UNITED STATES	BANKRUPTCY COURT		201010			
SOUTHERN DISTRICTION	SOUTHERN DISTRICT OF NEW YORK (MANHATTAN)					
In re:	College	Case No	umber:	1		
Jennifer Convert	ibles, Inc.	10-13	3779(ALG)			
	ors/Case Numbers/ important details. This fo dministrative expense arising after the comm of an administrative expense may be filed p		Check box if you are			
Name of Creditor and Address: the person or other entity to whom the debtor owes money or property		aware that anyone else has filed a proof of claim relating to your claim. Attach copy of	-			
Penn Mar Associate c/o Bregman, Berbe 7315 Wisconsin Ave Bethesda, MD 20814		LLC	statement giving particulars.  Check this box if you are the debtor or trustee in this case.			
Creditor Telephone Number (30)	) 656–2707		RECEIVED	If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again. THIS SPACE IS FOR COURT USE ONLY		
Name and address where paym	ent should be sent (if different from a	ibove):	ROOLI VEE	Check this box to indicate that this		
Same as above			OCT 22 2010	claim amends a previously filed claim.		
				Claim Number (if known):		
Payment Telephone Number ( )			BMC GROUP	Filed on:		
1. AMOUNT OF CLAIM AS OF D	ATE CASE FILED \$ 33,901.0	)4 (\$30	),194.80 general u	nsecured claim and \$3,706.24		
If all or part of your claim is entited if all or part of your claim qualified.  Check this box if claim includes	ied to priority, complete item 5. 28 as an administrative expense under 11 U. interest or other charges in addition to the pr			administrative priority		
		(See instr #2 and #3	uctions 3. LAST FOUR DIG	TS OF ANY NUMBER BY WHICH CREDITOR		
	230 Donnell Drive, Penn Mar 111e, MD 20747	reverse si	" INEW LIFTS DEBLO	DR: scheduled account as:		
4. SECURED CLAIM (See	instruction #4 on reverse side.)	cured Claim		oureduct account as.		
Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information  Nature of property or right of setoff:  Describe:  Secured Claim Amount: \$  Unsecured Claim Amount: \$  Unsecured Claim Amount: \$  Your claim here.						
Real Estate Motor	Vehicle Other		Amount of arrearage and other c	harges as of time case filed included in secured claim,		
Value of Property: \$	Annual Interest Rate:	%	if any: \$	Basis for Perfection:		
5. PRIORITY CLAIM						
	one of the following Unsecured Pricate the amount.	Lnistra lority Claim	ative Amount: \$ 3,706.24	include <u>ONLY</u> the priority portion of your unsecured claim here.		
You MUST specify the prior			Up to \$2 cost of document			
vvages, salaries, or commissions before filing of the bankruptcy per	er 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). (up to \$11,725*), earned within 180 days ition or cessation of the debtor's business,		Taxes or penalties owed to gove	i purchase, lease, or rental of property or nousehold use -11 U.S.C. § 507(a)(7). mmental units - 11 U.S.C. § 507(a)(8).		
whichever is earlier - 11 U.S.C. § 507(a)(4).  Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).  Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(2) (Administration of 11 U.S.C. § 507(a)(2) (Administration of 11 U.S.C. § 507(a)(5).  Amounts are subject to adjustment on 4/11/13 and every 3 years the paragraph.						
<ol> <li>AMOUNT OF CLAIM THAT See instruction #8 on reverse side</li> </ol>	QUALIFIES AS AN ADMINISTRA	ATIVE E	XPENSE UNDER 11 U.S.	C. § 503(b)(9): §		
7. CREDITS: The amount of all p	ayments on this claim has been credite	od for the				
7. CREDITS: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  8. SUPPORTING DOCUMENTS: Attach redacted copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized of evidence of perfection of a security interest. (See instruction 8 and definition of "redacted" on reverse lide.)						
DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.  See attached Exhibits A and B  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED						
	proof of claim form must be sent by illy received on or before _:00 pm, pr OR on or before, 2010 for Go		hand delivered (FAXES NOT	THIS SPACE FOR COURT USE ONLY		
BY MAIL TO: BMC Group, Inc	ВУ	HAND OR	OVERNIGHT DELIVERY TO.	Jennifor O		
Attn: Jennifer Convertibles Clai	ms Processing Att	n: Jennife	inc er Convertibles Claims Proces	Jennifer Convertibles		
PO Box 3020 Chanhassen, MN 55317-3020  18750 Lake Drive East Chanhassen, MN 55317						
ATE SIGNATURE: The person filing this claim must sign it. Sign and old the sign is sign in Sign and old the sign						
10/21/2010 Lau	and state address and telephone no rence H. Berbert, atto	umber if diff	ferent from the notice address ab	the creditor or other person authorized to file this claim ove. Attach copy of power of attorney, if any.		
	Delbert, atto	rnea I	ror randford/Cred	itor \VIVI I I L		

# UNITED STATES BANKRUPTCY COURT For the Southern District of New York

In re:

:

JENNIFER CONVERTIBLES, INC. : Case No. 10-13779 (ALG)

: Chapter 11

Debtor

# CALCULATION OF CLAIM OF PENN MAR ASSOCIATES, LLC UNDER SHOPPING CENTER LEASE (AS AMENDED) WITH JENNIFER CONVERTIBLES, INC.

Balance due as of 3/31/10 \$218.80 Rent due for 4/2010 - 6/2010 $(3 \text{ mos. } x \$8,206.67/\text{mo.}^1)$ 24,620.01 Rent due 7/1/10 - 7/17/10(17/31 mos. x \$8,206.67/mo.) 4,500.43 Late Charges for 4/2010 - 7/2010(4 mos. x \$100.00/mo.) 400.00 2009 CAM reconciliation (annual) 52.03 2010 CAM reconciliation (snow) 489.92 2009 Insurance reconciliation (credit) (86.39)

Total:

 $\$30.194.80^{2}$ 

<sup>&</sup>lt;sup>1</sup> Monthly Rent currently consists of Minimum Rent (\$6,666.67), Real Estate Tax Charge (\$577.00), Insurance Charge (\$40.00), trash charge (\$63.00), CAM Charge (\$696.00) and Merchants Association Security Charge (\$164.00).

This figure is exclusive of (i) any claim for administrative rent (including but not limited to "stub" rent for 7/18/10 – 7/31/10 which is due in the amount of \$3,706.24), (ii) any claim for lease rejection damages (if the Shopping Center Lease is ultimately rejected), (iii) attorney's fees, (iv) interest, (v) unreconciled Additional Rent, (vi) utility charges, and (vii) any and all other amounts that may be due or come due under the Shopping Center Lease (as to all of which Landlord/Creditor reserves all claims, rights and remedies).

SHOPPING CENTER LEASE

BY AND BETWEEN

PENN MAR ASSOCIATES, LLC AS LANDLORD

AND

JENNIFER CONVERTIBLES, INC., a Delaware corporation, d/b/a Jennifer Convertibles and Jennifer Leather
AS TENANT

F:\wpfiles\RAP\PENNMAR\Jennifer Convertibles\leasev6.wpd

# TABLE OF CONTENTS TO SHOPPING CENTER LEASE

SECTION 1 PARTIES		,
SECTION 2 TERMS, CONDITIONS AND DEFINITIONS		1
SECTION 3 IMPORTANT DATES AND ADDITIONAL DEFINITIONS		2
SECTION 4 POSSESSION		3
SECTION 5 USE		3
SECTION 6 TERM		4
SECTION 7 RENT		4
SECTION 8 REAL ESTATE TAXES		5
SECTION 9 INSURANCE		5
SECTION 10  COMMON AREA MAINTENANCE		6
SECTION 11 INTENTIONALLY DELETED		8
SECTION 12 DEPOSITS		8
SECTION 13  COVENANTS OF TENANT		8
SECTION 14 TENANT WORK		9
SECTION 15 REPAIRS	:	10
SURRENDER OF PREMISES	1	10
SECTION 17 UTILITIES AND TRASH	1	11
SECTION 18 SIGNS	1	11
SECTION 19 RIGHTS OF LANDLORD	3	12
DAMAGE TO PREMISES	1	13
CONDEMNATION	1	14
BANKRUPTCY	1	14
ASSIGNMENT AND SUBLET	1	16
SUBORDINATION  F:\vpfiles\RAP\FENNAR\Jennifer Convertibles\leaseve.vpd	1	8.

SECTION 25 RECORDATION
<u>SECTION 26</u> DEFAULT
SECTION 27 LEGAL PROCEEDINGS AND NOTICES
SUCCESSORS AND ASSIGNS
SECTION 29 BROKERS AND AGENTS
SECTION 30 PERSONAL PROPERTY
SECTION 31 ENVIRONMENTAL COVENANTS AND PROHIBITED MATERIALS
SECTION 32 APPROVALS
SECTION 33 LIABILITY OF LANDLORD
SECTION 34 ENTIRE AGREEMENT AND MISCELLANEOUS
SECTION 35 WAIVER OF JURY TRIAL

# SECTION 1

101. THIS SHOPPING CENTER LEASE (this "Lease"), made this 7 day of November,
2001, by and between PENN MAR ASSOCIATES, LLC ("Landlord") whose address is c/o Rappaport
Management Company, 8081 Wolftrap Road, 2nd Floor, Vienna, Virginia 22182, and JENNIFER
CONVERTIBLES, INC., a Delaware corporation, d/b/a Jennifer Convertibles and Jennifer
Leather ("Tenant") whose address is 417 Crossways Park Drive, Woodbury, New York 11797,
with a copy to Bernard Wincig, Esq., Wincig & Wincig, 514 Fifth Avenue, New York, New York
10036.

# SECTION 2 TERMS, CONDITIONS AND DEFINITIONS

201(a). Premises: Landlord leases to Tenant and Tenant leases from Landlord, for the Term (as defined) and upon the terms and conditions set forth in this Lease, the Premises situated and known as space numbers 24/25, which contains approximately 4,000 square feet (the "Premises") and is located in the Penn Mar Shopping Center (the "Shopping Center") in Forestville, Maryland as depicted on Exhibit A. The Premises shall be measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls, without any reduction, whatsoever for any columns, stairs, shafts, or other equipment within any building but excluding any space in such building attributable to any multi-deck, platform, rack or other multi-level storage system. Any non-leasable building area in the Shopping Center outside any tenant's premises (e.g., equipment or utility rooms or storage sheds) shall not be used in computing the leasable floor area in the Shopping Center.

201(b). Term: The Term of this Lease shall be for five (5) Lease Years commencing on the Term Commencement Date (as defined), unless sooner terminated pursuant to the provisions of this Lease. (See Exhibit I, Section 1 for Tenant's options to extend.)

201(c). Permitted Use: For the retail display and sale of sofas, furniture, home furnishings, mattresses and related items in a manner consistent with a majority of Jennifer Convertibles & Leather stores in the Washington, D.C. metropolitan area, subject to Exhibit F, and for no other purpose. (See Exhibit I, Section 3 for Tenant's Exclusive Use.)

201(d). Minimum Rent: Annually Monthly

Lease Years 1-5 \$72,000.00 \$6,000.00

201(e). Intentionally Deleted.

201(f). Intentionally Deleted.

201(g). Security Deposit: \$6,630.00 payable upon execution of this Lease.

201(h). Rental Deposit: \$6,630.00 payable upon execution of this Lease, to be applied to the first installment(s) of Rent.

201(i). Intentionally Deleted.

201(j). Monthly Real Estate Tax Charge: \$193.33 subject to adjustment pursuant to this Lease.

201(k). Monthly Insurance Charge: \$16.67 subject to adjustment pursuant to this Lease.

201(1). Monthly Common Area Maintenance Charge: \$300.00 subject to adjustment pursuant to this Lease.

201(m). Intentionally Deleted.

201(n). Estimated Delivery Date: December 15, 2001

201(o). Fixturing Period: Forty-five (45) calendar days after Notice of Possession (as defined).

201(p). Landlord's Agent: Rappaport Management Company

201(q). Tenant's Trade Name: Jennifer Convertibles and Jennifer Leather

201(r). Tenant's Agent For Service of Process: Matt Massaro, whose address is 2488 Solomons Island Road, Annapolis, Maryland 21401.

201(s). Store Plans: Tenant shall provide Landlord with four (4) copies of store plans as described in Section 1401 herein, within thirty (30) days of the execution of this Lease.

F:\wpfiles\RAP\PENNMAR\Jennifer Convertibles\leasev6.wpd

201(t). Sign Plans: Tenant shall provide Landlord with four (4) copies of sign plans as described in Section 1803 herein, within thirty (30) days of the execution of this Lease. In addition, Tenant shall provide Landlord with the name to appear on the undercanopy sign as described in Section 1805 herein, within thirty (30) days of the execution

Insurance Liability Requirements: Tenant shall keep in full force and effect during the Term insurance policies in the amount specified below. See Section 9
"Insurance," Paragraphs 902, 903, and 904, herein, for further detail. See Paragraph 906, herein, for additional insurance specifications.

<u>Policy</u> Commercial Property Plate Glass General Accident & Public Liability Business Interruption

Minimum Amount Replacement Cost Replacement Cost \$1,000,000.00 Amount equal to 1st Lease Year's Minimum Annual Rent.

Monthly Merchant's Association Security Charge: \$120.00, subject to adjustment pursuant to this Lease.

201(w). Certificate of Occupancy: Landlord shall obtain a Certificate of Occupancy and/or such other document as may be required by the applicable governmental agency in order for Tenant operate in the Premises.

#### EXHIBITS

Attached to this Lease and made a part hereof are the following exhibits:

EXHIBIT A: Site Plan
EXHIBIT B: Certificate Specifying Term of Lease
EXHIBIT C: Landlord's Work

EXHIBIT C(1):Tenant Signage Allowance

EXHIBIT D: Sign Plans

EXHIBIT D(1):Sign Criteria

EXHIBIT E: Tenant's Plans

EXHIBIT F: Prohibited Uses

EXHIBIT G: Rules and Regulations

EXHIBIT H: Intentionally Deleted

EXHIBIT I: Riders

#### SECTION 3 IMPORTANT DATES AND ADDITIONAL DEFINITIONS

301. Date of Lease. The date set forth in Paragraph 101 above. On such date, all rights and obligations of the parties under this Lease shall commence.

Notice of Possession. The date of Landlord's notice to Tenant that the Premises is ready for Tenant's use and that Landlord has completed the work listed or Exhibit C (the "Landlord's Work"). On such date, the utilities shall become Tenant's responsibility and the Fixturing Period (as defined) begins. Landlord shall provide Tenant ten (10) days' advance notice of the date Landlord anticipates delivering the Premises to Tenant ready for Tenant's fixturing and/or use with Landlord's Work substantially completed.

Notwithstanding anything herein to the contrary, if Landlord delivers the Premises to Tenant prior to January 31, 2002, Tenant shall have the right, at its sole option, to delay acceptance of the Premises until January 31, 2002 by providing notice to Landlord within five (5) days after Landlord delivers the Notice of Possession, and in such event, Notice of Possession shall be deemed to be January 31, 2002.

- Fixturing Period. The number of days specified in Paragraph 201(o) above commencing with the Notice of Possession, within which Tenant is obligated to fixture and equip the Premises in accordance with the plans set forth on Exhibit E (the "Tenant"
- 304. Rental Commencement Date. The next day after the last day of the Fixtur ng Period, shall be the commencement date of Tenant's obligations to pay monthly Minimum Rent, Monthly Common Area Maintenance Charges, Monthly Insurance Charges and Monthly Real Estate Tax Charges and submit statements of gross sales pursuant to Section 7 below.
- Term Commencement Date. The first day of the calendar month immediately following the Rental Commencement Date or the Rental Commencement Date if it shall be first day of the month.
- 306. Expiration Date. The last day of the Term.

