of reorganization been proposed or approved. Accordingly, the Landlord reserves its right to further amend this Proof of Claim and to assert an administrative claim for any amounts due pursuant to the terms of the Lease while the Debtor remains in possession of the premises which are the subject of the Lease and/or for an administrative rejection claim under 11 U.S.C. §§365, 503(b)(7) and/or 502(b)(6).
5. Pursuant to Art. 19 of the Lease, the Debtor is also liable to pay as additional rent all costs of collection, including attorney's fees, and Landlord reserves its right to make claims for such amounts.
6. This Proof of Claim is without waiver of any other rights which Landlord may have to seek payment on other administrative or priority claims.

Tenant Statement

10/19/10 12:01:21

26 attn: Dale
2 417 Crossways Parks Drive Woodbury NY 11797
JENNIFER CONVERTIBLES,

Type: Comm

Lease: 08/01/10-07/31/11

Rent: 21,854.58

Rent Balance: 85,773.61

Included in Rent Balance:

Rent Due: 101,377.06

Adjustments Due: -15,603.45

Date	LB CC AC Description	Debit	Credit	Balance	Check #/Comment
01/01/10	Balance Forward			42,439.51	
01/01/10	Rent Charge	21,218.00		63,657.51	
02/01/10	Rent Charge	21,218.00		84,875.51	
02/18/10	Rent Receipt		21,218.00	63,657.51	071424
02/18/10	Rent Receipt		21,218.00	42,439.51	071423
03/01/10	Rent Charge	21,218.00		63,657.51	
03/11/10	Rent Receipt		21,218.00	42,439.51	072053
03/11/10	Rent Receipt		21,218.00	21,221.51	072054
04/01/10	Rent Charge	21,218.00		42,439.51	
05/01/10	Rent Charge	21,218.00		63,657.51	
05/23/10	Rent Receipt		21,218.00	42,439.51	073675
06/01/10	Rent Charge	21,218.00		63,657.51	
06/20/10	Rent Receipt		21,218.00	42,439.51	073981
07/01/10	Rent Charge	21,218.00		63,657.51	
08/01/10	Rent Charge	21,854.58		85,512.09	
08/09/10	Rent Receipt		21,854.58	63,657.51	074897
09/01/10	Real Estate Tax	5,303.14		68,960.65	
09/01/10	Rent Charge	21,854.58		90,815.23	
09/07/10	Rent Receipt		21,854.58	68,960.65	075495
10/01/10	Rent Charge	21,854.58		90,815.23	
10/09/10	Rent Receipt		26,896.20	63,919.03	076014
11/01/10	Rent Charge	21,854.58		85,773.61	

Law Offices of
WINCIG & WINCIG

BERNARD WINCIG
OWEN WINCIG

UMAR A. SHEIKH*

ANDREW KLINE
WASHINGTON D.C. COUNSEL
ADMITTED ONLY IN D.C. & MD.

*ALSO ADMITTED IN NEW JERSEY

574 Fifth Avenue, New York, N.Y. 10036

TELEPHONE: 212-575-8333

FACSIMILE: 212-575-8525

February 15, 2007

BY CERTIFIED MAIL, RRR

Mr. Marc Jacobwitz
26 West 23rd Street Realty Corp.
1222 Avenue M - Suite 207
Brooklyn, NY 11230

Re: Lease Dated March 28, 2004 between
Jara Enterprises, Inc. and 26 West 23rd
Street Realty Corp.
Premises: 2,400 SF on the Ground Floor
1,500 SF on the Mezzanine
2,400 SF on the basement at
26 West 23rd Street, New York, NY
Our File No.: 1402-4333

Dear Mr. Jacobwitz:

As you know, we represent Jara Enterprises, Inc. and act as counsel to Jennifer Convertibles, Inc. Please be advised that effective March 1, 2007, Jara Enterprises, Inc., will assign its entire interest in the above-referenced Lease to its affiliate company; Jennifer Convertibles, Inc., the National Public Company trading on the American Stock Exchange. The contact information for Jennifer Convertibles, Inc., is as follows:

Edward B. Seidner
Executive Vice President
Jennifer Convertibles, Inc.
419 Crossways Park Drive
Woodbury, New York 11797
(Tel.) 516-496-1900
(Fax) 516-496-0008

COPY

LAW OFFICES OF
WINCIG & WINCIG

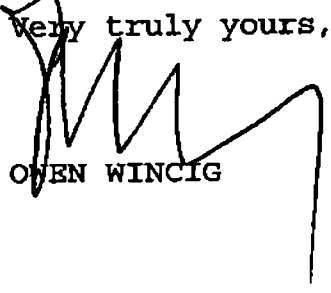
Mr. Marc Jacobwitz
February 15, 2007
Page 2

The assignment, of course, is being made as of right and is consistent with the Lease. Upon conclusion of the transaction, we will forward a copy of the executed assignment for your records.

If you have any questions, or would like to discuss this matter, please feel free to communicate directly with Mr. Edward B. Seidner, or with me.

All parties thank you for all courtesies afforded in connection with this matter.

Very truly yours,



OWEN WINCIG

OW/lc

cc: Steven M. Nachman, Esq.
(By Certified Mail, RRR)

26 West 23rd Street Realty Corp.
c/o Jay Import Company
(By Certified Mail, RRR)

Mr. Edward B. Seidner (By Fax)
Executive Vice President

2/94

STANDARD FORM OF LOFT LEASE
The Real Estate Board of New York, Inc.

Agreement of Lease, made as of this 26th day of March 2004, between
26 West 23rd Street Realty Corp.
party of the first part, hereinafter referred to as OWNER, and

Jara Enterprises, Inc.

