




UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK (MANHATTAN)		PROOF OF CLAIM	 YOUR CLAIM IS SCHEDULED AS: Schedule/Claim ID s449 Amount/Classification \$33,548.39 Unsecured
In re: <b>Jennifer Convertibles, Inc.</b>	Case Number: <b>10-13779</b>		
<small>NOTE: See Reverse for List of Debtors/Case Numbers/ important details. This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>			
<b>Name of Creditor and Address:</b> the person or other entity to whom the debtor owes money or property  25239792002073 CERTILMAN BALIN ADLER & HYMAN LLP (RE: JACOB PEARLSTEIN, LLC) RICHARD J MCCORD CAROL A GLICK 90 MERRICK AVE EAST MEADOW, NY 11554		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
Creditor Telephone Number ( )		<b>RECEIVED</b> <b>OCT 25 2010</b> <b>BMC GROUP</b>	
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Claim Number (if known): Filed on:	
Payment Telephone Number ( )			
<b>1. AMOUNT OF CLAIM AS OF DATE CASE FILED \$ 40,519.40</b> <small>If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim qualifies as an administrative expense under 11 U.S.C. § 503(b)(9), complete item 6.</small> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.			
<b>2. BASIS FOR CLAIM:</b> Non-Residential Real Property Lease		<b>3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:</b> 3a. Debtor may have scheduled account as:	
<b>4. SECURED CLAIM</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information <b>Nature of property or right of setoff:</b> Describe: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Value of Property: \$ Annual Interest Rate: % if any: \$ Basis for Perfection:		Secured Claim Amount: \$ Unsecured Claim Amount: \$ Amount of arrearage and other charges as of time case filed included in secured claim, <b>DO NOT</b> include the priority portion of your claim here.	
<b>5. PRIORITY CLAIM</b> <input type="checkbox"/> Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. <b>You MUST specify the priority of the claim:</b> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input checked="" type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) ( 2 ). <small>* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>			
<b>6. AMOUNT OF CLAIM THAT QUALIFIES AS AN ADMINISTRATIVE EXPENSE UNDER 11 U.S.C. § 503(b)(9): \$5,870.90</b> <small>See instruction #6 on reverse side</small>			
<b>7. CREDITS:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.			
<b>8. SUPPORTING DOCUMENTS:</b> <u>Attach redacted copies of supporting documents</u> , such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See instruction 8 and definition of "redacted" on reverse side.) If the documents are not available, please explain. <b>DATE-STAMPED COPY:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. <b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b>			
<b>The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before 5:00 pm, prevailing Eastern Time on October 25, 2010 for Non-Governmental Claimants OR on or before 5:00 pm, prevailing Eastern Time on January 18, 2011 for Governmental Units.</b> <b>BY MAIL TO:</b> BMC Group, Inc Attn: Jennifer Convertibles Claims Processing PO Box 3020 Chanhassen, MN 55317-3020		<b>THIS SPACE FOR COURT USE ONLY</b>  Jennifer Convertibles  00286	
<b>DATE</b> 10/21/2010		<b>SIGNATURE:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <b>Richard J. McCord, A Member of the Firm</b>	

## INSTRUCTIONS FOR PROOF OF CLAIM FORM

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

### ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY PROPERLY FILLED IN)

#### Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the Claims Agent, BMC Group, some or all of this information may have been already completed.

#### Debtor Name

See attached sheet

#### Case No

#### Creditor's Name and Address:

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

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

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete item, 4, 5 and 6. Check the box if interest or other charges are included in the claim.

#### 2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

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

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

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

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

#### 4. Secured Claim:

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

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

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

#### 6. Amount of Claim that qualifies as an Administrative Expense under 11 U.S.C. §503(b)(9):

State the value of any goods received by the debtor within 20 days before the date of commencement for which the goods have been sold to the debtor in the ordinary course of the debtor's business.

#### 7. Credits:

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

#### 8. Supporting Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.

#### Date and Signature:

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

#### Date-Stamped Copy

Return claim form and attachments, if any. If you wish to receive an acknowledgement of your claim, please enclose a self-addressed stamped envelope and a second copy of the proof of claim form with any attachments to the Claims Agent, BMC Group, at the address on the front of this form.

*Please read – important information: upon completion of this claim form, you are certifying that the statements herein are true.*

Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."

### DEFINITIONS

#### DEBTOR

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

#### CREDITOR

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

#### CLAIM

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

#### PROOF OF CLAIM

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court-appointed Claims Agent, BMC Group, at the address listed on the reverse side of this page

#### SECURED CLAIM Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors.

The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

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

#### UNSECURED NONPRIORITY CLAIM

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

#### UNSECURED PRIORITY CLAIM Under 11 U.S.C. §507(a)

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

#### Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other

### INFORMATION

document showing that the lien has been filed or recorded.

#### Redacted

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

#### Offers to Purchase a Claim

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

ONCE YOUR CLAIM IS FILED YOU CAN OBTAIN OR VERIFY YOUR CLAIM NUMBER BY VISITING [www.bmcgroup.com](http://www.bmcgroup.com)

**ATTACHMENT TO PROOF OF CLAIM OF JACOB PEARLSTEIN, LLC, LANDLORD**  
**UNDER AGREEMENT OF LEASE WITH JENNIFER CONVERTIBLES, INC.**  
**DATED JANUARY 1, 2010**

**Debtor/**

**Lessee:** Jennifer Convertibles, Inc.

**Case No.:** 10-13799-ALG

**Petition Date:** July 18, 2010

**Lessor:** Jacob Pearlstein, LLC  
96 Dogwood Road  
Roslyn, New York 11576

**Premises:** 190-10 Northern Boulevard  
Flushing, New York 11358

**Lease Commencement Date:** January 1, 2010

**Lease Expiration Date:** December 31, 2011

**Pre-Petition Claim**

\$13,390.00—For May 2010 (\$13,000.00 rent; \$260.00 late charge; \$130.00 interest)

\$13,526.50—For June 2010 (\$13,000.00 rent; \$260.00 late charge; \$266.50 interest)

\$ 7,732.00—Pro-rated for July 1-17, 2010 (\$7,128.95 rent [\$419.35 x 17 days]; \$260.00 late charge; \$343.05 interest)

\$34,648.50—As of July 17, 2010

TOTAL PREPETITION CLAIM: \$34,648.50

**Post-Petition Claim**

\$ 5,870.90—Pro-rated for July 18-31, 2010 (\$419.35 x 14)

TOTAL POST-PETITION CLAIM: \$ 5,870.90 entitled to priority pursuant to 11 U.S.C.  
§ 507(a)(2)

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**TOTAL CLAIM AMOUNT: \$40,519.40**

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

**Agreement of Lease**, made as of this 1<sup>st</sup> day of January, 2010, between

JACOB PEARLSTEIN, LLC, with offices at 96 Dogwood Road, Roslyn, New York 11576  
party of the first part, hereinafter referred to as OWNER, and

JENNIFER CONVERTIBLES, INC. with offices at 417 Crossways Park Drive, Woodbury, New York 11797 party of the  
second part, hereinafter referred to as TENANT,

**Witnesseth:** Owner hereby leases to Tenant and Tenant hereby hires from Owner  
the Premises known as 190-10 Northern Boulevard, Flushing, New York 11358, and as depicted in red on Exhibit A annexed  
hereto ("demised premises") or  
~~in the building known as~~ Center ("subject premises") in the County of Queens, State of New York, for the  
term of two (2) years

(or until such term shall sooner cease and expire as hereinafter provided) to commence on the

SEE RIDER ANNEXED HERETO and to end on the day of and both dates inclusive, at an annual rental rate of

See [Rider or Schedule A] annexed hereto

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

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

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

**Rent:**

**Occupancy:**

1. Tenant shall pay the rent as above and as hereinafter provided.
2. Tenant shall use the Demised Premises for the purpose of conducting business of the sale of sofas, furniture, mattresses,  
home furnishings, and related items and ancillary items

shall at all times conduct its business in a high grade and reputable manner, shall not violate Article 37 hereof, and shall keep show windows and signs in a neat  
and clean condition. and for no other purpose. Tenant