- 307. Lease Year. The first Lease Year shall begin on the Rental Commencement and shall end twelve (12) full calendar months after the Term Commencement Date. Thereafter, each Lease Year shall commence on the day following the expiration of the preceding Lease Year and shall end at the expiration of twelve (12) calendar months thereafter or, if earlier, the Expiration Date.
- 308. Pro Rata Share. Tenant's Pro Rata Share shall be a fraction, the numerator of which shall be the gross leasable area of the Premises and the denominator of which shall be the gross leasable area of the Shopping Center.
- 309. Rent: All amounts required to be paid by Tenant under this Lease, including, without limitation, Minimum Rent, Monthly Real Estate Tax Charges, Monthly Insurance. Charges, and Monthly Common Area Maintenance Charges and all other payments deemed to be Additional Rent pursuant to this Lease.
- 310. Additional Rent: All payments of money from Tenant to Landlord required to be paid under this Lease other than Minimum Rent.

#### SECTION 4 POSSESSION

- **401.** Tenant accepts the Premises in its present, "as is" condition, except as may be expressly set forth in Exhibit C. Tenant expressly acknowledges that Landlord makes no representations or warranties regarding the suitability of the Premises for Tenant's business.
- 402. Upon the date of the Notice of Possession from Landlord, Tenant shall with due diligence proceed to install such fixtures and equipment and to perform all other work as shall be required pursuant to Exhibit E or otherwise necessary or appropriate in order to prepare the Premises for the opening and continued operation of Tenant's business. In the event that Tenant does not open the Premises for the conduct of its business within thirty (30) days after the expiration of the Fixturing Period, Landlord, in addition to all other remedies it may have hereunder, shall have the option of terminating this Lease by giving Tenant notice of such termination, whereupon this Lease shall terminate for all purposes and in all respects. Tenant agrees not to commence any work upon any portion of the Premises until Landlord has approved Tenant's Plans (as defined in Paragraph 1401 below) in writing and Tenant has otherwise complied with the requirements set forth in Exhibit E. There shall be no changes to Tenant's Plans unless the same are approved by Landlord in writing.
- 403. If Tenant is unable to obtain possession of the Premises on or before the Estimated Delivery Date due to any act or condition beyond Landlord's reasonable control, such as the failure of any existing tenant to vacate the Premises (or any part thereof), Landlord shall not be liable for any loss, damage or cost resulting therefrom, and this Lease shall not be affected thereby in any way; provided, however, that if the Premises are not available for Tenant's occupancy by February 15, 2002, Landlord or Tenant may terminate this Lease anytime thereafter by giving the other party written notice thereof; provided, however if Tenant elects to terminate and Landlord delivers possession to Tenant prior to the expiration of thirty (30) days from receipt of Tenant's notice to terminate, this Lease shall continue in full force and effect as if Tenant's termination notice had never been given. Notwithstanding the foregoing, if this Lease is terminated pursuant to this Section 403, Landlord shall return to Tenant the amounts paid for the Rental and Security Deposits.

## SECTION 5

- 501. Tenant shall continually use and occupy the Premises solely for the Permitted Use, only under the Tenant's Trade Name and only in accordance with the uses permitted under applicable zoning and other applicable governmental regulations and requirements and for no other purpose or under any other name, unless otherwise approved in writing by Landlord. Furthermore, and without limiting the generality of the preceding sentence, Tenant shall not use the Premises for any of the purposes prohibited in Exhibit F.
- 502. Upon Tenant taking possession of the Premises and at all times thereafter during the Term, Tenant shall continuously and uninterruptedly operate its business from the Premises for the Permitted Use so as to maximize its sales volume during all hours of operations, as may be set from time to time by Landlord, and shall remain open for business at least during such days and hours as may be reasonably required by Landlord from time to time. Tenant shall conduct no distress sales, such as "going-out-of-business", "lost-our-lease", fire or bankruptcy sales on the Premises or elsewhere in Shopping Center. Tenant expressly acknowledges that the failure of Tenant to operate the Premises in accordance with this Paragraph 502 shall constitute a material event of default under this Lease giving rise to all remedies provided in this Lease and/or available at law or in equity to Landlord, and Landlord shall be entitled, among its other remedies, to enjoin the removal from, or discontinuance of Tenant's business at, the Premises by seeking injunctive relief or other appropriate remedy.

# SECTION 6

end at midnight on the Expiration Date without the necessity of any notice from either party to the other to terminate the same. Tenant hereby waives notice to vacate the Premises and agrees that Landlord shall be entitled to the benefit of all provisions of law respecting summary recovery of possession from a tenant holding over to the same extent as if any statutory notice had been given. Tenant's obligations with respect to the payment of Rent and all other obligations of Tenant hereunder shall survive the expiration or earlier termination of this Lease. If requested by Landlord, Tenant hereby agrees to execute, within thirty (30) days after the Rental Commencement Date, a certificate, in the form attached hereto as Exhibit B (the "Certificate Specifying Term of Lease"), confirming the Rental Commencement Date and Term Commencement Date and stating, among other things, that this Lease is in full force and effect. If Tenant shall fail to execute the Certificate Specifying Term of Lease within ten (10) days after receipt of such certificate from Landlord, the Rental Commencement Date and Term Commencement Date shall be conclusively deemed to be those dates as set forth by Landlord in such certificate.

# SECTION 7

701. Tenant shall pay to Landlord the Minimum Rent in the sums set forth in Paragraph 201(d) above and in Exhibit I, Section 1, payable in advance on the first day of each calendar month during the Term, without offset or notice or demand therefor. The Minimum Rent shall commence to accrue on the Rental Commencement Date. The first full monthly payment of Minimum Rent and Additional Rent shall be paid as the Rental Deposit upon execution of this Lease. The next payment of Rent shall be due on the Term Commencement Date for a pro-rated amount of the Minimum Rent and Additional Rent applicable to the period from the Rental Commencement Date to the Term Commencement Date.

702. Intentionally Deleted.

703. Intentionally Deleted.

704. Intentionally Deleted.

705. Intentionally Deleted.

706. Within ninety (90) days after the expiration of each Lease Year, Tenant shall deliver to Landlord a statement certified without material qualification by the independent certified public accountant regularly retained by Tenant, or such other firm or accountant as may be approved by Landlord, setting forth the amount of Tenant's gross sales for each such Lease Year. If Tenant fails to timely deliver the reports required by this Paragraph 706, Tenant shall pay Landlord, a late charge fee in accordance with Paragraph 2610 below.

707. Intentionally Deleted.

708. Intentionally Deleted.

709. Intentionally Deleted.

710. Intentionally Deleted.

711. Tenant shall promptly pay, to the entity and at the location directed by Landlord, all Rent and other payments called for herein when and as the same shall become due and payable, without offset, notice or demand therefor. If Landlord shall pay any monies, or incur any expenses in connection with any violation or breach of Tenant's covenants and obligations set forth in this Lease, the amounts so paid or incurred shall, at Landlord's option, be considered Additional Rent payable by Tenant and may be collected and enforced by Landlord as Rent. Any payments of Rent or other charges by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord shall be treated as a payment on account. The acceptance by Landlord of a payment for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such payment, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such payment without prejudice to any rights or remedies which Landlord may have.

712. In the event any payment of Rent in this Lease is not received by the Landlord by the tenth (10th) day of the month in which said payment is due, then Tenant agrees to pay to Landlord, upon demand, a late charge in accordance with Paragraph 2605 below. The provisions of this Section 7 are cumulative and shall in no way restrict the other remedies available to Landlord in the event of Tenant's default under this Lease.

713. Intentionally Deleted.

#### SECTION 8 REAL ESTATE TAXES

801. Tenant agrees to pay to Landlord Tenant's Pro Rata Share of the real estate taxes of the Shopping Center ("Real Estate Taxes" or "Taxes"). Real Estate Taxes shall include, but not be limited to, ad valorem taxes, sewer taxes, front-foot benefit charges, school taxes, special assessments, rental occupancy taxes, and gross receipt taxes or other such taxes levied directly upon the Shopping Center and/or any land associated with the Shopping Center and shall also include the cost to review, initiate and/or prosecute the appeal or contest of any such taxes. Landlord's reasonable costs in minimizing or otherwise reducing or contesting the Real Estate Taxes shall be included as part of the Real Estate Taxes. Real Estate Taxes shall not include net income taxes assessed against Landlord nor any taxes assessed against any leasehold interest or personal property of any kind owned or placed in, upon or about the Premises by the Tenant. Taxes shall not include any capital expenditure relating to construction of improvements on any part of the Shopping Center the net effect of which is to fund or finance or perform construction or other projects for or on behalf of Landlord, whether or not the same are paid for financed by Landlord or others through any assessment, special assessment district or other program authorized by law.

Tenant shall receive credit for Tenant's Pro Rata Share of any refund of Real Estate Taxes, less any reasonable expenses incurred by Landlord in connection with obtaining such refund, that Landlord receives which is applicable to any tax year during the Term hereof, to the extent that Tenant has theretofore paid Tenant's Pro Rata Share of such Real Estate Taxes.

802. Tenant shall pay to Landlord the Monthly Real Estate Tax Charge at the same time as Minimum Rent is payable hereunder, without offset, notice or demand. The Monthly Real Estate Tax Charge set forth in Paragraph 201(j) shall be the minimum charge payable by Tenant for Real Estate Taxes. If Tenant's Pro Rata Share of the actual Real Estate Taxes exceeds the real estate charges paid by Tenant for such period, Landlord shall deliver to Tenant a statement showing in reasonable detail Tenant's Pro Rata Share of such actual Real Estate Taxes and, within thirty (30) days after the date of such statement, Tenant shall pay such amount shown to be due by said statement as Additional Rent. If at any time the Real Estate Taxes increase, Landlord may increase the Monthly Real Estate Tax Charge accordingly to reflect Tenant's Pro Rata Share of such increase.

## SECTION 9

- 901. Landlord shall provide fire, casualty, liability, umbrella and/or such other insurance coverages as Landlord deems appropriate for the Shopping Center. Tenant shall pay to Landlord the Monthly Insurance Charge specified in Paragraph 201(k) at the same time as Minimum Rent is payable hereunder, without offset, notice or demand. The Monthly Insurance Charge shall be the minimum charge payable by Tenant for insurance. If Tenant's Pro Rata Share of the actual insurance costs exceeds the insurance charges paid by Tenant for such period, Landlord shall deliver to Tenant a statement showing in reasonable detail Tenant's Pro Rata Share of such actual insurance costs and, within thirty (30) days after the date of such statement, Tenant shall pay such amount shown to be due by such statement as Additional Rent. If at any time Landlord receives notice of an increase in the insurance costs with respect to the Shopping Center, Landlord may increase the Monthly Insurance Charge accordingly to reflect Tenant's Pro Rata Share of such increase.
- 902. Tenant shall be responsible for maintaining during the Term commercial property insurance, Causes of Loss-Special Form, insuring Tenant's inventory, furniture, fixtures, equipment, leasehold improvements and all other contents in the Premises in an amount not less than the full replacement cost thereof. Such property insurance shall also include Builders' Risk coverage during the course of any construction in or affecting the Premises. Tenant shall maintain Dram Shop insurance if Tenant sells alcoholic beverages. Tenant shall also maintain, at its sole cost and expense, a policy of plate glass insurance for the full replacement cost of repairing and/or restoring all of the plate glass in the Premises, which Tenant may self-insure. Tenant shall replace any damaged glass with glass of like-kind and quality at Tenant's expense within seventy-two (72) hours after the damage occurs from any cause whatsoever.
- 903. Tenant shall keep in full force and effect during the Term a policy of general accident and public liability insurance with respect to the Premises, the areas adjacent to the Premises (including, but not limited to, the sidewalk and loading dock) and the business operated by Tenant with a combined single limit for bodily injury, including death, to any person or persons, and for property damages, of not less than One Million Dollars (\$1,000,000.00).
- 904. Tenant shall keep in full force and effect during the Term business interruption insurance in an amount equal to the annual Minimum Rent for a twelve (12) month period.

- 905. Tenant shall keep in full force and effect during the Term such other insurance coverages against other insurable hazards as are from time to time reasonably requested by Landlord and are commercially available.
- 906. Tenant shall furnish Landlord with certificates of insurance at all times after the Notice of Possession until the Expiration Date. All certificates of insurance shall evidence that Tenant's insurance policies required pursuant to the provisions of this Lease (i) name both Landlord and Agent and, if requested by Landlord, Landlord's mortgages(s) as additional insureds and that an endorsement be attached providing for this coverage, (ii) contain a standard mortgagee endorsement satisfactory to Landlord and Landlord's mortgagee(s) and (iii) provide that the policies evidenced thereby may not be canceled without at least thirty (30) days' prior written notice to Landlord (and Landlord's mortgagee(s), where applicable) of such termination. All insurance carriers providing insurance required by this Section 9 must have an A.M. Best's A+ XV rating and amounts of such insurance must be approved by Landlord. In the event such certificates of insurance are not received by the Landlord within five (5) days after the Notice of Possession and at least fifteen (15) days prior to the expiration of any insurance policy, Tenant shall pay to Landlord, upon demand and in addition to any other rights and remedies of Landlord hereunder, a late charge pursuant to Paragraph 2610 below, and Landlord shall have the right to acquire such insurance, and Tenant shall be obligated to pay Landlord, as additional rent, the amount of the premium applicable thereto within five (5) days following notice from Landlord.
- 907. Tenant hereby agrees to defend, indemnify, and hold Landlord harmless from and against any and all costs, damage, claim, liability, or expense (including reasonable attorneys' fees) incurred by or claimed against Landlord, directly or indirectly, from any liability for damages to any person or for any property in or upon the Premises, and the sidewalks adjoining the Premises, and any loading platform area permitted to be used by Tenant, including the person and property of Tenant, and its employees and all persons in the Premises at its or their invitation or with its or their consent.
- 908. It is understood and agreed that all property kept, stored or maintained in the Premises shall be so kept, stored or maintained at the sole risk of Tenant. Landlord shall not be liable to Tenant for any loss of business or other consequential loss or damage from any cause whatsoever.
- 909. All insurance policies of Landlord and Tenant required by this Lease shall contain a clause or endorsement pursuant to which the insurance companies waive subrogation and consent to a waiver of right of recovery. Landlord and Tenant further agree that each will not make any claim against or seek to recover from the other for any loss covered by such insurance.
- 910. Tenant shall comply with all requirements and recommendations of Landlord's insurance carriers. In case of breach of this covenant, in addition to all other remedies of Landlord hereunder, Tenant agrees to pay to Landlord any and all increases in premiums for insurance carried by Landlord where such increases were caused in any way by the occupancy of Tenant.

# SECTION 10 COMMON AREA MAINTENANCE

1001. Landlord grants to Tenant, in common with others, the right to use the common areas and facilities of the Shopping Center (the "Common Areas"). Tenant agrees that (i) the Shopping Center is under the complete control of Landlord; (ii) the parking lot is provided primarily for the convenience of customers; and (iii) that any delivery area and employee parking area may be designated by Landlord in its sole and absolute discretion. Tenant shall use its best efforts to ensure that (i) Tenant, its employees and agents shall, at all times, use the parking area designated by Landlord, and (ii) Tenant, its employees and agents shall not under any circumstances use the area designated for customer parking in the Shopping Center. Landlord may change the area designated for Tenant parking, from time to time, by giving notice to Tenant. Tenant shall (i) conspicuously post the Parking Regulations within the Premises at its sole cost and expense, (ii) notify Tenant's employees and agents of the Parking Regulations at its sole cost and expense, and (iii) permit Landlord to notify Tenant's employees and agents of the Parking Regulations. Upon Landlord's request, Tenant shall furnish Landlord with the license number of the automobiles used by Tenant and its employees. Thereafter, Tenant shall immediately notify Landlord of any changes in such information within five (5) days after such change occurs. If Tenant and/or its employees shall fail to park their automobiles in the parking areas at the Shopping Center designated for such purpose by Landlord, then, in addition to any other remedy Landlord may have under this Lease or applicable law, (i) Tenant shall pay to Landlord as Additional Rent, upon Landlord's request, an amount equal to \$100.00 per automobile for each day such violation of this provision shall continue, and/or (ii) Landlord may tow any vehicles in violation of the parking requirements and Tenant shall reimburse Landlord for such costs, and indemnify Landlord in connection with such towing pursuant to Secti

Tenant acknowledges that Landlord has the right, in its sole and absolute discretion, to erect buildings or other structures and to make any changes and improvements in the Shopping Center, including, without limitation, remodeling or changing the interior and/or other exterior surfaces of the Shopping Center. Landlord may, in its sole and absolute discretion, relocate the Premises to another location in the Shopping Center at Landlord's cost for the relocation.