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

Witnesseth: Owner hereby leases to Tenant and Tenant hereby hires from Owner 2,400 SF on the ground floor, 1,500 SF on the mezzanine and 2,400 SF on the basement (all such square footage being approximate)

in the building known as 26 West 23rd Street
in the Borough of Manhattan, City of New York, for the term of 7 Years, four months

(or until such term shall sooner cease and expire as hereinafter provided) to commence on the
1st day of April 2004 ~~nineteen hundred and~~

31st day of July 2011

, and to end on the

both dates inclusive, at an annual rental rate of as stated on the attached rider and

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

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

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

Rent:

1. Tenant shall pay the rent as above and as hereinafter provided.

Occupancy:

2. Tenant shall use and occupy demised premises for a Jennifer Convertibles store for the

sale of furniture, sofas, sofasbeds and related accessories
provided such use is in accordance with the certificate of occupancy for the building, if any, and for no other purpose.

Alterations:

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

Repairs:

4. Owner shall maintain and repair the exterior of and the public portions of the building. Tenant shall, throughout the term of this lease, take good care of the demised premises including the bathrooms and lavatory facilities (if the demised premises encompass the entire floor of the building) and the windows and window frames and, the fixtures and appurtenances therein and at Tenant's sole cost and expense promptly make all repairs thereto and to the building, whether structural or non-structural in nature, caused by or resulting from the carelessness, omission, neglect or improper conduct of Tenant, Tenant's servants, employees, invitees, or licensees, and whether or not arising from such Tenant conduct or omission, when required by other provisions of this lease, including Article 6. Tenant shall also repair all damage to the building

and the demised premises caused by the moving of Tenant's fixtures, furniture or equipment. All the aforesaid repairs shall be of quality or class equal to the original work or construction. If Tenant fails, after ten days notice, to proceed with due diligence to make repairs required to be made by Tenant, the same may be made by the Owner at the expense of Tenant, and the expenses thereof incurred by Owner shall be collectible, as additional rent, after rendition of a bill or statement therefor. If the demised premises be or become infested with vermin, Tenant shall, at its expense, cause the same to be exterminated. Tenant shall give Owner prompt notice of any defective condition in any plumbing, heating system or electrical lines located in the demised premises and following such notice, Owner shall remedy the condition with due diligence, but at the expense of Tenant, if repairs are necessitated by damage or injury attributable to Tenant, Tenant's servants, agents, employees, invitees or licensees as aforesaid. Except as specifically provided in Article 9 or elsewhere in this lease, there shall be no allowance to the Tenant for a diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner, Tenant or others making or failing to make any repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in and to the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall not be entitled to any set off or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of any action for damages for breach of contract. The provisions of this Article 4 with respect to the making of repairs shall not apply in the case of fire or other casualty with regard to which Article 9 hereof shall apply.

Window

Cleaning:

5. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of

Section 202 of the New York State Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

Requirements

of Law,

Fire

Insurance:

6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter Tenant shall, at Tenant's sole cost and expense, promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters, or the Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, whether or not arising out of Tenant's use or manner of use thereof, or, with respect to the building, if arising out of Tenant's use or manner of use of the demised premises of the building (including the use permitted under the lease). Except as provided in Article 30 hereof, nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has, by its manner of use of the demised premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant shall not do or

permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner. Tenant shall not keep anything in the demised premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for fire insurance applicable to the building, nor use the premises in a manner which will increase the insurance rate for the building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. If by reason of failure to comply with the foregoing the fire insurance rate shall, at the beginning of this lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" rate for the building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to said premises. Tenant shall not place a load upon any floor of the demised premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Owner's judgement, to absorb and prevent vibration, noise and annoyance.

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

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

8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees; Owner or its agents shall not be liable for any damage caused by other tenants or persons in, upon or about said building or caused by operations in connection of any private, public or quasi public work. If at any time any windows of the demised premises are temporarily closed, darkened or bricked up (or permanently closed, darkened or bricked up, if required by law) for any reason whatsoever including, but not limited to Owner's own acts, Owner shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefor nor abatement or diminution of rent nor shall the same release Tenant from its obligations hereunder nor constitute an eviction. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorney's fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees, or licensees, of any covenant or condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any sub-tenant, and any agent, contractor, employee, invitee or licensee of any sub-tenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

Destruction, Fire and Other Casualty:

9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent as hereinafter expressly provided shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored by Owner (or sooner reoccupied in part by Tenant then rent shall be apportioned as provided in subsection (b) above), subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within 90 days after such fire or casualty, or 30 days after adjustment of the insurance claim for such fire or casualty, whichever is sooner, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Owner's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent

made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, including Owner's obligation to restore under subparagraph (b) above, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery with respect to subparagraphs (b), (d) and (e) above, against the other or any one claiming through or under each of them by way of subrogation or otherwise. The release and waiver herein referred to shall be deemed to include any loss or damage to the demised premises and/or to any personal property, equipment, trade fixtures, goods and merchandise located therein. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefiting from the waiver shall pay such premium within ten days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

Eminent Domain:

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

Assignment, Mortgage, Etc.:

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

Electric Current:

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

Access to Premises:

13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building or which Owner may elect to perform in the premises after Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities. Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein provided, wherever possible, they are within walls or otherwise concealed. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants and may, during said six months period, place upon

the demised premises the usual notices "To Let" and "For Sale" which notices Tenant shall permit to remain thereon without molestation. If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom. Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligation hereunder.

**Vault,
Vault Space,
Area:**

14. No Vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant, if used by Tenant, whether or not specifically leased hereunder.

