

UNITED STATES BANKRUPTCY COURT Southern 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):
BINA Realty LLC☐ Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:

Troutman Sanders LLP
The Chrysler Building 405 Lexington Avenue
New York, New York 10174
Attn: Lee W. Stremba, Esq.
Telephone number:
(212) 704-6000

RECEIVED

OCT 28 2010

BMC GROUP

Court Claim Number:
(If known)

Filed on:

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

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: \$ 4,068.36

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: See attached Addendum
(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:

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.

Lee W. Stremba, as counsel for BINA Realty LLC

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:

\$ 2000.00

*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

P 1:58

Jennifer Convertibles



00322

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C.

**ADDENDUM TO PROOF OF CLAIM
OF BINA REALTY LLC**

Claimant Bina Realty LLC (“Claimant”) is the landlord under a lease dated as of March 29, 2010 with debtor Hartsdale Convertibles, Inc. (“HCI”) relating to the premises 552-572 80th Street, Brooklyn, New York (the “Lease”). A copy of the Lease is annexed hereto as exhibit “A”.

Debtor Jennifer Convertibles, Inc. (“JCI”) fully guaranteed the Lease. A copy of JCI’s guaranty is annexed hereto as Exhibit “B”.

As of the date of the debtors’ bankruptcy filings (the “Petition Date”), HCI owed the sum of \$4,068.36 under the Lease for unpaid charges resulting from HCI’s failure to make timely rent payments. JCI is liable to Claimant in the same amount as the guarantor of HCI’s obligations under the Lease.

As of the date of this proof of claim, HCI has neither assumed nor rejected the Lease. Accordingly, Claimant reserves the right to file an additional claim or claims in the event that the Lease is rejected or in the event that HCI otherwise breaches the Lease in any respect for any period after the Petition Date.

Documentation relating to the Lease is voluminous. Claimant has attached the principal relevant documents to this proof of claim and reserves the right to produce such additional documents as may be reasonably requested by the debtors hereafter.

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

2/94-A

Agreement of Lease, made as of this 29 day of March 2010, between
BINA REALTY LLC, a New York limited liability company having an address at 200 Winston Drive, Unit 221,
Cliffside Park, New Jersey 07010
party of the first part, hereinafter referred to as OWNER, and
HARTSDALE CONVERTIBLES, INC. a New York corporation having an address at
417 Crossways Park Drive, Woodbury, New York 11797
party of the second part, hereinafter referred to as TENANT,

Witnesseth: Owner hereby leases to Tenant and Tenant hereby hires from Owner

the entire property known as 552-572 86th Street (Block 6053, Lot 17)

in the building known as

in the Borough of Brooklyn

, City of New York, for the term as provided in Article 41

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

day of

nineteen hundred and

, and to end on the

day of

and

both dates inclusive, at an annual rental rate as provided in Article 42

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

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

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

Rent: 1. Tenant shall pay the rent as above and as hereinafter provided.
Occupancy: 2. Tenant shall use and occupy demised premises as provided in Article 52

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

Alterations: 3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant, at Tenant's expense, may make alterations, installations, additions or improvements which are non-structural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved in each instance by Owner. Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general liability, personal and property damage insurance as Owner may require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within 30 days thereafter, at Tenant's expense, by payment or filing the bond required by law. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner on Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises unless Owner, by notice to Tenant no later than twenty days prior to the date fixed as the termination of this lease, elects to relinquish Owner's rights thereto and to have them removed by Tenant, in which event, the same shall be removed from the premises by Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in this article shall be construed to give Owner title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installation as may be required by Owner, Tenant shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed by Tenant at the end of the term remaining in the premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner at Tenant's expense.

Repairs: 4. Owner shall maintain and repair the portions of the building, both exterior and interior, except that if Owner allows Tenant to erect on the outside of the building a sign or signs, or a hoist, lift or sidewalk elevator, for the exclusive use of Tenant, Tenant shall maintain such exterior installations in good appearance and shall cause the same to be operated in a good and workmanlike manner and shall make all repairs thereto necessary to keep same in good order and condition at Tenant's own cost and expense, and shall cause the same to be covered by the insurance provided for hereafter in Article 6. Tenant

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

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

Requirements of Law, Fire Insurance: 6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters or the Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, and with respect to the portion of the sidewalk adjacent to the premises, if the premises are on the street level, whether or not arising out of Tenant's use or manner of use thereof, or with respect to the building arising out of Tenant's use or manner of use of the premises or the building (including the use permitted under the lease). Except as provided in Article 29 hereof, nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has by its manner of use of the demised premises, or method of operation therein, violated any such laws, orders, rules, regulations or requirements with respect thereto. Tenant shall not do

