

## UNITED STATES BANKRUPTCY COURT

Southern  
~~Northern~~ District of New York

## PROOF OF CLAIM

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

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

Name of Creditor (the person or other entity to whom the debtor owes money or property):

376 Boylston Street Realty Trust

Name and address where notices should be sent:

Philip Touitou, Esq.  
Hinshaw & Culbertson, LLP – 780 3rd Avenue  
New York, 10017Telephone number:  
(212) 471-6200RECEIVED  
OCT 26 2010  
BMC GROUP☐ Check this box to indicate that this claim amends a previously filed claim.Court Claim Number: \_\_\_\_\_  
(If known)

Filed on: \_\_\_\_\_

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

376 Boylston Street Trust  
c/o The Tannery  
402 Boylston Street  
Boston, MA 02116☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: \$ 1,038,299.42

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☒ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.2. Basis for Claim: lease; rejection; fraud  
(See instruction #2 on reverse side.)

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

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

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

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

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

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

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

if any: \$ \_\_\_\_\_ Basis for perfection: \_\_\_\_\_

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

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

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

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

If the documents are not available, please explain:

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

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).☐ Wages, salaries, or commissions (up to \$11,725\*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. § 507 (a)(4).☐ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).☐ Up to \$2,600\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).☐ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).

Amount entitled to priority:

\$ \_\_\_\_\_

\*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

FOR COURT USE ONLY

Date:  
10/25/2010

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Philip D. Touitou - HINSHAW &amp; CULBERTSON LLP

Jennifer Convertibles



00314

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

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

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

**Creditor's Name and Address:**

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

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

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

**2. Basis for Claim:**

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

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

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

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

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

**4. Secured Claim:**

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

**Secured Claim Under 11 U.S.C. §506(a)**

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

#### Pre-Petition Delinquencies

\$131,607.00	As of June 7, 2010
\$19,354.00	For the Month of July, 2010
\$967.70	5% administrative fee for month of July 2010
\$151,928.70	Total Pre-Petition Delinquencies

#### Lease Rejection Damages

\$250,824.00	One year of the remaining term base rent
\$62,485.24	Operating expenses for one year of remaining term
\$4,793.72	Real Estate Taxes for one year of remaining term
\$200,000.00	Renovations (as allowed under the lease)
\$50,164.80	Brokers Commission for Reletting Premises
\$568,267.76	Total Lease Rejection Damages

#### Damages Arising From Fraud

\$250,824.00	Base Rent Remaining Due Under Lease;
\$62,485.24	Operating expenses for one year of remaining term
\$4,793.72	Real Estate Taxes for one year of remaining term
\$318,102.96	Total Damages Resulting From Fraud

\$151,928.70	Total Pre-Petition Delinquencies
\$568,267.76	Total Lease Rejection Damages
\$318,102.96	Total Damages Resulting From Fraud
\$1,038,299.42	Total Proof of Claim Amount

ORIGINAL  
Number 1 of  
1 execution  
counterparts

LEASE AMENDMENT NO. 1

This instrument is entered into by Zouhair Ali Hassan, Trustee of the 376 Boylston Street Realty Trust, having an address c/o The Tannery, 402 Boylston Street, Boston, MA 02116 (hereinafter, the "Landlord"), and Jennifer Leather-Boylston MA, Inc., a Massachusetts corporation having an address of 376 Boylston Street, Boston, MA 02116 (hereinafter, the "Tenant"), and amends a certain "Lease" dated as of May 9, 1994 between the Tenant and the Trust Company of the West (the previous Landlord), and which Lease demises approximately 9,798 square feet in the Building located at 376 Boylston Street, Boston, MA. All capitalized words and phrases shall have the same meaning as stated in the Lease unless a different meaning is expressed herein.

For good and valuable consideration hereby acknowledged as received and sufficient, the Lease is amended as follows:

1. Lease Term. The Term of the Lease is hereby revised to end on July 31, 2012. The Landlord and tenant hereby confirm and agree that there are no options or other rights in the Tenant to extend said Term beyond July 31, 2012.
2. Basic Rent. The amount of Basic Rent to be paid shall be as follows:
  - (i) From the date of this instrument through to the Basic Rent payment that is due for the month of July 2006, Basic Rent shall remain at the current amount, which is: \$16,593.33 per month
  - (ii) From the Basic Rent payment that is due for the month of August 2006 through to and including the Basic Rent payment that is due for the month of July 2008, Basic Rent shall be: \$17,921.00 per month
  - (iii) From the Basic Rent payment that is due for the month of August 2008 through to and including the Basic Rent payment that is due for the month of July 2010, Basic Rent shall be: \$19,354.00 per month
  - (iv) From the Basic Rent payment that is due for the month of August 2010 through to and including the Basic Rent payment that is due for the month of July 2012, Basic Rent shall be: \$20,902.00 per month
3. Lease Year & Breakpoint. The definition of Lease Year is hereby revised to mean each 12 consecutive calendar month time period throughout the Lease Term, beginning on August 1 and ending July 31 of the following calendar year. July 31, 2004 shall be the end of Lease Year 10. The Breakpoint is amended as follows:

<u>Lease Years</u>	<u>Breakpoint</u>
(i) Lease Year 10 through and including Lease Year 12	\$4,585,000.00 per annum
(ii) Lease Year 13 through and including Lease Year 14	\$4,951,800.00 per annum
(iii) Lease Year 15 through and including Lease Year 16	\$5,347,944.00 per annum
(iv) Lease Year 17 through and including Lease Year 18	\$5,775,780.00 per annum

4. Guarantor Consent. Reference is made to that certain Guaranty dated May 9<sup>th</sup> 1994, as given by Jennifer Convertibles, Inc. ("Guarantor") to secure the obligations of the Tenant under the Lease. The Guarantor by executing this instrument consents to the transaction reflected herein, reaffirms that the Guaranty is given to the Landlord named herein, and that said Guaranty remains in full force and effect and applies to the Lease as amended by this instrument.

5. Miscellaneous. All other provisions of the Lease remain unchanged and in full force and effect. This instrument represents the entire agreement between the parties concerning the matters reflected herein.

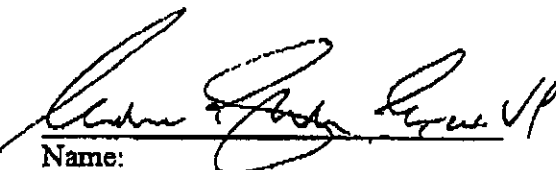
The person(s) executing this instrument on behalf of Tenant and the Guarantor warrant that each is a duly authorized and existing under the laws of the state of its formation, that the Tenant and Guarantor (and the person(s) executing this Lease on behalf of the Tenant and Guarantor) have the full right and authority to execute and deliver this instrument, and upon execution and delivery hereof by all parties, the Lease as amended by this instrument and the Guaranty shall be valid and binding obligations of the Tenant and Guarantor, respectfully, each fully enforceable in accordance with their provisions.

The person executing this instrument on behalf of the Landlord certifies that he is the trustee of the applicable trust, that all of the beneficiaries of such trust have consented and directed that said trustee execute and deliver this instrument, and that and upon execution and delivery of this instrument by all parties, the Lease as amended by this instrument shall be a valid and binding obligation of the Landlord, fully enforceable in accordance with its provisions.

(Signature page follows.)

This Instrument is executed as a sealed instrument, under seal, dated as of the date executed by the Landlord.

**TENANT****JENNIFER LEATHER-BOYLSTON MA, INC**

By:   
Name:  
Its President, duly authorized

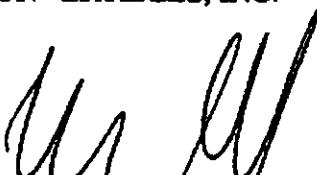
February 24, 2004  
Date

**LANDLORD****ZOUHAIR ALI HASSAN, TRUSTEE, 376 BOYLSTON STREET REALTY TRUST**

By:   
Zouhair Ali Hassan, As Trustee  
duly authorized

MARCH 2, 2004  
Date

**GUARANTOR****JENNIFER CONVERTIBLES, INC.**

By:   
Name:  
Its President, duly authorized

February 24, 2004  
Date

[Rev. 5/09/04]

TENANT: Jennifer Leather-Boylston MA, Inc.

ORIGINAL

LEASE OF

Number 3 of

376 BOYLSTON STREET

4 executed

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counterparts.

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LEASE

THIS INSTRUMENT IS A LEASE, dated as of May 9, 1994, in which the Landlord and the Tenant are the parties hereinafter named, and which relates to space in the building (the "Building") known and numbered as 376 Boylston Street, Boston, Massachusetts. The parties to this instrument hereby agree with each other as follows:

ARTICLE IBASIC LEASE PROVISIONS

1.1 INTRODUCTION. The following set forth basic data and, where appropriate, constitute definitions of the terms hereinafter listed:

1.2 BASIC DATA.

Landlord: Trust Company of the West, a California corporation, not individually but in its capacity as sub-trustee under Sub-Trust Agreement dated as of May 1, 1985.

Landlord's Original Address: c/o TCW Realty Advisors, 800 Boylston Street, Suite 1475, Boston, MA 02199

Tenant: Jennifer Leather-Boylston MA, Inc., a Massachusetts corporation.

Tenant's Original Address: c/o Jennifer Warehouse, 245 Roger Avenue, Inwood, NY 11696

Guarantor: Jennifer Convertibles, Inc., a Delaware corporation having a principal place of business at 245 Roger Avenue, Inwood, NY 11696.

Lease Year: As used herein, the term Lease Year shall mean the period commencing on the Rent Commencement Date through and including the close of the last day of the calendar month in which the twelve-month anniversary of the Commencement Date shall fall, and each twelve-month period thereafter throughout the Term of this Lease.

Basic Rent: Basic Rent shall be calculated as follows:

Lease Years 1 and 2: Basic Rent shall be the sum of (i) ~~\$141,480~~ <sup>\$27.00</sup> per square foot of Area A Premises Rentable Area) per annum, plus (ii) \$15,720.00 (\$3.45 per square foot of Area B Premises Rentable Area) per annum. 12, 733

Lease Years 3 and 4: Basic Rent shall be the sum of (i) ~~\$151,860~~ <sup>\$29.00</sup> per square foot of Area A Premises Rentable Area) per annum, plus (ii) \$15,720.00 (\$3.45 per square foot of Area B Premises Rentable Area) per annum. 2, 733

Lease Years 5 and 6: Basic Rent shall be the sum of (i) ~~\$162,440~~ <sup>\$31.00</sup> per square foot of Area A Premises Rentable Area) per annum, plus (ii) \$15,720.00 (\$3.45 per square foot of Area B Premises Rentable Area) per annum.

# 48,515.40

Lease Years 7 and 8: Basic Rent shall be the sum of (i) \$172,920 (\$33.00 per square foot of Area A Premises Rentable Area) per annum, plus (ii) \$15,720.00 (\$3.45 per square foot of Area B Premises Rentable Area) per annum.

Lease Years 9 and 10: Basic Rent shall be the sum of (i) \$183,400 (\$35.00 per square foot of Area A Premises Rentable Area) per annum, plus (ii) \$15,720.00 (\$3.45 per square foot of Area B Premises Rentable Area) per annum.

**Percentage Rent Percentage:** Four percent (4.0%).

**Breakpoint:** The Breakpoint shall be as follows:

<u>Lease Year</u>	<u>Breakpoint</u>
1 - 2	\$3,537,000.00 per annum.
3 - 4	\$3,799,000.00 per annum.
5 - 6	\$4,061,000.00 per annum.
7 - 8	\$4,323,000.00 per annum.
9 - 10	\$4,585,000.00 per annum.

**Minimum Days and Hours of Operation:** Monday through Friday, from 10:00 a.m. until 6:00 p.m.

**Optional Days and Hours of Operation:** All other days and times.

**Tenant's Trade Name:** Jennifer Leather, and/or Jennifer Convertibles

**Premises Rentable Area:** 9,798 square feet, being comprised of (i) 5,240 square feet located on the first floor ("Area A"), and (ii) 4,558 square feet located on the basement level ("Area B"), all as more specifically shown on Exhibit FP hereto.

**Permitted Uses:** The retail sale of sofas, furniture, home furnishings and related items and ancillary items. Tenant shall have the exclusive right to sell leather sofas and convertible sofas.

**Expense Factor:** 14.5%, as computed in accordance with the Expense Factor Computation.

**Initial Term:** Approximately ten (10) years and sixty days, commencing on the Commencement Date and expiring at the close of the last day of the calendar month in which the ten (10) year anniversary of the Rent Commencement Date shall fall.