**Alterations:**

3. Tenant shall make no changes in or to the demised  
premises of any nature without Owner's prior written  
consent. Subject to the prior written consent of Owner,  
and to the provisions of this article, Tenant, at Tenant's  
expense, may make alterations, installations, additions  
or improvements which are non-structural and which  
do not affect utility services or plumbing and electrical  
lines, in or to the interior of the demised premises by

using contractors or mechanics first approved in each instance by Owner.  
Tenant shall, before making any alterations, additions, installations or  
improvements, at its expense, obtain all permits, approvals and certificates  
required by any governmental or quasi-governmental bodies and (upon  
completion) certificates of final approval thereof and shall deliver promptly  
duplicates of all such permits, approvals and certificates to Owner and  
Tenant agrees to carry and will cause Tenant's contractors and sub-  
contractors to carry such workman's compensation, general liability,  
personal and property damage insurance as Owner may require. If any  
mechanic's lien is filed against the demised premises, or the building of  
which the same forms a part, for work claimed to have been done for, or  
materials furnished to, Tenant, whether or not done pursuant to this article,  
the same shall be discharged by Tenant within 30 days thereafter, at Tenant's  
expense, by payment of or filing the bond required by law. All fixtures and  
all paneling, partitions, railings and like installations, installed in the  
premises at any time, either by Tenant or by Owner on Tenant's behalf, shall,  
upon installation, become the property of Owner and shall remain upon and  
be surrendered with the demised premises unless Owner, by notice to Tenant  
no later than twenty days prior to the date fixed as the termination of this  
lease, elects to relinquish Owner's right thereto and to have them removed  
by Tenant, in which event, the same shall be removed from the premises by  
Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in  
this Article shall be construed to give Owner title to or to prevent Tenant's  
removal of trade fixtures, moveable office furniture and equipment, but upon  
removal of any such from the premises or upon removal of other installations  
as may be required by Owner, Tenant shall immediately and at its expense,  
repair and restore the premises to the condition existing prior to installation

and as its sole cost and expense, make all non-structural repairs thereto as  
and when needed to preserve then in good working order and condition,  
reasonable wear and tear, obsolescence and damage from the elements, fire  
or other casualty, excepted. If demised premises be or become infested with  
vermin, Tenant shall at Tenant's expense, cause the same to be exterminated  
from time to time to the satisfaction of Owner. Except as specifically  
provided in Article 9 or elsewhere in this lease, there shall be no allowance  
to the Tenant for the diminution of rental value and no liability on the part  
of Owner by reason of inconvenience, annoyance or injury to business  
arising from Owner. Tenant or others making or failing to make any repairs,  
alterations, additions or improvements in or to any portion of the building  
including the erection or operation of any crane, derrick or sidewalk shed,  
or in or to the demised premises or the fixtures, appurtenances or equipment  
thereof. It is specifically agreed that Tenant shall be not entitled to any set  
off or reduction of rent by reason of any failure of Owner to comply with  
covenants of this or any other article of this lease. Tenant agrees that  
Tenant's sole remedy at law in such instance will be by way of an action for  
damages for breach of contract. The provisions of this Article 4 with respect  
to the making of repairs shall not apply in the case of fire or other Casualty  
which are dealt with in Article 9 hereof.

**Window  
Cleaning:**

**Requirements  
of Law,  
Fire  
Insurance:**

5. Tenant will not clean nor require, permit, suffer  
or allow any window in the demised premises to be  
cleaned from the outside in violation of Section 202  
of the New York State Labor Law or any other  
applicable law or of the Rules of the Board of  
Standards and Appeals, or of any other Board or  
body having or asserting jurisdiction.

6. Prior to the commencement of the lease term, if  
Tenant is then in possession, and at all times  
thereafter, Tenant, at Tenant's sole cost and  
expense, shall promptly comply with all present and  
future laws, orders and regulations of all state

insurance rate shall, at the beginning of the lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional, rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant, to comply with the term of this article. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to said premises.

**Subordination:**

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

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

8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building or caused by operations in construction of any private, public or quasi public work. Tenant agrees, at Tenant's sole cost and expense, to maintain general public liability insurance in standard form in favor of Owner and Tenant against claims for bodily injury or death or property damage occurring in or upon the demised premises,

effective from the date Tenant enters into possession and during the term of this lease. Such insurance shall be in an amount and with carriers acceptable to the Owner. Such policy or policies shall be delivered to the Owner. On Tenant's default in obtaining or delivering any such policy or policies or failure to pay the charges therefor, Owner may secure or pay the charges for any such policy or policies and charge the Tenant as additional rent therefor.

Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorney's fees, paid, suffered or incurred as a result of any breach by Tenant. Tenant's agents, contractors, employees, invitees, or licensees, of any covenant on condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any subtenant, and any agent, contractor, employee, invitee or licensee of any subtenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

**Destruction, Fire and Other Casualty:**

9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent as hereinafter expressly provided shall be proportionately paid up to the time of the casualty and thenceforth shall

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

**Eminent Domain:**

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

**Assignment, Mortgage, Etc.:**

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

**Electric Current:**

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

progress prior to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants and may, during said six months period, place upon the demised premises the usual notice "To Let" and "For Sale" which notices Tenant shall permit to remain thereon without molestation. If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom, Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligations hereunder. Owner shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets, or other public parts of the building and to change the name, number or designation by which the building may be known.

**Vault,  
Vault Space,  
Area:**

14. No Vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and all

such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant.

**Occupancy:**

15. Tenant will not at any time use or occupy the demised premises in violation of Article 2 and 37 hereof, or of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations, whether or not of record.

**Bankruptcy:**

16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Landlord by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) the making by Tenant

of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) it is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per

(Bankruptcy Code); or if Tenant shall fail to move into or take possession of the premises within thirty (30) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge, then, in any one or more of such events, upon Owner serving a written fifteen (15) days notice upon tenant specifying the nature of said default and upon the expiration of said fifteen (15) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said fifteen (15) day period, and if Tenant shall not have diligently commenced curing such default within such fifteen (15) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Owner may serve a written five (5) days notice of cancellation of this lease upon Tenant, and upon the expiration of said five (5) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

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

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

18. In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration, (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or

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

**Fees and  
Expenses:**

19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, after notice if required and upon expiration of any

upon which it is erected or the demised premises, the rents, leases, expenses of operation, or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition, and agrees to take the same "as is" and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreements between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

#### End of Term:

21. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear expected, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any

renewal thereof, falls on Sunday this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

#### Quiet Enjoyment:

22. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 33 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

#### Failure to Give Possession:

23. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants or if the premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of

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

#### No Waiver:

24. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted as violation from having all the force and effect of an original violation. The receipt by Owner of rent and/or additional rent with

knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to

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

#### Inability to Perform:

26. This Lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making

any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment, fixtures, or other materials if Owner is prevented or delayed from so doing by reason of strike or labor troubles, government preemption or restriction or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of which have been or are affected, either directly or indirectly, by war or other emergency, or when in the judgement of Owner, temporary interruption of such services is necessary by reason of accident, mechanical breakdown, or to make repairs, alternations or improvements.

#### Bills and Notices:

27. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises from a part or at the last known residence address or business address of Tenant left at

any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

#### Water Charges:

28. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes Owner to be the sole judge) Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation thereof and throughout the duration of Tenant's occupancy Tenant shall keep said

meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter as and bills are rendered. Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption maintenance or supply of water, water system or sewage or sewage connection or system. The bill rendered by Owner shall be payable by Tenant as additional rent. If the building or the demised premises or any part thereof be supplied with water through a meter through which water is also supplied to other premises Tenant shall pay to Owner as additional rent, on the first day of each month,

(\$ 0 )

of the total meter charges, as Tenant's portion. Independently of and in addition to any of the remedies reserved to Owner hereinabove or elsewhere in this lease, Owner may sue for and collect any monies to be paid by Tenant or paid by Owner for any of the reasons or purposes hereinabove set forth.

#### Sprinklers:

29. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office or any bureau department or official of the F. D. I.



**Elevators,  
Heat,  
Cleaning:**

30. As long as Tenant is not in default under any of the covenants of this lease beyond the applicable grace period provided in this lease for the curing of such defaults, Owner shall, if and insofar as existing facilities permit furnish heat to the demised premises, when and as required by law, on business days from 8:00 a.m. to 6:00 p.m. ~~and on Saturdays from 8:00~~

~~a.m. to 1:00 p.m.~~ Tenant shall at Tenant's expense, keep demised premises clean and in order, to the satisfaction to Owner, and if demised premises are situated on the street floor. Tenant shall, at Tenant's own expense, make all repairs and replacements to the sidewalks and curbs adjacent thereto, and keep said sidewalks and curbs free from snow, ice, dirt and rubbish. Tenant shall pay to Owner the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Owner to Tenant at such times as Owner may elect and shall be due and payable when rendered, and the amount of such bills shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting for the removal of such rubbish and refuse in the event that Tenant does not wish to have same done by employees of Owner. Under such circumstances, however, the removal of such refuse and rubbish by others shall be subject to such rules and regulations as, in the judgement of Owner, are necessary for the proper operation of the building.

**Security**

31. Tenant has deposited with Owner the sum of \$-0- as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent,

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

**Captions:**

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

**Definitions:**

33. The term "Owner" as in this lease means only the Owner, or the mortgagee in possession, for the time being of the land and building (or the Owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of a any sale or sales of said land and building, or of the land and building or of said lease, or in the event of a lease of said building, or of the land and building, the

said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties of their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants

or abatement of rent.

**Rules and  
Regulations:**

35. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes

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

**Glass:**

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

be due from, and payable by, Tenant when rendered, and the amount thereof shall be deemed to be, and be paid, as, additional rent.

**Pornographic  
Uses  
Prohibited:**

37. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the premises, and shall not permit or conduct any obscene, nude, or semi-nude live performances on the premises, nor permit use of

the premises for nude modeling, rap sessions, or as a so called rubber goods shops, or as a sex club of any sort, or as a "massage parlor." Tenant agrees further that Tenant will not permit any of these uses by any sublessee or assignee of the premises. This Article shall directly bind any successors in interest to the Tenant. Tenant agrees that if at any time Tenant violates any of the provisions of this Article, such violation shall be deemed a breach of a substantial obligation of the terms of this lease and objectionable conduct. Pornographic material is defined for purposes of this Article as any written or pictorial manner with prurient appeal or any objects of instrument that are primarily concerned with lewd or prurient sexual activity. Obscene material is defined here as it is in Penal law §235.00.