**Destruction,
Fire,
and Other
Casualty:**

9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner, and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent as hereinafter expressly provided shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored by Owner (or sooner reoccupied in part by Tenant) then rent shall be apportioned as provided in subsection (b) above, subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant given within 90 days after such fire or casualty or 30 days after adjustment of the insurance claim for such fire or casualty, whichever is sooner, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease, and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Owner's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, including Owner's obligation to restore under subparagraph (b) above, each party shall

Vault, Vault Space, Area: 14. No vaults, vault space or area, whether or not enclosed or covered, nor within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the

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

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

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

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

Default: 17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent, or if the demised premises become vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under Section 365 of Title 11 of the U.S. Code (Bankruptcy Code); or if Tenant shall fail to move into or take possession of the premises within thirty (30) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then, in any one or more of such events, upon Owner serving a written fifteen (15) days notice upon Tenant specifying the nature of said default and upon the expiration of said fifteen (15) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said fifteen (15) day period, and if Tenant shall not have diligently commenced curing such default within such fifteen (15) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Owner may serve a written five (5) days notice of cancellation of this lease upon Tenant, and upon the expiration of said five (5) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

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

Remedies of Owner and Waiver of Redemption: 18. In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise; (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration. (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of

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

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

No Representations by Owner: 20. Neither Owner nor Owner's agent have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation, or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition; and agrees to take the same "as is" and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

End of Term: 21. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

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

Failure to Give Possession: 23. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants, or if the premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or for any other reason; Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for the inability to obtain possession or complete construction) until after Owner shall have given Tenant written notice that the Owner is able to deliver possession in the condition required by this lease. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease except the obligation to pay the fixed annual rent set forth in page

one of this lease. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.


No Waiver: 24. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent and/or additional rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed in acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

Waiver of Trial by Jury: 25. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any proceeding or action for possession including a summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding, including a counterclaim under Article 4 except for statutory mandatory counterclaims.


Inability to Perform: 26. This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making, any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment, fixtures or other materials if Owner is prevented or delayed from so doing by reason of strike or labor troubles, government preemption or restrictions or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of which have been or are affected, either directly or indirectly, by war or other emergency, or when, in the judgment of Owner, temporary interruption of such services is necessary by reason of accident, mechanical breakdown, or to make repairs, alterations or improvements.

Bills and Notices: 27. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.


Water Charges: 28. If Tenant requires use of consumer water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes Owner to be the sole judge) Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter as and when bills are rendered. Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. The bill rendered by Owner shall be payable by Tenant as additional rent. If the building or the demised premises or any part thereof be supplied with water through a meter through which water is also supplied to other premises Tenant shall pay to Owner as additional rent, on the first day of each month,

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

Sprinklers: 29. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office or any bureau, department or official of the federal, state or city government require or recommend the installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised premises, or for any other reason, or if any such sprinkler system

installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by any fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature. Tenant shall pay to Owner as additional rent the sum of \$ on the first day of each month during the term of this lease, as Tenant's portion of the cost of prior for sprinkler superiority action.

Elevators, Heat, Cleaning: 30. As long as Tenant is not in default under any of the covenants of this lease beyond the applicable grace period provided in this lease for the curing of such default, Owner shall, if and insofar as existing facilities permit furnish heat to the demised premises, when and as required by law, on business days from 6:00 a.m. to 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m. Tenant shall at Tenant's expense, keep demised premises clean and in order, to the satisfaction of Owner, and if demised premises are situated on the street floor, Tenant shall, at Tenant's own expense, make all repairs and replacements to the sidewalks and curbs adjacent thereto, and keep said sidewalks and curbs free from snow, ice, dirt and rubbish. Tenant shall pay to Owner the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Owner to Tenant at such times as Owner may choose and shall be due and payable when rendered, and the amount of such bills shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting for the removal of such rubbish and refuse, in the event that Tenant does not wish to have same done by employees of Owner. Under such circumstances, however, the removal of such refuse and rubbish by others shall be subject to such rules and regulations as, in the judgment of Owner, are necessary for the proper operation of the building.

Security: 31. Tenant has deposited with Owner the sum of \$ 85,000 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency accrued before or after the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security, and Tenant agrees to look to the new Owner solely for the return of said security; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

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

Definitions: 33. The term "Owner" as used in this lease means only the Owner, or the mortgagee in possession, for the time being of the land and building (or the Owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or a part, so that in the event of a lease of said building, or of the land and of said lease, or in the event of a lease of said building, or of the land and of said lease, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties of their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. The words "re-entry" and "re-entry" as used in this lease shall exclude legal meaning. The term "business days" as used in this lease shall exclude Saturdays, Sundays and all days designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service. Wherever it is expressly provided in this lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

Adjacent Excavation Shoring: 34. If an excavation shall be made upon land adjacent to the demised premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which demised premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Owner, or diminution or abatement of rent.