**Security Deposit:** \$14,846.67.

### 1.3 ADDITIONAL DEFINITIONS.

**Agent:** TCW Realty Advisors, 800 Boylston Street, Suite 1475, Boston, MA 02199

**Broker:** Prospectus, Inc., and Hinneman Retail Advisors

**Building Rentable Area:** 36,129 square feet

**Business Days:** All days except Saturday, Sunday, New Year's Day, Washington's Birthday, Patriot's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day (and the following day when any such day occurs on Sunday) and such other days that Tenant presently or in the future recognizes as holidays for Tenant's general office staff.

**Commencement Date:** The last to occur of (i) May 1, 1994, or (ii) the day on which Landlord delivers to Tenant possession of the Premises in accordance with Section 4.1.

**Rent Commencement Date:** Sixty (60) days after the Commencement Date.

**Default of Tenant:** As defined in Section 13.1.

**Expense Factor Computation:** Area A Premises Rentable Area divided by Building Rentable Area.

**Force Majeure:** Collectively and individually, strike or other labor trouble, fire or other casualty, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, or any other cause, whether similar or dissimilar, beyond Landlord's or Tenant's reasonable control.

**Initial Public Liability Insurance:** \$1,000,000 per occurrence (combined single limit) for property damage, bodily injury or death.

**Operating Expenses:** As set forth in Section 9.1.

**Operating Year:** As defined in Section 9.1.

**Premises:** A portion of the Building as shown on Exhibit FP annexed hereto.

**Property:** The Building and the land parcels on which it is located (including adjacent sidewalks).

**Tax Year:** As defined in Section 8.1.

**Taxes:** As determined in accordance with Section 8.1.

**Tenants Removable Property:** As defined in Section 5.2.

**Term of this Lease:** The Initial Term and any extension thereof in accordance with the provisions hereof.

Utility Expenses: As defined in Section 9.1.

## ARTICLE II

### PREMISES AND APPURTENANT RIGHTS

2.1 LEASE OF PREMISES. Landlord hereby demises and leases to Tenant for the Term of this Lease and upon the terms and conditions hereinafter set forth, and Tenant hereby accepts from Landlord, the Premises.

2.2 APPURTENANT RIGHTS AND RESERVATIONS. (a) Tenant shall have, as appurtenant to the Premises, the non-exclusive right to use, and permit its invitees to use in common with others, public or common lobbies, hallways, stairways and elevators and common walkways necessary for access to the Building, and if the portion of the Premises on any floor includes less than the entire floor, the common corridors and elevator lobby of such floor, but Tenant shall have no other appurtenant rights and all such rights shall always be subject to reasonable rules and regulations from time to time established by Landlord pursuant to Section 14.7 and to the right of Landlord to designate and change from time to time areas and facilities so to be used.

(b) Excepted and excluded from the Premises are the ceiling, floor, perimeter walls and exterior windows, except the inner surfaces thereof, but the entry doors (and related glass and finish work) to the Premises are a part thereof; and Tenant agrees that Landlord shall have the right to place in the Premises (but in such manner as to reduce to a minimum interference with Tenant's use of the Premises) utility lines, pipes, equipment and the like, in, over and upon the Premises. Tenant shall install and maintain, as Landlord may require, proper access panels in any hung ceilings or walls as may be installed by Tenant in the Premises to afford access to any facilities above the ceiling or within or behind the walls.

(c) Except in the case of emergency or in connection with Landlord's performance of renovations or repairs to the Building or Property, Landlord shall not (i) encumber the direct access between the public ways and the sidewalk on either side thereof on the one hand and the Premises on the other hand, and (ii) construct any additional buildings, structures, obstructions, barriers and the like upon, or attach or place the same adjacent to, the Building and/or Premises in such a manner so as to adversely affect the access to or visibility of the Building and/or the Premises and/or Tenant's signs. In addition, Landlord shall not reduce the space nor the dimension of the Premises.

## ARTICLE III

### BASIC RENT AND PERCENTAGE RENT

3.1 BASIC RENT. (a) Tenant agrees to pay to Landlord, or as directed by Landlord, commencing on the Rent Commencement Date without offset, abatement (except as provided in Article 12.1), deduction or demand, the Basic Rent. Such Basic Rent shall be payable in equal monthly installments, in advance, on the first day of each and every calendar month during the Term of this Lease, at Landlord's Original Address, or at such

other place as Landlord shall from time to time designate by notice, in lawful money of the United States. Until notice of some other designation is given, Basic Rent and all other charges for which provision is herein made shall be paid by remittance payable to the Agent, and all remittances so received as aforesaid, or by any subsequently designated recipient, shall be treated as a payment to Landlord. In the event that any installment of Basic Rent is not paid when due, Tenant shall pay, in addition to any charges under Section 14.18, at Landlord's request an administrative fee equal to 5% of the overdue payment.

(b) Basic Rent for any partial month shall be pro-rated on a daily basis, and if the first day on which Tenant must pay Basic Rent shall be other than the first day of a calendar month, the first payment which Tenant shall make to Landlord shall be equal to a proportionate part of the monthly installment of Basic Rent for the partial month from the first day on which Tenant must pay Basic Rent to the last day of the month in which such day occurs, plus the installment of Basic Rent for the succeeding calendar month.

**3.2 PERCENTAGE RENT.** (a) In addition to the Basic Rent specified in Section 3.1 above, Tenant covenants and agrees to pay to Landlord as Percentage Rent for each calendar year or portion thereof occurring during the term of this Lease, a sum equal to four percent (4.0%) of Tenant's Gross Sales (as hereinafter defined) in excess of the Breakpoint (as defined in Section 1.2). The Breakpoint shall be pro-rated for any partial calendar year occurring at the beginning or end of the Term. Percentage Rent shall be considered Additional Rent hereunder and part of the total rent to be paid by Tenant to Landlord.

(b) "Gross Sales" shall mean the total amount in dollars of the actual sales price, whether for cash or on credit, or partly for cash and partly for credit, of all sales of goods, wares, merchandise, food, beverage and services, and all other receipts of business conducted at, in or from the Premises; all mail or telephone orders received or filled at or from the Premises; all deposits not refunded to purchasers; all orders taken at and from the Premises, whether or not said orders are filled elsewhere; and receipts or sales by any sublessee, concessionaire, licensee and any other person or persons at or from the Premises. Gross Sales shall not, however, include employee discount sales or any sums collected and paid out by Tenant for any sales or retail excise tax imposed by any duly constituted governmental authority; nor any exchange of goods or merchandise between stores of Tenant where such exchange of goods or merchandise is made solely for the convenient operation of the business of Tenant and not for the purpose of (i) consummating a sale which has heretofore been made at or from the Premises; (ii) depriving Landlord of the benefit of a sale which otherwise would be made at or from the Premises; nor the amount of cash or credit refund made upon any sale; nor sales of fixtures which are not part of Tenant's stock in trade; nor sales made to employees at a discount of more than fifteen percent. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale shall be made, irrespective of the time when Tenant may receive payment from its customer.

(c) Tenant shall utilize cash registers equipped with sealed continuous totals to record Gross Sales, or computers which maintain records of such Gross Sales. Tenant agrees, within thirty days after the end of each calendar year or partial calendar year during the Term, to cause a written statement of the Gross Sales of Tenant for such calendar year to be prepared in accordance with generally accepted accounting principles consistently applied, and signed and certified by Tenant (or by Tenant's chief financial officer, if Tenant is a corporation) to be true and correct. Such statement shall also be duly certified by an independent certified public accountant reasonably acceptable to Landlord, to be true and correct and in compliance with the definition of Gross Sales and

in accordance with generally accepted accounting principles consistently applied. Such statement shall be delivered by Tenant to Landlord within such thirty-day period, accompanied by a check of Tenant for the Percentage Rent, if any, payable with respect to such prior calendar year.

The statement referred to in this subsection (c) shall be in such form and style and shall contain such details and information as Landlord may reasonably require. The acceptance by Landlord of payments of Percentage Rent or reports thereof shall be without prejudice and shall in no event constitute a waiver of Landlord's right to claim a deficiency in the payment of Percentage Rent or to audit Tenant's books and records as hereinafter set forth.

If Tenant's Gross Sales are required to be reported on any Federal, State or local sales tax or similar tax return, and Gross Sales as so reported on any such returns shall exceed the Gross Sales as reported by Tenant, then the Gross Sales shall be taken at the highest figure so reported. If any governmental authority shall increase the Gross Sales reported by Tenant on any such tax return, after audit, of any calendar year for which such Gross Sales have been reported, then Tenant shall notify Landlord promptly of such increase, supply to Landlord a true copy of such audit and pay at the time any additional Percentage Rent due.

Tenant shall prepare and keep for a period of not less than sixty (60) months following the end of each calendar year, true and accurate books of account and records, conforming to accepted accounting principles consistently applied, including, but not limited to, sales tax and other reports filed with governmental agencies, all purchases and receipts of merchandise, inventories and all sales and other transactions by Tenant from which Gross Sales can be determined. Such books and records shall be conveniently segregated from other business matters unrelated to the determination of Gross Sales.

(d) Landlord shall have the right, at any time within thirty (30) months after the close of each calendar year, to audit all the books of account, documents, records, returns, papers and files of Tenant relating to Gross Sales for such calendar year; and Tenant, on request of Landlord, shall make all such materials available for such examination at the principal office of Tenant or other place mutually agreed to. Such examination and audit may be made by any accountant designated in writing by Landlord from time to time. If Landlord shall have an audit made for any calendar year and the Gross Sales shown by Tenant's statements for such calendar year shall be found to be understated, then Tenant shall promptly pay Landlord any deficiency, with interest at the rate of 18 percent per annum from the date such payment should have been made to the date of payment. In addition, if an audit reveals an understatement of three percent (3%) or more, Tenant shall pay the cost of the audit, and if five percent (5%) or more, such understatement shall be deemed a default by Tenant under this Lease entitling Landlord to all remedies (including but not limited to termination) provided in Article XIII hereof.

(e) Computation of Percentage Rent shall be made separately with regard to each calendar year, it being understood and agreed that the Gross Sales of any calendar year and the Percentage Rent due thereon shall have no bearing on or connection with the Gross Sales of any other calendar year. It is further understood and agreed that Landlord shall in no event be construed or held to be a partner or associate of Tenant in the conduct of Tenant's business, nor shall Landlord be liable for any debts incurred by Tenant in the conduct of Tenant's business, but the relationship is and at all times shall remain that of landlord and tenant.

- 3.3 **NEW LOCATIONS.** In the event that during the first five (5) years after the Commencement Date, Tenant (including any affiliates or franchisees of Tenant) directly or indirectly owns any similar type of business (not so owned or operated on the Commencement Date) within the Exclusion Zone (as hereinafter defined), Landlord may, at its option and for so long as Tenant (including any affiliate or franchisee of Tenant) is operating said other business, include the Gross Sales of such other business in the Gross Sales made from the Premises for the purpose of computing Percentage Rent due hereunder. During said five (5) year period, Tenant will provide Landlord with a statement of Tenant's Gross Sales, in accordance with the provisions of Section 3.2(c), for each such business location.

After the expiration of the aforementioned five (5) year period, Tenant may operate, directly or indirectly, any other business within the Exclusion Zone, provided: (a) Tenant gives Landlord written notice of its intention to operate such business and the location and anticipated opening date of such business; and (b) within thirty (30) days of the date of said written notice, Landlord and Tenant shall enter into a written amendment to this Lease adjusting the Basic Rent payable hereunder in the following manner: (i) from the statements of Gross Sales as submitted by Tenant under Section 3.2(c), Landlord shall compute an amount which represents the highest amount of annual Percentage rent paid or payable by Tenant under this Lease during any consecutive twelve (12) month period occurring within the sixty (60) months immediately preceding said amendment; and (ii) this amount, if any, shall be added to the amount specified under Section 1.2 as annual Basic Rent and the resulting sum shall thereafter be the annual Basic Rent payable hereunder.

As used herein, the term "Exclusion Zone" shall mean the area in central Boston bounded by (i) the Charles River on the north; (ii) the Boston harbor on the east; (iii) Melnea Cass Boulevard on the south; and (iv) Harvard Street on the west; including any business located on such bounding streets or waterways.

## ARTICLE IV

### COMMENCEMENT AND CONDITION

- 4.1 **COMMENCEMENT DATE.** The last to occur of (i) May 1, 1994, or (ii) the day on which Landlord delivers possession of the Premises to Tenant. Notwithstanding anything in this Lease to the contrary, including any Force Majeure clause, if Landlord is unable to give Tenant possession of the Premises as required hereunder by June 1, 1994, Tenant shall have the option of terminating this Lease by thirty (30) days prior written notice delivered to Landlord not later than August 1, 1994.