Notwithstanding the foregoing, Landlord shall not, in exercising its rights under this Section 1001, (i) make changes to the Shopping Center or to the Common Areas which will materially adversely obstruct or materially adversely affect access to and from Premises via Tenant's storefront entrance, (ii) make changes to the Shopping Center or to the Common Areas which would materially adversely affect the visibility of Tenant's , storefront identification sign, entrance and display windows from the immediately adjacent Common Areas, or (iii) reduce the number of parking spaces in the Shopping Center below that which is required by the applicable governmental authorities. The foregoing provisions of this paragraph shall not apply in instances where access and/or visibility is temporarily affected as a result of repairs, remodeling, renovation or other construction to the Shopping Center.

1002. Tenant agrees to pay Landlord, as Additional Rent, Tenant's Pro Rata Share of the Shopping Center's Common Area Maintenance Costs (as defined in Paragraph 1003 below) in equal monthly installments, without offset, notice or demand, said payments to be based on Landlord's estimate (from time to time) of Common Area Maintenance Costs for each calendar year. Landlord shall submit a statement to Tenant which shall set forth Landlord's estimate of the Common Area Maintenance Costs, Tenant's Pro Rata Share thereof and Tenant's Monthly Common Area Maintenance Charge. As of the date of this Lease, Tenant's monthly Pro Rata Share of Common Area Maintenance Costs is equal to the Monthly Common Area Maintenance Charge, which shall be the minimum charge payable by Tenant for Common Area Maintenance Costs each month. If in any calendar year or portion thereof Tenant's Pro Rata Share of the Common Area Maintenance Costs exceeds the amount then estimated by Landlord and payable by Tenant, Landlord shall submit a bill to Tenant for its Pro Rata Share of such excess Common Area Maintenance Costs. Within thirty (30) days from the date of billing by Landlord, Tenant shall pay its Pro Rata Share of such excess Common Area Maintenance Costs, and thereafter, Tenant's Monthly Common Area Maintenance Charge shall be increased by the appropriate amount.

1003. The term "Common Area Maintenance Costs" means all expenses incurred by Landlord in maintaining, repairing, replacing, improving, operating, managing, administering and insuring the Common Areas, all facilities of the Shopping Center and all improvements within the Shopping Center, without limitation, and an amount equal to ten percent (10%) of the Common Area Maintenance Costs as a management reimbursement, which is included in the amount specified in Paragraph 201(1) of this Lease.

Notwithstanding anything in this Section 1003 to the contrary, Common Area Maintenance Costs shall exclude the following: (a) costs and expenses incurred by Landlord that are considered capital expenditures, under generally accepted accounting principles, but such cost and expense shall be depreciated or amortized according to generally accepted accounting principles over their useful life for federal income tax purposes but not to exceed fifteen (15) years with the annual depreciation or amortization being included in Landlord's Common Area Maintenance Costs; (b) any costs for which Landlord is reimbursed by insurance proceeds or condemnation awards; (c) attorneys' fees relating to the enforcement of lease agreements, brokerage fees or commissions, and advertising fees which pertain to the leasing of space within the Shopping Center; (d) interest on debt or amortization payments, or increases in interest or debt, on any mortgages and rental under any ground or underlying lease or changes in deeds of trust or any other debt for borrowed money in connection with the purchase, refinancing or original construction of the Shopping Center; (e) reserves for repairs, maintenance and replacements (provided that such reserves shall be included in Common Area Maintenance Costs in the year in which they are expended); (f) administrative fees except to the extent of any administrative fee specifically set forth in this Lease; and (g) costs and expenses associated with the cleanup of any hazardous waste substances required by law to be removed or neutralized.

1004. Landlord shall, after the expiration of each calendar year, submit a statement showing the determination of the actual Common Area Maintenance Costs for such calendar year and Tenant's Pro Rata Share thereof. If such statement shows that Tenant's Pro Rata Share of the actual Common Area Maintenance Costs exceeded the amount paid by Tenant during such calendar year, then Tenant shall pay the total amount of such deficiency Landlord within thirty (30) days after receipt of such statement.

Provided that Tenant has made all payments that have been invoiced by Landlord and is not otherwise in default beyond the expiration of any applicable notice and cure period, Tenant shall have the right to audit the books, records and computations of Landlord relative to Landlord's Common Area Maintenance Costs provided: (i) Tenant gives Landlord thirty (30) days' prior written notice of its intent to audit; (ii) the audit occurs during Landlord's normal business hours and in Landlord's principal offices; (iii) Tenant may only audit said records and books once during each calendar year; (iv) Tenant may only conduct the audit of a calendar year's books and records within six (6) months after receipt of the final statement for the item in question for such calendar year; (v)

the auditor shall not be compensated on a contingency basis; (vi) Tenant provides Landlord a copy of the auditor's report; and (vii) the auditor agrees to execute a confidentiality agreement with respect to such audit. All of the information obtained through said audit as well as any compromise, settlement, or adjustment reached between Landlord and Tenant relative to the results of the audit shall be held in strict confidence by Tenant and Tenant's officers, agents and employees and shall not be revealed in any manner to any person except upon the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion, or if required pursuant to any litigation between Landlord and Tenant materially related to the facts disclosed by such audit, or if otherwise required by law. Landlord shall have all rights allowed by law or equity if Tenant, its officers, agents or employees and/or auditor violate the terms of this provision, including without limitation, the right to terminate this Lease or the right to terminate Tenant's future right to audit pursuant to this Section 1004.

Landlord may contest Tenant's audit results by giving Tenant written notice of protest within thirty (30) days following Landlord's receipt of the audit report. If Landlord's accountant and Tenant's accountant cannot mutually agree as to Tenant's share of Common Area Maintenance Costs due within thirty (30) days after Tenant's receipt of Landlord's notice of protest, Landlord's accountant and Tenant's accountant shall jointly choose a third independent Certified Public Accountant, whose determination shall be binding upon the parties hereto. If the accountants fail to agree upon the third accountant, the parties agree to proceed forthwith to arbitrate the issue in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The cost of the third accountant or the cost of arbitration shall be borne equally by the parties.

1005. In addition to the charges set forth above, during the Term of this Lease Tenart shall pay Landlord a Monthly Merchant's Association Security Charge to be used for security costs for the Shopping Center. For the first Lease Year, Tenant's Monthly Merchant's Association Security Charge shall be as set forth in Section 201(v) of this Lease; such charge shall be the minimum charge payable by Tenant to the Merchants' Association Security Charge each month. The amount of such Monthly Merchants' Association Security Charge shall increase each year by the amount determined by the Merchants' Association.

### SECTION 11 INTENTIONALLY DELETED

#### SECTION 12 DEPOSITS

1201. Tenant agrees to pay Landlord upon execution of this Lease the Security Deposit and the Rental Deposit (collectively, the "Deposits"). The Security Deposit is to be held as collateral security for the payment of any Rent payable by Tenant under this Lease, and for the faithful performance of all other covenants, agreements and obligations of Tenant hereunder. The Rental Deposit is to be applied to the first installments Rent due. In no event shall Landlord be obligated to pay interest on the Deposits. Landlord and Tenant expressly agree that the Deposits shall be deemed to be the property of Landlord and may be commingled with Landlord's other funds. In the event of any default by Tenant under the provisions of this Lease which has not been cured within any applicable cure period, Landlord may, at its option, apply any sums it has received pursuant to this Paragraph 1201, to cure such default and, Tenant shall be obligated to deposit with Landlord, within five (5) days after Landlord's request, the amount necessary to restore the Security Deposit to the amount specified in Paragraph 201(g) and the Real Estate Deposit to the amount then required by Paragraph 802 hereof. Provided Tenant is not in default beyond any applicable cure period at the expiration of the twelfth (12th) full calendar month of the Term, the Security Deposit shall be returned to Tenant in the form of a credit against Rent for the thirteenth (13th) full calendar month of the Term.

### SECTION 13 COVENANTS OF TENANT

1301. Tenant, its agents, employees, contractors, invitees, licensees, customers, clients, family members, and guests shall at all times abide by and observe the rules and regulations set forth in Exhibit G, as the same may be modified by Landlord from time to time, and such other reasonable rules and regulations as may be promulgated by Landlord from time to time (the "Rules and Regulations"), which Rules and Regulations shall be applied in a non-discriminatory manner to all tenants similarly situated in the Shopping Center. Nothing contained in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce such Rules and Regulations, or the terms, conditions or covenants contained in any other lease, as against any other tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its employees, agents, contractors, invitees, licensees, customers, clients, family members or guests. The failure of Landlord to enforce any of such Rules and Regulations against Tenant and/or any other tenant in the Shopping Center shall not be deemed a waiver of any such Rules and Regulations. If there is any inconsistency between this Lease and any current or future Rules and Regulations, this Lease shall govern.

#### SECTION 14 TENANT WORK

1401. Pursuant to section 201(s), Tenant shall submit to Landlord its store layout plans and specifications, showing in reasonable detail any and all interior and/or exterior alterations or improvements that Tenant proposes to make to the Premises (the "Tenant's Plans"). After approval by Landlord, Tenant's Plans shall be marked "Approved", dated, signed by Landlord, marked Exhibit E and attached to and made a part of this Lease. (Tenant shall furnish, a minimum of four (4) such copies for approval). Tenant shall not commence any work in the Premises prior to obtaining Landlord's approval of Tenant's Plans.

In the event Tenant shall fail to deliver the Tenant's Plans to Landlord within the number of days specified in Section 201 (s) herein, such failure shall constitute a material event of default under this Lease and, in addition to any remedies available at law or in equity or under this Lease, Tenant shall be obligated to pay a late charge pursuant to Paragraph 2610 below and the Fixturing Period set forth in Section 201(d) shall be reduced by one (1) day for each day after the number of days specified in Section 201(s) that Tenant fails to deliver Tenant's Plans to Landlord. Further, if Tenant has not delivered Tenant's Plans to Landlord within forty-five (45) days after the date the same are due under this Lease, then Landlord's Work as set forth in Exhibit C shall be null and void and Tenant shall be obligated to accept the Premises in "as is" condition upon Landlord's giving of Notice of Possession.

1402. Tenant shall not alter the exterior of the Premises and shall not make any structural or non-structural alterations to the interior of the Premises without first obtaining Landlord's prior written approval of such alterations. Tenant agrees that all improvements and fixtures, other than trade fixtures made or installed by it, shall immediately become the property of Landlord and shall remain upon the Premises, unless Landlord requires that Tenant remove such alterations or improvements prior to the Expiration Date. Tenant shall, at its sole expense, promptly repair all damage caused by such removal. Tenant shall not be compensated for any alteration or improvements left in the Premises at the end of the Term. Except for installation of fixtures and other work to be performed by it in strict accordance with Exhibit E. Tenant shall not cut or drill into or secure any fixture, apparatus or equipment of any kind to any part of the Premises without first obtaining Landlord's written consent, which consent may be given or withheld in Landlord's sole and absolute discretion.

Notwithstanding anything in this Section 1402 to the contrary, Tenant shall be permitted to make interior, non-structural alterations, additions or improvements to the Premises without obtaining Landlord's prior written consent subject to the following terms and conditions:

- (a) such alterations, additions or improvements shall not affect the structural portions of the Premises or the building; the heating, ventilating and cooling equipment within the Premises or the building; the mechanical, electrical and other utility equipment within the Premises or the building; and the architectural design of Tenant's store; and
- (b) such alterations, additions or improvements shall in the aggregate during the Term not exceed the sum of Twenty Thousand Dollars (\$20,000) per Lease Year; and
- (c) if Tenant is required to file plans to obtain a building permit, Tenant shall have furnished to Landlord two (2) copies of plans and specifications covering such alterations, additions or improvements; and
- (d) such alterations, additions or improvements shall comply with all applicable statutes, ordinances, regulations and codes and shall comply with the requirements of Landlord's fire insurance underwriters or underwriter's prevention engineers, and other applicable terms of this Lease pertaining to construction.

1403. Tenant shall not suffer, permit or give cause for the filing of a lien against the Premises. In the event that any mechanic's or materialmen's lien or notice of lien shall at any time be filed against the Premises by reason of work, labor, services or materials performed or furnished to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall immediately cause the same to be bonded or discharged of record. If Tenant shall fail to cause such lien or notice of lien to be discharged or bonded within five (5) days after the filing thereof, then, in addition to any other rights and remedies available to Landlord at law, in equity or under this Agreement, Landlord may, but shall not be obligated to, discharge or bond off the same by paying the amount claimed to be due or posting a bond, and the amounts so paid by Landlord and all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in paying, bonding off or procuring the discharge of such lien, shall be due and payable by Tenant to Landlord as Additional Rent within five (5) days of Landlord's demand therefor.

1404. All construction in the Premises shall comply with Landlord's reasonable design criteria and shall be performed at Tenant's sole cost and expense in strict accordance with Exhibit E. Contractors must be licensed and carry such insurance in amounts, with coverages and issued by insurers reasonably satisfactory to Landlord.

### SECTION 15

1501. Tenant shall repair promptly at its sole expense any damage to the Premises or any other improvement within the Shopping Center caused by bringing into the Premises any property for Tenant's use, or by the installation or removal of such property, regardless of fault or by whom such damage shall be caused, unless caused by the gross negligence or wilful misconduct of Landlord, its agents or employees.

1502. Tenant shall be solely responsible for keeping the Premises in good condition and repair from Notice of Possession until the Expiration Date of the Lease, including, not limited to, all required and necessary repairs and replacements to the doors, windows, glass, ceiling, mechanical, electrical, plumbing, heating, ventilating and air-conditioning equipment. Tenant shall not cause the roof of the Premises to be penetrated without first obtaining Landlord's written consent, and, upon obtaining such consent, Tenant agrees that any such work shall be performed by Landlord's roofing contractor at Tenant's sole expense. Tenant agrees that any repairs to the sprinkler system shall be performed by Landlord at the sole cost of Tenant.

1503. Tenant shall also initiate and carry out a program of regular maintenance and repair of the Premises, including, but not limited to, (i) the painting or refinishing of all areas of the interior and maintaining or replacing of all trade fixtures and equipment, ceiling tile, flooring and other items of display used in the conduct of Tenant's business, so as to impede, to the extent possible, deterioration by ordinary wear and tear and to keep the same in attractive condition throughout the Term and (ii) obtaining and maintaining, at Tenant's sole cost, service contracts with reputable, licensed mechanical contractors to carry out a program of regular maintenance and repair of the heating, ventilating and air-conditioning systems. Notwithstanding anything to the contrary contained herein, Landlord shall assign to Tenant all warranties, extended warranties and guarantees, if any, given to Landlord by Landlord's contractors or materialmen with respect to mechanical parts of the heating, ventilating and air conditioning system.

1504. If any repairs required to be made by Tenant hereunder are not made within ter (10) days after written notice thereof by Landlord to Tenant, such failure shall constitute a material event of default under this Lease, and Landlord may, at its option, make such repairs without liability to Tenant for any loss or damage which may result to Tenant's business by reason of such repairs (including, without limitation, damage to Tenant's business). Tenant shall pay Landlord, within five (5) days of demand therefor, the cost of such repairs plus a repair fee in the sum of twenty percent (20%) of the amount thereof.

1505. Landlord shall have the right, but not the obligation, to enter upon the Premises at all reasonable hours for the purpose of inspecting the same, or for making repairs, additions or alterations to the Premises or any property owned or controlled by Landlord.