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

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

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

Pornographic Uses Prohibited: 37. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the premises, and shall not permit or conduct any obscene, nude, or semi-nude live performances on the premises, nor permit use of the premises for nude modeling, rap sessions, or as a so called rubber goods shops, or as a sex club of any sort, or as a "massage parlor." Tenant agrees further that Tenant will not permit any of these uses by any sublessee or assignee of the premises. This Article

shall directly bind any successors in interest to the Tenant. Tenant agrees that if at any time Tenant violates any of the provisions of this Article, such violation shall be deemed a breach of a substantial obligation of the terms of this lease and objectionable conduct. Pornographic material is defined for purposes of this Article as any written or pictorial manner with prurient appeal or any objects of instrument that are primarily concerned with lewd or prurient sexual activity. Obscene material is defined here as it is in Penal law §235.00.

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

Successors and Assigns: 39. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns. Tenant shall look only to Owner's estate and interest in the land and building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) against Owner in the event of any default by Owner hereunder, and no other property or assets of such Owner (or any partner, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this lease, the relationship of Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

SEE RIDER ATTACHED HERETO AND MADE A PART HEREOF

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

Witness for Owner:

OWNER: BINA REALTY LLC

By: Frederic M. Orloff

Witness for Tenant:

TENANT: HARTSDALE CONVERTIBLES, INC.

By: Janet Dawber

ACKNOWLEDGEMENTS

CORPORATE OWNER
STATE OF NEW YORK, ss.:
County of

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

INDIVIDUAL OWNER
STATE OF NEW YORK, ss.:
County of

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

CORPORATE TENANT
STATE OF NEW YORK, ss.:
County of NASSAU

On this 26 day of MARCH, 2019, before me personally came Edward B. Jr. Cio to me known, who being by me duly sworn, did depose and say that he resides in WOODBURY that he is the EMP of Jennifer Convertibles the corporation described in and which executed the foregoing instrument, as TENANT; that he knows the seal of said corporation; the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Janet Dawber
JANET DAWBER
Notary Public, State Of New York
No. 01DA6083157
INDIVIDUAL TENANT
STATE OF NEW YORK, ss.:
County of Qualified In Nassau County
Commission Expires November 12, 2019

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

RIDER ANNEXED TO AND MADE A PART OF LEASE DATED AS OF MARCH 29, 2010 BY AND BETWEEN BINA REALTY LLC, AS OWNER OR LANDLORD, AND HARTSDALE CONVERTIBLES, INC., AS TENANT, COVERING PREMISES 552-572 86TH STREET, BROOKLYN, NEW YORK

40. Definitions. The following definitions shall have the meanings hereinafter set forth wherever used in this lease or any Exhibits or Schedules annexed hereto (if any):

(a) "Building" shall mean the building known as 552-572 86th Street, Brooklyn, New York.

(b) "Commencement Date" shall mean May 1, 2010.

(c) "Expiration Date" shall mean the earlier of (i) April 30, 2020, as such date may be extended pursuant to Section 41(f) below or (ii) the date this lease terminates prior to its stated expiration date pursuant to the provisions of this lease.

(d) "Guarantor" shall mean Jennifer Convertibles, Inc. a Delaware corporation, the guarantor of this lease.

(e) "Lease Year" shall mean each twelve (12) month period commencing on a May 1st during the term of this Lease.

(f) "Legal Requirements" shall mean laws, statutes and ordinances (including building codes and zoning regulations and ordinances) and the orders, rules, regulations, directives and requirements of all federal, state, county, city and borough departments, bureaus, boards, agencies, offices, commissions and other subdivisions thereof, or of any official thereof, or of any other governmental public or quasi-public authority, whether now or hereafter in force, which may be applicable to the land or building or the demised premises or any part thereof, or the sidewalks, curbs or areas adjacent thereto and all requirements, obligations and conditions of all instruments of record on the date of this lease.

41. Term.

(a) "The term of this lease shall commence on the Commencement Date and shall end on the Expiration Date.

(b) Delivery of possession of the demised premises to Tenant shall in no event be deemed to have occurred until actual and exclusive physical possession of the demised premises shall have been delivered to Tenant in a broom-clean condition, free and clear of all prior leases, tenants and/or occupants. Landlord agrees to give Tenant notice of the intended date of delivery of possession not less than five (5) days and not more than fifteen (15) days prior to the intended date of delivery of possession.

(c) If Landlord does not deliver possession of the demised premises to Tenant by May 1, 2010, then (i) the Commencement Date shall be extended to reflect the date Landlord delivers possession of the demised premises to the Tenant, (ii) the Expiration Date shall be

similarly extended, (iii) the definition of Lease Year shall be similarly adjusted and (iv) the dates set forth in Sections 41(g) and 42(d) shall be similarly extended.