Delivery of possession of the 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 in a broom-clean condition, free and clear of all prior leases, tenants and/or occupants and free and clear of all removable property of all prior tenants and/or occupants, and with any warranties and representations contained in this Lease being true and fulfilled as of such date.

- 4.2 **CONDITION OF THE PREMISES.** The Premises are being leased in their condition as-is, without warranty or representation of any kind. Tenant acknowledges that it has inspected the Premises and the common areas of the Building and has found same to be satisfactory.

Notwithstanding the foregoing, Landlord shall provide Tenant with an allowance not to exceed \$52,400.00, to be utilized by Tenant to pay for the cost of constructing Tenant's initial improvements within the Premises. Such amount shall be paid by Landlord within thirty (30) days after Tenant provides Landlord with a receipted invoice or invoices evidencing Tenant's payment of such expenditures.

## ARTICLE V

### USE OF PREMISES

5.1 PERMITTED USE. (a) Tenant agrees that the Premises shall be used and occupied by Tenant only for Permitted Uses specifically excluding, without limitation, use for governmental, utility company or employment agency offices.

(b) Tenant agrees to conform to the following provisions during the Term of this Lease:

(i) Tenant shall cause all freight to be delivered to or removed from the Building and the Premises in accordance with reasonable rules and regulations established by Landlord therefor;

(ii) Tenant will not place on the exterior of the Premises (including both interior and exterior surfaces of doors and interior and exterior surfaces of windows) or on any part of the Building outside the Premises, any signs, symbol, advertisements or the like visible to public view outside of the Premises. Landlord will not unreasonably withhold consent for signs or lettering on the entry doors to the Premises provided (i) such signs or lettering conform to building standards adopted by Landlord and Tenant has submitted a sketch of the sign to be placed on such entry doors, (ii) such signs or lettering comply with all applicable laws, regulations and ordinances, and (iii) Tenant, at its sole cost and expense, obtains all necessary permits and approvals in connection with such signs and lettering. Landlord agrees, however, to maintain a directory in the lobby of the Building in which will be placed Tenant's name and the location of the Premises in the Building. Landlord will not unreasonably withhold consent to such displays provided (i) such displays conform to building standards adopted by Landlord and Tenant has submitted to Tenant a sketch of same (including a list of materials to be used in same), (ii) such displays comply with all applicable laws, regulations and ordinances, and (iii) Tenant, at its sole cost and expense, obtains all necessary permits and approvals in connection with such displays. In no event shall Tenant (a) display any sign or advertisement visible from outside of the Premises which contains neon, or (b) cover more than 25% of the Premises window area with paper signs or other signs or displays;

(iii) Tenant shall not perform any act or carry on any practice which may injure the Premises, or any other part of the Building, or cause offensive odors or loud noise or constitute a nuisance or menace to any other tenant or tenants or other persons in the Building;

(iv) Tenant shall, in its use of the Premises, comply with the requirements of all applicable governmental laws, rules and regulations. Without limiting the generality of the foregoing, Tenant shall be responsible, in connection with Tenant's use of the Premises, for compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto (collectively, the "ADA Requirements"). Tenant's compliance obligation shall include only alterations and improvements required, from time to time, to the Premises (including the doorways and entrances to the Premises) in order to comply with the ADA Requirements; and

(v) Tenant (or any permitted assignee of Tenant) shall continuously throughout the Term of this Lease occupy the Premises for Permitted Uses.

5.2 INSTALLATION AND ALTERATIONS BY TENANT. (a) Tenant shall make no alterations, additions, or improvements in or to the Premises without Landlord's prior written consent in each instance obtained. Any such alterations, additions or improvements shall (i) be in accordance with complete plans and specifications approved in advance by Landlord (ii) be performed in a good and workmanlike manner and in compliance with all applicable laws, (iii) be made only by contractors or mechanics approved by Landlord and who (x) carry general liability and property damage insurance in type and amount as described in Section 10.2 hereof and (y) have filed lien bonds, lien waivers and the like, (iv) be performed pursuant to a written contract first approved by Landlord, (v) be made at Tenant's sole cost and expense and at such times and in such manner as Landlord may from time to time designate, and (vi) become a part of the Premises and the Property of the Landlord. The Landlord reserves the right to reject any design, item or construction procedure which in Landlord's sole judgment conflicts with the integrity of the Building.

Notwithstanding the foregoing, with respect to minor, non-structural alterations, additions or improvements, the installation costs of which Improvements ("Improvements" being defined for this purpose as the aggregate alterations, additions and improvements installed in any one project, whether or not the installation is performed in phases or stages) of less than \$25,000.00 per year, Landlord's approval thereof shall not be required nor shall plans and specifications be required with respect to same, provided that Tenant shall notify Landlord of same prior to commencing such alteration, addition or improvement.

(b) All articles of personal property and all business fixtures, machinery and equipment and furniture owned or installed by Tenant or solely at its expense in the Premises ("Tenant's Removable Property") shall remain the property of Tenant and may be removed by Tenant at any time prior to the expiration of this Lease, provided that Tenant, at its expense, shall repair any damage to the Premises and the Building caused by such installation or removal.

(c) In no event shall Landlord be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and no mechanic's or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of Landlord in or to the Premises. Whenever and as often as any mechanic's lien shall have been filed against the Property based upon any act or interest of Tenant or of anyone claiming through Tenant, Tenant shall forthwith take such actions by bonding, deposit or payment as will remove or satisfy the lien.

(d) In the course of any work being performed by Tenant, including without limitation the "field installation" of any Tenant's Removable Property, Tenant agrees to use labor compatible with that being employed by Landlord for work in or to the Building or other buildings owned by Landlord or its affiliates, and not to employ or permit the use of any labor or otherwise take any action which might result in a labor dispute involving personnel providing services in the Building or other properties owned or managed by Landlord or its affiliates.

(e) If Tenant shall make or cause to be made at its own expense any alteration, addition or improvement to the Premises which shall result in an increase in the Taxes, then Tenant shall pay, in addition to the Basic Rent, Additional Rent and other charges, the entire increase in such Taxes attributable to such alteration, addition or improvement.

**5.3 OPERATING HOURS.** Tenant shall, throughout the Term, continuously keep the Premises open for business with the public at least during the Minimum Days and Hours of Operation specified in Section 1.2. To the extent permitted by law, Tenant may keep the Premises open for business during any of the Optional Days and Hours of Operation specified in Section 1.2.

**5.4 GENERAL OPERATING STANDARD.** Tenant acknowledges and agrees that (i) the Building is a first-class office building, (ii) Landlord has established and intends to maintain a particularly high standard for the image and reputation of the Building, (iii) the nature, character and manner of use of the Premises, and the nature and character of the occupants therein, will have a significant impact on the Landlord's ability to maintain the first-class character and image of the Building, (iv) Tenant shall use the Premises for such purposes as will be comparable with the standards set forth in this Article V and which will contribute to, and not materially detract from, the public image or perception of the Building. Accordingly, and without limiting the generality of the foregoing, Tenant agrees that (i) the architectural character, decor, design and layout within the Premises whether or not visible from areas outside of the Premises, (ii) the materials, colors, finishes and furnishings used in the Premises, (iii) the nature, kind and quality of merchandise offered by Tenant in the Premises, (iv) the sales methods and deportment of personnel employed by Tenant in the premises and the manner of the presentation of Tenant's merchandise shall all be dignified and in conformance with the high standards expected of superior type retail establishments.

**5.5 DELIVERIES, ETC.** Throughout the Term Tenant shall cause all deliveries of food, beverage and other merchandise to the Premises and all removal of garbage, refuse and rubbish from the Premises to be made and undertaken only through the rear of the Premises and such other areas of the Building designated by Landlord from time to time therefor. In no event shall any deliveries be made to, or any refuse be removed through, the front of the Premises or the Building. All deliveries to the rear of the Premises shall be made only during the hours of 4:30 a.m. to 6:00 p.m.

**5.6 MUSIC.** Tenant shall not play or permit any "live" music or other entertainment nor use, play or operate or permit to be used, played or operated any sound or music making or reproducing device or system in the Premises, except (a) as shall be consistent with the "first-class" character and image of the Building, and (b) in such manner and under such conditions as shall not disturb, in Landlord's judgment, the occupancy of any other tenants or occupants of the Building. Tenant covenants and agrees that (i) Tenant, at Tenant's sole cost and expense, will observe, comply with and adopt such means, precautions, rules and regulations as Landlord may from time to time impose with respect thereto and (ii) if such "live" music or other entertainment or sound or music making or

reproducing device or system shall cause any such disturbance, then Tenant shall, upon Landlord's request, immediately cease such activity.

- 5.7 **TENANT'S TRADE NAME.** Tenant shall not carry on business under any corporate, firm or trade name other than Tenant's Trade Name specified in Section 1.2, without the prior written consent of Landlord.
- 5.8 **MANAGEMENT.** Tenant agrees that it will, at all times during the operation of Tenant's business upon the Premises, managerially supervise the same and shall, at its sole cost and expense, employ and maintain a competent and adequate staff of employees, all of whom will be employees of Tenant subject to the control of Tenant.
- 5.9 **LABOR.** Tenant agrees to use best efforts to conduct its labor relations and its relations with its employees in such manner as to attempt to avoid all strikes, picketing and boycotts of, on or about the Premises or the Building.
- 5.10 **FOOD PREPARATION.** Tenant shall not use all or any portion of the Premises for cooking or other preparation of food or beverages.

## ARTICLE VI

### ASSIGNMENT AND SUBLETTING

- 6.1 **PROHIBITION.** (a) Tenant covenants and agrees that whether voluntarily, involuntarily, by operation of law or otherwise, neither this Lease nor the term and estate hereby granted, nor any interest herein or therein, will be assigned, mortgaged, pledged, encumbered or otherwise transferred and that neither the Premises nor any part thereof will be encumbered in any manner by reason of any act or omission on the part of Tenant, or used or occupied, by anyone other than Tenant, or for any use or purpose other than a Permitted Use, or be sublet (which term, without limitation, shall include granting of concessions, licenses and the like) in whole or in part, or be offered or advertised for assignment or subletting.
- (b) The provisions of paragraph (a) of this Section shall apply to a transfer (by one or more transfers) of a majority of the stock or partnership interests, or other evidences of ownership of Tenant as if such transfer were an assignment of this Lease; but such provisions shall not apply to transactions with an entity into or with which Tenant is merged or consolidated or to which substantially all of Tenant's assets constituting a portion and/or all of the retail chain of which the business in the Premises is a part in the state in which the Premises is located, or transactions with any entity which controls or is controlled by Tenant or is under common control with Tenant, or with a licensee or operating subsidiary of Tenant, provided that in any of such events (i) at the time of such assignment or sublease Tenant shall not be in default under the terms of this Lease beyond any applicable cure period, (ii) the successor to or transferee of Tenant has a net worth computed in accordance with generally accepted accounting principles at least equal to the net worth of Tenant immediately prior to such merger, consolidation or transfer, (iii) proof satisfactory to Landlord of such net worth shall have been delivered to Landlord at least 10 days prior to the effective date of any such transaction, (iv) the assignee or sublessee agrees directly with Landlord, by written instrument in form

satisfactory to Landlord, to be bound by all the obligations of Tenant hereunder including, without limitation, the covenant against further assignment or subletting, and (v) no such assignment or sublet shall release Tenant of any of its obligations under this Lease (including, without limitation, its obligation to pay rent) and Tenant's liability after any assignment or subletting shall be joint and several with the assignee or sublessee.

(c) Except as allowed pursuant to subsection 6.1(b), if this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by anyone other than Tenant, Landlord may, at any time and from time to time, collect rent and other charges from the assignee, subtenant or occupant, and apply the net amount collected to the rent and other charges herein reserved, but no such assignment, subletting, occupancy, collection or modification of any provisions of this Lease shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as a tenant or a release of the original named Tenant from the further performance by the original named Tenant hereunder. No assignment or subletting hereunder shall relieve Tenant from its obligations hereunder and Tenant shall remain fully and primarily liable therefor. No assignment or subletting, or occupancy shall affect Permitted Uses.