1506. Subject to reimbursement pursuant to Section 10, Landlord shall make repairs to the roof and the outer walls (excluding doors, windows, glass, ceiling, mechanical, electrical and plumbing equipment) of Tenant's Premises. Landlord shall make and complete any such repairs within a reasonable time after being notified by Tenant that repairs are needed. Except as set forth in Section 1507, Landlord shall not be liable to maintain or make any other improvements, repairs or replacements of any kind upon the Premises.

1507. Landlord, at its sole expense, shall repair the load bearing walls, structural foundations, columns and beams, and structural concrete floors of the Premises and of the building (to the extent the same may adversely affect the Premises) of which the Premises is a part. Landlord shall make and complete any such repairs within a reasonable time after being notified by Tenant that repairs are needed.

#### SECTION 16 SURRENDER OF PREMISES

1601. Tenant, on the Expiration Date, shall peaceably surrender to Landlord the Premises in broom-clean condition and in good repair reasonable wear and tear, damage by fire or other casualty that Landlord is required to repair excepted. Tenant hereby waives any and all notices to vacate.

1602. All trade fixtures owned by Tenant and installed in the Premises shall remain the property of Tenant and shall be removable from time to time and also at the expiration of the Term, or any renewal or extension thereof, or other termination thereof, provided Tenant shall not at such time be in default under any covenant, agreement or obligation contained herein; and, if in default, Landlord shall have a lien on such trade fixtures as security against loss or damage resulting from any such default by Tenant, and said fixtures shall not be removable by Tenant until such default is cured or Landlord notifies Tenant to remove such trade fixtures (or any items thereof) from the Premises.

1603. It shall be a material event of default under this Lease if Tenant remains in possession of the Premises after the Expiration Date without the written permission of Landlord, and without the execution and delivery of a new lease. In the event of such default by Tenant, Landlord, at its option, may (i) in addition to any other remedies available to Landlord at law, in equity or under this Lease, immediately re-enter and take possession of the Premises without process, or by any legal process in force in the jurisdiction in which the Shopping Center is located and hold Tenant liable for any all damages incurred as a result of such holdover, and for the reasonable value of the use of the Premises which is hereby agreed to be three (3) times the Minimum Rent plus the other Rent required under this Lease during the last month of the Term or (ii) treat the Tenant as occupying the Premises as a tenant on a month-to-month basis, subject to all the conditions, provisions and obligations of this Lease (but without any right of Tenant hereunder to extend the Term) insofar as the same are applicable to a month-to-month tenancy. During any such hold-over period, Rent shall be three (3) times the Minimum Rent plus the other Rent required under this Lease for the last month of the Term.

#### SECTION 17 UTILITIES AND TRASH

1701. Tenant shall, at its sole cost and expense, pay promptly all charges when due for water, gas, electricity, trash, heat, sewer rentals or service charges, and any other utility charges incurred by Tenant in its use and occupancy of the Premises commencing upon the Notice of Possession. If Landlord is required to supply water, gas, electricity, heat or sewer rentals, or any other utility service, for the Shopping Center and/or the Premises, then Tenant agrees to purchase the same from Landlord at the then-prevailing local rates and charges, and to pay promptly the charges therefor when bills are rendered to Tenant. Tenant shall use reasonable diligence in conservation of these utilities.

### SECTION 18

1801. Tenant shall, at its own expense and by the end of the Fixturing Period, install and at all times thereafter maintain in good condition and repair an exterior sign of such size, color, design, illumination and location, all as designated and approved by Landlord. The sign must also conform to all governmental requirements. Exterior sign(s) shall be kept illuminated from dusk until 10:00 p.m. every day or at such other times as reasonably prescribed by Landlord.

1802. Tenant shall not display any sign, lettering or lights on or adjacent to the exterior walls of the Premises, including, without limitation, both interior and exterior surfaces of windows and all surfaces of the Premises, unless first approved by Landlord in writing. Tenant shall not attach any non-permanent sign to the inside of any window of the Premises which may be visible through such window from the outside of the building in which the Premises are located without the prior written approval of Landlord. No rights are granted to Tenant to use the outer walls or the roof of the Premises without Landlord's prior written consent.

Notwithstanding anything in the foregoing to the contrary, Tenant may install professionally made promotional signs (including neon signage) which Tenant uses in a all of its other stores within the Washington D.C. metropolitan area in the interior portion of the window, provided that the total window signage does not occupy more than twenty-five percent (25%) of the glass, and further provided that such signs are permitted by applicable state and/or county codes and ordinances.

1803. Tenant's sign plan must conform to Landlord's sign criteria as per Exhibit D(1), which Landlord may modify from time to time. Tenant agrees to keep its sign in conformity with Landlord sign criteria at all times. Within the number of days specified in section 201(t), Tenant shall submit to Landlord its sign plans and specifications, showing in complete detail the proposed construction and installation of Tenant's sign (the "Sign Plans"). After approval by Landlord, the Sign Plan shall be marked "Approved", dated, signed by Landlord, marked Exhibit D and attached to and made a part of this Lease. Tenant shall furnish, a minimum of four (4) such copies for approval. In the event fails to deliver the Sign Plans to Landlord within the number of days specified in section 201(t), such failure shall constitute a material event of default under this Lease and, in addition to any other remedies available to Landlord at law, in equity or under this Lease, a late charge shall be assessed against and paid by Tenant pursuant to Paragraph

1804. In the event Tenant fails to install an exterior sign as depicted on the Tenant's sign plans approved by Landlord within the Fixturing Period, such failure shall constitute an event of default under this Lease and, in addition to any other remedies available to Landlord at law, in equity or under this Lease, a late charge shall be assessed against and paid by Tenant pursuant to Paragraph 2610 below. In addition, Landlord may have a sign installed on behalf of Tenant and Tenant shall reimburse the reasonable cost of sign within fifteen (15) days of invoice from the Landlord.

1805. Within the number of days specified in section 201(t), Tenant shall furnish to Landlord the name to appear on the under-canopy sign. If Landlord chooses to install

under-canopy signs, Landlord shall obtain and install the sign at the sole cost of Tenant.

1806. Prior to the Expiration Date, Tenant shall remove its sign and shall repair any damage, including the filling of holes caused by the installation or removal of the sign.

1807. If Landlord provides other Tenant identification signs, such as pylon or directory signs, Tenant agrees to reimburse Landlord for the cost of such additional signage.

#### SECTION 19 RIGHTS OF LANDLORD

1901. Landlord reserves the following rights with respect to the Premises:

- (i) Landlord, any party with a security interest in the Shopping Center, or any portion thereof, or the interest of Landlord therein, and any lessor under any ground lease or underlying lease, and their representatives, to have free and unrestricted access to, and to enter upon, the Premises at all reasonable hours for the purposes of inspecting the Premises, or of making repairs, replacements or improvements in or to the Premises or the building or equipment (including, without limitation, sanitary, electrical, heating, air-conditioning or other systems), or of complying with all laws, orders and requirements of any governmental or other quasi-governmental authority, or of exercising any right reserved to Landlord under this Lease (including the right during the progress of any repairs, replacements, improvements or other work permitted or required by this Lease to keep and store within the Premises all necessary materials, tools and equipment); and
- (ii) To show, at reasonable times, the Premises during ordinary business hours to any existing or prospective lender, ground lessor, purchaser, assignee of any loan secured by the Shopping Center, or any portion thereof, or assignee of any interest in Landlord, and/or to any person contemplating the leasing of the Premises or any part thereof; provided, however, to show or inspect at reasonable times and upon twenty-four (24) hours' oral notice to Tenant during the last six (6) months of the Term to any existing or prospective tenant. If during the last month of the Term, Tenant shall have removed all or substantially all of Tenant's trade fixtures therefrom, Landlord may immediately enter and alter, renovate, and redecorate the Premises. If Tenant shall not be personally present to open and permit an entry into the Premises at any time when for any reason an entry therein shall be necessary or permissible, Landlord or Landlord's agents may enter the same by a master key, or may forcibly enter the same, without rendering Landlord or such agents liable therefor, and without any abatement of Rent or in any manner affecting the obligations and covenants of this Lease. Landlord shall exercise in such manner as to minimize, to the extent practicable, interference with Tenant's use and occupancy of the Premises, provided that Landlord shall incur no additional expense thereby.
- (iii) To display a "For Sale" sign at any time, and also, after notice from either party of intention to terminate this Lease, or at any time within six (6) months prior to the Expiration Date, a "For Rent" sign, or both "For Rent" and "For Sale" signs, and all of said signs shall be placed upon such part of the Premises as Landlord shall require, except on display windows or doors leading into the Premises. Prospective purchasers or tenants authorized by Landlord may inspect the Premises at reasonable hours;
- (iv) To install or place upon, or affix to, the roof and exterior walls of the Premises equipment, signs, displays, antenna, and any other object or structure of any kind, provided the same shall not materially impair the structural integrity of the building in which the Premises are located or interfere with Tenant's occupancy;
- (v) At any time, and from time to time, to make alterations or additions to, and to build additional stories on, the building in which the Premises are contained, and to build in or on the areas adjoining the Premises, including, without limitation, the Common Areas. Landlord also reserves the right to construct other buildings or improvements or add to existing buildings or facilities in the Shopping Center, and to permit others to do so, from time to time;
- (vi) To discontinue any and all facilities furnished and services rendered by Landlord not expressly covenanted for herein, it being understood that they constitute no part of the consideration for this Lease;
- (vii) At any time, and from time to time, to use all or any part of the roof and exterior walls of the Premises for any purpose; to erect scaffolds, protective barriers and other aids to construction on, around and about the exterior of the Premises, provided that access to the Premises shall not be completely denied; to enter the Premises to shore the foundations and/or walls thereof and/or to install, maintain, use, repair, inspect and replace pipes, ducts, conduits and wires leading through the Premises and serving other parts of the Shopping Center in locations which do not materially interfere with Tenant's use thereof. Tenant further agrees that Landlord may make any use it desires of the side or rear walls of the Premises, provided that there shall be no encroachment upon the interior of the Premises;

(viii) If an excavation shall be made or authorized to be made upon land adjacent to the Premises, Tenant shall afford to the person causing or authorized to cause such excavation license to enter upon the Premises for the purpose of doing such work as Landlord shall deem necessary to preserve the wall or the building of which the Premises form a part from injury or damage and to support the same by proper foundations, without any claim for damages or indemnification against Landlord or diminution or abatement of rent;

- (ix) Landlord shall not be liable in any such case for any inconvenience, disturbance, loss of business or any other losses or annoyance arising from the exercise of any or all of the rights of Landlord under this Paragraph 1901;
- (x) The purpose of the plan annexed hereto as Exhibit A is solely to show the approximate location of the Premises. Landlord hereby reserves the right at any time, and from time to time, to make changes or revisions in such plan, including, but not limited to, additions to, subtractions from, and/or relocations or rearrangements of, the buildings, parking areas, and other Common Areas shown on such plan; provided only that the size of the Premises, and reasonable access thereto shall not be substantially impaired;
- (xi) Landlord reserves the right to sever the ownership of or title to the various sections of the Shopping Center and/or to place separate mortgages on such sections, in which case the right of Tenant and other tenants in the Shopping Center will be preserved by a written declaration or agreement, to be executed by Landlord and duly recorded, creating mutual, reciprocal and interdependent rights to use the parking and other Common Areas and the utilities and facilities needed for the full use and enjoyment of the Premises by Tenant and other tenants or occupants in the Shopping Center without impairing any of the duties and obligations of Landlord to Tenant under this Lease. Tenant shall execute from time to time such instruments reasonably required by Landlord and its mortgagee(s) to effectuate the provisions of this Paragraph 1901(x);
- (xii) If during the last month of the Term or any renewal or extension thereof, Tenant shall have removed all or substantially all of Tenant's trade fixtures from the Premises, Landlord may, prior to the Expiration Date and without releasing Tenant from any of Tenant's obligations under this Lease, including the obligations to return certain property, to repair and restore the Premises and to pay the full Rent and other sums due hereunder, immediately enter upon the Premises and alter, renovate and decorate the same; and
- (xiii) Landlord has the right, at Landlord's sole and absolute discretion, at any time during the Term, to remodel or change the roof and/or other exterior surfaces of the Shopping Center. Tenant understands that, during such remodeling (i) it might be necessary to remove Tenant's existing sign(s), (ii) that such sign(s) may not be suitable for reinstallation after the remodeling is completed, and (iii) Landlord shall bear the cost of reinstallation or replacement of Tenant's exiting sign at all times during the initial Term and Tenant shall bear the cost of reinstallation or replacement at any time after the expiration of the initial Term of this Lease. Such sign(s), or part thereof, which Tenant has installed, shall remain the property of Tenant, but Landlord is released from any and all liability for damages to such sign(s) during its removal, provided said removal was conducted with reasonable care. During any such remodeling, Tenant agrees to cooperate with Landlord and execute any documentation required or desirable to facilitate the remodeling process. Tenant understands that it may be necessary to erect scaffolds or other construction equipment during the remodeling, but access to the Premises shall not be denied.

Notwithstanding the foregoing, Landlord agrees that, in exercising its rights under this Section 1901, (i) it will make no changes to the Shopping Center or to the Common Areas which will materially adversely obstruct or materially adversely affect access to and from the Premises via Tenant's storefront entrance, (ii) it shall make no changes to the Shopping Center or to the Common Areas which would materially adversely affect the visibility of Tenant's storefront identification signage, entrance and display windows from the immediately adjacent Common Areas, and (iii) it shall not reduce the number of parking spaces in the Shopping Center below that which is required by the applicable governmental authorities. The foregoing provisions of this paragraph shall not apply in instances where access and/or visibility is temporarily affected as a result of repairs, remodeling, renovation or other construction to the Shopping Center.

### SECTION 20 DAMAGE TO PREMISES

2001. If the Premises shall be partially damaged by fire or other cause without the fault or neglect of Tenant, its employees, agents, contractors, invitees, licensees, customers, clients, family members or guests, this Lease shall not be terminated and Landlord shall proceed with diligence, subject to the then applicable statutes, building codes, zoning ordinances, and regulations of any governmental authority, and as soon as practicable after such damage occurs, to repair such damage, at the expense of Landlord if Landlord is insured with respect thereto to the extent of insurance proceeds made available to Landlord by any lenders with a security interest in the Shopping Center or any portion

hereof, or at the expense of Tenant if Tenant is required to be insured hereunder with respect to such damage (in either case taking into account the time necessary to effectuate a satisfactory settlement with any insurance company involved and for such other delays as may result from government restrictions, controls on construction, if any and strikes, emergencies, and other conditions beyond the control of the parties); provided, however, that if the Premises are damaged by fire or other cause to such extent that the damage cannot be fully repaired within ninety (90) days from the date of settlement of the insurance claims, Landlord, upon notice to Tenant, may terminate this Lease, in which event the Rent shall be apportioned and paid to the date of such damage.

. [ .

If this Lease is not terminated by Landlord and Landlord does not either: (i) obtain a building permit for any repairs, rebuilding or restoration required hereunder within six (6) months after the date of such damage or destruction; or (ii) complete such repairs, rebuilding or restoration within twelve (12) months after the date of such damage or destruction (subject, however, to force majeure), then in either event Landlord dr Tenant may, at any time thereafter, cancel and terminate this Lease by sending thirty (30) days' written notice thereof to the other, except, however, Tenant's notice of cancellation to Landlord shall not be effective if Landlord, within said thirty (30) period, shall obtain such permit or complete the repairs, rebuilding or restoration as aforesaid, as the case may be.

2002. During the period that Tenant is deprived of the use of the damaged portion of the Premises, Tenant shall be required to pay Rent adjusted in the manner described below to cover only that part of the Premises that Tenant is able to occupy, and the Rent for such space shall be that portion of the total Rent which the amount of the gross leasable area of the Premises remaining that can be occupied by Tenant bears to the total gross leasable area of the Premises. Landlord shall not be liable for delays in making of any such repairs which are due to government regulation, casualties, strikes, unavailability labor and materials, and/or other causes beyond the reasonable control of Landlord.