(d) Within five (5) days of the date of the tendered possession of the demised premises to Tenant, both Landlord and Tenant agree to execute a certificate confirming the Commencement Date.

(e) Notwithstanding anything in this lease to the contrary, if Landlord is unable to delivery possession of the demised premises to Tenant by October 1, 2010, then Tenant may, on or before October 15, 2010 give a notice to Landlord electing to terminate this lease and if Landlord has not delivered possession of the demises premises prior to Landlord's receipt of Tenant's notice of termination, this lease will terminate on the date Landlord receives Tenant's notice of termination and neither party will have any obligations hereunder.

(f) The term of this lease, at the option of Tenant, exercised by written notice (an "Extension Notice") to Landlord given not less than seven (7) months prior to the then expiration of the term of this lease, may be extended for two (2) periods of five (5) years each (the "Extension Periods"), upon all terms, covenants, and conditions set forth in this lease except that the annual fixed rent shall be as provided in Sections 42(b) and 42(c) and Tenant shall have no further right to extend the term of this lease. If Tenant fails to give an Extension Notice to Landlord on or before the date which is seven (7) months prior to the then expiration date of the term of this lease, Landlord shall give a notice (a "Reminder Notice") to Tenant notifying Tenant of its failure to timely give an Extension Notice under this Section 41(f). If Tenant gives to Landlord an Extension Notice on or before the date (the "Outside Date") which is the later of (1) six (6) months prior to the then expiration date of the term of this lease or (2) fifteen (15) days after the giving of the Reminder Notice by Landlord to Tenant, then the Extension Notice shall be deemed to have been timely given to Landlord. If Tenant fails to give to Landlord an Extension Notice on or before the Outside Date, then Tenant's option to extend the term of this lease will cease and terminate without any further notice from Landlord. As used in this lease, "Term" shall include the initial term and the Extension Periods, if timely and properly elected pursuant to this Section 41(f). Time shall be of the essence with respect to Tenant's obligation to timely and properly give an Extension Notice. Tenant's exercise of any extension option shall be null and void if on the date of the giving of an Extension Notice and/or on the first day of the Extension Period in question, Tenant is in default under this lease with respect to any monetary obligation or with respect to any non-monetary obligation and such non-monetary default has remained uncured beyond the expiration of the applicable grace period set forth in this lease. Tenant's option to extend the term of this lease may not be severed from this lease or separately assigned. Tenant's option to extend the term of this lease pursuant to this Section 41(f) will automatically terminate upon any assignment of this lease or any subletting of all or part of the Premises, other than an assignment or subletting permitted pursuant to Section 46(c).

(g) Notwithstanding anything in this lease to the contrary, Tenant may, at its option at any time on or after November 1, 2014 and before November 1, 2015 give a notice (the "Termination Notice") to Landlord electing to terminate this lease, in which event, this lease will terminate and expire on the date (the "Early Termination Date") that is six (6) months after the date Landlord receives the Termination Notice, provided that (1) Tenant is not in default under this lease on the date Landlord receives the Termination Notice or on the Early Termination

Date, (2) Tenant delivers to Landlord, together with the Termination Notice, the Rent Payment Amount (as defined below) as an early termination fee and (3) Tenant continues to pay annual fixed rent and additional rent payable hereunder through the Early Termination Date. As used herein, the term "Rent Payment Amount" shall mean the sum of (i) nine months of annual fixed rent as of the day Landlord receives the Termination Notice and (ii) 75% of the Taxes for the Tax Year in which Landlord receives the Termination Notice.

42. Annual Fixed Rent

(a) The annual fixed rent payable by Tenant hereunder shall be as follows:

- (i) during the first (1st) Lease Year, at the rate of \$500,000.00 per annum (\$41,666.67 per month);
- (ii) during the second (2nd) Lease Year, at the rate of \$510,000.00 per annum (\$42,500.00 per month);
- (iii) during the third (3rd) Lease Year at the rate of \$520,200.00 per annum (\$43,350.00 per month);
- (iv) during the fourth (4th) Lease Year at the rate of \$530,604.00 per annum (\$44,217.00 per month);
- (v) during the fifth (5th) Lease Year at the rate of \$541,216.08 per annum (\$45,101.34 per month);
- (vi) during the sixth (6th) Lease Year at the rate of \$552,040.44 per annum (\$46,003.37 per month);
- (vii) during the seventh (7th) Lease Year at the rate of \$563,081.28 per annum (\$46,923.44 per month);
- (viii) during the eighth (8th) Lease Year at the rate of \$574,342.92 per annum (\$47,861.91 per month);
- (ix) during the ninth (9th) Lease Year at the rate of \$585,829.68 per annum (\$48,819.14 per month); and
- (x) during the tenth (10th) Lease Year at the rate of \$597,546.36 per annum (\$49,795.53 per month).