## ARTICLE VII

### RESPONSIBILITY FOR REPAIRS AND CONDITIONS OF PREMISES:

#### SERVICES TO BE FURNISHED BY LANDLORD

7.1 **LANDLORD REPAIRS.** (a) Except as otherwise provided in this Lease, Landlord agrees to keep in good order, condition and repair the roof, public areas, exterior walls (excluding exterior glass) and structure of the Building (including Building plumbing, mechanical and electrical systems installed by Landlord but excluding any systems installed specifically for Tenant's benefit), all insofar as they affect the Premises, except that Landlord shall in no event be responsible to Tenant for the condition of glass in the Premises (including without limitation the store front portion of the Premises) or for the doors (or related glass and finish work) leading to the Premises, or for any condition in the Premises or the Building caused by any act or neglect of Tenant, its agents, employees, invitees or contractors. Landlord shall not be responsible to make any improvements or repairs to the Building other than as expressly provided in this Section 7.1 or elsewhere in this Lease. Landlord shall maintain and keep in good order and repair the foundation, floorslab, exterior, exterior walls (excluding exterior glass), steel frame, roof, structural portions, gutters, downspouts, if any, and utility lines located on the Property and serving the Premises. Landlord shall perform and such replacements or repairs in a manner which, to the extent practicable, minimizes the interference with the conduct of Tenant's business.

(b) Landlord shall never be liable for any failure to make repairs which Landlord has undertaken to make under the provisions of this Section 7.1 or elsewhere in this Lease, unless Tenant has given notice to Landlord of the need to make such repairs, and Landlord has failed to commence to make such repairs within a reasonable time after receipt of such notice, or fails to proceed with reasonable diligence to complete such repairs.

7.2 **TENANT'S AGREEMENT.** (a) Tenant will keep neat and clean and maintain in good order, condition and repair the Premises and every part thereof (including Building

systems which serve the Premises exclusively), excepting only those repairs for which Landlord is responsible under the terms of this Lease, reasonable wear and tear of the Premises, and damage by fire or other casualty and as a consequence of the exercise of the power of eminent domain; and shall surrender the Premises, at the end of the Term, in such condition. Without limitation, Tenant shall continually during the Term of this Lease maintain the Premises in accordance with all laws, codes and ordinances from time to time in effect and all directions, rules and regulations of the proper officers of governmental agencies having jurisdiction, and of the Boston Board of Fire Underwriters, and shall, at Tenant's own expense, obtain all permits, licenses and the like required by applicable law. Without limiting the generality of the foregoing, Tenant shall be responsible, in connection with Tenant's use of the Premises, for compliance with the ADA Requirements. Tenant's compliance obligation shall include not only alterations and improvements required, from time to time, to the Premises (including all doorways and entrances to the Premises) in order to comply with the ADA Requirements, but also any alterations or improvements required, from time to time, within the Building but outside of the Premises as a result of Tenant's particular use of the Premises in order to comply with the ADA Requirements. Notwithstanding the foregoing or the provisions of Article XII, Tenant shall be responsible for the cost of repairs which may be necessary by reason of damage to the Building caused by any act or neglect of Tenant or its agents, employees, contractors or invitees (including any damage by fire or any other casualty arising therefrom).

(i) Without limiting the generality of the foregoing, Tenant's obligation to repair and maintain shall include, without limitation, (a) all glass, windows and doors in the interior and exterior of the Premises, (b) all heating, exhaust, ventilation and air conditioning, plumbing, electrical and other mechanical equipment within the Premises, (c) all installations and alterations made by Tenant pursuant to Section 5.2, and (d) all repairs, replacements or other work that may be necessary in connection therewith in order to maintain the Premises in first-class condition and repair. Tenant shall operate and maintain its ventilation and exhaust system at least in accordance with the operation and maintenance specifications recommended by the manufacturer and designer of such system.

(ii) Tenant shall cause daily cleaning, policing and janitorial services to be performed in the Premises as may be required in order to keep the Premises in a first-class clean and sanitary condition and appearance at all times throughout the Term. Tenant shall also be responsible for sweeping the sidewalk in front of the Premises from the store front to the curb at least daily and washing the exterior and interior of all windows in the Premises at least two (2) times per week, and more frequently if necessary. Landlord shall not include charges for any of the foregoing services actually contracted for by Tenant in its calculation of Operating Expenses. With respect to the sidewalk in front of the Premises, Landlord shall be responsible for keeping such sidewalk clean and free of snow and ice on Mondays through Fridays from 8:00 a.m. until 6:00 p.m. (including customary office hours on holidays falling on such days), and Tenant shall be responsible for keeping such sidewalk clean and free of snow and ice at all other times.

(iii) Tenant shall continuously (a) collect and contain all garbage, trash, refuse and rubbish generated by or in connection with Tenant's Premises operations in sealed, watertight restaurant-grade containers approved by Landlord, which approval shall not be unreasonably withheld or delayed, and (b) remove all containers of refuse from the Premises and dispose of the same on a regular basis so as to avoid unreasonable accumulations of the same in the Premises. Tenant shall contract directly with a trash hauler to remove its refuse from the Premises,

and shall pay directly to such contractor all charges billed for trash removal. Such contractor shall be subject to (i) Landlord's prior written approval, and (ii) all applicable rules and regulations in force and effect from time to time in the Building, including, without limitation, the building manager's scheduling of trash removal during such reasonable hours as the building manager may designate.

(iv) Tenant shall maintain the Premises free of rodents, roaches, vermin and other pests throughout the Term. In implementation, but without limitation, of the foregoing, Tenant shall maintain throughout the Term a contract for pest control service services at the premises, in form and substance reasonably acceptable to Landlord, with a contractor reasonably acceptable to Landlord. Such contract shall provide, inter alia, for periodic treatment at intervals sufficient to maintain the Premises pest-free.

(b) If repairs are required to be made by Tenant pursuant to the terms hereof, Landlord may demand that Tenant make the same forthwith, and if Tenant refuses or neglects to commence such repairs and complete the same with reasonable dispatch after such demand, Landlord may (but shall not be required to do so) make or cause such repairs to be made (the provisions of Section 14.18 being applicable to the costs thereof) and shall not be responsible to Tenant for any loss or damage that may accrue to Tenant's stock or business by reason thereof. Notwithstanding the foregoing, Landlord may elect to take action hereunder immediately and without notice to Tenant if Landlord reasonably believes an emergency to exist.

**7.3 FLOOR LOAD - HEAVY MACHINERY.** (a) Tenant shall not place a load upon any floor in the Premises exceeding the floor load per square foot of area which such floor was designed to carry and which is allowed by law. Landlord reserves the right to prescribe the weight and position of all business machines and mechanical equipment, including safes, which shall be placed so as to distribute the weight. Business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient, in Landlord's judgment, to absorb and prevent vibration, noise and annoyance. Tenant shall not move any safe, heavy machinery, heavy equipment, freight, bulky matter or fixtures into or out of the Building without Landlord's prior consent, which consent may include a requirement to provide insurance, naming Landlord as an insured, in such amounts as Landlord may deem reasonable.

(b) If such safe, machinery, equipment, freight, bulky matter or fixtures requires special handling, Tenant agrees to employ only persons holding a Master Rigger's License to do such work, and that all work in connection therewith shall comply with applicable laws and regulations. Any such moving shall be at the sole risk and hazard of Tenant, and Tenant will exonerate, indemnify and save Landlord harmless against and from any liability, loss, injury, claim or suit resulting directly or indirectly from such moving.

**7.4 BUILDING SERVICES.** The parties acknowledge and agree that Landlord shall have no obligation to provide any Building services to the Premises or to Tenant whatsoever. All utilities necessary for the operation of the Premises shall be separately metered, contracted and paid for by Tenant, subject to the specific provisions concerning electricity set forth in Section 7.5 below.

**7.5 ELECTRICITY.** (a) Tenant shall contract with the company supplying electric current to the Building for the purchase and obtaining by Tenant of electric current directly from such company, to be billed directly to, and paid for by, Tenant. In such event Landlord shall permit Landlord's existing wires, risers, conduits and other electrical equipment of Landlord to be used to supply electric current to Tenant to meet a demand requirement

(utilizing the demand measurement standards established by the supplying utility) not to exceed the installed capacity of the Premises electrical system as of the Execution Date. If the Premises shall have been provided with a separate meter to measure Tenant's consumption of electricity, then Tenant shall, at Tenant's expense, keep such meter in good repair and operation throughout the Term. Tenant agrees in its use of the Premises not to exceed such requirements or any limits from time to time established under applicable governmental regulations. If Tenant's demand shall exceed the foregoing, Tenant shall pay the cost of such excess demand;

(b) Notwithstanding the foregoing, Landlord shall have the right, at its option, to install, at Landlord's expense, a so-called "check meter" which shall measure the amount of electricity actually used in the Premises, in which event:

(i) Landlord shall permit Landlord's existing wires, risers, conduits and other electrical equipment of Landlord to be used to supply electricity to Tenant provided that the limits set forth in paragraph (a) shall not be exceeded; and

(ii) Tenant shall make payments (as an additional charge) on account of electricity directly to Landlord, within ten (10) days of receipt of a statement therefor. In no event shall Tenant be required to pay with respect to such electricity an amount in excess of the amount that Tenant would be required to pay if purchasing directly from the supplying utility company.

## ARTICLE VIII

### REAL ESTATE TAXES

**PAYMENTS ON ACCOUNT OF REAL ESTATE TAXES.** (a) For the purposes of this Article, the term "Tax Year" shall mean the twelve-month period commencing on the July 1 immediately preceding the Commencement Date and each twelve-month period thereafter commencing during the Term of this Lease; and the term "Taxes" shall mean real estate taxes assessed with respect to the Property for any Tax Year.

(b) Tenant shall pay to Landlord, as Additional Rent, an amount equal to (i) the Taxes for each Tax Year, multiplied by (ii) the Expense Factor, such amount to be apportioned for any fraction of a Tax Year in which the Commencement Date falls or the Term of this Lease ends.

(c) Estimated payments by Tenant on account of Taxes shall be made monthly and at the time and in the fashion herein provided for the payment of Basic Rent. The monthly amount so to be paid to Landlord shall be sufficient to provide Landlord by the time real estate tax payments are due a sum equal to Tenant's required payments, as estimated by Landlord from time to time, on account of Taxes for the then current Tax Year. Promptly after receipt by Landlord of bills for such Taxes, Landlord shall advise Tenant of the amount thereof and the computation of Tenant's payment on account thereof. If estimated payments theretofore made by Tenant for the Tax Year covered by such bills exceed the required payments on account thereof for such Year, Landlord shall credit the amount of overpayment against subsequent obligations of Tenant on account of Taxes (or refund such overpayment if the Term of this Lease has ended and Tenant has no further obligation to Landlord); but if the required payments on account thereof for such Year are greater than estimated payments theretofore made on account thereof for such Year,

Tenant shall make payment to Landlord within 30 days after being so advised by Landlord. Landlord shall have the same rights and remedies for the non-payment by Tenant of any payments due on account of Taxes as Landlord has hereunder for the failure of Tenant to pay Basic Rent.

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

8.2 **ABATEMENT.** If Landlord shall receive any tax refund or reimbursement of Taxes or sum in lieu thereof with respect to any Tax Year which is not due to vacancies in the Building, then out of any balance remaining thereof after deducting Landlord's expenses reasonably incurred in obtaining such refund, Landlord shall, provided there does not then exist a Default of Tenant, credit an amount equal to such refund or reimbursement or sum in lieu thereof (exclusive of any interest) multiplied by the Expense Factor against subsequent obligations of Tenant on account of Taxes (or refund such amount to Tenant if the Term of this Lease has ended and Tenant has no further obligation to Landlord); provided, that in no event shall Tenant be entitled to receive more than the payments made by Tenant on account of real estate tax increases for such Year pursuant to paragraph (b) of Section 8.1.

8.3 **ALTERNATE TAXES.** (a) If some method or type of taxation shall replace the current method of assessment of real estate taxes in whole or in part, or the type thereof, or if additional types of taxes are imposed upon the Property or Landlord relating to the Property, Tenant agrees that Tenant shall pay a proportionate share of the same as an additional charge computed in a fashion consistent with the method of computation herein provided, to the end that Tenant's share thereof shall be, to the maximum extent practicable, comparable to that which Tenant would bear under the foregoing provisions.

(b) If a tax (other than Federal or State net income tax) is assessed on account of the rents or other charges payable by Tenant to Landlord under this Lease, Tenant agrees to pay the same as an additional charge within ten (10) days after billing therefor, unless applicable law prohibits the payment of such tax by Tenant.

## ARTICLE IX

### OPERATING AND UTILITY EXPENSES

9.1 **DEFINITIONS.** For the purposes of this Article, the following terms shall have the following respective meanings:

(i) **Operating Year:** Each calendar year in which any part of the Term of this Lease shall fall.