Occupancy:

15. Tenant will not at any time use or occupy the demised premises in violation of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations, whether or not of record. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business, Tenant shall be responsible for and shall procure and maintain such license or permit.

Bankruptcy:

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

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

Default:

17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises becomes vacant or deserted "or if this lease be rejected under §235 of Title 11 of the U.S. Code (bankruptcy code);" or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if Tenant shall make default with respect to any other lease between Owner and Tenant; or if Tenant shall have failed, after five (5) days written notice, to re-deposit with Owner any portion of the security deposited hereunder which Owner has applied to the payment of any rent and additional rent due and payable hereunder or failed to move into or take possession of the premises within thirty (30) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then in any one or more of such events, upon Owner serving a written fifteen (15) days notice upon Tenant specifying the nature of said default and upon the expiration of said fifteen (15) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said fifteen (15) day period, and if Tenant shall not have diligently commenced during such default within such fifteen (15) day period, and shall not thereafter with reasonable diligence and in good faith, proceed to remedy or cure such default, then Owner may serve a written five (5) days' notice of cancellation of this lease upon Tenant, and upon the expiration of said five

(5) days this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

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

**Remedies of
Owner and
Waiver of
Redemption:**

18. In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration, (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency for any subsequent month by a similar proceeding. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

**Fees and
Expenses:**

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

**Building
Alterations
and
Management:**

20. Owner shall have the right at any time without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of the building and to change the name, number or designation by which the building may be known. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or other Tenant making any repairs in the building or any such alterations, additions and improvements. Furthermore, Tenant shall not have any claim against Owner by reason of Owner's imposition of any controls of the manner of access to the building by Tenant's social or business visitors as the Owner may deem necessary for the security of the building and its occupants.

No Representations by Owner:

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

End of Term:

22. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear and damages which Tenant is not required to repair as provided elsewhere in this lease excepted, and Tenant shall remove all its property from the demised premises. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this Lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

Quiet Enjoyment:

23. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 34 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

Failure to Give Possession:

24. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants or if the demised premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or if Owner has not completed any work required to be performed by Owner, or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for Owner's inability to obtain possession or complete any work required) until after Owner shall have given Tenant notice that Owner is able to deliver possession in the condition required by this lease. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease, except the obligation to pay the fixed annual rent set forth in page one of this lease. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

No Waiver:

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

Waiver of Trial by Jury:

26. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action,

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

Inability to Perform:

27. This Lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment, fixtures or other materials if Owner is prevented or delayed from doing so by reason of strike or labor troubles or any cause whatsoever beyond Owner's sole control including, but not limited to, government preemption or restrictions or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions which have been or are affected, either directly or indirectly, by war or other emergency.

Bills and Notices:

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

Water Charges:

29. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes Owner to be the sole judge) Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation, thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense in default of which Owner may cause such meter and equipment to be replaced or repaired and collect the cost thereof from Tenant, as additional rent. Tenant agrees to pay for water consumed, as shown on said meter as and when bills are rendered, and on default in making such payment Owner may pay such charges and collect the same from Tenant, as additional rent. Tenant covenants and agrees to pay, as additional rent, the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. If the building or the demised premises or any part thereof is supplied with water through a meter through which water is also supplied to other premises Tenant shall pay to Owner, as additional rent, on the first day of each month, 33 % of the total meter charges as reserved to Owner hereinabove and in addition to any of the remedies for and collect any monies to be paid by Tenant or paid by Owner for any of the reasons or purposes hereinabove set forth.

Sprinklers:

30. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the New York Fire Insurance Exchange or any bureau, department or official of the federal, state or city government recommend or require the installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised premises, or for any other reason, or if any such sprinkler system installations, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by any fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature. Tenant shall pay to Owner as additional rent the sum of \$, on the first day of each month during the term of this lease, as Tenant's portion of the contract price for sprinkler supervisory service.

Elevators, Heat, Cleaning:

31. As long as Tenant is not in default under any the covenants of this lease beyond the applicable grace period provided in this lease for the curing of such defaults, Owner shall: (a) provide necessary passenger elevator facilities on business days from 8 a.m. to 6 p.m. and on Saturdays from 8 a.m. to 1 p.m.; (b) if freight elevator service is provided, same shall be provided only on regular business days Monday through Friday inclusive, and on those days only between the hours of 9 a.m. and 12 noon and between 1 p.m. and 5 p.m.; (c) furnish heat, water and other services supplied by Owner to the demised premises, when and as required by law, on business days from 8 a.m. to 6 p.m. and on Saturdays from 8

a.m. to 1 p.m.; (d) clean the public halls and public portions of the building which are used in common by all tenants. Tenant shall, at Tenant's expense, keep the demised premises, including the windows, clean and in order, to the reasonable satisfaction of Owner, and for that purpose shall employ the person or persons, or corporation approved by Owner. Tenant shall pay to Owner the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Owner to Tenant at such time as Owner may elect and shall be due and payable hereunder, and the amount of such bills shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting for the removal of such rubbish and refuse in the event that Tenant does not wish to have same done by employees of Owner. Under such circumstances, however, the removal of such refuse and rubbish by others shall be subject to such rules and regulations as, in the judgment of Owner, are necessary for the proper operation of the building. Owner reserves the right to stop service of the heating, elevator, plumbing and electric systems, when necessary, by reason of accident, or emergency, or for repairs, alterations, replacements or improvements, in the judgment of Owner desirable or necessary to be made, until said repairs, alterations, replacements or improvements shall have been completed. If the building of which the demised premises are a part supplies manually operated elevator service, Owner may proceed diligently with alterations necessary to substitute automatic control elevator service without in any way affecting the obligations of Tenant hereunder.