(b) If Tenant timely and properly extends the term of this lease for the first Extension Period, annual fixed rent during the first Extension Period shall be as follows:

- (i) during the eleventh (11th) Lease Year at the rate of \$615,472.80 per annum (\$51,289.40 per month);
- (ii) during the twelfth (12th) Lease Year at the rate of \$633,936.96 per annum

(\$52,828.08 per month);

- (iii) during the thirteenth (13th) Lease Year at the rate of \$652,955.04 per annum (\$54,412.92 per month);
- (iv) during the fourteenth (14th) Lease Year at the rate of \$672,543.72 per annum (\$56,045.31 per month); and
- (v) during the fifteenth (15th) Lease Year at the rate of \$692,720.04 per annum (\$57,726.67 per month).

(c) If Tenant timely and properly extends the term of this lease for the second Extension Period, annual fixed rent during the second Extension Period shall be as follows:

- (i) during the sixteenth (16th) Lease Year at the rate of \$713,501.64 per annum (\$59,458.47 per month);
- (ii) during the seventeenth (17th) Lease Year at the rate of \$734,906.64 per annum (\$61,242.22 per month);
- (iii) during the eighteenth (18th) Lease Year at the rate of \$756,953.88 per annum (\$63,079.49 per month);
- (iv) during the nineteenth (19th) Lease Year at the rate of \$779,661.60 per annum (\$64,971.88 per month);
- (v) during the twentieth (20th) Lease Year at the rate of \$803,052.36 per annum (\$66,921.03 per month).

(d) Provided that Tenant is not in default under this lease beyond any applicable grace period, annual fixed rent payable pursuant to this Article 42 shall be abated during the three (3) months of May, 2010, March, 2011 and April, 2011. Notwithstanding the foregoing, if at any time prior to the second anniversary of the Commencement Date, Tenant shall be in default under this Lease and such default shall remain uncured beyond the expiration of the applicable grace period, then the aggregate amount of annual fixed rent so abated shall become immediately due and payable.

(e) Annual fixed rent will be payable in monthly installments in advance on the first day of each month without any set off or deduction whatsoever. Unless and until instructed otherwise, monthly installments of annual fixed rent will be paid by wire transfer of immediately available funds to the account of Landlord set forth on Exhibit A attached hereto.

(f) If (i) during the two (2) year period commencing with the Commencement Date, Tenant performs repair work to the roof or to the heating, ventilation and air conditioning system of the building; (ii) such work is performed by a licensed contractor in accordance with Article 3 and the other provisions of this lease, (iii) Tenant delivers to Landlord evidence reasonably satisfactory to Landlord that such repairs have been fully paid by Tenant, and (iv) such work was not necessitated by the acts or omissions of Tenant, then Tenant shall receive a rent credit against

payment of annual fixed rent in an amount equal to the lesser of (x) the total amount paid by Tenant for such repairs or (y) \$20,000; it being understood that in no event will the rent credit received by Tenant under this clause (f) exceed \$20,000 in the aggregate.

(g) If the Commencement Date shall not be on the first day of a month or the Expiration Date shall not be on the last day of a month annual fixed rent and additional rent will be pro-rated for such partial month.

43. Taxes.

(a) For the purposes of this Article 43, the following definitions shall apply:

- (i) "Tax Statement" shall mean a statement issued by Landlord to Tenant setting forth the amount payable by Tenant for a specified Tax Year with respect to Taxes pursuant to Section 43(b) hereof.
- (ii) "Tax Year" shall mean each period of twelve months, commencing on the first day of July of each such period, in which occurs any part of the term of this lease or such other period of twelve months occurring during the term of this lease as hereafter may be duly adopted as the fiscal year for real estate tax purposes of the City of New York.
- (iii) "Taxes" shall mean all real estate taxes, assessments, vault taxes, governmental levies, municipal taxes, county taxes, business improvement district fees or charges or any other governmental charge, general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind or nature whatsoever, which are or may be assessed, levied or imposed upon all or any part of the building including any tax, excise or fee measured by or payable with respect to any rent, and levied against Landlord and/or the land and/or building, under the laws of the United States, the State of New York, the City of New York or any political subdivision thereof, as finally determined by the applicable taxing authorities. If, due to a future change in the method of taxation or in the taxing authority, a new or additional real estate tax, or a franchise, income, transit, profit or other tax or governmental imposition, however designated, shall be levied against Landlord, and/or the land and/or building, in addition to, or in substitution in whole or in part for any tax which would constitute "Taxes", or in lieu of additional Taxes, such tax or imposition shall be deemed for the purposes hereof to be included within the term "Taxes".