**Estoppel  
Certificate:**

38. Tenant, at any time, and from time to time, upon at least 10 days prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications),

stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any defaults by Owner under this lease, and if so, specifying each such default.



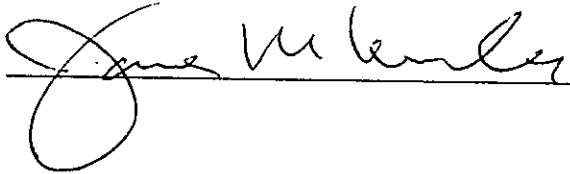
**Successors  
and Assigns:**

39. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns. Tenant shall look only to Owner's estate and interest in the land and building, for the satisfaction of Tenant's remedies for the collection of a judgement (or

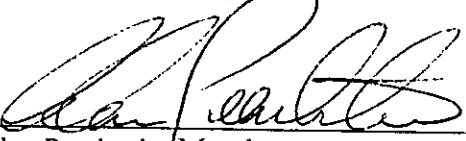
other judicial process) against Owner in the event of any default by Owner hereunder, and no other property or assets of such Owner (or any partner, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this lease, the relationship of Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

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

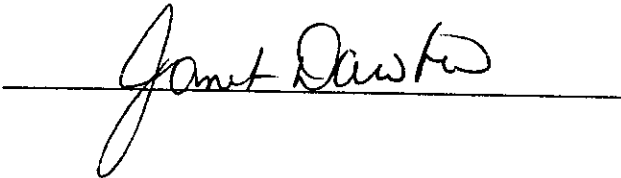
Witness for Owner:



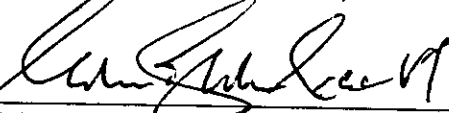
JACOB PEARLSTEIN, LLC

By:   
Alan Pearlstein, Member

Witness for Tenant:



JENNIFER CONVERTIBLES, INC.

By:   
Edward B. Seidner  
Executive Vice President

## ACKNOWLEDGMENTS

CORPORATE OWNER  
STATE OF NEW YORK, ss:  
County of

On this       day of       , 20       ,  
before me personally came

to me known, who being by me duly sworn, did  
depone and say that he resides in

that he is the       of       ;  
the corporation described in and which executed the  
foregoing instrument, as OWNER; that he knows  
the seal of said corporation; the seal affixed to said  
instrument is such corporate seal; that it was so  
affixed by order of the Board of Directors of said  
corporation, and that he signed his name thereto by  
like order.

---

CORPORATE TENANT  
STATE OF NEW YORK, ss:  
County of

On this       day of       , 20       ,  
before me personally came

to me known, who being by me duly sworn, did  
depone and say that he resides in

that he is the       of       ;  
the corporation described in and which executed the  
foregoing instrument, as TENANT; that he knows  
the seal of said corporation; the seal affixed to said  
instrument is such corporate seal; that it was so  
affixed by order of the Board of Directors of said  
corporation, and that he signed his name thereto by  
like order.

---

INDIVIDUAL OWNER  
STATE OF NEW YORK, ss:  
County of

On this       day of       , 20       ,  
before me personally came  
to be known and known to me to be the individual  
described in and who, as OWNER, executed the  
foregoing instrument and acknowledged to me that  
he executed  
the same.

---

INDIVIDUAL TENANT  
STATE OF NEW YORK, ss:  
County of

On this       day of       , 20       ,  
before me personally came  
to be known and known to me to be the individual  
described in and who, as TENANT, executed the  
foregoing instrument and acknowledged to me that  
he executed  
the same.

---

## GUARANTY

The undersigned Guarantor guarantees to Owner, Owner's  
successors and assigns, the full performance and observance of all the  
agreements to be performed and observed by Tenant in the attached Lease,  
including the "Rules and Regulations" as therein provided, without  
requiring any notice to Guarantor of nonpayment or nonperformance or

\_\_\_\_\_  
Guarantor's Residence

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Firm Name

STATE OF NEW YORK ) ss.:

COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before  
me personally came \_\_\_\_\_

to me known and known to me to be the individual described in, and who  
executed the foregoing Guaranty and acknowledged to me that he executed  
the same.

\_\_\_\_\_  
Notary

IMPORTANT - PLEASE READ

RULES AND REGULATIONS ATTACHED TO AND  
MADE A PART OF THIS LEASE  
IN ACCORDANCE WITH ARTICLE 35

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress and egress from the demised premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designed for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any tenant or by jobbers or others in the delivery or receipt of merchandise, any hand trucks except those equipped with rubber tires and safeguards.

2. If said premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalks and curb in front of said premises clean and free from ice, snow, etc.

3. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed.

4. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the building by reason of noise, odors and/or vibrations or interfere in any way with other Tenants or those having business therein.

5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premises if the same is visible from the outside of the demised premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by an Tenant, Owner may remove same without any liability, and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Signs on interior doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.

6. No Tenant shall mark, paint, drill into, or in any way deface any part of the demised premises or the building of which they form a part. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall

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

8. Owner reserves the right to exclude from the building between the hours of 6:00 P.M. and 8 A.M. and at all hours on Sundays, and holidays all persons who do not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests same in writing. Each Tenant shall be responsible for all persons for whom he requests such pass and shall be liable to Owner for all acts of such persons.

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

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

11. Tenant shall not place a load on any floor of the demised premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant at Tenant's expense in setting sufficient in Owner's judgement to absorb and prevent vibration, noise and annoyance.

12. Refuse and Trash - Tenant covenants and agrees, at its sole cost and expense, to comply with all present and future laws, orders, and regulations of all state, federal, municipal, and local governments, departments, commissions and boards regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash. Tenant shall

Address

Premises

---

JACOB PEARLSTEIN, LLC

TO

JENNIFER CONVERTIBLES, INC.

---

STANDARD FORM OF

STORE  
LEASE

The Real Estate Board of New York, Inc.

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part prohibited.

**RIDER TO LEASE DATED JANUARY 1, 2010  
BETWEEN JACOB PEARLSTEIN, LLC, OWNER, AND  
JENNIFER CONVERTIBLES, INC., TENANT**

In the event of a conflict between the covenants, conditions, and provisions of this Rider with those of the Standard Form of Store Lease or any of the exhibits or schedules attached hereto, the terms, covenants, conditions and provisions of this Rider shall govern and control the rights and obligations of the parties hereto.

**ARTICLE - 40  
DEMISED PREMISES - TERM OF LEASE**

The Owner hereby demises and leases to Tenant and Tenant hereby hires and takes from Owner the store space known as 190-10 Northern Boulevard, Flushing, New York, 11358, and designated parking spaces to be used in connection with said lease, as depicted in red on Exhibit A annexed hereto, for a Term of two (2) years, commencing on January 1, 2010 ("Lease Commencement Date"), and terminating on December 31, 2011 ("Lease Termination Date") in "As Is" Condition.

**ARTICLE - 41  
RENT**

The basic annual rent ("Base Rent") which is to be paid on the first of each month, shall be as set forth below:

- A) Tenant agrees to pay to the Owner at the Owner's office set forth above, or at such other place as Owner may from time to time designate, without any prior demand therefor and without any set-off or deduction whatsoever, fixed minimum rent at the following annual rates:
1. Except as otherwise set forth in this lease, \$156,000.00 gross rent for the first year, by the payment of \$13,000.00 in advance on the first day of each and every calendar month.
  2. Except as otherwise set forth in this lease, \$156,000.00 gross rent for the second year, by the payment of \$13,000.00 in advance on the first day of each and every calendar month.

**ARTICLE - 42  
AUTHORITY**

This lease is presented to the Tenant for signature by Owner's designee solely in said designee's capacity as representative of Owner and is hereby made expressly subject to Owner's acceptance and approval by execution by Owner and delivery to Tenant. This lease is not to be construed as an offer to lease and shall not in any way bind the Owner or its designee until such time as the Owner has executed and delivered the lease as aforesaid.

**ARTICLE - 43  
INTEREST**

Any payment required to be made by Tenant pursuant to this lease including all payments of rent, additional rent or other charges, not made by Tenant as and when due shall thereafter be deemed to be due and payable by Tenant to Owner on demand with interest thereon from the date when the particular amount becomes due to the date of payment thereof to Owner at the rate of the lesser of twelve (12%) percent per annum or the highest rate permitted by law.

#### **ARTICLE - 44**

##### **UTILITIES**

The Tenant shall pay for and bear the entire cost and expense for all utilities, to include electricity and gas consumed by the Tenant in the demised premises pursuant to separate meters serving the demised premises. In the event that the Tenant shall fail to pay this charge, the Owner may, but shall not be obligated, to pay same and upon such payment the amount so expended shall be deemed to be additional rent due and payable on the next month succeeding the payment therefor. In addition to electricity and gas, utilities to be paid by Tenant shall include heat, air conditioning, light and telephone services. Water shall be paid by Owner.