(ii) **Operating Expenses:** The aggregate costs or expenses reasonably incurred by Landlord with respect to the operation, administration, cleaning, repair, maintenance, and management of the Property (but specifically excluding utility costs) all as set forth in Exhibit OC annexed hereto (which shall specifically include the costs incurred by Landlord in complying with the ADA Requirements, such costs to be treated as capital expenditures as appropriate). Notwithstanding anything to the contrary in this Lease or in Exhibit OC contained, in no event shall Operating Expenses include the following items:

- a) capital expenditures or any other expenditures not currently chargeable against income in accordance with generally accepted accounting principles, unless same are incurred for the purpose of (i) achieving a savings in labor or other costs, (ii) repairing or replacing a system or item of equipment serving the Building on the date of this Lease, (iii) complying with any building code or other law, regulation or legal requirement, including, without limitation, the Americans with Disabilities Act, or (iv) complying with the requirements of any insurer of Landlord. Any allowable capital expenditures shall be amortized over the useful life of the item, together with a reasonable interest factor;
- b) expenses for repairs or other work occasioned by fire, windstorm or other insured casualty;
- c) expenses incurred in leasing or procuring new tenants (i.e. lease commissions, tenant inducements, advertising expenses and expenses of renovating space for new tenants);
- d) legal expenses in enforcing the terms of any lease;
- e) interest or amortization payments on any mortgage or mortgages;
- f) reserve funds;
- g) administrative expenses of Landlord, to the extent not directly related to the operation and management of the Building;
- h) the cost of preparing Landlord's income tax returns; and
- i) direct settlement payments by Landlord in personal injury or property claims.

(iii) **Utility Expenses:** The aggregate costs or expenses reasonably incurred by Landlord with respect to supplying electricity (other than electricity supplied to those portions of the Building leased or intended to be leased to tenants), oil, steam, gas, water and sewer and other utilities supplied to the Property and not paid for directly by tenants.

**9.2 TENANT'S PAYMENTS.** (a) Tenant shall pay to Landlord, as Additional Rent, an amount equal to (i) Operating Expenses for each Operating Year, multiplied by (ii) the Expense Factor, such amount to be apportioned for any partial Operating Year in which the Commencement Date falls or the Term of this Lease ends.

(b) Tenant shall pay to Landlord, as Additional Rent, an amount equal to (i) Utility Expenses for each Operating Year, multiplied by (ii) the Expense Factor, such amount to be apportioned for any partial Operating Year in which the Commencement Date falls or the Term of this Lease ends.

(c) Estimated payments by Tenant on account of Operating Expenses and Utility Expenses shall be made monthly and at the time and in the fashion herein provided for the payment of Basic Rent. The monthly amount so to be paid to Landlord shall be sufficient to provide Landlord by the end of each Operating Year a sum equal to Tenant's required payments, as estimated by Landlord from time to time during each Operating Year, on account of Operating Expenses and Utility Expenses for such Operating Year. After the end of each Operating Year, Landlord shall submit to Tenant a reasonably detailed accounting of Operating Expenses and Utility Expenses for such Year (using generally accepted accounting principles consistently applied), and Landlord shall certify to the accuracy thereof. Landlord shall provide Tenant with reasonable back-up documentation of such accounting upon request. If estimated payments theretofore made for such Year by Tenant exceed Tenant's required payment on account thereof for such Year, according to such statement, Landlord shall credit the amount of overpayment against subsequent obligations of Tenant with respect to Operating Expenses and Utility Expenses (or refund such overpayment if the Term of this Lease has ended and Tenant has no further obligation to Landlord); but, if the required payments on account thereof for such Year are greater than the estimated payments (if any) theretofore made on account thereof for such Year, Tenant shall make payment to Landlord within thirty (30) days after being so advised by Landlord. Landlord shall have the same rights and remedies for the nonpayment by Tenant of any payments due on account of Operating Expenses and Utility Expenses as Landlord has hereunder for the failure of Tenant to pay Basic Rent.

## ARTICLE X

### INDEMNITY AND PUBLIC LIABILITY INSURANCE

10.1 TENANT'S INSURANCE. Tenant shall maintain the following coverages in the following amounts:

(a) Commercial General Liability Insurance covering the insured against claims of Bodily Injury, Personal Injury and Property Damage arising out of Tenant's operation, assumed liabilities or use of the Premises, including the performance by Tenant of the indemnity agreements set forth in Section 10.03 of this Lease; for limits of liability not less than : (i) Bodily Injury and Property Damage Liability \$1,000,000 Each Occurrence and \$2,000,000 Annual Aggregate, and (ii) Personal Injury Liability \$1,000,000 Each Occurrence and \$2,000,000 Annual Aggregate.

(b) Property Damage Insurance covering (i) all office furniture, trade fixtures, office equipment, merchandise and all other items of Tenant's property on the Premises installed by, for, or at the expense of Tenant, and (ii) all other improvements, alterations and additions to the Premises. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include a vandalism and malicious mischief endorsement, sprinkler leakage coverage and earthquake sprinkler leakage coverage.

(c) Boiler and Machinery Insurance. If during the term of this Lease, Tenant shall receive Landlord's prior written consent to operate on the Premises a boiler or other pressured vessels, Tenant shall, as a pre-condition to installing the same, place and maintain Boiler Insurance with Limits of Liability in an amount not less than \$250,000 Per Occurrence or as needed, and providing coverage for the full replacement value thereof.

(d) Worker's Compensation/Employer's Liability Insurance. If the nature of Tenant's use of the Premises requires that any or all of its employees be provided coverage under State Worker's Compensation Insurance or similar statutes, Tenant shall keep in force Worker's Compensation Insurance or similar statutory coverage containing statutorily prescribed limits and Employer's Liability with limits of at least \$1,000,000 Bodily Injury by Accident for Each Accident, \$1,000,000 Bodily Injury by Disease for Each Person and \$1,000,000 Bodily Injury by Disease policy limit.

(e) Form of Policies. The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (i) name the Landlord, and any other party it so specifies, as an additional insured; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Section 10.03 of this Lease; (iii) be issued by an insurance company having a rating of not less than AXII in Best's Key Rating Guide or which is otherwise acceptable to Landlord and licensed to do business in the Commonwealth of Massachusetts; (iv) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is not excess and is non-contributing with any insurance requirement of Tenant; (v) provide that said insurance shall not be cancelled or coverage changed unless thirty (30) days prior written notice shall have been given to Landlord and any mortgagee of Landlord; and (vi) contain a cross-liability endorsement or severability of interest clause acceptable to Landlord. Tenant shall deliver said policies or certificates thereof to Landlord on or before the Commencement Date and at least thirty (30) days before the expiration date thereof.

10.2 TENANT'S COMPLIANCE WITH LANDLORD'S FIRE AND CASUALTY INSURANCE. Tenant shall, at Tenant's expense, comply with all insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for any insurance policies carried by Landlord, then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

10.3 INDEMNIFICATION OF LANDLORD. Tenant will indemnify Landlord and the Agent and save the same harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Premises, or the occupancy or use by Tenant of the Premises or any part thereof, or occasioned wholly or in part by the default under this Lease or any act or omission of Tenant, its agents, contractors, employees, servants, subtenants, or concessionaires, licensees or invitees. In case Landlord or the Agent shall, without fault on its part, be made party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord and the Agent harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by Landlord and the Agent in connection with such litigation. Tenant shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Landlord in enforcing the covenants and agreements in this Lease.

10.4 WAIVER OF SUBROGATION. (a) Each policy of insurance carried by Tenant shall provide that the insurer waives any right of subrogation against the Landlord in connection with or arising out of any damage to such property contained in the Premises caused by fire or other risks or casualty covered by such insurance. In no event shall Tenant or any person or corporation claiming an interest in the Premises by, through or

under Tenant, claim, maintain or prosecute any action or suit at law or in equity against the Landlord for any loss, cost or damage caused by or resulting from fire or other risk or casualty in the Premises or any part thereof, for which Tenant is or may be insured, whether or not carried by Tenant and whether or not caused by the negligence of the Landlord, or the agents, or servants, or employees of the Landlord.

(b) Each policy of insurance carried by Landlord shall provide that the insurer waives any rights of subrogation against the Tenant in connection with or arising out of any damage to such property contained in the Premises caused by fire or other risks or casualty covered by such insurance. In no event shall Landlord or any person or corporation claiming an interest in the Premises by, through or under Landlord, claim, maintain or prosecute any action or suit at law or in equity against the Tenant for any loss, cost or damage caused by or resulting from fire or other risk or casualty in the Premises or any part thereof for which Landlord is or may be insured, whether or not carried by Landlord or whether or not caused by the negligence of the Tenant or the agents, or servants or employees of Tenant.

**10.5 LANDLORD'S INSURANCE.** Throughout the Term of this Lease, Landlord shall maintain a policy of all risk insurance on all of the Building and improvements situated therein in an amount equal to at least eighty percent (80%) of the full insurable value thereof. All such policies shall name Landlord and the holder of any mortgage which affects the Building as parties insureds thereunder as their respective interests may appear. Landlord shall also have the right to maintain rental value insurance insuring payment of one (1) year's fixed and additional rentals and other annual charges payable to Landlord by the various tenants of the Building.

During the Term of this Lease, Tenant agrees to pay to Landlord, as additional rent, its pro rata share (being 14.5%) of the premiums payable by Landlord for the policies of insurance referred to in the first paragraph of this Section 10.05. Tenant shall pay to Landlord Tenant's pro rata share within thirty (30) days after receipt by Tenant of a bill therefor. Tenant shall also pay to Landlord, as additional rent, Tenant's pro rata share of any and all expenses incurred by Landlord in the restoration, reconstruction or repair of all or any part of the Building subsequent to a casualty, which expenses are incurred by Landlord as the result of so-called "deductibles" contained in Landlord's fire insurance policy(s). Landlord will have the right at any time during the Term of this Lease to notify Tenant that it has elected to require Tenant to deposit with Landlord, on a monthly basis, an amount equal to one-twelfth (1/12th) of Tenant's pro rata share of said insurance premiums. In such event, Tenant shall promptly comply therewith and make said monthly payments to Landlord, as additional rent.

## ARTICLE XI

### LANDLORD'S ACCESS TO PREMISES

**11.1 LANDLORD'S RIGHTS.** Landlord shall have the right to enter the Premises at all reasonable hours for the purpose of inspecting or making repairs to the same, and Landlord shall also have the right to make access available at all reasonable hours to prospective or existing mortgagees, purchasers or tenants of any part of the Property.

Landlord shall exercise the foregoing rights in such a manner so as not to interfere with the operation of Tenant's business.

## ARTICLE XII

### FIRE, EMINENT DOMAIN, ETC.

- 12.1 **ABATEMENT OF RENT.** If the Premises shall be damaged by fire or casualty, Basic Rent and Additional Rent payable by Tenant shall abate proportionately for the period in which, by reason of such damage, there is substantial interference with Tenant's use of the Premises, having regard to the extent to which Tenant may be required to discontinue Tenant's use of all or a portion of the Premises, but such abatement or reduction shall end if and when Landlord shall have substantially restored the Premises (excluding any alterations, additions or improvements made by Tenant pursuant to Section 5.2) to the condition in which they were prior to such damage. If the Premises shall be affected by any exercise of the power of eminent domain, Basic Rent and Additional Rent payable by Tenant shall be justly and equitably abated and reduced according to the nature and extent of the loss of use thereof suffered by Tenant. In no event shall Landlord have any liability for damages to Tenant for inconvenience, annoyance, or interruption of business arising from such fire, casualty or eminent domain.
- 12.2 **LANDLORD'S RIGHT OF TERMINATION.** If the Premises or the Building are substantially damaged by fire or casualty (the term "substantially damaged" meaning damage of such a character that the same cannot, in ordinary course, reasonably be expected to be repaired within sixty (60) days from the time the repair work would commence), or if any part of the Building is taken by any exercise of the right of eminent domain, then Landlord shall have the right to terminate this Lease (even if Landlord's entire interest in the Premises may have been divested) by giving notice of Landlord's election so to do within 60 days after the occurrence of such casualty or the effective date of such taking, whereupon this Lease shall terminate thirty (30) days after the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.
- 12.3 **RESTORATION.** If this Lease shall not be terminated pursuant to Section 12.2, Landlord shall thereafter use due diligence to restore the Premises (excluding any alterations, additions or improvements made by Tenant) to proper condition for Tenant's use and occupation, provided that Landlord's obligation shall be limited to the amount of insurance proceeds available therefor. If, for any reason, such restoration shall not be substantially completed within six months after the expiration of the 60-day period referred to in Section 12.2 (which six-month period may be extended for such periods of time as Landlord is prevented from proceeding with or completing such restoration for any cause beyond Landlord's reasonable control, but in no event for more than an additional three months), Tenant shall have the right to terminate this Lease by giving notice to Landlord thereof within thirty (30) days after the expiration of such period (as so extended). Upon the giving of such notice, this Lease shall cease and come to an end without further liability or obligation on the part of either party unless, within such 30-day period, Landlord substantially completes such restoration. Such right of termination shall be Tenant's sole and exclusive remedy at law or in equity for Landlord's failure so to complete such restoration.