Security:

~~32. Tenant has deposited with Owner the sum of \$ _____ as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event of defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the reletting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security; and Tenant agrees to look to the new Owner solely for the return of said security, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.~~

Captions:

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

Definitions:

34. The term "Owner" as used in this lease means only the owner of the fee or of the leasehold of the building, or the mortgagee in possession, for the time being of the land and building (or the owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "rent" includes the annual rental rate whether so expressed or expressed in monthly installments, and "additional rent" "Additional rent" means all sums which shall be due to Owner from Tenant under this lease, in addition to the annual

rental rate. The term "business days" as used in this lease, shall exclude Saturdays, Sundays and all days observed by the State or Federal Government as legal holidays and those designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service. Wherever it is expressly provided in this lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

Adjacent Excavation-Shoring:

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

Rules and Regulations:

36. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, the Rules and Regulations annexed hereto and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing upon Owner within fifteen (15) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

Glass:

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

Estoppel Certificate:


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

Directory Board Listing:

39. If, at the request of and as accommodation to Tenant, Owner shall place upon the directory board in the lobby of the building, one or more names of persons other than Tenant, such directory board listing shall not be construed as the consent by Owner to an assignment or subletting by Tenant to such person or persons.

Successors and Assigns:


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


 Space to be filled in or deleted.

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

Witness for Owner:

Witness for Tenant





ACKNOWLEDGEMENTS

CORPORATE TENANT
STATE OF NEW YORK,
County of

ss.:

INDIVIDUAL TENANT
STATE OF NEW YORK,
County of

ss.:

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

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

IMPORTANT - PLEASE READ

RULES AND REGULATIONS ATTACHED TO AND
MADE A PART OF THIS LEASE IN
ACCORDANCE WITH ARTICLE 36.

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress or egress from the demised premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any Tenant or by jobbers or others in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and sideguards. If said premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalk and curb in front of said premises clean and free from ice, snow, dirt and rubbish.
2. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.
3. No carpet, rug or other article shall be hung or shaken out of any window of the building; and no Tenant shall sweep or throw or permit to be swept or thrown from the demised premises any dirt or other substances into any of the corridors of halls, elevators, or out of the doors or windows or stairways of the building and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the buildings by reason of noise, odors, and or vibrations, or interfere in any way, with other Tenants or those having business therein, nor shall any bicycles, vehicles, animals, fish, or birds be kept in or about the building. Smoking or carrying lighted cigars or cigarettes in the elevators of the building is prohibited.
4. No awnings or other projections shall be attached to the outside walls of the building without the prior written consent of Owner.
5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premises if the same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.
6. No Tenant shall mark, paint, drill into, or in any way deface any part of the demised premises or the building of which they form a part. No boring,

cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the demised premises, and, if linoleum or other similar floor covering is desired to be used an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or mechanism thereof. Each Tenant must, upon the termination of his Tenancy, restore to Owner all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys, so furnished, such Tenant shall pay to Owner the cost thereof.

8. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations of the lease of which these Rules and Regulations are a part.

9. No Tenant shall obtain for use upon the demised premises ice, drinking water, towel and other similar services, or accept barbering or bootblackening services in the demised premises, except from persons authorized by Owner, and at hours and under regulations fixed by Owner. Canvassing, soliciting and peddling in the building is prohibited and each Tenant shall cooperate to prevent the same.

10. Owner reserves the right to exclude from the building all persons who do not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests same in writing. Each Tenant shall be responsible for all persons for whom he requests such pass and shall be liable to Owner for all acts of such persons. Notwithstanding the foregoing, Owner shall not be required to allow Tenant or any person to enter or remain in the building, except on business days from 8:00 a.m. to 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m. Tenant shall not have a claim against Owner by reason of Owner excluding from the building any person who does not present such pass.

11. Owner shall have the right to prohibit any advertising by any Tenant which in Owner's opinion, tends to impair the reputation of the building or its desirability as a loft building, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.

12. Tenant shall not bring or permit to be brought or kept in or on the demised premises, any inflammable, combustible, or explosive, or hazardous fluid, material, chemical or substance, or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the demised premises.

13. Tenant shall not use the demised premises in a manner which disturbs or interferes with other Tenants in the beneficial use of their premises.

Address

Premises

TO

STANDARD FORM OF



The Real Estate Board of New York, Inc.
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Dated

19

Rent Per Year

Rent Per Month

Term from to

Drawn by

Checked by

Entered by

Approved by

**RIDER ANNEXED TO AND FORMING A PART OF
THE LEASE DATED MARCH 28, 2003
BETWEEN
26 WEST 23RD STREET REALTY CORP., AS LANDLORD
AND
JARA ENTERPRISES INC., AS TENANT**

The printed part of this lease is hereby modified and supplemented as follows, it being agreed that wherever there is any conflict between this Rider and the printed part of this Lease, the provisions of this Rider are paramount and shall govern, and this lease shall be construed accordingly.

41. (a) Delivery of Possession: Delivery of possession of the leased premises to Tenant shall in no event be deemed to have occurred until actual and exclusive physical possession of the leased premises shall have been delivered to Tenant in a broom-clean condition, free and clear of all prior leases, tenants and/or occupants and free and clear of all property of all prior tenants and/or occupants, and with any warranties and representations contained in this Lease being true and fulfilled as of such date, and with the construction and condition of the leased premises being such as to allow the issuance of a building permit for work to be performed by Tenant.