(b) (i) Tenant shall pay as additional rent for each Tax Year, a sum ("Tenant's Tax Payment") equal to 100% of the Taxes for such Tax Year occurring in whole or in part during the term hereof. Tenant's Tax Payment shall be payable after the later of (i) 10 days after written demand from Landlord or (ii) the date which is 30 days prior to the due date of the Taxes and shall be payable in the same number of installments that Landlord is required to make payments of Taxes to the appropriate taxing authority.

(ii) If the real estate tax fiscal year of The City of New York shall be changed during the term of this Lease, any Taxes for such fiscal year, a part of which is included within a particular Tax Year and a part of which is not so included, shall be apportioned on the basis of the number of days in such fiscal year included in the particular Tax Year for the purpose of making the computations under this Section 43(b).

(iii) Intentionally Omitted.

(iv) If Landlord shall receive a refund of Taxes for any Tax Year after Tax Year 2009/2010 Landlord shall (after deduction of any costs of obtaining the same for which Tenant has not theretofore been charged) permit Tenant to credit against subsequent payments under this Section 43(b) Tenant's share of the refund but not to exceed Tenant's Tax Payment paid for such Tax Year.

(v) In the event that the commencement date of the term of this lease shall be other than the first day of a Tax Year or the date of the expiration or other termination of this lease shall be a day other than the last day of a Tax Year, then, in such event, in applying the provisions of this Article 43 with respect to any Tax Year in which such event shall have occurred, appropriate pro rata adjustments shall be made to reflect the occurrence of such event.

(c) Payments shall be made pursuant to this Article 43 notwithstanding the fact that a Tax Statement is furnished to Tenant after the expiration of the term of this lease.

(d) In no event shall the fixed annual rent ever be reduced by operation of this Article 43 and the rights and obligations of Landlord and Tenant under the provisions of this Article 43 with respect to any additional rent shall survive the termination or expiration of this lease.

(e) Landlord's failure to render a Tax Statement with respect to any Tax Year shall not prejudice Landlord's right to thereafter render a Tax Statement with respect thereto or with respect to any subsequent Tax Year. Tenant's obligation to pay for Taxes for any Tax Year and during the term of this lease shall survive the expiration or earlier termination of this lease for a period of eighteen (18) months.

(f) (i) Notwithstanding anything in this Article 43 to the contrary, Landlord shall have the right, at its option, during any calendar year during the term hereof, to furnish to Tenant a written statement setting forth Landlord's reasonable estimate of Tenant's Tax Payment for such calendar year, in which event Tenant shall pay to Landlord on the first day of each month during such calendar year an amount equal to one twelfth of Landlord's estimate for such calendar year for Tenant's Tax Payment. If, however, Landlord shall furnish any such statement for any calendar year subsequent to the commencement hereof, then (i) Tenant shall pay Landlord on the first day of the month following the month in which Landlord furnishes such statement, one twelfth of Landlord's estimate for such calendar year for Tenant's Tax Payment multiplied by the number of months elapsed for such calendar year including the month in which such first payment date occurs and (ii) Tenant shall pay one-twelfth of such estimate on the first day of each subsequent month through the end of such estimate on the first day of each subsequent month through the end of such calendar year.

(ii) Landlord shall have the right from time to time during any calendar year, to

furnish to Tenant a revised statement of Landlord's reasonable estimate of Tenant's Tax Payment for such calendar year in which event within fifteen (15) days thereafter any underpayment by Tenant for the prior months of such calendar year shall be paid by Tenant to Landlord and any overpayment by Tenant for the prior months of such calendar year shall be paid by Landlord to Tenant and thereafter each monthly payment shall be based on the revised statement.

(iii) At the end of each calendar year, Landlord shall furnish to Tenant a statement (each an "Annual Statement") setting forth the actual Taxes for such calendar year. If the annual statement shall show that Tenant's payments made pursuant to this clause (f) exceeded the actual amounts required to be paid by Tenant under this Section 43(b) for such calendar year, the Landlord shall refund to Tenant the amount of such excess within twenty (20) days after delivery of the Landlord's statement to Tenant. If the annual statement shall show that the payments made by Tenant under this clause were less than the actual amounts required to be paid by Tenant under this Section 43(b) for such calendar year, then Tenant shall pay the amount of such deficiency to Landlord within twenty (20) days after delivery of Landlord's statement to Tenant. Landlord's failure to render an Annual Statement with respect to any calendar year, shall not prejudice Landlord's right to thereafter render an Annual Statement with respect thereto or with respect to any subsequent calendar year.

(g) Tenant shall not have any right to contest the amount or validity of any Taxes, and Landlord shall have the sole and exclusive right in its sole discretion to contest Taxes. Nothing contained herein shall obligate Landlord to contest Taxes.