- 12.4 **AWARD.** Landlord shall have and hereby reserves and excepts, and Tenant hereby grants and assigns to Landlord, all rights to recover for damages to the Property and the leasehold interest hereby created, and to compensation accrued or hereafter to accrue by reason of such taking; damage or destruction, and by way of confirming the foregoing, Tenant hereby grants and assigns, and covenants with Landlord to grant and assign to Landlord, all rights to such damages or compensation. Nothing contained herein shall be construed to prevent Tenant from prosecuting in any condemnation proceedings a claim for the value of any of Tenant's Removable Property installed in the Premises by Tenant at Tenant's expense and for relocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable by Landlord from the taking authority.

### ARTICLE XIII

#### DEFAULT

- 13.1 **TENANT'S DEFAULT.** (a) If at any time subsequent to the date of this Lease any one or more of the following events (herein referred to as a "Default of Tenant") shall happen:
- (i) Tenant shall fail to pay the Basic Rent, Percentage Rent, Additional Rent or other charges hereunder when due and such failure shall continue for fifteen (15) days; or
  - (ii) Tenant shall neglect or fail to perform or observe any other covenant herein contained on Tenant's part to be performed or observed, and Tenant shall fail to remedy the same within thirty (30) days after notice to Tenant specifying such neglect or failure, or if such failure is of such a nature that Tenant cannot reasonably remedy the same within such thirty (30) day period, Tenant shall fail to commence promptly to remedy the same and to prosecute such remedy to completion with diligence and continuity; or
  - (iii) Tenant shall desert or abandon the Premises or the Premises shall become, or appear to have become vacant (regardless whether the keys shall have been surrendered or the rent and all other sums due shall have been paid), and Tenant shall fail to remedy the same within fifteen (15) days after notice to Tenant specifying such neglect or failure; or
  - (iv) Tenant's leasehold interest in the Premises shall be taken on execution or by other process of law directed against Tenant; or
  - (v) Tenant shall make an assignment for the benefit of creditors or shall file a voluntary petition in bankruptcy or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future Federal, State or other statute, law or regulation for the relief of debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall admit in writing its inability to pay its debts generally as they become due; or

(vi) A petition shall be filed against Tenant in bankruptcy or under any other law seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future Federal, State or other statute, law or regulation and shall remain undismissed or unstayed for an aggregate of sixty (60) days (whether or not consecutive), or if any debtor in possession (whether or not Tenant) trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Premises shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated or unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(vii) If a Default of Tenant of the kind set forth in clauses (i) or (ii) above shall occur and if either (a) Tenant shall cure such Default within the applicable grace period or (b) Landlord shall, in its sole discretion, permit Tenant to cure such Default after the applicable grace period has expired, and an event which would constitute a similar Default if not cured within the applicable grace period shall occur more than once within the next 365 days, whether or not such event is cured within the applicable grace period;

then in any such case (1) if such Default of Tenant shall occur prior to the Commencement Date, this Lease shall ipso facto, and without further act on the part of Landlord, terminate, and (2) if such Default of Tenant shall occur after the Commencement Date, Landlord may terminate this Lease by notice to Tenant, and thereupon this Lease shall come to an end as fully and completely as if such date were the date herein originally fixed for the expiration of the Term of this Lease, and Tenant will then quit and surrender the Premises to Landlord, but Tenant shall remain liable as hereinafter provided.

(b) If this Lease shall be terminated as provided in this Article, or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the Premises shall be taken or occupied by someone other than Tenant, then Landlord may, without notice, re-enter the Premises, either by force, summary proceedings, ejectment or otherwise, and remove and dispossess Tenant and all other persons and any and all property from the same, 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.

(c) In the event of any termination, Tenant shall pay the Basic Rent, Percentage Rent, Additional Rent and other sums payable hereunder up to the time of such termination, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such termination, and whether or not the Premises shall have been relet, shall be liable to Landlord for, and shall pay to Landlord, as liquidated current damages, the Basic Rent, Percentage Rent, Additional Rent and other sums which would be payable hereunder if such termination had not occurred, less the net proceeds, if any, of any reletting of the Premises, after deducting all expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, advertising, expenses of employees, alteration costs and expenses of preparation for such reletting. Tenant shall pay such current damages to Landlord monthly on the days which the Basic Rent would have been payable hereunder if this Lease had not been terminated.

(d) At any time after such termination, whether or not Landlord shall have collected any such current damages, as liquidated final damages and in lieu of all such current damages beyond the date of such demand, at Landlord's election Tenant shall pay to Landlord and amount equal to the excess, if any, of the Basic Rent, Percentage Rent, Additional Rent and other sums as hereinbefore provided which would be payable hereunder from the

date of such demand (assuming that, for the purposes of this paragraph, annual payments by Tenant on account of Percentage Rent, Taxes, Utility Expenses and Operating Expenses would be the same as the payments required for the immediately preceding calendar year, Operating or Tax Year, as the case may be) for what would be the then unexpired Term of this Lease if the same had remained in effect, over the then fair net rental value of the Premises for the same period.

(e) In the case of any Default by Tenant, re-entry, expiration and dispossession by summary proceeding or otherwise, Landlord may (i) re-let the Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may at Landlord's option be equal to or 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 to the extent that Landlord considers advisable and necessary to re-let the same and (ii) may make such reasonable alterations, repairs and decorations in the Premises as Landlord in its sole judgment considers advisable and necessary for the purpose of re-letting the Premises; and the making of such alterations, repairs and decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to re-let the Premises, or, in the event that the Premises are re-let, for failure to collect the rent under such re-letting. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease. Landlord shall use reasonable efforts to re-let the Premises and to collect the rent under any such re-letting.

(f) If a Guarantor of this Lease is named in Section 1.2, the happening of any of the events described in paragraphs (a)(iv) or (a)(v) of this Section 13.1 with respect to the Guarantor shall constitute a Default of Tenant hereunder.

(g) The specified remedies to which Landlord may resort hereunder are not intended to be exclusive of any remedies or means of redress to which Landlord may at any time be entitled to lawfully, and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

(h) All costs and expenses incurred by or on behalf of Landlord (including, without limitation, attorneys' fees and expenses) in enforcing its rights hereunder or occasioned by any Default of Tenant shall be paid by Tenant.

13.2 LANDLORD'S DEFAULT. Landlord shall in no event be in default of the performance of any of Landlord's obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord specifying wherein Landlord has failed to perform any such obligations.

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

14.1 EXTRA HAZARDOUS USE. (a) Tenant covenants and agrees that Tenant will not do or permit anything to be done in or upon the Premises, or bring in anything or keep anything therein, which shall increase the rate of property or liability insurance on the

Premises or of the Building above the standard rate applicable to premises being occupied for Permitted Uses; and Tenant further agrees that in the event that Tenant shall do any of the foregoing, Tenant will promptly pay to Landlord, on demand, any such increase resulting therefrom, which shall be due and payable as an additional charge hereunder.

(b) Definitions. As used herein, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, materials or wastes or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "infectious wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations including, without limitation, all petroleum based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

(c) General Prohibition. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not cause or permit any Hazardous Material to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Premises or the Property by Tenant, its agents, employees, contractors, sublessees or invitees without the prior written consent of Landlord. Landlord shall be entitled to take into account such factors or facts as Landlord may in its good faith business judgment determine to be relevant in determining whether to grant, condition or withhold consent to Tenant's proposed activity with respect to Hazardous Material and Tenant shall indemnify, defend and hold Landlord harmless from any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including, without limitation, punitive damages), expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs, and amounts paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses (economic or other) arising from a breach of this prohibition by Tenant, its agents, employees, contractors, sublessees or invitees. In no event, however, shall Landlord be required to consent to the installation or use of any storage tanks in, on or under the Premises or the Property. If Landlord consents to the generation, production, use, storage, treatment or disposal of Hazardous Materials in or about the Premises by Tenant, its agents, employees, contractors, sublessees or invitees, then, in addition to any other requirements or conditions that Landlord may impose in connection with such consent, (1) Tenant promptly shall deliver to Landlord copies of all permits, approvals, filings and reports reflecting the legal and proper generation, production, use, storage, treatment or disposal of all Hazardous Materials generated, used, stored, treated or removed from the Premises and the Property and, upon Landlord's request, copies of all hazardous waste manifests relating thereto, and (2) upon expiration or earlier termination of this Lease, Tenant shall cause all Hazardous Materials arising out of or related to the use or occupancy of the Premises by Tenant or its agents, affiliates, customers, employees, business associates or assigns to be removed from the Premises and the Property and transported for use, storage or disposal in accordance with all applicable laws, regulations and ordinances and Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord of the same.

(d) In the event that Hazardous Materials are discovered upon, in, or under the Premises, and the applicable governmental agency or entity having jurisdiction over the Premises requires the removal of such Hazardous Materials, Tenant shall be responsible

for removing those Hazardous materials arising out of or related to the use or occupancy of the Premises by Tenant or its agents, affiliates, customers, employees, business associates or assigns but not those of its predecessors. Notwithstanding the foregoing, Tenant shall not take any remedial action in or about the Premises or the Property without first notifying Landlord of Tenant's intention so to do and affording Landlord the opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interest with respect thereto. Tenant immediately shall notify Lessor in writing of: (i) any spill, release, discharge or disposal of any Hazardous Material in, on or under the Premises, the Property or any portion thereof, (ii) any enforcement, cleanup, removal or other governmental or regulatory action instituted, contemplated, or threatened pursuant to any Hazardous Materials Laws, (iii) any claim made or threatened by any person against Tenant, the Premises or the Property relating to damage, contribution, recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous materials, and (iv) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in, on or removed from the premises or Property, including any complaints, notices, warnings, reports or asserted violations in connection therewith. Tenant also shall supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises, the Property or Tenant's use thereof.

(e) The respective rights and obligations of Landlord and Tenant under this Section shall survive the expiration or earlier termination of this Lease.

- 14.2 WAIVER. (a) Failure on the part of Landlord or Tenant to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by Tenant or Landlord, respectively, of any of the other's rights hereunder. Further, no waiver at any time of any of the provisions hereof by Landlord or Tenant shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of Landlord or Tenant to or of any action by the other requiring such consent or approval shall not be construed to waive or render unnecessary Landlord's or Tenant's consent or approval to or of any subsequent similar act by the other.

(b) No payment by Tenant, or acceptance by Landlord, of a lesser amount than shall be due from Tenant to Landlord shall be treated otherwise than as a payment on account of the earliest installment of any payment due from Tenant under the provisions hereof. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

- 14.3 COVENANT OF QUIET ENJOYMENT. Tenant, subject to the terms and provisions of this Lease, on payment of the Basic Rent and Additional Rent and observing, keeping and performing all of the other terms and provisions of this Lease on Tenant's part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Premises during the term hereof, without hindrance or ejection by any persons lawfully claiming under Landlord to have title to the Premises superior to Tenant; the foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

- 14.4 LANDLORD'S LIABILITY. (a) Tenant specifically agrees to look solely to Landlord's then equity interest in the Property at the time owned, for recovery of any

judgment from Landlord; it being specifically agreed that Landlord (original or successor) shall never be personally liable for any such judgment, or for the payment of any monetary obligation to Tenant. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or Landlord's successors in interest, or to take any action not involving the personal liability of Landlord (original or successor) to respond in monetary damages from Landlord's assets other than Landlord's equity interest in the Property.

(b) With respect to any services or utilities to be furnished by Landlord to Tenant, Landlord shall in no event be liable for failure to furnish the same when prevented from doing so by strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services, or because of war or other emergency, or for any cause beyond Landlord's reasonable control, or for any cause due to any act or neglect of Tenant or Tenant's servants, agents, employees, licensees or any person claiming by, through or under Tenant.

(c) In no event shall Landlord ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause.