(b) Commencement of Term and Rent Commencement Date: If the Landlord cannot deliver possession of the demised premises to the Tenant, then the commencement date shall be adjusted to reflect a date coincidental with the Landlord's ability to deliver possession of the demised premises to the Tenant. The termination date of the lease shall be similarly adjusted and any anniversary dates for rental increases or for renewals by the Tenant shall be adjusted to reflect the new commencement date.

(c) Certificate of Commencement Date: Within five (5) days of the date of the tendered possession of the leased premises to the Tenant, both Landlord and Tenant agree to execute a certificate in form annexed herewith marked as Letter of Possession.

(d) Apportionment/Proration of Rent: Any apportionments or prorations of rents to be made under this Lease shall be computed on the basis of a three hundred sixty (360) day year, with twelve months (12) of thirty (30) days each.

(e) Term and Rental: The term of this lease shall be for a period of seven (7) years and four (4) months commencing on April

1, 2004 (the "Commencement Date") and, unless terminated earlier, shall terminate on July 31, 2011. The base rent for the lease term, commencing on the Commencement Date and for a period of sixteen (16) months, and thereafter with respect to each year of the lease term commencing with the lease year beginning August 1, 2005, shall be as follows:

First 16 months: \$293,333.33, payable in equal monthly payments of \$18,333.33

Year Two: \$226,600.00, payable in equal monthly payments of \$18,883.33

Year Three: \$233,398.00, payable in equal monthly payments of \$19,449.83.

Year Four: \$240,400.00, payable in equal monthly payments of \$20,033.33.

Year Five: \$247,200.00, payable in equal monthly payments of \$20,600.00.

Year Six: \$254,616.00, payable in equal monthly payments of \$21,218.00.

Year Seven: \$262,255.00, payable in equal monthly payments of \$21,854.58.

No third-party checks may be used for the payment of rent or additional rent. Tenant shall pay \$36,666.66 representing rent for the month of August and September 2004, upon the signing of this lease.

(f) Free Rent: Provided that Tenant is not otherwise in material default, uncured after notice, of any obligation under this Lease, notwithstanding anything in this Lease to the contrary, all payments under this Lease shall not commence or begin to accrue until one hundred twenty (120) days after delivery to Tenant of the Premises in the condition called for under this Lease.

(g) Initial Option to Extend: Provided that Tenant shall not then be in material default of any obligation under this Lease, uncured after notice, Tenant shall have a one time option to extend the Lease term once for a period of five (5) additional years, through July 31, 2016 (the "Extended Term") by giving the Owner a written notice which must be received no later than January 31, 2011, time being of the essence. Any failure to have

such notice timely received by Owner shall void and forfeit Tenant's option to extend the term of the Lease. All the terms, conditions, covenants, agreements, obligations and provisions of the Lease shall govern the tenancy during the Extended Term except that Tenant shall have no option to further extend the term of the Lease, and except that the annual rents due under the Lease for the Extension Term shall be as follows:

Year Eight: \$270,123.00, payable in equal monthly payments of \$22,510.25.

Year Nine: \$278,227.00, payable in equal monthly payments of \$23,185.58.

Year Ten: \$286,574.00, payable in equal monthly payments of \$23,881.17.

Year Eleven: \$295,171.00, payable in equal monthly payments of \$24,597.58.

Year Twelve: \$304,026.00, payable in equal monthly payments of \$25,335.50.

All the other terms, conditions, covenants, agreements, obligations and provisions of the Lease, shall remain unmodified and in full force and effect during the Extended Term.

(h) Tenant may elect to cancel this lease as of January 31, 2006 by giving at least six (6) months prior written notice of cancellation. Provided that tenant shall surrender possession of the leased premises pursuant to the terms of this lease on or before the effective date of the notice, and shall fulfill all obligations due as of that date, including the payment of all amounts due as rent and additional rent, this lease shall terminate as of that date and the parties shall have no further obligations to each other.

42. (a) In addition to the base rent stated in the lease and this rider, Tenant covenants and agrees to pay Landlord, as "additional rent," the sums computed in accordance with the following provisions of this paragraph (the "Tax Rent"):

(i) The term "Taxes" shall be deemed to include all real estate taxes, assessments, governmental levies, county taxes or any other governmental charge, general or special, ordinary or extraordinary, unforeseen as well as foreseen, and business improvement district charges, of any kind or nature whatsoever,

which have been, are or may be assessed or imposed upon the building in which the leased premises are located, the land upon which the building is situated and the sidewalks, plazas, or streets in front of or adjacent thereto (collectively, the "Property"), including any tax, excise or fee measured by or payable with respect to any rent, and levied against Landlord and/or the land and/or building, under the laws of the United States, the State of New York, the City of New York, or other authorized taxing authority, as a substitute or addition in whole or in part for taxes presently or hereafter imposed in the land and building or resulting from or due to any change in the method of taxation provided that any such substitute tax on rent shall be considered as if the rent were the only income of Landlord by excluding any income, franchise, corporate, estate, inheritance, succession, capital stock or transfer tax levied on Landlord.

(ii) The term the "Base Tax Year" shall mean the fiscal year July 1, 2004 through June 30, 2005.

(iii) The term "Tax Year" shall mean every twelve consecutive month period commencing July 1, all or any part of which occurs during the term of this lease.

(b) In each Tax Year, Tenant shall pay to Landlord, as Tax Rent, a sum equal to 33% of the amount by which the Taxes for the Tax Year in question exceeds the Taxes levied in the Base Tax Year. Said Tax Rent shall be billed to and payable by Tenant within ninety (90) days of the Landlord's learning that additional payments are due pursuant to this Article of the lease. All such bills shall be accompanied by a statement from the Landlord which demonstrates how any increase was calculated. Any delay or failure of Landlord to timely send the billing or statement for the Tax Rent set forth in this paragraph shall not constitute a waiver of Tenant's continuing obligation to pay said Tax Rent.