#### **ARTICLE - 45**

##### **INSURANCE**

- A) The Tenant shall at Tenant's sole cost and expense, obtain liability insurance with both Owner and Tenant as insured parties against all claims, demands and actions for injury to, or death of, any one person in an amount of not less than \$2,000,000.00 and with respect to any one accident of not less than \$2,000,000.00 and for damage to property in an amount of not less than \$500,000.00 with respect to any accidents or occurrences in or about the demised premises, and common areas. Owner reserves the right to increase the amount of its insurance required in conformance with the industry standard of comparable buildings in the Borough of Queens.
- B) It is mutually agreed that (provided the following waiver does not invalidate the applicable insurance policy) Owner and Tenant shall waive, and they do hereby waive, any claim against the other for loss to either of their properties occasioned by the fault of the other, to the extent that either collects from the insurance in force to indemnify the injured party for loss sustained, and to the extent that such waiver is permitted by the insurance in force, and other provisions in this lease to the contrary notwithstanding.
- C) The Tenant shall furnish the Owner with a policy of insurance protecting the Owner against such liability. Should the Tenant fail to obtain such liability insurance, the Owner may, at its option, purchase and maintain such liability insurance policy and charge the cost thereof to the Tenant as additional rent due and payable on the first day of the month next succeeding the purchase of such insurance. The Tenant shall maintain insurance coverage damage to its own personal property situated upon the demised premises, as well as damage to third persons, and will under any claim for damage to supplies, equipment, or other goods upon the demised premises.
- D) The Tenant shall pay as additional rent its pro rata share of any increase over the base insurance year 2009 of all insurance premiums being paid by the Owner pertaining to insurance policies which the Owner has obtained for the Subject Premises of which the demised premises is a part. It is agreed to by and between the parties that the Tenant's pro rata share equals Seventy Five (75%) per cent.
- E) True and complete copies of certificates of insurance reflecting insurance coverage required herein shall be provided to Owner by Tenant prior to Tenant taking actual possession of the demised premises, and Tenant shall also provide Owner with written confirmation from any insurance company(s) providing insurance that Owner shall receive notice of cancellation of such insurance coverage required of Tenant not less than fifteen (15) prior to date of cancellation.
- F) Tenant shall self-insure for plate glass damage.

**ARTICLE - 46**  
**TRASH REMOVAL**

Tenant shall pay for twice weekly trash removal service.

**ARTICLE - 47**  
**SIGNS**

Tenant at its own cost, shall have the right to place, construct and maintain on the west side of the building on the demised premises one or more signs advertising its business. This right to display signs is limited to the Tenant's own business and Tenant may not display any other advertising signs on the premises without the express consent of the Landlord. All signs publically displayed by Tenant shall be in compliance with all applicable laws and wherever necessary, Tenant shall obtain any approval for the placement of such signs from the appropriate authority. Landlord makes no representation regarding the Tenant's ability to obtain such consent or authorization.

**ARTICLE - 48**  
**BROKERAGE**

Parties hereto represent that there was no broker instrumental in consummating this lease. Parties agree to hold one another harmless from and against any and all claims or demands for brokerage commissions arising out of or in connection with the execution of this lease or any conversations or negotiations thereto with any other broker.

**ARTICLE - 49**  
**CHANGE IN OWNERSHIP**

Tenant agrees to give Owner written notice of any proposed change in the ownership of the majority of the outstanding capital stock or membership interest of Tenant or any change in the ownership of the majority of the assets of Tenant. Failure of Tenant to give notice provided for in the preceding sentence shall be deemed a non-curable default by Tenant pursuant to this lease (that is, a default which has already extended beyond the applicable grace period, if any, following notice from Owner), giving Owner the right, at its option, to cancel and terminate this lease or to exercise any and all other remedies available to Owner hereunder or as shall exist at law or in equity.

**ARTICLE - 50**  
**HOLDING OVER**

If Tenant retains possession of the demised premises or any part thereof after the termination of the term by lapse of time or otherwise, without prior written approval of Owner, the Tenant shall pay the Owner rent at one and one-half times the rate specified in this lease for the time the Tenant thus remains in possession, and in addition thereto, shall pay the Owner all damages, consequential as well as direct, sustained by reason of the Tenant's retention of possession. If the Tenant remains in possession of the demised premises, or any part thereof, after the termination of the term by lapse of time or otherwise, such holding over shall at the election of the Owner expressed in a written notice to the Tenant and not otherwise, constitute an extension of this lease in a month to month basis at one and one-half times the monthly rental set forth in this lease. The provisions of this Article do not exclude the Owner's right of re-entry or any other right hereunder.

**ARTICLE - 51**  
**ADDITIONAL RENT**

All costs, charges, adjustments and expenses which Tenant assumes or agrees to pay pursuant to this lease shall at Owner's election be treated as additional rent and, in the event of nonpayment, Owner shall have the



rights and remedies herein provided for in the case of nonpayment of rent or breach of condition. If Tenant shall default in making any payment required to be made by Tenant (other than the payment of rent required pursuant to this lease) or shall default in performing any term, covenant or condition of this lease on the part of Tenant to be performed hereunder, Owner at Owner's option may (but shall not be obligated to) immediately or at any time thereafter on fifteen (15) days' written notice make such payment, or, on behalf of Tenant, cause the same to be performed for the account of Tenant and expend such sum as may be necessary to perform and fulfill such term, covenant or condition, and any and all sums so expended by Owner, with interest thereon at the rate of interest of the lesser of twelve (12%) percent per annum or the highest legal rate per annum from the date of such expenditure, shall be and be deemed to be additional rent, in addition to the fixed rent, and shall be repaid by Tenant to Owner on demand, but no such payment or expenditure by Owner shall be deemed a waiver of Tenant's default nor shall it affect any other remedy of Owner by reason of such default. Tenant's obligation to pay additional rent shall survive any termination of this lease.

## **ARTICLE - 52**

### **ASSIGNMENT AND SUB-LETTING**

- A) Without the previous written consent of Owner which will not unreasonably be withheld, neither Tenant nor Tenant's legal representatives or successors in interest by operation of law or otherwise, shall assign, encumber, mortgage or otherwise transfer this lease in whole or in part, sublet the demised premises or any part thereof, or grant any license or concession in the demised premises except as provided for herein. No reference to other parts of this lease to an assignee, subtenant, licensee or concessionaire shall be deemed to modify the foregoing sentence or waive the provisions thereof. Any consent by Owner to any act of assignment, mortgage or subletting shall apply to the specific transaction thereby authorized, and shall not be deemed a waiver of the duty of Tenant, or the successor or assigns of Tenant, to obtain Owner's consent to any subsequent act of assignment, mortgaging or subletting. If this lease shall be assigned, Owner may collect rent from the assignee, and if the demised premises or any part thereof are sublet, Owner may, in case of default by Tenant, collect rent from the subtenant. In either such case Owner may apply the net sum so collected to rent or additional rent hereunder, and no such collection shall be deemed a waiver of any part of this Article, an acceptance of such assignee or subtenant, or a release of Tenant from Tenant's obligations under this lease. The assignee or subtenant shall have a net worth in excess of \$1,000,000 or shall otherwise be able to demonstrate to the reasonable satisfaction of the Owner that it will be able to satisfy the monetary obligations under this Lease. Upon an assignment or sublet of this Lease, the assignee or subtenant shall deposit with Owner an amount equal to two (2) months Base Rent as Security Deposit.
- B) An assignment, within the meaning of this Article, shall be deemed to include one or more sales or transfers, by operation of law or otherwise, by which an aggregate of more than fifty (50%) percent of Tenant's stock or membership interest shall be vested in a party or parties who are non-stockholders as of the date hereof. This paragraph shall not apply if Tenant's stock is listed on a recognized security exchange. For the purpose of this paragraph, stock ownership shall be determined in accordance with the principles set forth in Section 544 of the Internal Revenue Code of 1954 as the same existed on August 16, 1954.
- C) Any party who shall within the restrictions of this Article become vested with the leasehold interest hereunder, shall be liable for those obligations of Tenant which shall accrue from and after such vesting; and it shall be a condition of such vesting that any such party shall immediately deliver to Owner an instrument, executed in the manner required to entitle a deed to a recordation, assuming the obligations of Tenant hereunder.
- D) These provisions shall apply to any and all subsequent proposals of assignment or subleases, notwithstanding Owner's consent to any prior assignment or sublease.