(d) With respect to any repairs or restoration which are required or permitted to be made by Landlord, the same may be made during normal business hours and Landlord shall have no liability for damages to Tenant for inconvenience, annoyance or interruption of business arising therefrom. Landlord shall perform such repairs or restoration in a manner so as to minimize any inconvenience, annoyance or interruption of Tenant's business arising therefrom.

14.5 NOTICE TO MORTGAGEE OR GROUND LESSOR. After receiving notice from any person, firm or other entity that it holds a mortgage or a ground lease which includes the Premises, no notice from Tenant to Landlord alleging any default by Landlord shall be effective unless and until a copy of the same is given to such holder or ground lessor (provided Tenant shall have been furnished with the name and address of such holder or ground lessor), and the curing of any of Landlord's defaults by such holder or ground lessor shall be treated as performance by Landlord.

14.6 ASSIGNMENT OF RENTS AND TRANSFER OF TITLE. (a) With reference to any assignment by Landlord of Landlord's interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage on property which includes the Premises, Tenant agrees that the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage, shall never be treated as an assumption by such holder of any of the obligations of Landlord hereunder unless such holder shall, by notice sent to Tenant, specifically otherwise elect and that, except as aforesaid, such holder shall be treated as having assumed Landlord's obligations hereunder only upon foreclosure of such holder's mortgage and the taking of possession of the Premises.

(b) In no event shall the acquisition of Landlord's interest in the Property by a purchaser which, simultaneously therewith, leases Landlord's entire interest in the Property back to the seller thereof be treated as an assumption by operation of law or otherwise, of Landlord's obligations hereunder, but Tenant shall look solely to such seller-lessee, and its successors from time to time in title, for performance of Landlord's obligations hereunder. In any such event, this Lease shall be subject and subordinate to the lease to such purchaser. For all purposes, such seller-lessee, and its successors in title, shall be

the Landlord hereunder unless and until Landlord's position shall have been assumed by such purchaser-lessor.

(c) Except as provided in paragraph (b) of this Section, in the event of any transfer of title to the Property by Landlord, Landlord shall thereafter be entirely freed and relieved from the performance and observance of all covenants and obligations hereunder.

- 14.7 RULES AND REGULATIONS.** Tenant shall abide by rules and regulations from time to time established by Landlord, it being agreed that such rules and regulations will be established and applied by Landlord in a uniform, non-discriminatory fashion, such that all rules and regulations shall be generally applicable to other tenants of the Building of similar nature to the Tenant named herein. Landlord agrees to use reasonable efforts to insure that any such rules and regulations are uniformly enforced, but Landlord shall not be liable to Tenant for violation of the same by any other tenant or occupant of the Building, or persons having business with them. In the event that there shall be any conflict between such rules and regulations and the provisions of this Lease, the provisions of this Lease shall control.
- 14.8 ADDITIONAL CHARGES.** If Tenant shall fail to pay when due any sums under this Lease as an additional charge, Landlord shall have the same rights and remedies as Landlord has hereunder for failure to pay Basic Rent.
- 14.9 INVALIDITY OF PARTICULAR PROVISIONS.** If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by Law.
- 14.10 PROVISIONS BINDING, ETC.** Except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant and, if Tenant shall be an individual, upon and to his heirs, executors, administrators, successors and assigns. Each term and each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition. The reference contained to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances in which Landlord may later give consent to a particular assignment as required by those provisions of Article VI hereof.
- 14.11 RECORDING.** Tenant agrees not to record this Lease, but each party hereto agrees, on the request of the other, to execute a so-called notice of lease in form recordable and complying with applicable law and reasonably satisfactory to Landlord's and Tenant's attorneys. In no event shall such document set forth the rent or other charges payable by Tenant under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.
- 14.12 NOTICES.** Whenever, by the terms of this Lease, notices, consents or approvals shall or may be given either to Landlord or to Tenant, such notices, consents or approvals shall be in writing and shall be sent by registered or certified mail, postage prepaid:

If intended for Landlord, addressed to Landlord at Landlord's Original Address (or to such other address as may from time to time hereafter be designated by Landlord by like notice).

If intended for Tenant, addressed to Jennifer Leather-Boylston, MA, Inc., c/o Jennifer Warehouse, 245 Rogers Avenue, Inwood, New York 11696, with a copy to Law Office of Bernard Wincig, Attn: Bernard Wincig, Esq., 574 Fifth Avenue, New York, NY 10036.

All such notices shall be effective when deposited in the United States Mail within the Continental United States, provided that the same are received in ordinary course at the address to which the same were sent.

- 14.13 **WHEN LEASE BECOMES BINDING.** The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both Landlord and Tenant. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and this Lease expressly supersedes any proposals or other written documents relating hereto. This Lease may be modified or altered only by written agreement between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change or modify any of the provisions hereof.
- 14.14 **PARAGRAPH HEADINGS.** The paragraph headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Lease.
- 14.15 **RIGHTS OF MORTGAGEE OR GROUND LESSOR.** This Lease shall be subordinate to any mortgage or ground lease from time to time encumbering the Premises, whether executed and delivered prior to or subsequent to the date of this Lease, if the holder of such mortgage or ground lease shall so elect. If this Lease is subordinate to any mortgage or ground lease and the holder thereof (or successor) shall succeed to the interest of Landlord, at the election of such holder (or successor) Tenant shall attorn to such holder and this Lease shall continue in full force and effect between such holder (or successor) and Tenant. Tenant agrees to execute such instruments of subordination or attornment in confirmation of the foregoing agreement as such holder may request, and Tenant hereby appoints such holder as Tenant's attorney-in-fact to execute such subordination or attornment agreement upon default of Tenant in complying with such holder's request. Landlord shall use reasonable efforts to obtain from each mortgagee or ground lessor a non-disturbance agreement.
- 14.16 **STATUS REPORT.** Recognizing that both parties may find it necessary to establish to third parties, such as accountants, banks, mortgagees, ground lessors, or the like, the then current status of performance hereunder, either party, on the request of the other made from time to time, will promptly furnish to Landlord, or the holder of any mortgage or ground lease encumbering the Premises, or to Tenant, as the case may be, a statement of the status of any matter pertaining to this Lease, including, without limitation, acknowledgement that (or the extent to which) each party is in compliance with its obligations under the terms of this Lease.
- 14.17 **SECURITY DEPOSIT.** If, in Section 1.2 hereof, a security deposit is specified, Tenant agrees that the same will be paid upon execution and delivery of this Lease, and that Landlord shall hold the same throughout the Term of this Lease as security for the performance by Tenant of all obligations on the part of Tenant hereunder. Landlord shall have the right from time to time without prejudice to any other remedy Landlord may have on account thereof, to apply such deposit, or any part thereof, to Landlord's

damages arising from, or to cure, any Default of Tenant. If Landlord shall so apply any or all of such deposit, Tenant shall immediately deposit with Landlord the amount so applied to be held as security hereunder. There then existing no Default of Tenant, Landlord shall return the deposit, or so much thereof as shall theretofore not been applied in accordance with the terms of this Section 14.17, to Tenant on the expiration or earlier termination of the Term of this Lease and surrender of possession of the Premises by Tenant to Landlord at such time. While Landlord holds such deposit, Landlord shall have no obligation to pay interest on the same and shall have the right to commingle the same with Landlord's other funds. If Landlord conveys Landlord's interest under this Lease, the deposit, or any part thereof not previously applied, may be turned over by Landlord to Landlord's grantee, and, if so turned over, Tenant agrees to look solely to such grantee for proper application of the deposit in accordance with the terms of this Section 14.17, and the return thereof in accordance therewith. The holder of a mortgage shall not be responsible to Tenant for the return or application of any such deposit, whether or not it succeeds to the position of Landlord hereunder, unless such deposit shall have been received in hand by such holder.

- 14.18 **REMEDYING DEFAULTS.** Landlord shall have the right, but shall not be required, to pay such sums or to do any act which requires the expenditure of monies which may be necessary or appropriate by reason of the failure or neglect of Tenant to perform any of the provisions of this Lease, and in the event of the exercise of such right by Landlord, Tenant agrees to pay to Landlord forthwith upon demand all such sums, together with interest thereon at a rate equal to 3% over the prime rate in effect from time to time at the First National Bank of Boston (but in no event less than 18% per annum), as an additional charge. Any payment of Fixed Rent, Additional Rent or other sums payable hereunder not paid when due and remaining unpaid at the expiration of any applicable cure period shall, at the option of Landlord, bear interest at a rate equal to 3% over the prime rate in effect from time to time at the First National Bank of Boston (but in no event less than 18% per annum) from the due date thereof and shall be payable forthwith on demand by Landlord, as an additional charge.
- 14.19 **HOLDING OVER.** Any holding over by Tenant after the expiration of the Term of this Lease shall be treated as a daily tenancy at sufferance at a rate equal to the then fair rental value of the the Premises but in no event less than 1 1/2 times the sum of (i) Fixed Rent and (ii) Additional Rent in effect on the expiration date. Tenant shall also pay to Landlord all damages, direct and/or indirect (including any loss of a tenant or rental income), sustained by reason of any such holding over. Otherwise, such holding over shall be on the terms and conditions set forth in this Lease as far as applicable.
- 14.20 **WAIVER OF SUBROGATION.** Insofar as, and to the extent that, the following provision shall not make it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in the locality in which the Property is located (even though extra premium may result therefrom) Landlord and Tenant mutually agree that any property damage insurance carried by either shall provide for the waiver by the insurance carrier of any right of subrogation against the other, and they further mutually agree that, with respect to any damage to property, the loss from which is covered by insurance then being carried by them, respectively, the one carrying such insurance and suffering such loss releases the other of and from any and all claims with respect to such loss to the extent of the insurance proceeds paid with respect thereto.
- 14.21 **SURRENDER OF PREMISES.** Upon the expiration or earlier termination of the Term of this Lease, Tenant shall peaceably quit and surrender to Landlord the Premises in neat and clean condition and in good order, condition and repair, together with all alterations, additions and improvements which may have been made or installed in, on or

to the Premises prior to or during the Term of this Lease, excepting only ordinary wear and use and damage by fire or other casualty for which, under other provisions of this Lease, Tenant has no responsibility of repair and restoration. Tenant shall remove all of Tenant's Removable Property and, to the extent specified by Landlord, all alterations and additions made by Tenant and all partitions wholly within the Premises; and shall repair any damage to the Premises or the Building caused by such removal. Any Tenant's Removable Property which shall remain in the Building or on the Premises after the expiration or termination of the Term of this Lease shall be deemed conclusively to have been abandoned, and either may be retained by Landlord as its property or may be disposed of in such manner as Landlord may see fit, at Tenant's sole cost and expense.

- 14.22 **FORCE MAJEURE.** Except as otherwise specifically provided herein, in any case where either party hereto is required to do any act, delays caused by Force Majeure shall not be counted in determining the time during which work shall be completed, whether such time be designated by a fixed date, a fixed time, or a "reasonable" time.
- 14.23 **BROKERAGE.** Tenant warrants and represents that Tenant has dealt with no broker in connection with the consummation of this Lease other than the Broker, if any, identified in Section 1.3 hereof, and, in the event of any brokerage claims against Landlord predicated upon prior dealings with Tenant, Tenant agrees to defend the same and indemnify Landlord against any such claim (except any claim by the Broker).
- 14.24 **GOVERNING LAW.** This Lease shall be governed exclusively by the provisions hereof and by the laws of the Commonwealth of Massachusetts, as the same may from time to time exist.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be duly executed, under seal, by persons hereunto duly authorized, in multiple copies, each to be considered an original hereof, as of the date first set forth above.

**TENANT:**

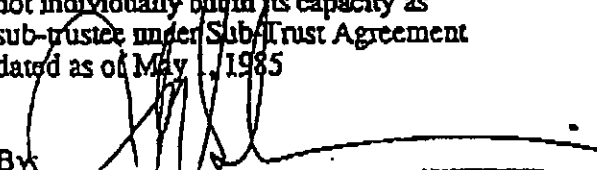
JENNIFER LEATHER-BOWLSTON MA, INC.