(c) Any payments due hereunder for any period of less than full calendar year or Tax Year at the expiration of the term of this Lease shall be equitably prorated.

(d) Landlord covenants and agrees that it shall timely and fully pay the real estate taxes and assessments levied against the Building, including the leased premises and all improvements therein.

(e) If Landlord shall obtain any abatement, refund or rebate in Taxes, Landlord shall promptly forward to Tenant its share of such abatement, refund or rebate (less Tenant's share of

the reasonable cost and reasonable expense of obtaining them).

43. Tenant represents that it has inspected the premises and is satisfied as to the condition thereof, and will assume its tenancy in "as is" condition except as expressly provide herein. Except as expressly provided herein, Landlord makes no warranties, expressed or implied, or representations as to the condition of the leased premises other than that it will deliver the premises in vacant and broom clean condition.

44. Landlord represents that as of the date of this Lease, it has no knowledge of any environmental or other hazards in or applicable to the leased premises. Landlord agrees to indemnify, defend and hold Tenant harmless from any liability, obligations, claims, expenses, charges, costs or penalties, including reasonable attorneys' fees and costs, arising out of any hazardous waste or hazardous substance, as defined in the relevant environmental statutes, which exist or come to exist on the leased premises or property unless its presence has been caused by Tenant, or by tenant's agents, servants or contractors. Tenant agrees to indemnify, defend and hold Landlord harmless from any liability, obligations, claims, expenses, charges, costs or penalties, including reasonable attorneys' fees and costs, arising out of any hazardous waste or hazardous substance, as defined in the relevant environmental statutes, provided that its presence on the property was caused by Tenant, or by Tenant's agents, servants or contractors.

45. (a) Tenant shall, at its own expense, make all necessary repairs to its improvements to the leased premises and to any portion of the leased premises, including the floors of the building, damaged by its manner of use of the premises or by the acts of any of its agents, servants, contractors or invitees. Landlord shall be responsible for repairs to the structural elements of building, including walls and roof. Tenant shall be responsible for the boiler, heating, HVAC, plumbing, sprinkler and electrical systems.

(b) Landlord will, at all times during the Lease Term, maintain and keep in good order and repair the foundation, floorslab of the basement and third floors, exterior and exterior walls (other than nonstructural repairs and maintenance at the ground floor level, including graffiti removal, which shall be Tenant's responsibility), steel frame, roof, structural portions, gutters, downspouts, if any, and underground utility lines of the leased premises and the Building, and all utility lines serving the leased premises except to the extent they are the responsibility of third-parties. Landlord shall make all repairs

and replacements without, to the extent practicable, interfering with the conduct of Tenant's business. If during such repairs and replacements the leased premises are wholly or partially unsuitable for their use as provided in this Lease, there shall be an equitable abatement of rent and additional rent until such time as such repairs and replacements have been completed.

46. Tenant shall arrange for services as follows:

- (a) Tenant shall arrange for (i) electric services to be provided to the leased premises by the appropriate public utility and shall be fully responsible for the cost of the electric service provided as measured by the existing electric meter; (ii) burglary and related alarm services to be provided to the leased premises by a licensed and qualified third party and shall be fully responsible for the cost of such services; and (iii) all HVAC services used in the leased premises, including for the installation and maintenance of all such systems.
- (b) Tenant will maintain the heating system for the leased premises, using the separate boiler currently in place in the basement of the leased premises and such additional HVAC systems as it may install, and be responsible for all heating costs, including but not limited to the cost of natural gas used by the above referenced boiler as measured by the existing meter. Tenant agrees to maintain the temperature in the leased premises so as to prevent the pipes from freezing and breaking and so as to prevent any other damages to the premises.
- (c) Tenant shall be responsible for, and shall pay any costs of, rubbish and garbage removal. Tenant shall be responsible for snow removal from all sidewalks, walkways and other areas adjacent to, or leading into, the leased premises.
- (d) Tenant shall be responsible for, and shall pay the costs of, exterminating services to be provided by a licensed exterminator as may be necessary to maintain the leased premises free from vermin.

47. Tenant shall renovate and install such improvements and fixtures as may be necessary so that the leased premises shall be operated as a "Jennifer Convertibles" retail store in the same manner, look and appearance of other such stores as are currently

operated by the Tenant in the Borough of Manhattan. Tenant may install exterior signage in a manner which, if removed, shall not have defaced or otherwise damaged the building. All such improvements and installations shall be in accordance with all applicable building and other codes and governmental requirements, and shall be completed, and the "Jennifer Convertibles" store opened, no later than four (4) months after the commencement date of this lease. Tenant shall before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi governmental bodies and upon completion, certificates of final approval thereof and shall deliver promptly duplicates of all such approvals, additions and certificates to Landlord. Landlord's approval shall be required for all such work by the Tenant, which approval shall not be unreasonably withheld or delayed. All fixtures installed by Tenant shall become the property of the Landlord at the expiration or termination of the term of the Lease, provided, however, that Tenant agrees, at no later than the expiration date, to remove all trade fixtures and personal property, to repair any damage caused by such removal, to remove all Tenant's signs wherever located and to surrender all keys to the Premises and yield up the Premises, in the same good order and repair in which Tenant is obliged to keep and maintain the Premises by the provisions of this Lease, reasonable wear and tear and damage by fire, casualty or taking excepted. Any property not so removed shall be deemed abandoned and may be removed and disposed of by Landlord in such manner as Landlord shall determine, without any obligation on the part of Landlord to account to Tenant for any proceeds therefrom, all of which shall become the property of Landlord. If any mechanics lien is filed against the premises or the lot leased hereby for work claimed to have been done for, or materials to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within ten (10) days thereafter, at Tenant's expense, by filing the bond required by law.