(h) Landlord covenants and agrees that, provided that Tenant timely pays Tenant's Tax Payments, Landlord will timely pay the Taxes.

44. Electricity, Gas and Water Service and other Utilities.

(a) Tenant shall, at Tenant's sole cost and expense, prior to Tenant commencing to use electricity with respect to electric service, and prior to opening its business at the demised premises, with respect to gas, water and all other utilities, (i) install all meters, if any, necessary to measure electric current, gas, water and other utilities used at the demised premises; (ii) install all equipment and perform all work (subject to the terms and provisions of Article 3 and the other provisions of this lease) necessary for the demised premises to obtain electric, gas and water service and all other utilities; (iii) arrange to obtain electricity, gas and water services from the companies furnishing same to the building; and (iv) pay and be responsible for all charges for such services directly to said companies as and when billed.

(b) Landlord shall have no obligation to provide or furnish any heat or air conditioning or any heat or air conditioning equipment to the demised premises. Tenant shall have the obligation, at Tenant's sole cost and expense, to obtain and pay for heat and air conditioning at the demised premises and install all equipment and perform all work (subject to the terms and provisions of Article 3 and the other articles of this lease) and obtain all permits or licenses, if any, necessary for the demised premises to receive air conditioning and heating.

(c) Landlord shall have no responsibility for the rendition of any services or utilities

to Tenant or the demised premises including, without limitation, air conditioning, heating, cleaning, elevator, gas, electricity or water.

(d) Landlord reserves the right, without liability to Tenant and without constituting any claim of constructive eviction, to stop or interrupt any heating, electricity, air conditioning, gas, water, or other service and to stop or interrupt any permitted use of any facilities at such times as may be necessary and for as long as may reasonably be required by reason of accidents, strikes, or the making of repairs, alterations or improvements, or inability to secure a proper supply of fuel, steam, water, electricity, labor or supplies, or by reason of any other similar or dissimilar cause beyond the reasonable control of Landlord. No such stoppage or interruption shall entitle Tenant to any diminution or abatement of rent or other compensation nor shall this lease or any of the obligations of Tenant be affected or reduced by reason of any such stoppage or interruption. Landlord agrees to use reasonable efforts (but shall have no obligation to employ workers at overtime rates) to the extent reasonably practicable to minimize interference with Tenant's use of the demised premises.

(e) The Landlord and its agents, representatives and tenants, including utility personnel, shall have the right to have access or to pass through the tenant's demised premises for all repairs and access to all areas of the Building during normal business hours. Under no circumstances shall the tenant obstruct the Landlord's and such other personnel access to the demised premises. The Landlord shall give the Tenant reasonable notice of entry.

45. Subordination.

(a) In the event of any act or omission of Landlord that would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to the holder of each superior mortgage and the lessor of each superior lease whose name and address shall previously have been furnished to Tenant in writing and (ii) unless such act or omission shall be one that is not capable of being remedied by Landlord or such holder or lessor within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such holder or lessor shall have become entitled under such superior mortgage or superior lease, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this lease or otherwise, after similar notice, to effect such remedy), provided that such holder or lessor shall give Tenant written notice of its intention to remedy such act or omission and shall, with due diligence, commence and continue to do so, until 30 days have elapsed after each such holder has received such notice without the condition in question being remedied.

(b) If any mortgagee or any ground lessor or any other person claiming by or through any such mortgagee or ground lessor, or by or through any foreclosure proceeding, sale in lieu of foreclosure, summary proceeding or otherwise, shall succeed to the rights of Landlord under this Lease, Tenant shall, at Landlord's request, attorn to and recognize such successor as the Landlord of Tenant under this Lease, and Tenant shall promptly execute, acknowledge and deliver at any time any instruments requested by such person or persons to evidence such attornment. Upon such attornment, this Lease shall continue as a direct lease from such

successor Landlord to Tenant, upon and subject to all of the provisions of this Lease for the remainder of the term hereunder. The attornment provisions of this Article shall be self-operative, and no further instrument of attornment shall be required or needed therefor. In confirmation of any such agreement to attorn on the part of Tenant, Tenant shall, at the request of Landlord or any mortgagee or ground lessor, promptly execute, acknowledge and deliver such further instruments as shall be requested by any mortgagee or ground lessor, and if Tenant shall fail to execute and deliver any such further instruments within seven days after any request therefor, Landlord shall have (in addition to any other rights or remedies) the right to execute, acknowledge and deliver any such further instruments for and on behalf of Tenant, and Tenant hereby irrevocably constitutes and appoints Landlord as the attorney-in-fact of Tenant for such purposes.