- E) In any event, if Tenant shall desire to assign this lease, Owner will give consideration to such request to the provisions of the proceeding subparagraphs. Any request by Tenant for the Owner's consent to assignment or subletting, shall be accompanied by, and if required, be supplemental with, all information that Owner may need in order to determine the financial responsibility of the proposed assignee or sublessee, and its previous experience in business. Such proposed assignee or sublessee may be required by Owner, as a condition to Owner's granting its consent, to assume full responsibility for the performance of this Tenant's part to be performed, notwithstanding the named Tenant herein shall not be released of its responsibility.
- F) INTENTIONALLY OMITTED
- G) An executed copy of any assignment or sublease which has been consented to by Owner shall be delivered to Owner within three (3) business days after execution.
- H) In no event shall Owner's failure or delay in granting consent to any assignment or sublease be the basis for a claim for monetary damages by Tenant; Tenant's sole recourse shall be an action for declaratory judgment to be brought in Supreme Court, Queens County.
- I) Any assignment or sublease of the demised premises or any part thereof shall be for a legally permitted use (and subject further to the permissible uses, limitations and restrictions set forth in the Certificate of Occupancy and/or Minutes of the Board of Standards and Appeals, as attached hereto).
- J) Upon any assignment or sublease of the demised premises, Tenant shall be obligated to pay to Owner fifty (50%) percent of any increase in base rental payments due pursuant to the terms of the assignment or sublease, by the assignee or subtenant, greater than the payments in base rent due to Owner pursuant to the terms of this Lease, with said increase in payments to be made to Owner on the first day of each month. As a condition to any assignment or sublease, the assignee or subtenant shall execute a sworn affidavit in form acceptable to the Owner which shall set forth the increase in payments to be made.
- K) Notwithstanding any wording to the contrary set forth herein, under no circumstances shall Owner be required to consent to any assignment, sublease, license, or concession in the demised premises if Tenant is in default under the terms and provisions of this Lease.

#### **ARTICLE - 53** **MECHANICS' LIEN**

If, because of any act or omission of Tenant or anyone claiming through or under Tenant, any mechanics' or other lien or order for the payment of money shall be filed against the demised premises or the building, or against Owner (whether or not such lien or order is valid or enforceable as such), Tenant shall, at Tenant's own cost and expense, cause the same to be cancelled and discharged of record within thirty (30) days after the date of filing thereof, and shall also indemnify and save harmless Owner from and against any and all costs, expenses, claims, losses or damages, including reasonable counsel fees, resulting therefrom or by reason thereof.

#### **ARTICLE - 54** **RIGHTS RESERVED BY OWNER**

Without abatement or diminution in rent, Owner reserves and shall have the following rights:

- A) To change the street address and/or the name of the buildings and/or the location of the entrances,

passageways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of the building without liability to Tenant provided that it shall not unreasonably interfere with Tenant's use and occupancy of the demised premises.

- B) To require that no exterior sign shall be affixed or installed by the Tenant on the exterior facade of the Premises without the written approval of Owner submitted in writing by Tenant to Owner as to the location, lettering, trade name, size, type, design, specifications and source of supply thereof, which consent shall not be unreasonably withheld.
- C) To approve in writing all sources furnishing sign painting and lettering, and to approve all sources furnishing cleaning services, construction work, painting, decorating, repairing, maintenance and any other work in or about the demised premises, which approval shall not be unreasonably withheld.
- D) To enter the demised premises at all reasonable times (1) for the making of inspections, alterations, improvements and repairs, as Owner may deem necessary or desirable, (2) to exhibit the demised premises to prospective purchasers or lessees of the building at any time upon reasonable notice, (3) for any purpose whatsoever relating to the safety, protection or preservation of the demised premises or of the building, (4) to build onto the subject premises or the building of which the demised premises is a part, provided such entry shall not be unreasonably interfere with Tenant's use and occupancy of the Premises.
- E) At any time or times, Owner either voluntarily or pursuant to governmental requirement, may, at Owner's own expense, make repairs, alterations or improvements in or to the Subject Premises or any part thereof and during alterations, may close entrances, doors, windows, corridors, or other facilities, provided that such acts shall not unreasonably interfere with Tenant's use and occupancy of the demised premises as a whole.
- F) To erect, use and maintain pipes and conduits in and through the demised premises, provided that such acts shall not unreasonably interfere with Tenant's use and occupancy of the demised premises as a whole.
- G) To charge to Tenant any expense including overtime cost incurred by Owner in the event that repairs, alterations, decorating or other work in the demised premises are made or done after ordinary business hours at Tenant's request.
- H) To grant to anyone the exclusive right to conduct any particular business or undertaking in the building as long as this does not conflict with rights granted to Tenant hereunder.
- I) To require that animals such as dogs, cats, etc. are not allowed at the demised premises or on the Subject Premises.
- J) Owner may exercise any or all of the foregoing rights hereby reserved to Owner without being deemed guilty of an eviction, actual or constructive, or disturbance or interruption of Tenant's use or possession and without being liable in any manner toward Tenant and without limitation or abatement of rent or other compensation, and such acts shall have no effect on this lease.

#### **ARTICLE - 55** **COMMON AREAS - USE**

Tenant and its employees, agents and invitees shall be entitled to use the parking areas, access and egress, roads, walkways, sidewalks and other common facilities at the Subject Premises, subject, however, to the following provisions of this Article and other provisions of this Lease. Such use shall be subject to such

reasonable rules and regulations as Owner may from time to time impose. Tenant shall abide by such rules and shall use its best efforts to cause its employees, agents and invitees to conform thereto. Owner may from time to time close any common area temporarily to make repairs or changes or prevent the acquisition of public rights therein.

**ARTICLE - 56**  
**PARKING OF VEHICLES**

At no additional charge, Tenant is hereby given the right to use the parking area depicted on Exhibit "A" annexed hereto, which parking area consists of four (4) parking spaces, and is hereby given rights with the other commercial Tenant (located at 190-08 Northern Boulevard, Flushing, New York), to use the common driveway off Northern Boulevard for ingress and egress to said parking area. Said parking area is for the use of the Tenant, its employees, customers, and invitees. Owner at all times shall have the right and privilege of determining and changing the nature and extent of the automobile parking, and of modifying the parking area for any expansion or modification thereof as in its opinion are deemed to be desirable.

**ARTICLE - 57**  
**EXCULPATORY PROVISION**

Tenant shall look only to Owner's estate and interest in the land and building (or the proceeds thereof), for the satisfaction of Tenant's remedies for failure to perform any of Owner's obligations under this lease, express or implied, or under any law. Neither Owner nor any disclosed or undisclosed principal of Owner (or any partners or agents of Owner or of any such principal) shall have any personal liability for any such failure under this lease or otherwise; and no other property or other assets of Owner, its partners or agents or any such principal shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies. Such exculpation is to be absolute and without any exceptions whatsoever.

**ARTICLE - 58**  
**AFFIRMATIVE COVENANTS OF TENANT**

The Tenant covenants that it shall:

- A) Comply with the terms of any state or federal statute or local ordinance or regulation applicable to the Tenant or its use of the demised premises, and save the Owner harmless from penalties, fines, costs, expenses or damages resulting from its failure to do so.
- B) Comply with the terms and conditions set forth in this lease relating to the use, operation and maintenance of the common facilities.
- C) Give to the Owner prompt written notice of any accident, fire or damage occurring on or to the demised premises and the common area.
- D) Arrange for loading and unloading of equipment goods and personalty in such a manner as not to interfere with the use and enjoyment of the adjoining commercial property by the tenant located at 190-08 Northern Boulevard, Queens, New York.
- E) Keep the demised premises sufficiently heated to prevent freezing of water pipes and fixtures.
- F) Keep the demised premises, to include windows, clean, orderly, sanitary, and free from objectionable noise, dust, odors or other nuisance, and from insects, vermin and other pests and at its own cost and

expense to engage an exterminating service as Owner may direct on a monthly basis for each and every month of the term of this lease.

- G) Comply with Owner's requirement that Tenant's employees park their cars only in those portions of the parking areas as are designated for that purpose by the Owner. The Tenant shall from time to time, upon written notice, furnish the Owner with the state automobile license numbers assigned to the Tenant's cars and the cars of all the Tenant's directors, officers, employees, agents, contractors, subtenant(s) and licensees. In the event that the Tenant or its employees fail to park their cars in designated parking areas as aforesaid, then the Owner at its option shall charge the Tenant \$100.00 per day per car parked in any area other than those designated, as and for liquidated damages, after receipt of notice of Owner's intent to do so.
- H) Comply with all rules and regulations of the Owner and the municipalities in effect at the time of the execution of this lease or at any time and from time to time reasonably promulgated by the Owner, which the Owner in its sole discretion shall deem necessary in connection with the demised premises and the Subject Property as the Owner and the municipalities may require; and comply with the recommendation of the Owner's insurance carriers and their ratemaking bodies, if the Tenant's use of the demised premises requires any of the above.
- I) Repay the Owner, as additional rental, on demand, all sums disbursed or deposited by the Owner pursuant to the foregoing provisions of this Article, including the Owner's costs, expenses and reasonable attorney's fees incurred by the Owner in connection therewith.
- J) Be responsible for and at its sole cost and expense the maintenance of any existing alarm security system or at Tenant's election its replacement, the replacement or upgrading of the door locks presently in place and to make all repairs to the exterior doors (to include the frames and supports thereof) of the demised premises.
- K) Tenant covenants and agrees that it will, throughout the term of this lease, at its own cost and expense, repair and replace any and all damaged or broken plate or other glass on any windows or in any of the entrance doors of the demised premises.
- L) Tenant covenants and agrees that it will indemnify and hold the Owner harmless from and against any and all claims, liability, loss or damage, whether for injury to persons or loss of life or damage to property arising out of Tenant's use and occupancy during the term of this Lease of the demised premises or Tenant's use of the sidewalks and curbs appurtenant thereto in connection with the business being carried on therein.
- M) Use the plumbing facilities only for those purposes for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant.
- N) Provide for the delivery or shipping of merchandise, supplies and fixtures to and from the demised premises in accordance with such reasonable rules and regulations as in the judgement of the Owner are necessary for the proper operation of the Subject Premises.
- O) Not store outside any furniture, sofas, mattresses, furnishings, or other merchandise or goods of any nature.