(b) Alterations: Tenant shall have the right, without consent of Landlord but with prior notice to the Landlord, to make non-structural repairs and alterations provided disbursements do not exceed \$75,000.00 per annum for the first lease year and \$25,000.00 per annum per lease year thereafter.

(c) Interior Signs: Tenant shall be entitled to place, maintain, and Landlord shall allow to be permitted, placed and maintained appropriate dignified displays of customary type for its display windows on the interior of the window area, or elsewhere on the premises so as to be visible to the public as

may be allowed by law. Tenant shall be permitted a "relocating sign" during the last sixty (60) days.

48. Tenant, at its own cost and expense, shall maintain (a) appropriate workman's compensation insurance in respect of any work being performed for the Tenant on or about the premises; (b) comprehensive general liability insurance with contractual liability endorsement against claims for the personal injury, death or property damages occurring in or about the demised premises, resulting from any and all causes and occurrences, all such insurance to afford protection to the limit of not less than Five Hundred Thousand (\$500,000.00) Dollars in respect to the injury, illness or death of a single person, to the limit of not less than Two Million (\$2,000,000.00) Dollars in respect to any accident, and to the limit of not less than Two Hundred Fifty Thousand (\$250,000.00) Dollars in respect to property damage. Landlord, at its own cost and expense, shall maintain for its own benefit fire insurance in respect of the leased premises, which insurance shall not provide any benefit or coverage to the Tenant.

49. All insurance policies maintained by the Tenant as required hereunder shall (a) name Landlord and Tenant as additional insureds; (b) be in a qualified insurance company satisfactory to the Landlord; and (c) provide that no cancellation of material modification thereof shall be effective until at least thirty (30) days after written notice thereof has been given to the Landlord. Landlord shall have the right to have named in any such policy as an insured any mortgagee of the premises. Tenant shall promptly deliver to Landlord originals or duplicate originals of the policies bearing evidence satisfactory to Landlord of the current payment of all premiums for the insurance hereinabove required.

50. (a) Assignment, Subletting, etc.: (a) Tenant shall have the right to make any assignment, transfer or subletting of the Premises, or any part thereof, upon the consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed to any other entity or person. Any sale or other transfer of more than 50% of the stock of the Tenant shall be deemed an assignment of this lease. Landlord shall not require Tenant's consent to any assignment of the lease.

(b) Notwithstanding the above, no consent shall be required for, and Tenant shall have the right to make, any assignment, transfer or subletting of the Premises, or any part thereof (i) to a parent, subsidiary or affiliated company, (ii) directly or indirectly, in any manner, in connection with a merger, or a

consolidation or a combination, or a sale of substantially all of the assets constituting a portion and/or all of the retail chain of which the business in the Premises is a part in the state in which the Premises is located. Upon any assignment in accordance with the foregoing, the Tenant named herein shall be relieved of any further liability hereunder.

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

(d) Notwithstanding any other provision of this Paragraph 50, no assignment, sublet or other transfer may be allowed absent Landlord's consent to any third party which, in the subjective judgment of the Landlord, would operate a store or other business at the leased premises which is of a quality less than that of the Tenant or whose operation would, in the Landlord's subjective judgment, tend to degrade, lessen or impair the value or quality of the leased premises or the Building.

51. Tenant warrants that no brokers were involved in this transaction other than Marc Finkel of Robert K. Futterman & Associate, LLC and shall indemnify and hold Landlord harmless for any breach of this warranty.

52. Tenant will indemnify and save harmless Landlord against and from liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against the Landlord by reason of any of the following occurring during the terms of this Lease:

(a) any matter, cause or thing arising out of the Tenant's use and occupancy, control or management of the demised premises or any part hereof caused by Tenant or its agents, contractors, servants, employees, licensees or invitees;

(b) any work or thing done in the demised premises or any part thereof by the Tenant or its agents;

(c) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees;

(d) any accident, injury or damages to any person or property occurring in, or about the demised premises or any party

thereof or any sidewalk, passageway or space adjacent thereto unless caused by, or due to the negligence of, the Landlord or its agents, servants or employees; and

(e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms and conditions contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Landlord by reason of such claim above set forth, Tenant upon timely written notice from Landlord, will at Tenant's expense, resist or defend such action or proceeding by counsel approved by Landlord in writing, such approval not to be unreasonably withheld, and will pay any judgment or perform any decree resulting therefrom. Landlord also agrees to pay all costs and attorney fees in case Landlord fails or breaches any part of its obligation in regards to this Lease or the leased premises and such failure or breach results in suit and the Tenant is successful in its claim.

53. Tenant shall, without charge, at any time and from time to time, within ten (10) days after request by Landlord, certify by written instrument duly executed, acknowledged and delivered to Landlord or any person, firm or corporation specified by Landlord:

(a) that this Lease is unmodified and in full force and effect (or, if there has been a modification, that the same is in full force and effect as modified and stating the modification);

(b) whether or not there are then any existing alleged setoffs or defenses against the enforcement by Landlord of any of the agreements, terms, covenants or conditions upon the part of Tenant to be performed or complied with under this Lease (and if so, specifying the same); and

(c) the date, if any, to which the rental and other charges hereunder have been paid in advance.