2003. Tenant shall give Landlord prompt written notice of any accident, fire or damage occurring on or to the Premises or the Shopping Center.

#### SECTION 21 CONDEMNATION

2101. If all of the Premises (or all rights of use or occupancy of the Premises) shall be taken or condemned by any governmental or quasigovernmental authority for any public or quasi-public use or purpose, or purchased by such authority under threat of such taking (collectively, a "Taking"), the Term of this Lease shall cease and terminate as of the date when title vests in such governmental authority and the Rent shall be abated on the date when such title vests in such governmental or quasi-governmental or quasi-governmental authority. If less than all of the Premises is the subject of a Taking, the Rent shall be equitably adjusted on the date when title vests in such governmental or quasi-governmental authority and the Lease shall otherwise continue in full force and effect. Tenant shall have no claim against Landlord (or otherwise) for any portion of the amount that may be awarded as damages as a result of any Taking, or for the value of any unexpired portion of the Term, or for loss of profits or moving expenses, or for any other claim or cause of action resulting from such Taking. Tenant shall have the right to make a separate claim against the condemning authority for moving expenses, loss of business, and any other awards to which it may be entitled separately from any award due to Landlord as long as such award to Tenant does not diminish Landlord's award.

Notwithstanding the foregoing, in the event more than fifteen percent (15%) of the leasable square footage of the Premises is the subject of a Taking and such partial Taking materially interferes with Tenant's ability to perform its business, then Tenant shall have the right to terminate this Lease upon written notice delivered to Landlord within thirty (30) days of such partial Taking.

#### SECTION 22 BANKRUPTCY

2201. The following shall be "Events of Bankruptcy" under this Lease:

- (i) Tenant's becoming insolvent, as that term is defined in Title 11 of the United States Code, entitled Bankruptcy, 11 U.S.C. §101 et seq . (the "Bankruptcy Code"), or under the insolvency laws of any State, District, Commonwealth, or Territory of the United States (the "Insolvency Laws");
- (ii) the appointment of a receiver or custodian for all or a substantial portion of Tenant's property or assets, or the institution of a foreclosure action upon all or a substantial portion of Tenant's real or personal property;
- $\mbox{(iii)}$  the filing of a voluntary petition under the provisions of the Bankruptcy Code or Insolvency Laws;
- (iv) the filing of an involuntary petition against Tenant as the subject debtor under the Bankruptcy Code or Insolvency Laws, which is either not dismissed within

thirty (30) days of filing, or results in the issuance of an order for relief against the debtor, whichever is later; or

(v) Tenant's making or consenting to an assignment for the benefit of creditors or a common law composition of creditors.

2202. Landlord's remedies upon the occurrence of an event of Bankruptcy shall be as follows:

- (i) Landlord shall have the right to terminate this Lease and/or any services being provided to Tenant under this Lease by giving notice to Tenant, whereupon Tenant shall be immediately obligated to quit the Premises. Any other notice to quit or notice of Landlord's intention to re-enter is hereby expressly waived. If Landlord elects to terminate this Lease, everything contained in this Lease on the part of Landlord done and performed shall cease without prejudice, subject, however, to the right of Landlord to recover from Tenant all Rent and any other sums accrued up to the time of termination or recovery of possession of the Premises by Landlord, whichever is later, and any other monetary damages or loss of Rent sustained by Landlord; provided, however, and notwithstanding the foregoing or any remedies set forth in this Paragraph 2202, Landlord shall not have the right to terminate this Lease while a case in which Tenant is the subject debtor under the Bankruptcy Code is pending, unless Tenant or Tenant's trustee in bankruptcy (the "Trustee") is unable to comply with the provisions of Paragraphs 2202(v), (vi) and (vii) below.
- (ii) Upon termination of this Lease pursuant to Paragraph 2202(i), Landlord may proceed to recover possession under and by virtue of the provisions of the laws of the jurisdiction in which the Shopping Center is located, or by such other proceedings, including re-entry and possession, as may be applicable.
- (iii) Upon termination of this Lease pursuant to Paragraph 2202(i), Landlord shall have the option to relet the Premises for such rent and upon such terms as are unreasonable under the circumstances and, if the full Rent reserved under this Lease (and any of the costs, expenses, or damages indicated below) shall not be realized by Landlord, Tenant shall be liable for all damages sustained by Landlord, including, without limitation, deficiency in Rent, reasonable attorneys' fees, brokerage fees, and expenses of placing the Premises in first-class rentable condition. Landlord, in putting the Premises in good order or preparing the same for re-rental, may, at Landlord's option, make such alterations, repairs or replacements in and to the Premises as Landlord, in its sole discretion, considers advisable and necessary for the purpose of reletting the Premises, and the making of such alterations, repairs or replacements shall not operate or be construed to release Tenant from liability under this Lease. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises are relet, for failure to collect the rent under such reletting, and in no event shall Tenant be entitled to receive the excess, if any, of such net rent collected over the sums payable by Tenant to Landlord hereunder.
- (iv) Any damage or loss of Rent sustained by Landlord as a result of an Event of Bankruptcy may be recovered by Landlord, at Landlord's option, at the time of the reletting, or in separate actions, from time to time, as said damage shall have been made more easily ascertainable by successive relettings, or in a single proceeding deferred until the Expiration Date (in which event Tenant hereby agrees that the cause of action shall not be deemed to have accrued until the Expiration Date), or in a single proceeding prior to either the time of reletting or the Expiration Date, in which event Tenant agrees to pay Landlord the difference, if any, between the present value of the Rent reserved under this Lease on the date of breach, discounted at eight percent (8%) per annum, and the fair market value of the Lease on the date of breach. In the event Tenant becomes the subject debtor in a case under the Bankruptcy Code, the provisions of this Paragraph 2202(iv) may be limited by the limitations of damage provisions of the Bankruptcy Code. In addition, Tenant shall reimburse Landlord for its reasonable attorneys' fees incurred in enforcing or interpreting the provisions of this Section 22, including, but not limited to, any and all costs incurred in consulting with its attorneys with respect to any suit or dispute under this Lease, whether or not suit is brought, and any and all costs of litigation with respect to such enforcement or interpretation (which, with regard to any suit or dispute whereby Landlord is seeking a monetary recovery, are hereby stipulated to be fifteen percent (15%) of the monies awarded to Landlord).
- (v) In the event Tenant becomes the subject debtor in a case pending under the Bankruptcy Code, Landlord's right to terminate this Lease pursuant to this Section 22 shall be subject to the rights of Tenant or the Trustee to assume or assign this Lease. Tenant or the Trustee shall not have the right to assume or assign this Lease unless Tenant or the Trustee, within thirty (30) days of the Event of Bankruptcy (a) cures all defaults under this Lease, (b) compensates Landlord for monetary damages incurred as a result of such default, (c) provides "adequate assurance of future performance" (as defined in Paragraph 2202(vi) below) and (d) complies with all provisions of Paragraph 2202 of this Lease.
- (vi) Landlord and Tenant hereby agree in advance that the phrase "adequate assurance of future performance", as used in this Paragraph 2202, includes adequate

assurance (a) of the source of Rent and other consideration due under this Lease, and, in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the Tenant and its guarantors, if any, as of the time the Tenant became the Tenant under this Lease; (b) that any assumption or assignment of this Lease is subject to all the provisions hereof, including, but not limited to, location, use and exclusivity, and will not breach any such provisions contained in any other lease or financing agreement; and (c) that any assumption or assignment of this Lease will not disrupt or adversely affect the tenant mix or balance in the Shopping Center.

(vii) In the event Tenant is unable (a) to cure its defaults, (b) to reimburse Landlord for its monetary damages, (c) to pay when due the Rent due under this Lease, or any other payments required of Tenant under this Lease or (d) to meet the priteria and obligations imposed by Paragraph 2202(vi) above, then Tenant agrees in advance that it has not met its burden to provide adequate assurance of future performance, and this Lease may be terminated by Landlord in accordance with Paragraph 2202(i) above.

#### SECTION 23 ASSIGNMENT AND SUBLET

2301. Tenant shall not assign, mortgage, pledge, encumber or otherwise transfer, voluntarily, by operation of law, or otherwise, this Lease or the Premises nor any interest herein or therein, and that neither the Premises, nor any part thereof, will be used, occupied or managed, or permitted to be used, occupied or managed, by anyone other than Tenant, or used for any purpose other than as permitted under this Lease, or be advertised for subletting, without the prior written consent of Landlord, which shall not be unreasonably withheld.

2302. If Tenant is a corporation, general partnership, limited partnership or joint venture, Tenant shall not permit or allow any transfers of stock or interests in Tenant by assignment, mortgage, pledge, encumbrance, merger, consolidation or other transfer, voluntarily or by operation of law, or otherwise, which would result in a change in the present effective control of Tenant by the person or persons, entity or entities possessing a controlling interest in Tenant on the Date of Lease, without the prior written consent of Landlord, which consent may be granted, denied and/or conditioned in Landlord's sole and absolute discretion. Furthermore, Tenant shall not cause or permit the sale of all or substantially all of its assets, without the prior written consent of Landlord, which consent may be granted, denied and/or conditioned in Landlord's sole and absolute discretion. In the event Landlord considers an assignment, sublease or other transfer referenced above upon Tenant's request, Tenant and any proposed successor entity shall execute, acknowledge and deliver to Landlord, as one of the conditions precedent to obtaining Landlord's consent, an agreement in form and substance satisfactory to Landlord whereby such proposed successor shall expressly agree to be independently bound by all of the covenants, agreements, terms, provisions and conditions set forth in this Lease, including this Section 23 which shall be binding upon it with respect to all future assignments and transfers of this Lease.

2303. If Tenant is a partnership or joint venture, (i) each present and future general partner or venturer shall be personally bound by all of the covenants, agreements, terms, provisions and conditions set forth in this Lease and (ii) in confirmation of the foregoing, at the time that Tenant admits any new general partner to its partnership or venturer to its joint venture, Landlord may require, and Tenant shall deliver, an agreement executed by each new partner in form and substance satisfactory to Landlord whereby such new general partner or venturer shall agree to be personally bound by all of the covenants, agreements, terms, provisions and conditions of this Lease, without regard to the time when such new partner is admitted to the partnership or when any obligations under any such covenants, agreements, terms, provisions and conditions accrue.

2304. Landlord and Tenant expressly agree that some of the reasonable factors that may be considered by Landlord in determining whether to consent to a proposed assignment or sublet include, but are not limited to, (i) the compatibility or appropriateness of such proposed assignee or subtenant with the desired overall tenant mix for the Shopping Center, (ii) the business experience and reputation of such proposed assignee or subtenant (and the partners, officers and principals thereof) (iii) the financial capability or creditworthiness of such proposed assignee or subtenant (and the partners, officers and principals thereof) and (iv) the express agreement and ability of such proposed assignee or tenant to comply with the terms of this Lease, including, without limitation, the provisions contained in Section 31 below. Tenant agrees to pay Landlord's agent a minimum fee of One Thousand Dollars (\$1,000.00) to reimburse Landlord's agent for expenses incurred by Landlord's agent for the review and documentation of any proposed assignment or sublet, whether or not Landlord ultimately approves or disapproves such proposed assignment or sublet. Such minimum fee shall be paid at the same time that Tenant submits its request for such assignment or sublet. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. Prior to any assignment or sublet of the Premises, each prospective assignee or subtenant must expressly agree in writing to pay any and all Rent or other charges accruing under this Lease including obligations that will have accrued prior to the date of any such assignment or sublease. If this Lease be assigned,

or if the Premises or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of the provisions on its part to be observed or performed under this Lease. Notwithstanding any assignment or sublease, Tenant shall remain fully liable under this Lease and shall not be released from performing any of the terms, covenants, conditions and obligations under of this Lease.

2305. Any assignment or subletting of this Lease or the Premises, or any portion thereof, shall be void in the absence of the approval of Landlord and Landlord's mortgagee(s) or deed of trust holders having a security interest in the Premises.

2306.Tenant may assign this Lease or sublet the entire Premises with Landlord's consent, which shall not be unreasonably withheld and which shall be given within thirty (30) days of Landlord's receipt of a written request from Tenant, if:

- (i) the sublessee or assignee is an affiliate or an entity which may, as a result of a reorganization, merger or consolidation, succeed to the entire business carried on by Tenant; or
- (ii) the assignment or subletting is part of a chain-wide assignment or sale of all of Tenant's stores in the standard metropolitan statistical area (as defined by the United States Bureau of Labor Statistics) wherein the Premises is located, the assignee or sublessee has management experience in the particular type of business conducted on the Premises and such experience is at least equal to that of Tenant as of the date hereof, and the assignee or sublessee has a tangible net worth (exclusive of good will) sufficient to operate a business of such nature, as determined in Landlord's reasonable discretion;

and provided that:

- the assignment or subletting consists of all of Tenant's leasehold interest or of the entire Premises, as the case may be, and in the case of an assignment, shall transfer to the assignee all of Tenant's rights in, and interest under, this Lease, including but not limited to, the Security Deposit, if any; and
- (2) at the time of such assignment or subletting, this Lease is in full force and effect without any breach or default thereunder on the part of the
- (3) the assignee or sublessee shall (1) assume, by written recordable instrument, in form and content satisfactory to Landlord, the due performance of all of Tenant's obligations under this Lease, including any accrued obligations as of the time of the assignment or subletting, and (2) agree to perform and observe all of Tenant's representations, warranties, and duties under this Lease; and
- (4) a copy of the assignment or sublease and the original assumption agreement, both in form and content satisfactory to Landlord and fully executed and acknowledged by the assignee or sublessee, and, in the event the assignee or sublessee is a corporation, a certified copy of a properly executed corporate resolution authorizing such assumption agreement, shall have been delivered to Landlord within ten (10) days prior to the effective date of such assignment or subletting; and
- (5) such assignment or subletting shall be upon and subject to all the provisions, terms, covenants and conditions of this Lease including the requirement to use the Premises only for the Permitted Use; and
- (6) Tenant shall have obtained and furnished to Landlord the written consent of the Guarantor of this Lease, if any, wherein said Guarantor, in accordance with the terms of the Guaranty executed by Guarantor guaranteeing Tenant's obligations and covenants under said Lease, agrees to continue to be Guarantor of the terms, obligations and covenants of Tenant and Tenant's successor under this Lease notwithstanding such assignment or transfer of stock; and
- (7) the assignee, sublessee or transferee or its parent, subsidiaries or affiliates shall not be subject to any bankruptcy or insolvency proceedings at the time of such sale.

The term "affiliate(s)" shall mean a corporation which directly or indirectly controls or is controlled by, or is under common control with Tenant. For this purpose, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

2307. Notwithstanding anything in Section 2306 to the contrary, Tenant may assign this Lease or sublet the entire Premises to an approved "Jennifer Convertibles"

franchisee using the "Jennifer Convertibles and Jennifer Leather" Trade Name, without Landlord's prior written consent, if:

- (a) Tenant has a franchise agreement which is in full force and effect which such assignee or sublessee covenants to sell a full line of merchandise being sold in a majority of Jennifer Convertibles stores, and covenants to only use the Trade Name as provided or required by this Lease: and
- (b) Assignee or sublessee is obligated to operate such franchise in the same manner as the franchise is being operated by a majority of other Jennifer Convertibles franchisees; and
- (c) The gross sales of such sublessee are to be included within the gross sales statements as defined in this Lease for each Lease Year; and
- (d) Failure of any assignee or sublessee to use the Trade Name as required and provided for in this Lease or to continuously operate a Jennifer Convertibles franchise shall be a material default and substantial breach of this Lease which shall terminate the assignment or sublease. Termination of the franchise agreement shall terminate the sublease or assignment then in effect and such termination shall cause a reassignment of such franchisee's interest to Tenant without further action of the parties and the Tenant shall immediately retake and repossess the Premises and shall commence to immediately and continuously operate a Jennifer Convertibles franchise;

and

- (e) In case of any subletting, the Minimum Rent rate and other charges payable hereunder shall be increased to fifty percent (50%) of any greater amount or rate which subtenant shall pay in connection with subletting (computed in the same manner as provided for in Section 2304): and
- (f) Landlord shall have the right to accept, directly from any assignee or subtenant, all Rent payments and such acceptance by Landlord shall not constitute any release or waiver of Tenant's obligations under this Lease; and
- (g) A copy of the assignment or sublease and the franchise agreement shall be furnished to Landlord, and
- (h) The assignment or subletting shall not be effective until and unless all of the above conditions are satisfied.