#### **ARTICLE 59** **NEGATIVE COVENANTS OF TENANT**

The Tenant covenants that it shall not do any of the following without the prior consent in writing of the Owner:

- A) Use or operate any machinery to include but not limited to sound systems that, in the Owner's opinion, is harmful to the building or disturbing to other tenants in the building of which the demised premises are a part or use any loudspeakers, phonographs, televisions, radios or other devices in a manner so as to be heard or seen outside of the demised premises.
- B) Do or suffer to be done, anything objectionable to the fire insurance companies whereby the fire insurance or any other insurance now in force or hereafter to placed on the demised premises or any part thereof, or on the building of which the demised premises may be part, shall become void or suspended, or be rated as a more hazardous risk than at the date when the Tenant receives possession hereunder. In addition to all other remedies of the Owner hereunder, the Tenant shall pay to the Owner as additional rent any increases of premiums on insurance carried by the Owner on the demised premises, or any part thereof, or on the building of which the demised premises may be part, caused in any way by the occupancy of the Tenant.
- C) Attach any awning, aerial, antenna, or other projection to the roof or the outside walls of the demised premises or the building of which the demised premises is a part or on the grounds of the Subject Premises any of the above of which shall be subject to removal at anytime without notice.

#### **ARTICLE 60** **ATTORNEYS FEES**

If Tenant shall default in the observation or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this Lease and if Owner, in connection with any default by Tenant, including a default in the covenant to pay rent hereunder, makes any payment of money, for attorneys fees in instituting, prosecuting or defending any action or proceeding, such sums so paid or obligations incurred with interest and costs shall be deemed additional rent hereunder and shall be paid by Tenant to Owner within fifteen (15) days of rendition of any bill or statement to the Tenant therefor, and if the Lease shall have terminated or the Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

#### **ARTICLE - 61** **MISCELLANEOUS**

- 1. On the last day of the term or the earlier termination thereof, Tenant shall peaceably and quietly leave, surrender and deliver up to Owner the demised premises broom-clean, and all alterations, changes, additions and improvements which may have been made upon the demised premises (except movable furniture or movable trade fixtures put in at the expense of Tenant) in good repair and in good order and in safe condition except for reasonable wear and tear and damage by fire, other casualty or the elements excepted and shall surrender all keys for the demised premises to Owner at the place then fixed for the payment of rent and shall inform Owner of all combinations on locks, safes and vaults, if any, in the demised premises. Before surrendering the demised premises as aforesaid, Tenant shall repair any damage to the demised premises.
- 2. No diminution or abatement of rent or other compensation shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the building or to its appliances. In respect to the "services", if any, herein expressly or impliedly agreed to be furnished by the Owner to the Tenant, it is agreed that there shall be no diminution or abatement of the rent, or any other compensation, for interruption or curtailment of such "service" when such interruption or curtailment shall be due to accident, alterations, or repairs necessary to be made or to inability or difficulty in securing supplies or labor for the maintenance of such "service" or to some other cause, not negligent on the part of the Owner. The Owner shall not be required to furnish and the Tenant shall not be entitled to receive any of such "service" during the period wherein the

- Tenant shall be in default in respect to the payment of rent. Neither shall there be any abatement or diminution of rent because of making of repairs, improvements or decorations to the demised premises after the date above fixed for the commencement of the term.
3. The invalidity or unenforceability of any portion of the within lease agreement shall in no way affect the validity or enforceability of any other provisions hereof.
  4. This lease is subject and subordinate to any utility, gas, water and electric light or telephone line easements now or hereinafter given, affecting the demised premises, provided that the same does not interfere with the unrestricted use of the demised premises by the Tenant. Owner shall have the right to run services and utilities through the demised premises, if required.
  5. It is mutually covenanted that if the Owner shall reasonably pay or be compelled to pay any sum of money or shall reasonably perform any act or be compelled to perform any act, which act shall require the payment of any sum of money, but by reason of the failure of the Tenant to perform any one or more of the covenants herein contained, the sum or sums so paid by the Owner, together with all interests, costs and damages, shall, after ten (10) days written notice and demand, be added to the rent installment next due and shall be collectible in the same manner and with the same remedies as if originally reserved as rent hereunder.
  6. It expressly understood and agreed that the Owner has not made, and does not make, any warranty or representation whatsoever, as to the demised premises, and/or as to any personal property, equipment, or fixtures included therein, and the Owner is not bound by any statement, representations or information that may have been made to the Tenant by any other person pertaining to same, unless specifically set forth herein. The Tenant hereby expressly acknowledges that no such representation have been made and that the Tenant has personally made a thorough inspection of the demised premises and is familiar with its condition, and with the condition of the personal property, equipment and/or fixtures, and the Tenant agrees to accept same in its present condition, "AS IS".

#### **ARTICLE - 62** **ACCESS TO THE BUILDING**

Subject to the provisions set forth in this Lease, Owner covenants and agrees, and this Lease is conditioned upon there being at all times during the Lease Term direct and unencumbered access to the demised Building. In addition, Owner covenants and agrees that it will not reduce the space nor the dimensions of the demised Building.

#### **ARTICLE - 63** **DELIVERY OF POSSESSION**

Delivery of possession of the demised Premises to Tenant shall in no event be deemed to have occurred until actual and exclusive physical possession of the Premises shall have been delivered to Tenant, free and clear of all violations, prior leases, Tenants and/or occupants.

#### **ARTICLE - 64** **REAL ESTATE TAXES**

Owner covenants and agrees that it shall timely and fully pay the real estate taxes and assessments levied against the Building, including the demised Premises and all improvements therein.

#### **ARTICLE - 65** **USE OF THE PREMISES**

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



**ARTICLE - 66**  
**HAZARDOUS MATERIALS**

Owner represents that to the best of Landlord's knowledge, the demised Premises, on the commencement date of this Lease, will contain no hazardous materials.

**ARTICLE - 67**  
**OWNERSHIP BY LANDLORD/SUBJECT TO PROVISIONS**

Owner warrants and represents that it is the sole owner of the fee simple interest in the entire building. Notwithstanding any wording to the contrary set forth in this Lease, the terms and provisions of this Lease are subject to the provisions, restrictions and limitations set forth in the Certificate of Occupancy for the demised premises (#401276490), a copy of which is attached hereto as Exhibit "B", and the Board of Standards and Appeals Calendar # 252-71-BZ Minutes, a copy of which is attached as Exhibit "C", and any other documents referred to in said Certificate and/or Minutes, which are deemed incorporated into and made a part of this Lease. Tenant acknowledges receipt of said Certificate of Occupancy, and Minutes, prior to execution of this Lease, and has read and understands the contents thereof.

Initial:  (Tenant)

**ARTICLE - 68**  
**MAINTENANCE/REPAIRS**

Owner covenants and agrees that it will, at all times during the Lease Term maintain and keep in good order and repair the foundation, floorslab, exterior, exterior, walls, steel frame, roof, structural portions, gutters, downspouts, if any, and underground utility lines of the Premises and the Building, and all utility lines serving the Premises. Owner shall make all repairs and replacements without, to the extent practicable, interfering with the conduct of the Tenant's business. Tenant shall be responsible and pay for the proper maintenance of the HVAC System (with said HVAC System to be serviced and maintained not less than twice a year pursuant to a service contract obtained by Tenant and to be provided to Owner upon request). Owner shall be responsible for all repairs and shall replace said system at no cost or expense to Tenant if Owner concludes that said replacement shall be necessary during the term of the Lease.

**ARTICLE - 69**  
**INTERIOR SIGNS**

Tenant shall be entitled to place, maintain, and Owner shall allow to be permitted, placed and maintained appropriate dignified displays of customary type for its display windows on the interior of the window area, or elsewhere on the premises so as to be visible to the public as may be allowed by law. Tenant shall be permitted a "relocating sign" during the last sixty (60) days.

**ARTICLE - 70**  
**REMEDIES CUMULATIVE**

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

**ARTICLE - 71**  
**DEFAULT**

For the purpose of Article "17" of the printed Lease, a default by Tenant in the payment of rent or additional rent, or any part of either, shall be defined as a failure by Tenant to make such payment of rent or additional rent, or any part of either, where such failure continues for a period of five (5) days following written notice to the Tenant.

**ARTICLE - 72**  
**NOTICE FROM ONE PARTY TO THE OTHER**

Any notice from Owner to Tenant or from Tenant to Owner shall be sent by certified mail, return receipt requested. All notices shall be addressed or delivered, if to:

To Landlord:	Jacob Pearlstein, LLC 96 Dogwood Road Roslyn, New York 11576 Attn: Alan Pearlstein
With a copy to:	Murphy & Lynch, P.C. 1045 Oyster Bay Road P.O. Box 69 East Norwich, New York 11732 Attn: James M. Murphy, Esq.
To Tenant:	Jennifer Convertibles, Inc. 417 Crossways Park Drive Woodbury, New York 11797
With a copy to:	Law Offices of Wincig & Wincig 137 5 <sup>th</sup> Avenue, 9 <sup>th</sup> Floor New York, New York 10010 Att: Owen Wincig Esq.