54. (a) Tenant's Access to Building: There shall be at all times during the Lease Term (i) direct and unencumbered access between the sidewalk in front of the leased premises on the one hand and the leased premises on the other hand and (ii) no additional buildings, structures, obstructions, barriers and the like shall be constructed upon, attached or placed adjacent to the leased premises which shall adversely affect the access to or visibility of the leased premises and/or Tenant's sign(s). In addition, Landlord will not reduce the space nor the dimension of the

Demised Premises.

(b) Landlord's Access: Tenant shall give the Landlord reasonable access to the leased premises for purposes of conducting renovations, repairs and/or construction for which it may be responsible hereunder or which may otherwise for the maintenance or upkeep of the building which includes the leased premises. Further, Landlord shall be given access to the basement included in the leased premises upon prior notice for purposes of maintaining the boiler, heating and plumbing systems of the building which includes the leased premises. Tenant shall make such portions of the leased premises accessible for such purposes, including by moving its goods as necessary. Tenant shall provide Landlord with keys to leased premises, including to the basement and elevator, for emergency use only pursuant to Article 13 of this Lease and Tenant shall, in emergency situations, be responsible for providing access to the leased premises, including the basement, to emergency response personnel including ASA or such other alarm service as may be monitoring the Building. Landlord's rights hereunder shall not unreasonably interfere with the Tenant's use and occupancy of the Premises.

(c) Actions of Landlord - Whenever Landlord shall enter, or perform any work in or about the Premises, such entry shall be made, and such work shall be performed, to the extent practicable, without interfering with the conduct of Tenant's business.

55. Use of the Premises: Tenant shall use the Premises for the purpose of conducting the business of the sale of sofas, furniture, mattresses, home furnishings and related items and ancillary items.

56. Rules and Regulations: All rules and regulations that Landlord may make shall be uniform, reasonable, and applied equally on a non-discriminatory basis to all of the Tenants in the Building, complied with by all tenants in the building, and shall not conflict with any provisions of this Lease.

57. Remedies Cumulative: Any and all rights and remedies that Landlord or Tenant may have under this Lease, and at law and in equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two or more of all such rights and remedies may be exercised at the same time insofar as permitted by law.

58. Right to Cure Defaults: (a) With regard to non-monetary defaults, Tenant shall have a right to cure any such default

within twenty (20) days after notice or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said twenty (20) day period, Tenant shall diligently commence to cure said default during such twenty (20) day period, and shall thereafter with reasonable diligence and in good faith, proceed to remedy or cure such default.

(b) With regard to any monetary default, Tenant shall have the right to cure said default within fifteen (15) days after notice and Landlord will not impose late fee penalties nor any interest on said amount.

59. Effect of Waivers on Default: No consent or waiver, express or implied, by either party to or of any breach of any covenants, conditions or duty of the other shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty.

60. Notice from One Party to the Other: Any notice from Landlord to Tenant or from Tenant to Landlord shall be sent by certified mail, return receipt requested. All notices shall be addressed or delivered, if to:

• To Landlord: 26 West 23rd Street Realty Corp.
c/o Jay Import Company
224 Fifth Avenue
New York, NY 10001

With A Copy To: Law Offices of Steven M. Nachman
Attn: Steven M. Nachman, Esq.
675 Third Avenue, 29th Floor
New York, NY 10017

To Tenant: Jara Enterprises, Inc.
One Ames Court, Suite 205
Plainview, NY 11803

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

61. Mutuality of Lease Provision: All provisions of said Lease relating to (i) payment of attorneys' fees, (ii) effect of waivers (or lack of waivers), (iii) delays ("force majeure"), and

(iv) indemnification and/or exculpation of Landlord, shall be deemed mutual, Tenant having the same rights with respect thereto as Landlord.

62. Plate Glass: Tenant is permitted to self-insure plate glass.

63. Imputation: For purposes of this Lease, the negligence, affirmative act or violation of the provisions of this Lease by an employee or agent of Landlord or Tenant, or by a contractor, employed by Landlord or Tenant, shall be the negligence, affirmative act or violation of the provisions of this Lease of Landlord or Tenant, as the case may be.

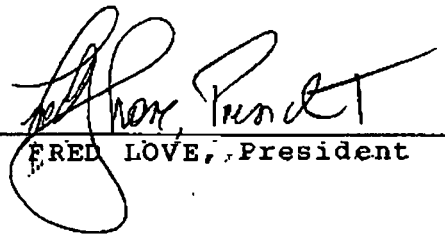
64. Terms Used: The use of the following terms shall be interchangeable: Landlord and Owner. The use of the following terms shall be interchangeable: Premises, demised premises, Demised Premises, and Leased Premises.

65. In the event either party brings an action as a result of any action or omission by Tenant pursuant this Lease, the other party agrees to waive its right to a jury trial.

66. This Lease and Rider may be modified only by a written instrument signed by Tenant and Landlord.

67. This Lease shall be construed under the substantive laws of the State of New York without regards to principles of conflicts of law.

JARA ENTERPRISES INC.

By:  FRED LOVE, President

26 WEST 23RD STREET REALTY
CORP.

By: 

LAW OFFICES OF
STEVEN M. NACHMAN
675 THIRD AVENUE
29TH FLOOR
NEW YORK, NEW YORK 10017

TELEPHONE
212-983-8490

TELECOPIER
212-949-1923

October 20, 2010

BY FEDEX

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


Re: Jennifer Convertibles, Inc.
Case No.: 10-13779

Dear Sirs:

Pursuant to the terms of the September 16, 2010 Notice of Deadlines for Filing Proofs of Claim in this matter, I enclose the Proof of Claim of my client 26 West 23rd Street LLC.

Please stamp the enclosed copy of the Proof of Claim as "Received" and return it to me in the stamped, self addressed envelope.

Very truly yours,


Steven M. Nachman

Enclosures