By: 

Title: President

**LANDLORD:**

TRUST COMPANY OF THE WEST, a California corporation  
not individually but in its capacity as  
sub-trustee under Sub-Trust Agreement  
dated as of May 1, 1985

By:   
Authorized Signatory

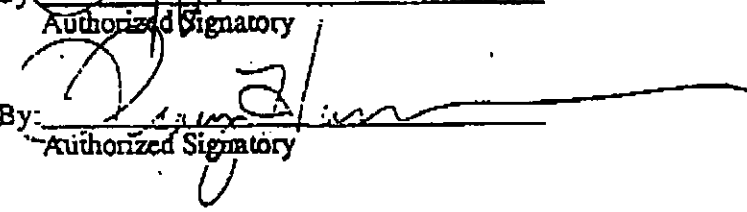
By:   
Authorized Signatory

EXHIBIT OC

As used in this Lease, "Operating Costs" shall include all costs and expenses of every kind and nature incurred by Landlord in operating, managing, equipping, lighting, cleaning, maintaining, repairing and replacing the Premises, the Building and the Property, including, without limitation, costs for (i) janitorial service, (ii) rubbish removal, (iii) HVAC service, (iv) utilities, (v) landscaping and snow removal, (vi) elevator and HVAC maintenance, (vii) management fees, wages, salaries, benefits, payroll taxes and unemployment compensation insurance for employees of Landlord or any contractor of Landlord engaged in the cleaning, operating, and maintenance of security of the Property, (viii) the cost of all of Landlord's insurance, including, without limitation, casualty, liability and loss of rent insurance, and (ix) costs for work required to comply with laws and insurance regulations.

In no event shall Operating Costs include (a) leasing commissions, advertising and promotional expenditures, legal fees and disbursements relating to leasing, and other expenses incurred in connection with leasing space in the Building, (b) salaries for Landlord's executives above the grade of building manager, (c) financing or ground lease expenses, (d) real estate taxes, (e) costs paid directly by individual tenants to suppliers including tenant electricity and telephone costs, (e) amounts for which Landlord is otherwise reimbursed through insurance, condemnation awards, warranties or by payments from other tenants, (f) expenditures for preparing other tenant space in the Building for occupancy, (g) cost of utilities furnished by Landlord to other tenants' premises and paid for directly by such tenants for the premises, and (h) the cost of any special services furnished by Landlord to any tenants of the Building for which such tenants are charged separately.

EXHIBIT C

Tenant's Work

EXHIBIT D

Rules and Regulations

## TCW TEN. T LEASE MAINTENANCE . IORT FORM

4

Check One: Add: ☒ Change: ☐ Delete: ☐Check One: New ☒ Renewal ☐ Same Space ☐ New Space ☐FUND #/NAME 1 RockwellPROPERTY #/NAME 1376 Boylston StUNIT #            SPACE ID#           TENANT NAME Jennifer Leather - Boylston MA,DBA Jennifer Leather Inc☒ Lease Lease Date:           ☐ Amendment #            Date:           ☐ Other            Date:           SECURITY DEPOSIT - AMOUNT COLLECTED \$ 14,846.67CURRENT MONTHLY RENT           MKT. RENT-ANNUAL PSF 27.00 / 26.55RENTABLE SQUARE FEET 9798LEASE START DATE 6 / 1 / 94LEASE EXPIRATION DATE 5 / 31 / 04LEASE SIGNED DATE 1 / 1 / 94MOVED OUT DATE           

## GENERAL LEASE INFORMATION \*(SEE NOTE)

Base Rent on 5,240 sf. of retail: \$27 psf - yrs 1+2; \$29 psf - yrs 3+  
 \$31 psf - yrs 5+6; \$33 - yrs 7+8; \$35 psf - yrs 9+10.  
 Base Rent on 4,558 sf. of storage is \$3.45 flat.

## RENEWAL OPTIONS:

	Type +	Term	Minimum Rent	Notice Date
(1)	NA			
(2)				
(3)				
(4)				
(5)				

+ Types: 1 = Fixed 2 = Market 3 = CPI 4 = % of CPI 5 = % of Market

\*Note: The computer can store up to 840 characters of comments. Enter \*MM/YY in the first seven positions of each line to appear on the Action Date Report. A space must follow the \*.

Weighted Average Rent  
 Annualize TI's + LC over  
 9798 sf. over 10415.

LEASE ANALYSIS376 Boylston

PROJECT

Jennifer Leather-Boylston MA, Inc.

Tenant

5/19/94

Date

Mimi Turner  
Asset

Manager

RDOPM

	Per Month \$ /SF	Per Annum \$ /SF
1. Average Gross Effective Rent	<u>1.49</u> /	<u>17.88</u> /
2. Less Amount to Fully Amortize Marginal Cap Costs @ 8% Interest Rate	(.07) ( ) .06	(.84) ( ) .67
3. Less Base Tax & Operating Costs	( — ) ( )	( — ) ( )
4. Equals Average Net Effective Shell Rent	<u>1.36</u>	<u>16.37</u>
5. Return on Book Value* =	<u>Net Effective Shell Rent</u> Book Value	<u>16.37</u> 48

34%

\* Book Value = last appraisal plus capital costs to include capital costs in this transaction

Attachment: Lease Abstract

Average Rent for 5240.  
 Amortize TI's + LC over  
 5240 sf. for 10 yrs.

LEASE ANALYSIS

376 Boylston  
 PROJECT

Jennifer Leather - Boylston MA, Inc.  
 Tenant

5/19/94  
 Date

W. H. Hume

Asset - Manager

RDOPM

	Per Month \$ / SF	Per Annum \$ / SF
1. Average Gross Effective Rent	<u>229</u> / <u>1</u>	<u>33.43</u> / <u>1</u>
2. Less Amount to Fully Amortize Marginal Cap Costs @ 8% Interest Rate	(.13) ( )	(1.57) ( )
3. Less Base Tax & Operating Costs	(.11) ( )	(1.26) ( )
4. Equals Average Net Effective Shell Rent	<u>2.55</u>	<u>30.60</u>
5. Return on Book Value*-	<u>Net Effective Shell Rent =</u> Book Value	<u>30.60</u> <u>48</u>

63.8%

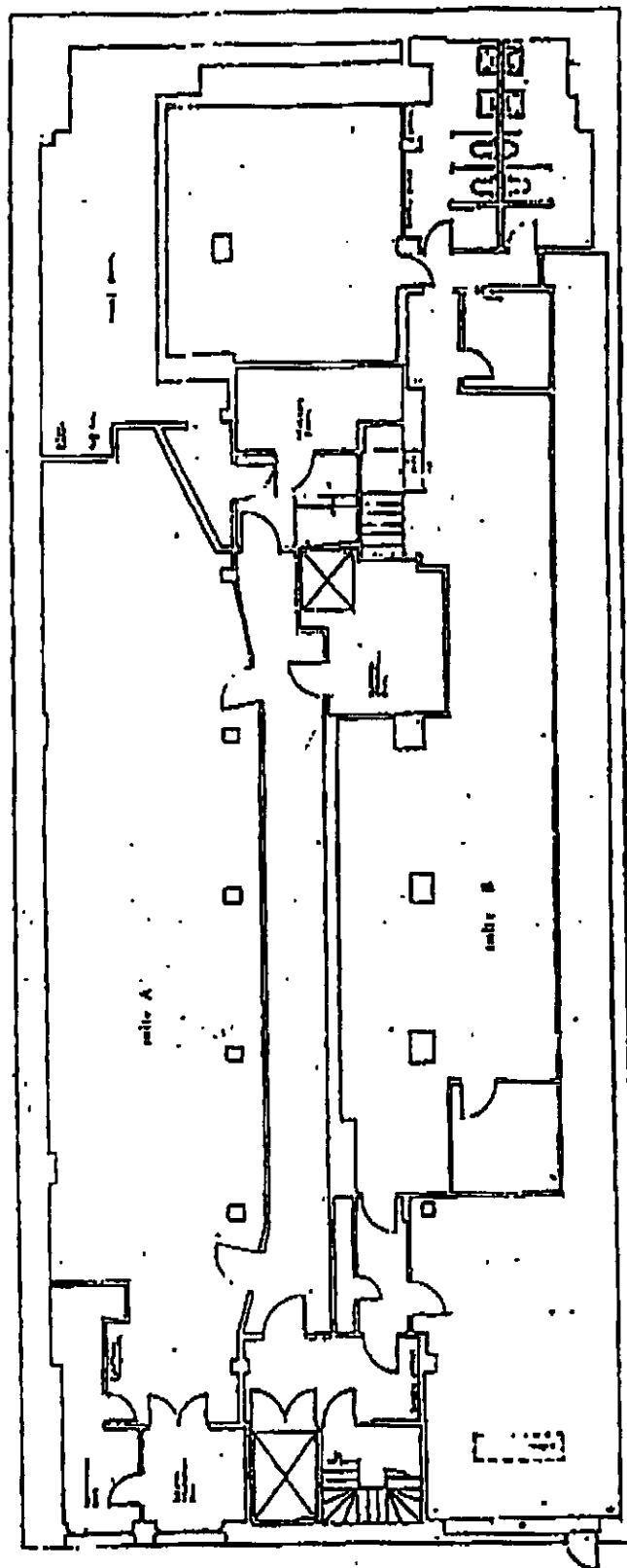
\* Book Value = last appraisal plus capital costs to include capital costs in this transaction

Attachment: Lease Abstract

00101 - 0113341  
FLOOR PLAN374  
BOYLSTON ST.  
BOSTON, MA.FLOOR  
BASEMENT00101 - 0113341  
FLOOR PLAN

EXHIBIT FP

(P. 1 of 2)



ORIGINAL

Number 1 c

4 execut

counterpart

GUARANTY

Reference is hereby made to a certain Lease dated as of May 9, 1994 (the "Lease") by and between Trust Company of the West, a California corporation, not individually but in its capacity as sub-trustee under Sub-Trust Agreement dated as of May 1, 1985 (the "Landlord"), as landlord, and Jennifer Leather-Boylston MA, Inc., a Massachusetts corporation (the "Tenant"), as tenant, for certain premises located in the building known and numbered as 376 Boylston Street, Boston, Massachusetts.

In consideration of Landlord's entering into the above-described Lease with Tenant, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby unconditionally guarantees to the Landlord, and its successors and assigns, the full and prompt payment and performance by Tenant (including any assignee of Tenant or successor to Tenant) of all of its obligations under the Lease accruing during the period commencing on the Commencement Date (as defined in the Lease), through and including the last day of the calendar month in which the three year anniversary of the Commencement Date shall fall. In no event shall the liability of the undersigned hereunder exceed \$314,400.00 in the aggregate.

This guaranty is and shall be construed to be an absolute, unconditional, present and continuing guaranty of payment, performance and observance, and is no way conditioned or contingent upon any attempt to collect from or demand performance of the Tenant or upon any other condition or contingency; and accordingly, Landlord and its successors and assigns shall have the right to proceed against the undersigned immediately upon any material default under the Lease without taking any prior action or proceeding of any kind to enforce the Lease. This guaranty shall continue in full force and effect until all obligations of Tenant under the Lease accruing during the period commencing on the Commencement Date (as defined in the Lease), through and including the last day of the calendar month in which the three year anniversary of the Commencement Date shall fall, have been performed in full. Nothing shall discharge or satisfy the undersigned's liability hereunder except the full satisfaction of the aforesaid condition.

The undersigned's obligations under this guaranty shall remain in full force and effect without regard to, and shall not be impaired or affected by: any amendment, assignment, modification, or extension of the Lease; any compromise, release, consent, or other action or inaction in respect of any terms of the Lease; any bankruptcy, insolvency, reorganization, liquidation, or the like of the Tenant or any other guarantor; the discharge or release of the Tenant or any other guarantor in any such bankruptcy proceedings; any limitation of the Tenant's liability which may now or hereafter be imposed by any statute, regulation, or rule of law; any illegality, irregularity, invalidity or unenforceability, in whole or in part, of the Lease; any sale, lease or transfer of any or all of the assets of the Tenant to any other person, firm, or entity; or any other circumstance, whether or not Landlord or its successors or assigns shall have notice or knowledge thereof.

The undersigned waives notice of acceptance of this guaranty, presentment, demands, and notice of default under the Lease, and notice of any change in Tenant's financial condition.

In the event it shall become necessary for Landlord or its successors or assigns to employ counsel to enforce any obligations hereunder, the undersigned agrees to pay Landlord's reasonable attorney's fees and all other costs and expenses reasonably connected therewith.

The obligations of the undersigned shall be binding upon its successors and assigns and shall inure to the benefit of Landlord and its successors and assigns.

This guaranty contains the sole and entire understanding and agreement of the parties with respect to its entire subject matter, and supersedes all prior or contemporaneous written or oral communications with respect thereto. This guaranty can be amended or modified only by a writing signed by both the Landlord and the undersigned.

This guaranty is an agreement subject to the laws of the Commonwealth of Massachusetts.

WITNESS the execution hereof under seal by the undersigned as of this \_\_\_\_ day of May, 1994.

JENNIFER CONVERTIBLES, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_