**ARTICLE - 73**  
**CONSENT**

Where pursuant to the terms of this Lease, or in connection with the administration of the Lease, the consent, approval, judgment, satisfaction or similar exercise of discretion of or by one party shall be required, requested or appropriate, such party covenants and agrees that its consent, approval, judgment, satisfaction or similar exercise of discretion shall not be unreasonably withheld, delayed or conditioned, and shall not be charged for, unless otherwise set forth in this Lease:

**ARTICLE - 74**  
**WARRANTIES**

Owner represents and warrants that the bathrooms, HVAC System, plumbing system and electrical system will be in good working order at date of delivery of the premises and that the roof will be free of leaks and the sidewalk free of repair and that the Owner has not received any notices of any violations of the applicable building code. The HVAC System which is presently installed in the demised premises is the property of the Landlord. Tenant is hereby granted the right to use said equipment.

**ARTICLE - 75**  
**CONVEYANCE BY LANDLORD**

In the event Owner shall convey, transfer or otherwise dispose of its interest in the demised premises or in this Lease, all liabilities and obligations on the part of Landlord shall terminate upon such conveyance or disposal, and thereupon all such liabilities and obligations shall be binding upon any such transferee. Upon any such transfer, the transferee shall become "Owner/Landlord" hereunder and, by accepting such interest, the transferee shall be deemed to have assumed such obligations.

**ARTICLE - 76**  
**LATE PAYMENT CHARGE**

In the event any check given by Tenant to Owner in payment of rent is returned unpaid by the bank, or if payment of rent is not received by the Owner by the tenth of each month, Tenant, shall pay an additional charge of two (2%) percent of the monthly rent payment to the owner.

IN WITNESS THEREOF, the parties have signed this agreement the day and year first above written.

OWNER:

JACOB PEARLSTEIN, LLC

By: 

Alan Pearlstein, Member

TENANT:

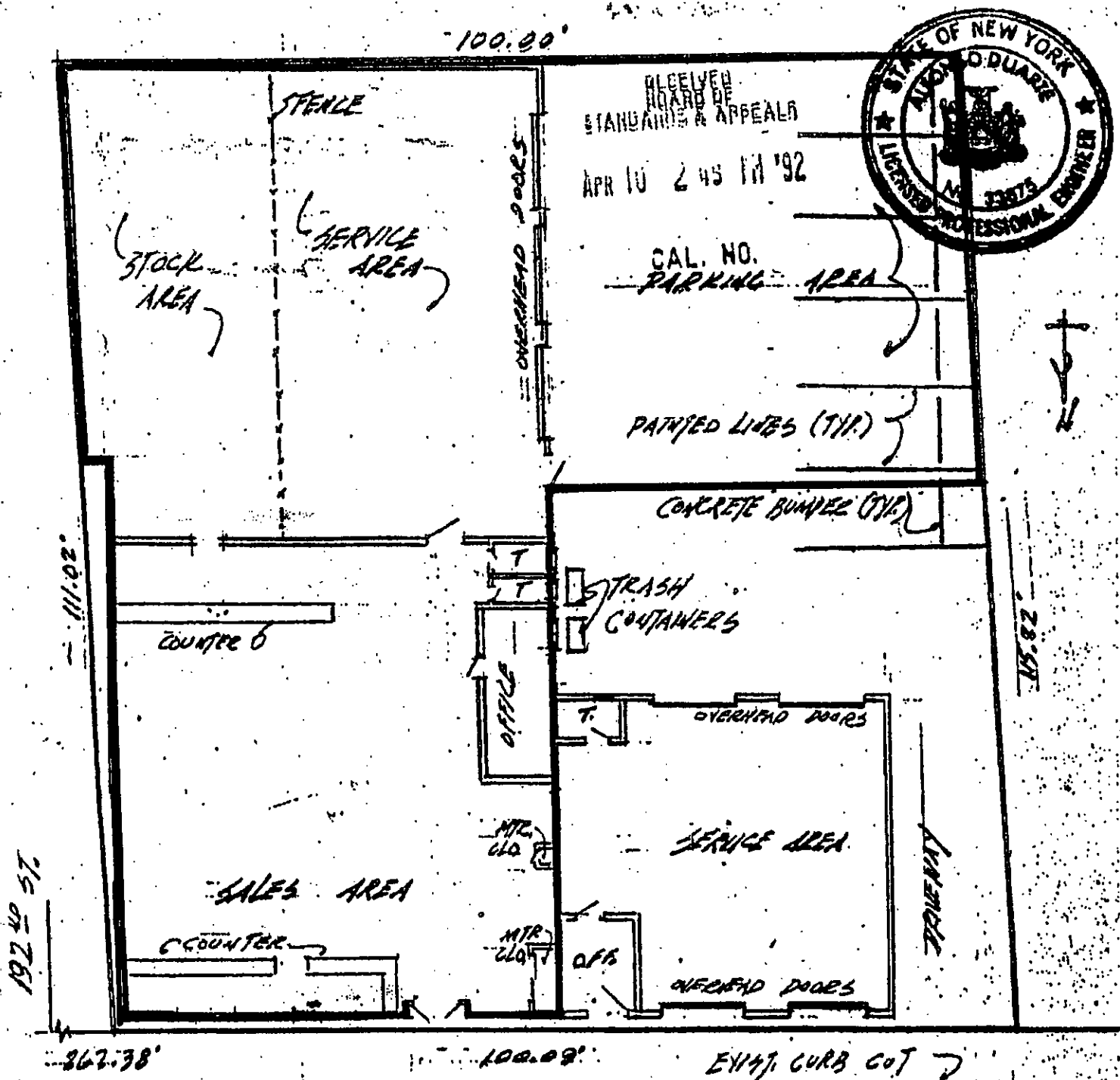
JENNIFER CONVERTIBLES, INC.

By: 

Edward B. Seidner

Executive Vice President

EXHIBIT "A"



BLOCK 5513  
LOT 22

FIRST FLOOR PLAN  
SCALE: 1"=16'

NORTHERN BLVD.

PREMISES: 190-18 NORTHERN BLVD., QUEENS

EXISTING CONDITIONS

# EXHIBIT B



## CERTIFICATE OF OCCUPANCY

BOROUGH QUEENS

DATE: DEC 02 2008

NO. 401276490

This certificate supersedes C.O. NO. 4P0009044

ZONING DISTRICT R3-2

THIS CERTIFIES that the new—altered—existing—building—premises located at

190-18 Northern Boulevard

Block 5513 Lot 22

CONFORMS SUBSTANTIALLY TO THE APPROVED PLANS AND SPECIFICATIONS AND TO THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES, AND REGULATIONS FOR THE USES AND OCCUPANCIES SPECIFIED HEREIN.

### PERMISSIBLE USE AND OCCUPANCY

STORY	LIVE LOAD LBS. PER SQ. FT.	MAXIMUM NO. OF PERSONS PERMITTED	ZONING DEVELOPMENT OR RESIDING UNITS	BUILDING CODE HABITABLE ROOMS	ZONING USE GROUP	BUILDING CODE OCCUPANCY GROUP	DESCRIPTION OF USE
1st	D.G.	34			7 6C 16B	D2 C D2	<p>Sale &amp; installation of automobile seat covers and convertible tops</p> <p>Furniture sales</p> <p>Simonizing, shampooing, minor automobile repairs with hand tools only</p> <p>Accessory open parking.</p>
<p>CONDITIONS AS STIPULATED BY THE BOARD OF STANDARDS &amp; APPEALS</p> <p>THAT the premises shall be kept clean of debris and graffiti;</p> <p>THAT all lighting shall be posted away from residential dwellings;</p> <p>THAT there shall be no parking on the sidewalks;</p> <p>THAT there will be no outside storage;</p> <p>THAT there shall be no outdoor automobile repairs or body work;</p> <p>THAT there will be no outdoor automobile lifts on the premises;</p> <p>THAT all signs shall be maintained in accordance with BSA approved plan:</p> <p>All in accordance with the Board of Standards and Appeals</p> <p>CAL. #252-71-B2, Bulletin No. 18, Vol. 87. same to expire</p> <p>July 13, 2011.</p>							

THIS CERTIFICATE OF OCCUPANCY MUST BE POSTED WITHIN THE BUILDING IN ACCORDANCE WITH THE RULES OF THE DEPARTMENT OF BUILDINGS

OPEN SPACE USES

(SPECIFY PARKING SPACES, LOADING BERTHS, OTHER USES, NONE)

NO CHANGES OF USE OR OCCUPANCY SHALL BE MADE UNLESS A NEW AMENDED CERTIFICATE OF OCCUPANCY IS OBTAINED

THIS CERTIFICATE OF OCCUPANCY IS ISSUED SUBJECT TO FURTHER LIMITATIONS, CONDITIONS AND SPECIFICATIONS NOTED ON THE REVERSE SIDE.

Commissioner

QNS 7

Borough Superintendent

COMMISSIONER

ORIGINAL

☐ OFFICE COPY - DEPARTMENT OF BUILDINGS

## EXHIBIT C

# MINUTES

**REGULAR MEETING**  
**TUESDAY MORNING, APRIL 23, 2002**  
**10:00 A.M.**

**Present:** Chairman Chin, Vice-Chair Babbar, Commissioner Korbey and Commissioner Caliendo.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, March 26, 2002, were approved as printed in the Bulletin of April 4, 2002, Volume 87, No. 14.