The right to assign or sublet shall be a right solely of the named Tenant hereunder and shall not be construed to grant any assignee or sublessee the right to assign or sublet without Landlord's prior written consent, which consent shall be in the sole and absolute discretion of Landlord.

#### SECTION 24 SUBORDINATION

2401. This Lease shall be subordinate to any and all mortgages and deeds of trust currently existing or that may hereafter be placed upon the Shopping Center, or any portion thereof, and to any and all renewals, modifications, participations, consolidations, replacements and extensions thereof. Tenant's obligation to subordinate to any future lender shall be conditioned upon Landlord obtaining for Tenant a non-disturbance agreement on the form subordination, non-disturbance and attornment agreement used by such lender at Tenant's sole cost and expense.

2402. Tenant agrees that at any time and from time to time, within five (5) days after the request of Landlord, Tenant shall promptly execute, acknowledge and deliver to Landlord (or any other person designated by Landlord) any written statement containing substantially the following provisions: (1) a statement confirming the subordination of this Lease to any and all mortgages and deeds of trust on or affecting the Shopping Center, or any portion thereof, (ii) a statement that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications, that the Lease is in full force and effect as modified and stating the modifications), (iii) a statement of the dates to which the Rent and any other charges hereunder have been paid by Tenant, (iv) a statement of whether or not Landlord is in default in the performance of any covenant, agreement, condition or obligation contained in this Lease, and if so, specifying each such default, (v) a statement of the address to which notices to Tenant should be sent, (vi) a statement that Tenant accepts the Premises and the improvements therein, (vii) a statement that Tenant will not attempt to terminate this Lease by reason of Landlord's default or omission without giving written notice of such default or omission to Landlord and any lender or lenders with a security interest in the Shopping Center, or any portion thereof, of which Tenant has knowledge, and (viii) such other statement or statements as

may be reasonably requested by Landlord, any prospective purchaser of the Shopping Center, or any portion thereof, any lender or prospective lender with a security interest in the Shopping Center, or any portion thereof, or of Landlord's interest in either, any lessor or prospective lessor thereof, any lessee or prospective lessee thereof, and/or any prospective assignee of any of the foregoing. Any such statement delivered pursuant hereto may be relied upon by any owner of the Shopping Center, or any portion thereof, any prospective purchaser of the Shopping Center, or any portion thereof, any lender or prospective lender with a security interest in the Shopping Center, or any portion thereof, or of Landlord's interest in either, any lessor or prospective lessor thereof, any lessee or prospective lessee thereof, or any prospective assignee of any of the foregoing.

2403. Tenant agrees that it will attorn to and recognize any purchaser of the Shopping Center, or any portion thereof, at a foreclosure sale under any mortgage or deed of trust, any transferee who acquires the Shopping Center, or any portion thereof, by deed in lieu of foreclosure, and the successor and assigns of such purchasers, as its Landlord for the unexpired balance of the Term of this Lease upon the same terms and conditions set forth in this Lease.

2404. Tenant agrees that in the event that any mortgagee or trustee shall succeed to the interest of Landlord under this Lease, such mortgagee or trustee shall not be:

- (i) liable for any act or omission of Landlord;
- (ii) liable for the return of all or any part of the Security Deposit;
- (iii) subject to any offsets or defenses which Tenant might have against Landlord;
- (iv) bound by any Rent which Tenant might have paid for more than the durrent month to Landlord; or
- (v) bound by any amendment or modification of this Lease made without mortgagee's or trustee's prior written consent.
- 2405. Tenant agrees to execute, acknowledge and deliver any and all documents deemed necessary to effectuate the provisions of Paragraphs 2401-2404 above.
- 2406. If Landlord can obtain approval of this Lease by its existing or future mortgage lenders only upon the basis of modifications of the terms and provisions of this Lease, Landlord shall have the right to terminate this lease if Tenant refuses to approve in writing any such modifications within thirty (30) days after Landlord's request therefor, which request may not be made after notice of possession. Within ten (10) days of receipt of a request therefor from Landlord, Tenant agrees to forward to Landlord financial statement of Tenant and/or, if applicable, Tenant's guarantor or surety, in form satisfactory to Landlord, certified by an independent certified public accountant acceptable to Landlord. If the financial credit rating of Tenant and/or, if applicable, Tenant's guarantor or surety is not acceptable for the purposes of any existing or contemplated financing, Landlord shall have the right to terminate this Lease if Tenant refuses to execute or supply such additional assurances and/or guarantors and/or sureties as Landlord shall state as necessary for such acceptance within thirty (30) days after Landlord's request therefor, which request may not be made after Notice of Possession. If any such right to terminate is exercised, each of the parties shall be released from any other further liability accruing after such date, any of the Deposits made hereunder shall (subject to the other provisions of this Lease) be refunded to Tenant without interest, and neither party shall have any liability to the other by reason of such termination.
- 2407. Tenant agrees to give any mortgagee or deed of trust holder with an interest in the Shopping Center, or any portion thereof, a copy of any notice of default served upon the Landlord, provided that prior to such notice Tenant has been notified, in writing (by way of notice of assignment of rents and leases, or otherwise) of the address of such mortgagees or deed of trust holders. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the mortgagee(s) or deed of trust holder(s) shall have an additional thirty (30) days within which to cure such default or, if such default cannot be cured within that time, such additional time as may be necessary if, within such thirty (30) days, any such mortgagee(s) or deed of trust holder(s) has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated so long as such remedies are being diligently pursued.

### SECTION 25 RECORDATION

2501. It is agreed that Tenant shall not record this Lease and/or its Exhibits violation of this clause shall be deemed a material event of default on the part of Tenant, and Landlord shall have the right to cancel this Lease and take those steps necessary to remove the Lease and/or its Exhibits from any records. In the event of this

action on the part of Landlord, Tenant agrees to bear any and all costs and expenses in connection therewith, including, but not limited to, Landlord's attorneys' fees. In the event that Landlord's mortgagee(s) or deed of trust holder(s) requires that this Lease (or a memorandum thereof) be recorded, Landlord shall have the right to record the same, and, in such event, Tenant agrees to bear such recordation charges. Tenant hereby constitutes and appoints Landlord its true and lawful attorney-in-fact in Tenant's name (which power of attorney shall be deemed irrevocable and a power coupled with an interest) to execute any and all documents necessary to remove the Lease and/or its Exhibits from record and/or to record the Lease and/or its Exhibits (or a memorandum thereof) in a manner and among the records determined by Landlord.

### SECTION 26 DEFAULT

**2601.** The occurrence of any of the following shall constitute an event of default under this Lease:

- (i) Failure of Tenant to pay when due any installment of Rent hereunder after ten (10) days written notice from Landlord; provided, however, if Landlord provides Tenant with written notice on two (2) occasions during any twelve (12) month period, then during the twelve (12) month period following such 2nd notice, Landlord shall not be required to give Tenant notice and Tenant's failure to pay any installment of Rent within ten (10) days after the due date shall constitute an event of default under this Lease;
- (ii) Failure of Tenant to commence business by the end of the Fixturing Period;
- (iii) Discontinuance of the operation of Tenant's business at the Premises after five (5) days' notice from Landlord;
  - (iv) Apparent abandonment and/or abandonment of the Premises:
    - (v) An Event of Bankruptcy;
- (vi) Tenant's removal of Tenant's goods or property from or out of the Premises otherwise than in the ordinary and usual course of business without having first paid and satisfied all obligations to Landlord for all Rent which may become due during the entire Term of this Lease;
- (vii) Breach or failure of Tenant to strictly comply with, any of the terms and provisions of Sections 9, 23, 25 and 31 of this Lease after five (5) days' notice from Landlord; and
- (viii) Tenant's failure to perform (or in the case of obtaining a bond, Tenant's failure to undertake to perform) any covenant, condition or obligation under this Lease (other than those set forth in Paragraphs 2601(1) through (vii) above) within twenty (20) days after written notice and demand by Landlord, unless the failure is of such character as to require more than twenty (20) days to cure, in which event it shall be an event of default upon (a) Tenant's failure to commence and proceed diligently to cure such default and (b) Tenant's failure to cure such default within thirty (30) days after Landlord's notice to Tenant of such default; provided, however, no such notice shall be required hereunder if Tenant has received three (3) similar notices within three hundred and sixty-five (365) days prior to such default.
- **2602.** Upon the occurrence of an event of default, subject to the laws of the jurisdiction in which the Shopping Center is located:
- (i) Landlord may terminate this Lease and/or any services provided to Tenant under this Lease, by giving notice of such termination to Tenant, whereupon this Lease shall automatically cease and terminate, and Tenant shall be obligated to immediately quit the Premises. Any other notice to quit or notice of Landlord's intention to re-enter the Premises is hereby expressly waived. If Landlord elects to terminate this Lease, everything contained in this Lease on the part of Landlord to be done and performed shall cease, without prejudice, however, to the right of Landlord to recover from Tenant all Rent accrued up to the time of termination or recovery of possession by Landlord, whichever is later, and any other monetary damages or loss of Rent sustained by Landlord.
- (ii) Whether or not this lease is terminated pursuant to Paragraph 2602(i), Landlord may proceed to recover possession of the Premises under and by virtue of the provisions of the laws of the jurisdiction in which the Shopping Center is located, or by such other proceedings, including re-entry and possession, as may be applicable.
- (iii) Should this Lease be terminated pursuant to Paragraph 2602(i), or if Tenant shall abandon or vacate the Premises (whether or not the keys shall have been surrendered or the Rent shall have been paid) before the Expiration Date without having paid the full Rent for the remainder of the Term, Landlord shall have the option to relet the Premises for such rent and upon such terms as are not unreasonable under the circumstances and, if the full Rent reserved under this Lease (and any of the costs, expenses, or damages indicated below) shall not be realized by Landlord, Tenant shall be

liable for all damages sustained by Landlord, including, without limitation, deficiency in Rent, attorneys' fees, brokerage fees, and expenses of placing the Premises in first-class rentable condition. Landlord, in putting the Premises in good order or preparing the same for re-rental, may, at Landlord's option, make such alterations, repairs or replacements in and to the Premises as Landlord, in its sole discretion, considers advisable and necessary for the purpose of reletting the Premises, and the making of such alterations, repairs or replacements shall not operate or be construed to release Tenant from liability under this Lease. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises or, in the event that the Premises are relet, for failure to collect the rent under such reletting, and in no event shall Tenant be entitled to receive the excess, if any, of such net rent collected over the sums payable by Tenant to Landlord under discretion.

- (iv) Notwithstanding anything herein to the contrary, Landlord shall have the right, upon written notice to Tenant, to accelerate and recover Rent and other amounts due hereunder for the six (6) month period following delivery of Landlord's acceleration notice, such amounts to be discounted to present value at an assumed discount rate of six percent (6%). Upon payment of all sums due hereunder, Tenant shall receive a credit or a rebate at the end of each rental period, against accelerated rent paid by Tenant hereunder, of any rent actually paid to Landlord by a replacement tenant in a re-letting of the Premises during each such six (6) month period. In addition, Landlord shall continue to be entitled to collect and Tenant shall pay all accrued past due Rent due hereunder in addition to any accelerated Rent collected hereunder. On each anniversary of such acceleration date, Landlord shall be entitled to accelerate and recover Rent and other amounts which will come due for each subsequent six (6) month period, discounted to present value at an assumed discount rate of six percent (6%).
- (v) Any damage or loss of Rent sustained by Landlord may be recovered by Landlord, at Landlord's option, at the time of the reletting, or in separate actions, from time to time, as said damage shall have been made more easily ascertainable by successive relettings, or in a single proceeding deferred until the Expiration Date (in which event Tenant hereby agrees that the cause of action shall not be deemed to have accrued until the Expiration Date), or in a single proceeding prior to either the time of reletting or the Expiration Date), or which event Tenant agrees to pay Landlord the difference, if any, between the present value of the Rent reserved under this Lease on the date of breach, discounted at eight percent (8%) per annum, and the fair market value of the Lease on the date of the breach.
- (vi) Nothing contained herein shall prevent the enforcement of any claim Landlord may have against Tenant for anticipatory breach of the unexpired Term. In the event of a breach or anticipatory breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction, the right to specific performance, and the right to invoke any remedy allowed at law or in equity or under this Lease.
- regular business hours for more than three (3) consecutive business days, it is agreed and understood that Landlord shall have been deprived of an important right under this Lease and, as a result thereof, will suffer damages in an amount which is not readily ascertainable; therefore, in addition to, and not in lieu of, any other remedies which Landlord has under this Lease, at law or in equity, Landlord shall have the right to collect as liquidated damages (and not as a penalty) two (2) times the Rent due for month, or portion thereof, that such discontinuance shall persist.
- 2603. If, under the provisions hereof, either party shall institute proceedings against the other and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any other covenant, condition, agreement or obligation contained in this Lease, nor of such party's rights under this Lease. No waiver by a party of any breach of any covenant, condition or agreement contained in this Lease and the Rules and Regulations promulgated hereunder shall operate as a waiver of such covenant, condition, agreement or rule or regulation itself, or of any subsequent breach thereof. No provision of this Lease shall be deemed to have been waived by a party unless such waiver is in writing and signed by such party. No endorsement or statement on any check or letter accompanying a check for payment shall be deemed an accord and satisfaction, and either party may accept such check or payment without prejudice to such party's right to recover the balance of any sums owed or to pursue any other remedy provided in this Lease.
- 2604. If Tenant defaults in the making of any payment or in the doing of any act under this Lease required to be made or done by Tenant, then Landlord may, but shall not be required to, make such payment or do such act, and charge the amount of the expense thereof, if made or done by Landlord, with interest thereon at the rate of fifteen percent (15%) per annum, from the date paid by Landlord to the date of payment thereof by Tenant, provided however, that nothing herein contained shall be construed or implemented in such a manner as to allow Landlord to charge or receive interest in excess of the maximum legal rate then allowed by law. Such payment and interest shall constitute Additional Rent hereunder due and payable within five (5) days of Landlord's demand therefor, but the making of such payment or the taking of such action by Landlord shall not operate to cure such default or to estop Landlord from the pursuit of any remedy to which Landlord would otherwise be entitled at law, in equity or under this Lease.

2605. If Tenant fails to pay any installment of Rent and/or Additional Rent in accordance with the provisions of this Lease when such installment becomes due and payable as specified in Section 712, Tenant shall pay to Landlord, after ten (10) days' notice from Landlord, a late charge of One Hundred Dollars (\$100.00) per month for each month that such installment remains unpaid, and, in addition, such unpaid installment shall bear interest at the rate of eight percent (0%) per annum from the date such installment became due and payable to the date of payment thereof by Tenant; provided however, that nothing herein contained shall be construed or implemented in such a manner as to allow Landlord to charge or receive interest in excess of the maximum legal rate then allowed by law. Such late charge and interest shall constitute Additional Rent hereunder due and payable within ten (10) days of Landlord's demand therefor. If payments have been accelerated pursuant to Paragraph 2602(iv) above, all Additional Rent due under any provision of this immediately upon Landlord's demand therefor.

2606. Intentionally Deleted.

2607. Tenant hereby waives and surrenders all rights and privileges which it might under or by reason of any present or future law to redeem the Premises, or to have a continuance of this Lease for the remainder of the Term after being dispossessed or ejected therefrom by process of law, or under the terms of this Lease, or after the termination of this Lease as herein provided.

2608. Except as otherwise provided herein to the contrary, the specified remedies to which either party may resort hereunder are cumulative and are not intended to be exclusive of any remedies or means of redress to which either party may at any time be entitled at law, in equity or under this Lease, and either party may invoke any remedy (including the remedy of specific performance) not precluded herein and allowed at law, in equity or under this Lease, as if specific remedies were not provided for herein.

2609. Landlord shall have the right to apply any payments made by Tenant to the satisfaction of any debt or obligation of Tenant to Landlord according to Landlord's sole and absolute discretion and regardless of the instructions of Tenant as to application of any such sum, whether such instructions be endorsed upon Tenant's check or otherwise.

2610. In addition to any other rights and remedies which Landlord may have at law, in equity or under this Lease, in the event that (a) Tenant fails to deliver all insurance certificates required under Section 9 hereof within the number of days required in Section 9; (b) Tenant fails to deliver the Tenant's Plans to Landlord pursuant to Section 14 hereof; (c) Tenant shall fail to deliver the Sign Plans to Landlord pursuant to Section 18 hereof; (d) Tenant shall fail to deliver the statements of gross sales to Landlord pursuant to Paragraphs 705 and/or 706 hereof; or (e) Tenant shall fail to install exterior sign as approved by Landlord by the end of the Fixturing Period then Tenant shall pay to Landlord, after five (5) days' notice from Landlord, a late charge of One Hundred Dellars (\$100.00) for each thirty (30)-day period during which any such failure shall contique.

2611. Notwithstanding any of the terms and provisions herein contained to the contrary, Landlord and Tenant shall each have the duty and obligation to use reasonable good faith efforts to mitigate any and all damages that may or shall be caused or suffered by virtue of the other's defaults under, or violation of, any of the terms and provisions of this Lease; provided, however, Landlord does not necessarily agree to rent the Premises at its then fair market value in the event it enters into a new lease agreement but may relet the Premises at a minimum annual rent, taxes and other charges consistent with the prevailing economic conditions to a tenant which is acceptable to Landlord based upon the following criteria: (a) the proposed tenant shall have a net worth equal to or greater than \$5,000,000; (b) the proposed tenant will be obligated to use the Premises for either the same use as Tenant or another use which in Landlord's reasonable judgment is in accordance with a proper mix of uses for the Shopping Center and (c) the proposed tenant shall agree to enter into a lease agreement with Landlord which contains terms, covenants and conditions at least as favorable to Landlord as those set forth in this Lease. The foregoing, however, shall in no way obligate Landlord to relet the Premises in preference to other vacant space in the Shopping Center. The burden of proof as to the reasonableness of a party's efforts shall be borne by the defaulting party in any litigation between the parties.

# SECTION 27 LEGAL PROCEEDINGS AND NOTICES

2701. If either party hereto finds it necessary to bring an action at law or other proceedings against the other party to enforce any of the terms, covenants or conditions hereof, the unsuccessful party shall pay to the prevailing party a reasonable sum for attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and the discovery, travel, and all other necessary costs incurred in such litigation.

2702. This Lease is made pursuant to, and shall be governed by, and construed in accordance with the laws of the jurisdiction which the Shopping Center is located and any applicable local or county rules, regulations, and ordinances. Should any provision of

this Lease require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or though its agent prepared the same.

1

2703. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

2704. Tenant hereby waives all rights of redemption granted by any present or future laws.

2705. All notices required or permitted under this Lease shall be in writing and deemed to be properly served if sent by registered or certified mail or Federal Express or similar courier service with overnight delivery or via professional messenger service (which provides for an acknowledgment of receipt) to the addresses stipulated in Paragraph 101 or such other address as either party may designate in writing in accordance with this Paragraph 2705, and shall be deemed effective when received, refused or returned as undeliverable. All notices sent by certified or registered mail, return receipt requested, first-class postage prepaid shall be deemed effective when received, refused or returned as undeliverable, and notices sent by any other method of delivery specified in this Paragraph 2705, shall be effective upon receipt. All requests, consents and approvals required or permitted under this Lease shall be in writing.

2706. Tenant hereby (i) irrevocably appoints Tenant's Agent for Service of Process as Tenant's agent to accept service of process in any action or proceeding for the enforcement against Tenant of any obligation or liability under this Lease, (ii) agrees that any such action or proceeding against Tenant may be commenced in any court of competent jurisdiction by service of process upon Tenant's Agent for Service of Process with the same effect as if Tenant were physically present in the location where service was made upon Tenant's Agent for Service of Process and had lawfully been served with process in such location and (iii) directs Tenant's Agent for Service of Process to forward a copy of any notice, process or pleading served on Tenant's Agent for Service of Process to Tenant in the same manner in which notices are to be delivered to Tenant pursuant to Paragraph 2705.

2707. Any headings preceding the text of the several Paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Lease, nor shall they affect its meaning, construction or effect.

#### SECTION 28 SUCCESSORS AND ASSIGNS

2801. If in connection with or as a consequence of the sale, transfer or other disposition of the Shopping Center, or any portion thereof, Landlord ceases to be the owner of the reversionary interest in the Premises, Landlord shall be entirely freed and relieved from the performance and observance thereafter of all covenants and obligations under this Lease on the part of Landlord to be performed and observed, it being understood and agreed in such event (and it shall be deemed and construed as a covenant running with the land) that the person succeeding to Landlord's ownership of said reversionary interest in the Premises shall thereupon and thereafter assume, and perform and observe, any and all of such covenants and obligations of Landlord. Any Deposits or other security given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to its successor in interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

2802. If there shall be more than one party constituting Tenant, they shall all be bound jointly and severally by the terms, covenants, agreements and obligations under this Lease and the word "Tenant" shall be deemed and taken to mean each and every person or party mentioned as a Tenant herein, be the same one or more; and if there shall be more than one party constituting Tenant, any notice required or permitted by the terms of this Lease may be given by or to any one thereof and shall have the same force and effect as if given by or to all thereof. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved by Landlord in writing in accordance with this Lease.

### SECTION 29 BROKERS AND AGENTS

2901. Each of the parties hereto represents and warrants that, other than the brokerage commission payable by Landlord to the Landlord's Agent and Divaris Real Estate pursuant to a separate agreement, there are no other brokerage commissions or finders' fees of any kind due in connection with this Lease, and each of the parties hereto agrees to indemnify the other against, and hold it harmless from, any and all liabilities, damages, costs, claims and obligations arising from any such claim (including, without limitation, the cost of attorneys' fees in connection therewith).

2902. The Agent(s) listed in Section 201(p) are acting as Landlord's Agent only and shall not in any event be held liable to Landlord or to Tenant for the fulfillment or nonfulfillment of any of the terms, covenants, conditions or obligations of this Lease or any action or proceedings that may be taken by Landlord against Tenant, or by Tenant against Landlord, including, but not limited to, any such action arising out of, in connection with or in any manner relating to, the performance or nonperformance by Landlord's Agent of any act pursuant to this Lease or Landlord's direction. Any waiver by Tenant of Landlord's liability hereunder, including, but not limited to, any waiver of subrogation rights, shall apply with equal force and effect to Landlord's Agent.

#### SECTION 30 PERSONAL PROPERTY

3001. This Lease shall constitute a security agreement under the Uniform Commercial Code of the jurisdiction in which the Shopping Center is located. None of the goods, wares, merchandise, inventory, furniture, fixtures, machinery, equipment or other personal property of Tenant situated on or in the Premises shall be removed from the Premises without the prior written consent of Landlord unless all Rent, and all other charges and sums then due to Landlord shall first have been paid and discharged in full, and Tenant is not otherwise in default of any of its covenants or obligations under this Lease. Upon the occurrence of a default by Tenant under this Lease, Landlord shall have the option, in addition to any other remedies provided herein at law, in equity or under this Lease to enter into the Premises with or without the permission of Tenant and take possession of any and all goods, wares, merchandise, inventory, furniture, fixtures, machinery, equipment and other personal property of Tenant situated on or in the Premises without liability for trespass or conversion and to enforce the first lien and security interest hereby granted in any manner provided by law. Upon Landlord's request, Tenant shall execute and deliver to Landlord one or more U.C.C. Financing Statements evidencing the foregoing lien in favor of Landlord.

#### SECTION 31 ENVIRONMENTAL COVENANTS AND PROHIBITED MATERIALS

- Tenant covenants that during the term of this Lease the Premises shall at times be free from the presence of any pollutants, contamination, toxic or hazardous waste, or any other substances, the removal of which is required or the use or presence of which is restricted, prohibited or penalized by any Federal, State or local law or regulation relating to pollution or protection of the environment (generally, "Hazardous Substances"). Tenant will not permit any Hazardous Substances to be brought onto the Premises and if so brought or found located thereon the same shall be immediately removed with proper disposal, and all required clean-up procedures shall be diligently undertaken pursuant to all applicable laws. If, at any time during or after the term of this lease, the Premises are found to be so contaminated or subject to said conditions, Tenant agrees to indemnify, defend and hold Landlord harmless from all claims, demands, actions, liabilities, costs, expenses, damages and obligations of any nature arising from or result of the use of the Premises by Tenant, unless the presence of such Hazardous Substances results from the acts of Landlord or its agents or other tenants in the Shopping Center not related to Tenant. The foregoing indemnification shall survive the expiration or earlier termination of this Lease.
- 3102. Landlord represents to the best of its knowledge, without independent inquiry, that it does not know of any Hazardous Substances in or on the Premises. If at any time during the Term of this Lease, Hazardous Substances are found to be present in or on the Premises in violation of any environmental law (other than Hazardous Substances introduced by Tenant, its agents, employees, contractors or invitees) as a result of any use of Premises prior to the date hereof, Landlord shall, upon written notice of same from Tenant, remediate the same, as and to the extent required by law.

### SECTION 32 APPROVALS

- 3201. Except as otherwise expressly set forth in this Lease, if a party's consent is required the other party agrees not to unreasonably withhold its consent. Tenant hereby expressly acknowledges and agrees that Landlord shall not be held liable to Tenant, any person claiming under Tenant or any third party as a result of Landlord's approval or failure to approve or consent to any discretionary action or decision requested or required by Landlord under this Lease. In the event that Landlord is found to be in breach of this Lease as a result of Landlord's failure to grant such approval or consent despite the foregoing provisions of this Paragraph 32, Tenant's sole and exclusive remedy shall be to injunctive relief directing Landlord to grant or deny such approval or
- 3202. Neither Landlord's approval of the Tenant's Plans and Sign Plans, nor any other inspections or approvals of the improvements on the Property or plans for construction thereof by Landlord's employees, agents or inspecting engineers, shall constitute a warranty or representation as to the technical sufficiency, adequacy or safety of the plans, structures, any of their component parts, or any other physical condition or feature pertaining to the improvements, it being acknowledged by Tenant the Landlord has made such approvals solely as a landlord in determining and protecting the

value of its property for internal purposes, and not as an expert in construction-related matters.

A 61.61

#### SECTION 33 LIABILITY OF LANDLORD

Shall not be liable to Tenant, its employees, agents, contractors, business invitees, licensees, customers, clients, family members, guests, or any other person claiming under or through Tenant, for any damage, compensation or claim arising from the necessity of repairing or replacing any portion of the Premises, the interruption in the use of the Premises, accident or damage resulting from the use or operation (by Landlord, Tenant or any other person or persons whatsoever) of the Premises or the Shopping Center or any part thereof or anything contained therein, or the termination of this Lease by reason of the destruction of the Premises, or from any fire, and/or any other casualty, robbery, theft or mysterious disappearance, or for any personal injury arising from the use, occupancy and condition of the Premises, unless any of the foregoing is solely attributable to the gross negligence or willful act of Landlord. In no event shall Landlord or its agents or employees have any liability to Tenant for lost profits or any consequential damages whatsoever, or for any damage caused by any other tenants or occupants of the Premises or the Shopping Center or any other person claiming under or through Tenant, or their agents or employees, or for any damage caused by governmental or quasi-governmental authorities or public utilities or their agents or employees. Tenant shall not be entitled to any abatement or diminution of Rent as a result of any of the foregoing occurrences, nor shall the same release Tenant from its obligations under this Lease or constitute an eviction. Any goods, property or personal effects of Tenant, its employees, agents, contractors, business invitees, licensees, customers, clients, family members or guests, stored or placed in or about the Premises shall be at their sole risk, and the Landlord shall not in any manner be held responsible therefor. Tenant acknowledges that Landlord is not under any obligation to carry insurance on the Premises or Tenant's furniture, furnishings, fixtures, equi

3302. Tenant shall neither assert nor seek to enforce any claim for breach of this Lease against any of Landlord's assets other than Landlord's interest in the Shopping Center, or any portion thereof, and Tenant agrees to look solely to such interest for the satisfaction of any liability of Landlord under this Lease, it being specifically agreed that in no event shall Landlord (or any of the officers, trustees, directors, partners, beneficiaries, joint venturers, members, stockholders, or other principals or representatives, disclosed or undisclosed) ever be personally liable for any such liability. This section shall not limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord. In no event shall Landlord (or any of the officers, trustees, directors, partners, beneficiaries, joint venturers, members, stockholders, or other principals or representatives, disclosed or undisclosed) ever be liable for consequential damages. If by reason of Landlord's failure to complete construction of the Shopping Center or the Premises and Landlord shall be held to be in breach of this Lease. Tenant's sole and exclusive remedy shall be a right to terminate this Lease.

3303. Tenant hereby agrees to indemnify, defend, and hold Landlord harmless from and against any cost, damage, claim, liability or expense (including reasonable attorneys' fees) incurred by or claimed against Landlord, directly or indirectly, which is occasioned by or results from (i) any default hereunder, (ii) any act, omission, fault, negligence or misconduct on the part of Tenant, its agents, employees, contractors, invitees, licensees, concessionaires, customers, clients, family members and guests, and/or (iii) from Tenant's use and occupancy of the Premises or in any other manner which relates to the business of Tenant. Any such cost, damage, claim, liability or expense incurred by Landlord for which Tenant is obligated to reimburse Landlord hereunder or under this Lease shall be deemed Additional Rent due and payable within five (5) days after notice to Tenant that payment is due. It is expressly understood and agreed that Tenant's liability under this Lease extends to the acts and omissions of any subtenant and any agent, employee, contractor, invitee, licensee, concessionaire, customer, client, family member and guest of any subtenant.

#### SECTION 34 ENTIRE AGREEMENT AND MISCELLANEOUS

3401. The submission of this Lease for examination does not constitute a reservation of, or option for, the Premises, and this Lease shall become effective only upon execution and delivery by all parties hereto. There are no oral agreements between the parties hereto affecting this Lease and/or the Premises, and this Lease supersedes and cancels any and all previous negotiations, arrangements, letters of intent, lease proposals, brochures, agreements, representations, promises, warranties and understandings between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. Tenant hereby expressly acknowledges that Landlord or Landlord's employees or agents (including

Landlord's Agent) have made no representations, warranties, inducements or promises with respect to the Shopping Center or the Premises or this Lease except as herein expressly set forth. Tenant acknowledges that it does not have any exclusive rights in the Shopping Center with respect to the sale of its merchandise or the provision of its services.

. 60

- 3402. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and Tenant, or to create any other relationship between the parties hereto other than that of Landlord and Tenant.
- 3403. Time shall be of the essence in the performance of all obligations under this Lease.
- 3404. The Exhibits attached hereto (or will be contemplated to be completed and attached to this Lease within the time periods specified in this Lease) are hereby made a part of this Lease as fully as if set forth in the text of this Lease.
- 3405. Tenant, at its sole expense, shall comply with all laws, rules, orders and regulations, including without limitation, all energy-related requirements, of Federal, state, county, and municipal authorities and with any direction of any public officer or officers, pursuant to law, which shall impose any duty upon Landlord or Tenant with respect to or arising out of Tenant's use or occupancy of the Premises. Tenant shall reimburse and compensate Landlord for all expenditures made by, or damages or fines sustained or incurred by, Landlord due to nonperformance or noncompliance with or breach or failure to observe an item, covenant, or condition of this Lease upon Tenant's part to be kept, observed, performed or complied with. If Tenant receives notice of any violation of law, ordinance, order or regulation applicable to the Premises, it shall give prompt notice thereof to Landlord.