### SPECIAL ORDER CALENDAR

**0-54-BZ**

**APPLICANT** - Sheldon Lobel, P.C., for Dryden Hotel Associates, owner; Carlyle Construction Corp., lessee.

**SUBJECT** - Application November 19, 2001 - reopening for an amendment to the resolution.

**REMISES AFFECTED** - 148/152 East 39th Street, between Third Avenue and Lexington Avenue, Block 854, Lot 52, Borough of Manhattan.

**COMMUNITY BOARD #6M**

**APPEARANCES** -

Applicant: Eric Palatnik.

**ACTION OF THE BOARD** - Rules of Practice and Procedure waived, application reopened, resolution ended.

**THE VOTE TO GRANT** -

Affirmative: Chairman Chin, Vice-Chair Babbar, Commissioner Korbey and Commissioner Caliendo.....4  
Negative: .....0

**THE RESOLUTION** -

**WHEREAS**, the applicant has requested a reopening of amendment to the variance granted under Cal. No. 80-BZ; and

**WHEREAS**, a public hearing was held on this application on March 26, 2002 after due notice by publication in *The City Record*, laid over to April 23, 2002 decision; and

**WHEREAS**, the applicant is seeking to permit the reduction of commercial cellar space from the previously authorized 3030 square feet to 2330 square feet of retail space; and

**WHEREAS**, the applicant is also seeking to permit the newly partitioned 700 square feet of space to be used as an accessory recreation room for the residents of 148-152 East Street and 108 East 38<sup>th</sup> Street, a nearby building under same owner.

*Resolved*, that the Board of Standards and Appeals hereby waives the Rules of Practice and Procedure and *reopens and amends* the resolution pursuant to Z.R. §§11-412 and 11-413, said resolution having been adopted December 13, 1955, so that as amended this portion of the resolution shall read:

"to permit the reduction of commercial cellar space from the previously authorized 3030 square feet to 2330 square feet of retail space and to permit the newly partitioned 700 square feet of space to be used as an accessory recreation room for the residents of 148-152 East 39<sup>th</sup> Street and 108 East 38<sup>th</sup> Street, *on condition*

**THAT** the premises shall be maintained in substantial compliance with the proposed drawings submitted with the application marked "Received April 11, 2002"-(1) sheet; and that other than as herein amended the resolution above cited shall be complied with in all respects;

**THAT** the newly partitioned 700 square feet of space to be used as an accessory recreation room shall be reflected in the Certificates of Occupancy for 148-152 East 39<sup>th</sup> Street and 108 East 38<sup>th</sup> Street;

**THAT** the maximum occupancy for the newly partitioned accessory recreation room shall be 25 persons;

**THAT** new Certificates of Occupancy for 148-152 East 39<sup>th</sup> Street and 108 East 38<sup>th</sup> Street shall be obtained within one year from the date of this amended resolution;

**THAT** this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

**THAT** the approved plans shall be considered approved only for the portions related to the specific relief granted;

**THAT** the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (ALT No. 102778004)

Adopted by the Board of Standards and Appeals, April 23, 2002.

**252-71-BZ**

**APPLICANT** - Alfonse Duarte, P.E., for Jacob Pearlstein, LLC, owner.

**SUBJECT** - Application July 10, 2001 - reopening for an extension of term of variance which expired July 13, 2001.

**PREMISES AFFECTED** - 190-18 Northern Boulevard, south side between 189<sup>th</sup> and 192<sup>nd</sup> Streets, Block 5513, Lot 22, Borough of Queens

## EXHIBIT C

CONTINUED

# MINUTES

Procedure waived, application reopened, resolution amended and term of the variance extended.

### THE VOTE TO GRANT -

Affirmative: Chairman Chin, Vice-Chair Babbar, Commissioner Korbey and Commissioner Callendo.....4

Negative: .....0

### THE RESOLUTION -

WHEREAS, the applicant has requested a reopening and an extension of the variance which expired July 13, 2001; and

WHEREAS, Community Board #18, Queens, has recommended approval of this application; and

WHEREAS, a public hearing was held on this application on December 18, 2001 after due notice by publication in *The City Record*, laid over to February 5, 2002, March 19, 2002, April 9, 2002 and then to April 23, 2002 for decision; and

WHEREAS, the applicant is seeking to permit the change of use on a portion of the lot from an automobile supply store (Use Group 6C) to sale of furniture (Use Group 6C), and to extend the term of the variance for an additional ten (10) years.

Resolved, that the Board of Standards and Appeals hereby waives the Rules of Practice and Procedure and reopens and extends the resolution pursuant to Z.R. §11-11, said resolution having been adopted July 13, 1971 as amended through July 13, 1991, and expiring July 13, 2001, so that as amended this portion of the resolution shall read:

"to permit the change of use on a portion of the lot from an automobile supply store (Use Group 6C) to sale of furniture (Use Group 6C) and to extend the term of the resolution for ten years from July 13, 2001 expiring July 13, 2011, on condition

THAT the premises shall be maintained in substantial compliance with the proposed drawings submitted with the application marked "Received July 10, 2001"-(1) sheet; and at other than as herein amended the resolution above cited shall be complied with in all respects;

THAT the premises shall be kept clean of debris and affiti;

THAT all lighting shall be pointed away from residential dwellings;

THAT there shall no parking on the sidewalks;

THAT there will be no outdoor storage;

THAT there shall be no outdoor automobile repair or dy work;

THAT there shall be no outdoor automobile lifts on the premises;

THAT all signs shall be maintained in accordance with A approved plans:

the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (ALT No. 401276490)

Adopted by the Board of Standards and Appeals, April 23, 2002.

1038-80-BZ

APPLICANT - Davidoff & Malito, LLP, for Feinrose Association, owner; Expressway Arcade Corp., lessee.

SUBJECT - Application February 6, 2002 - reopening for an extension of term of variance which expired January 6, 2002.

PREMISES AFFECTED - 31-07/09/11 Downing Street, Block 4367, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES -

For Applicant: Arthur Goldstein.

ACTION OF THE BOARD - Application reopened and term of the special permit extended.

### THE VOTE TO CLOSE HEARING -

Affirmative: Chairman Chin, Vice-Chair Bonfilio, Commissioner Korbey and Commissioner Callendo.....4

Negative: .....0

### THE VOTE TO GRANT -

Affirmative: Chairman Chin, Vice-Chair Bonfilio, Commissioner Korbey and Commissioner Callendo.....4

Negative: .....0

### THE RESOLUTION -

WHEREAS, this is an application to extend the term of the special permit; and

WHEREAS, a public hearing was held on this application on April 23, 2002 after due notice by publication in the City Record, and a decision was reached on the same date; and

WHEREAS, Community Board #7Q recommends approval of the application;

Resolved, that the Board of Standards and Appeals hereby reopens and extends the term of the resolution pursuant to Z.R. §73-03, said resolution having been adopted on January 6, 1991 as amended.



IN RE:

JENNIFER CONVERTIBLES, INC.

Debtor.

**PROOF OF CLAIM**

**CERTILMAN BALIN ADLER & HYMAN, LLP**

*Attorney(s) for*

*Office and Post Office Address, Telephone*

90 MERRICK AVENUE, 9TH FLOOR  
EAST MEADOW, NEW YORK 11554  
(516) 296-7000  
FAX (516) 296-7111

To

To the best of the undersigned's knowledge,  
information and belief, formed after an inquiry  
reasonable under the circumstances, the within  
documents and contentions contained herein are  
not frivolous as defined in 22 NYCRR 130-1.1-a.

Dated: .....

Attorney(s) for

.....

**PLEASE TAKE NOTICE:**

☐ NOTICE OF ENTRY

that the within is a *(certified) true copy of a*  
duly entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an order  
will be presented for settlement to the HON.  
within named Court, at  
on

of which the within is a true copy  
one of the judges of the

at

M.

Dated,

Yours, etc.

**CERTILMAN BALIN ADLER & HYMAN, LLP**

RICHARD J. MCCORD  
PARTNER  
DIRECT DIAL 516.296.7801  
rmccord@certilmanbalin.com

October 22, 2010

**Via Federal Express**

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

**Re: *Jennifer Convertibles, Inc.***  
***Chapter 11 Debtor***  
***Case No. 10-13779***

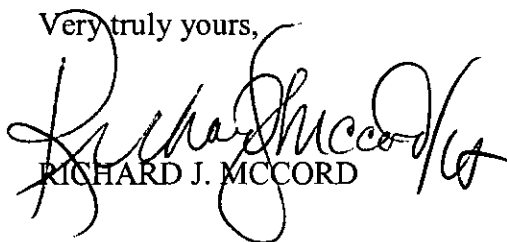
Dear Sir/Madam:

Enclosed herein please find an original and one (1) copy of the Proof of Claim to be filed on behalf of Jacob Pearlstein, LLC. in connection with the above referenced matter.

Please return a stamped copy in the enclosed envelope provided herein.

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

Very truly yours,

  
RICHARD J. MCCORD

RJM:ccf  
Encls.