Notwithstanding the foregoing, Landlord shall, at its own cost and expense, comply with all governmental laws, rules, orders, ordinances and regulations now in force, or which may hereafter be in force, applicable to the structural portions of the Premises; provided, however, Landlord shall not be required to comply with any such governmental laws, rules, orders, ordinances for which it would otherwise be responsible, if the same have been imposed or are applicable as a result of Tenant's negligence, Tenant's particular use of the Premises, Tenant's failure to make repairs required of Tenant hereunder, or which are imposed as a result of alterations or improvements made by Tenant, or as a result of Tenant's failure to comply with any of its obligations under this Lease and in such event Tenant shall comply with such governmental laws, rules, orders,

- 3406. Notwithstanding any provision in this Lease to the contrary, if the Lease Term has not commenced within five (5) years after the Date of Lease, this Lease shall automatically terminate on the 5th anniversary of the Date of Lease. The sole purpose of this provision is to avoid any possible interpretation of this Lease as violating the Rule Against Perpetuities or other rule of law against restraints on alienation.
- 3407. Masculine, feminine or neuter pronouns shall be substituted for one another, and the plural shall be substituted for the singular number, in any place or places herein in which the context may require such substitution.
- 3408. This Lease shall be governed exclusively by the provisions hereof and by the laws of the state in which the Premises is located. If this Lease shall be for a term of more than five years, this Lease shall be deemed to satisfy the provisions of Virginia law that a lease of more than five years be conveyed by a deed of Lease.
- 3409. Landlord and Tenant each hereby covenant and warrant that: each party is a duly formed corporation or company qualified to do business and in good standing in the State of Maryland; each party will remain qualified to do business and in good standing in said state throughout the Term; and such person(s) are duly authorized by such corporation to execute and deliver this Lease on behalf of the corporation.
- 3410. Except for the payment of monetary obligations, if Landlord or Tenant is delayed or prevented from performing any of its obligations under this Lease by reason of strike, labor troubles, or any similar cause whatsoever beyond their control, the period of such delay or such prevention shall be deemed added to the time herein provided for the performance of any such obligation by Landlord or Tenant. It shall be a condition of Tenant's right to any relief provided for in this Section 3410 that Tenant notify Landlord in writing within ten (10) days after the occurrence of such cause, specifying the nature thereof and the period of time contemplated for such non-performance or which is necessary for performance.

### SECTION 35 WAIVER OF JURY TRIAL

3501. TO INDUCE LANDLORD AND TENANT TO ENTER INTO THIS LEASE, LANDLORD AND TENANT EACH HEREBY WATVES ANY RIGHT TO A TRIAL BY JURY OF ANY OR ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN LANDLORD AND TENANT OR THEIR SUCCESSORS, ASSIGNS, PERSONAL OR LEGAL REPRESENTATIVES AND HEIRS UNDER OR IN CONNECTION WITH THIS LEASE OR ANY OF ITS PROVISIONS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY LANDLORD AND TENANT, AND

LANDLORD AND TENANT EACH ACKNOWLEDGE THAT NEITHER LANDLORD NOR TENANT NOR ANY PERSON ACTING ON BEHALF OF LANDLORD OR TENANT HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. LANDLORD AND TENANT EACH FURTHER ACKNOWLEDGE THAT HE, SHE OR IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS LEASE WITH LEGAL COUNSEL.

IN WITNESS WHEREOF, the parties hereto have executed this Shopping Center Lease under their respective seals as of the day and year first above written.

WITNESS:

<u>LANDLORD</u>:
PENN MAR ASSOCIATES, L.L.C.

ATTEST:

TENANT:
JENNIFER CONVERTIBLES, INC., a Delaware corporation, d/b/a Jennifer Convertibles and Jennifer Leather

By: (SEAL)

Name: Edward S. Seddner
Title: Executive Vice President of Real Estate

Gary D. Rappaport, President

Federal Tax ID #: 11-2824696

[Corporate Seal]

### EXHIBIT I TO

#### Riders

The following special provisions are hereby made a substantive part of this Lease as fully as if set forth within the main text of this Lease:

1. Option to Extend. (a) Provided (1) Tenant is not in default beyond any applicable cure period of any term or provision of this Lease; (2) this Lease is in full force and effect, and (3) Tenant is not subject to any insolvency or bankruptcy proceedings, then the Term of this Lease shall be automatically extended, without the requirement of any further act or agreement by either party, for two (2) additional periods of five (5) years each ("First Extended Term" or "Second Extended Term", as applicable), commencing on the first day following the last day of the initial Term of this Lease, or First Extended Term, as the case may be, on the same terms and conditions as contained in this Lease unless Tenant shall, at least one hundred eighty (180) days prior to the Expiration Date, give Landlord notice in writing to the contrary, in which event, the Term of this Lease shall terminate as of the Expiration Date.

If at any time during the Term hereof or any extensions, Landlord shall enter into possession of the Premises or shall have the right to terminate this Lease and shall in fact terminate this Lease, but notwithstanding the automatic extension provision of this Section 1, no extension of any Term shall take place. Following the expiration of the Second Extended Term, Tenant shall have no further right to renew or extend the Lease pursuant to this Section 1. The Minimum Rent shall be increased for each Lease Year as set forth below:

Period	Annually	Monthly
First Extended Term Lease Years 6-10	\$80,000.04	\$6,666.67
Second Extended Term Lease Years 11-13 Lease Years 14-15	\$84,000.00 \$87,999.96	\$7,000.00 \$7,333.33

- 2. Early Termination. Notwithstanding anything in the Lease to the contrary, provided Tenant is not in default beyond the applicable cure period of any term and provision of this Lease, Tenant shall have three separate rights to terminate this Lease as follows: (a) after the expiration of the third (3rd) Lease Year, by giving Landlord written notice of its election to terminate within one hundred twenty (120) days after the expiration of the 3rd Lease Year; (b) after the expiration of the eighth (8th) Lease Year, by giving Landlord written notice of its election to terminate within one hundred twenty (120) days after the expiration of the 8th Lease Year; and (c) after the expiration of the thirteenth (13th) Lease Year, by giving Landlord written notice of its election to terminate within one hundred twenty (120) days after the expiration of the 8th Lease Year; and (c) after the expiration of the thirteenth (13th) Lease Year, by giving Landlord written notice of its election to terminate within one hundred twenty (120) days after the intensity (120) days after the expiration of the 13th Lease Year. If Tenant elects to terminate this Lease as set forth above, this Lease shall terminate one hundred twenty (120) days after the date of said notice. Failure by Tenant to exercise timely any of the above rights of termination shall be an affirmative waiver of that particular right to terminate, provided, however, Tenant shall retain any future right(s) to terminate as set forth herein, if any. Time is of the essence. All Rent and charges shall be prorated through the effective date of termination and Tenant shall promptly pay any of said sums to Landlord. Notwithstanding the foregoing, Landlord may not accelerate any Rent and charges which accrue or which would have accrued after the effective date of termination pursuant to this Section 2.
- 3. Exclusive Use. A. Landlord shall not hereafter lease any store space within the Shopping Center during the Lease Term to a tenant whose primary business is the sale of convertible sofas ("Competing Use"). As used herein, "primary business" means the sale of such items from more than five percent (5%) of the square footage of such tenant's premises.
- B. Tenant expressly understands that the immediately preceding paragraph does not apply to presently existing leases, or to successors or assigns of tenants under such existing leases or to any lease renewals, expansions, extensions, relocations or replacement of such tenants or to new leases with tenants occupying more than 14,000 square feet of spade.
- c. In the event Landlord receives a claim from a third party, whether a governmental officer or private party, claiming that the terms and provisions of this Section constitute a violation of a law or statute, or are not enforceable in claims, damages or compensation, ther Tenant shall be immediately informed by Landlord and Tenant shall defend, hold harmless and indemnify Landlord from and against any expense, liability or damages resulting from such claim, demand or liability.
- D. This covenant shall cease and terminate and be of no further force or effect if, subsequent to the Rental Commencement Date, Tenant is in default beyond the expiration of any applicable notice and cure period, or if the Premises shall cease to be used for the Competing Use for a period of thirty (30) days, excluding temporary interruptions of said operation due to causes beyond Tenant's reasonable control.

F:\wpfiles\RAP\PENNMAR\Jennifer Convertibles\leasev6.wpd

### AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE ("Amendment") is entered as of the 2007, by and between PENN MAR ASSOCIATES, L.L.C. ("Landlord") and JENNIFER CONVERTIBLES, INC., a Delaware corporation, d/b/a Jennifer Convertibles and Jennifer Leather ("Tenant").

#### RECITALS:

- A. Landlord and Tenant entered into a Shopping Center Lease dated January 7, 2002 (the "Original Lease"), whereby said Tenant let those certain premises known as space numbers 24/25, containing approximately four thousand (4,000) square feet ("Premises") located in the Penn Mar Shopping Center, Forestville, Maryland ("Shopping Center"), for a period expiring on April 30, 2012. As used in this Amendment, the term "Lease" shall mean the "Lease, as amended hereby," unless there is an express reference to the Original Lease or the context requires it to mean the Original Lease;
- B. Landlord and Tenant hereby acknowledge that the Term has been automatically extended for the First Extended Term, pursuant to the terms set forth in Paragraph 1 of the Rider attached to the Lease as Exhibit I ("Rider"); and
  - Landlord and Tenant desire to amend said Lease in certain respects as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby reciprocally acknowledged, Landlord and Tenant agree as set forth below.

- Recitals. The foregoing recitals and representations form a material part of this Amendment and are incorporated herein by this reference.
- 2. Option to Extend the Term. Notwithstanding anything to the contrary in Paragraph 1 of the Rider, the Term of the Lease shall not be automatically extended for the Second Extended Term. Subject to the terms and conditions set forth in the Rider, as modified herein, Tenant shall continue to have the option to extend the Term of the Lease for the Second Extended Term; provided, however, the option to extend shall be exercisable as hereinafter provided.

Tenant shall exercise the option to extend, with respect to the Second Extended Term, by giving Landlord written notice of the exercise thereof (the "Option Notice") not later than eight (8), nor earlier than twelve (12), months prior to the expiration of the First Extended Term. Time is of the essence as to all dates pertaining to Tenant's exercise of the option to extend the Term. If the Option Notice is not given timely or if Tenant does not exercise the option to extend or if Tenant has been in default under the Lease beyond any applicable cure period at any time during the Term or if Tenant has assigned the Lease or sublet all or any portion of the Premises or if Tenant is subject to any insolvency or bankruptcy proceedings, then at Landlord's election, the Option Notice shall be void, and Tenant's right with respect to the unexercised option to extend and uncommenced Second Extended Term shall thereupon and thereafter lapse, terminate and be of no further force or effect. In no event shall Tenant have the right to extend the Term of the Lease beyond the expiration of the Second Extended Term.

Tenant hereby specifically acknowledges and agrees that the time limitations upon the exercise of the option to extend the Term will be strictly enforced, that any attempt to exercise the option at any other time shall be void and of no force or effect, and that if the option is not exercised within the applicable time period, Landlord intends immediately thereafter to undertake appropriate efforts relating to the marketing or management of the Premises. The period of time within which the option to extend the Term may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise such option, because of any provisions of this Paragraph 2, or for any other reason whatsoever.

- Landlord's Agent. Section 201(p) of the Original Lease is hereby modified to provide that Landlord's Agent is The Rappaport Companies instead of Rappaport Management Company.
- 4. <u>Employee Parking.</u> Within five (5) days after Landlord's request, Tenant shall furnish to Landlord the license plate numbers and description of the vehicles operated by Tenant and its employees and permitted concessionaires or other occupants and Tenant shall notify Landlord of any changes in such information within fifteen (15) days after such changes occur. Tenant shall not interfere with the rights of Landlord and other tenants, and their respective permitted concessionaires, officers, employees, agents, licensees and invitees, to use any part of the parking areas or any other portion of the Common Areas. Landlord reserves the right to impose parking charges by installing meters or otherwise, with appropriate provisions for parking ticket validation by tenants, and to tow vehicles in violation of any parking requirements imposed under the Lease.
- 5. <u>Waiver of Subrogation.</u> The last sentence of Section 909 of the Original Lease (which begins with the word "Landlord" and ends with the word "Tenant") is hereby deleted in its entirety and replaced with the following: Landlord and Tenant further agree that each will not make any claim against or seek to recover from the other for any loss which could be insured against under any of the insurance policies required under the Lease or actually maintained

by such party, whether or not the party suffering the loss or damage actually carries such insurance or recovers under such insurance.

Notices. The Lease is hereby modified to provide that notices to Landlord and Rent payments shall be sent to the address set forth below:

Landlord c/o The Rappaport Companies 8405 Greensboro Drive, Suite 830 McLean, Virginia 22102-5121

- <u>Defined Terms</u>. Terms that are defined in the Lease shall have the same meanings when such terms are used in this Amendment.
- 8. <u>Confirmation of Terms</u>. All of the terms, covenants and conditions of the Lease, except as are herein specifically modified and amended, shall remain in full force and effect and are hereby adopted and reaffirmed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Amendment under their respective seals on the day and year first above written.

WITNESS:

[Corporate Seal]

<u>LANDLORD</u>: PENN MAR ASSOCIATES, L.L.C.

By: Gary D. Rappaport, President

TENANT:
JENNIFER CONVERTIBLES, INC., a Delaware corporation

Title: EXECUTIVE FEIN: 11-2824696

# BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

ATTORNEYS AT LAW
7315 WISCONSIN AVENUE
SUITE 800 WEST
BETHESDA, MARYLAND 20814-3244

DOUGLAS M. BREGMAN (MD, DC)
LAURENCE H. BERBERT (MD, DC)
TIMOTHY P. SCHWARTZ (MD, DC, VA)
MARK A. GILDAY (MD, DC)
GEOFFREY T. HERVEY (MD, DC, VA)
KEVIN B. McPARLAND (MD, DC)
DANIEL P. RIGTERINK (MD, DC)
KAY B. SCHWARTZ (MD)
HEATHER LIBMAN KAFETZ (MD, DC)
DANIELLE T. ERKMANN (VA)
MARC W. BOLAND (MD, DC, VA)
CATHERINE B. HARRINGTON (MD, DC)
MARC B. BERGOFFEN (MD, DC, VA, FL)
WENDY D. PULLANO (MD, DC)

CHRISTOPHER B. BOWMAN (DC, VA)

CHRISTINE E. SINDALL (MD, DC)
GWENDOLYN M. ALLEN (MD)

TELEPHONE: (301) 656-2707

www.bregmanlaw.com

FACSIMILE: (301) 961-6525

VIRGINIA OFFICE 5529 LEE HIGHWAY ARLINGTON, VIRGINIA 22207

> EDWARD WEISS (DC) OF COUNSEL

October 21, 2010

lberbert@bregmanlaw.com

## **Via FEDERAL EXPRESS**

BMC Group, Inc.

Attn: Jennifer Convertibles Claims Processing 18750 Lake Drive East Chanhassen, MN 55317

Re:

Debtor:

Jennifer Convertibles, Inc.

Case No:

10-13779(ALG)

Chapter 11

### Dear Sir/Madam:

Enclosed you will find the following:

- 1. An original Proof of Claim (and attached Exhibits A and B) for my client, Penn Mar Associates, LLC, to be filed in case no. 10-13779 (ALG) (Jennifer Convertibles, Inc.).
  - 2. A copy of the Proof of Claim to be stamped and returned to my office.
  - 3. A self-addressed stamped envelope.

BMC Group, Inc. October 21, 2010 Page 2

Thank you for your help.

Sincerely yours,

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

By:

Laurence H. Berbert

**Enclosures** 

cc: Ms. Overton (via e-mail)
F:\Karenwilhb\penn maruennifer convertibles\bmc group Ltr 10-21-10.doc