(c) Notwithstanding anything to this lease to the contrary, this lease will not be subject to any future mortgage or ground lease hereafter affecting the demised premises unless the holder of such future mortgage or ground lease executes and delivers to Tenant a subordination non-disturbance and attornment agreement (1) in the form then used by such mortgagee, if the mortgagee is a savings or commercial bank insurance company or other lending institution (a "Lending Institution") and (2) in form and substance reasonably satisfactory to such mortgagee or ground lessor, as applicable, and Tenant, if such mortgagee or ground lessor is not a Lending Institution.

(d) Landlord represents and warrants to Tenant that as of the date hereof there are no mortgages or ground leases affecting the building.

46. Assignment and Subletting.

(a) For purposes of Article 11, the assignment, transfer, pledge, mortgage, hypothecation or other disposition, whether voluntarily or involuntarily or by operation of law or otherwise and whether in a single transaction or in a series of related or unrelated transactions, of more than 49% of the direct or indirect ownership interests in Tenant, however accomplished, shall be deemed an assignment of this lease requiring the consent of Landlord. The provisions of this clause (a) should not be applicable if Tenant is a public corporation whose stock is traded over a nationally recognized stock exchange.

(b) Provided Tenant is not in default under this Lease beyond the expiration of the applicable grace period if any, as of the effective date of the assignment, Tenant shall have the right to assign this Lease or sublease the entire demised premises in connection with a sale of Tenant's business at the demised premises, with the prior written consent of Landlord, which consent Landlord agrees not to unreasonably withhold. Landlord shall not be deemed to unreasonably withhold its consent to any proposed assignment or subletting if (1) the financial condition, or business reputation of the assignee or subtenant or of any of the principals of the assignee or subtenant is not reasonably satisfactory to Landlord, notwithstanding Tenant's original or current financial position or reputation, (2) a principal of the assignee or subtenant does not have at least five (5) years' experience as a principal, in the operation or ownership of a retail furniture store in New York City, (3) the assignee or subtenant proposes to use the demised premises in violation of this Lease, (4) the proposed assignment or sublease is not reasonably satisfactory to Landlord's attorney, or (5) with respect to any assignment, the assignee does not

assume all of the obligations of Tenant under this Lease accruing from and after the effective date of the assignment pursuant to an assumption agreement reasonably satisfactory to Landlord. If Landlord consents to any assignment or subletting, such assignment or subletting shall not become effective unless and until (1) Landlord, Tenant and the assignee or subtenant execute and deliver a consent in form and substance satisfactory to Landlord, (2) in connection with an assignment of this lease, Landlord receives an original of an assignment and assumption of the lease executed by Tenant and the assignee in form and substance satisfactory to Landlord and (y) an additional security deposit from the assignee equal to two (2) months annual fixed rent (as of the effective date of the assignment and assumption of this lease), (3) in connection with a sublease, Landlord receives an original of the sublease executed by Tenant and the subtenant in form and substance satisfactory to Landlord and (4) Landlord receives an additional security deposit from Tenant equal to two (2) months annual fixed rent (as of the effective date of the assignment or sublease). Tenant shall reimburse Landlord for all reasonable costs and expenses (including, without limitation, reasonable attorney's fees) incurred by Landlord in connection with any proposed assignment or subletting.

(c) Notwithstanding anything herein to the contrary, Tenant may, without Landlord's consent, but upon not less than 10 days prior notice to Landlord, assign this lease or sublease all of the demised premises to (i) an Affiliate of Tenant (where the term "Affiliate" means an entity which controls, is controlled by or is under common control with Tenant and where the term "control" means the ownership of more than 50% of the ownership interests in the entity in question and the ability to control and direct the management and policies of the entity in question) or (ii) any entity which acquires (1) all of the Ashley Home stores in the United States, owned or operated (directly or indirectly) by Guarantor and (2) if there are then fewer than fifteen (15) Ashley Home stores in the United States owned or operated (directly or indirectly) by Guarantor, not less than 15 stores owned or operated (directly or indirectly) by Guarantor (which fifteen (15) stores described in this clause (2) shall include the Ashley Home stores included under clause (1) above), whether by purchase of assets, merger or purchase of ownership interests.

(d) Tenant represents and warrants to Landlord that the ownership structure of Tenant attached hereto as Exhibit B is true, complete and correct.

47. Preparation of Premises.

(a) Tenant has examined the demised premises and agrees to accept the same in their condition and state of repair existing as of the date hereof and understands and agrees that Landlord shall not be required to perform any work, supply any materials or incur any cost or expense to prepare the demised premises for Tenant's occupancy.

(b) Landlord does not warrant that any license or other governmental certificate or permit which may be required for Tenant's business to be carried on in the demised premises will be granted, or if granted will be continued in effect or renewed. If any license or other governmental certificate or permit shall be required for the lawful conduct of Tenant's business, Tenant shall duly procure and thereafter maintain such license, certificate or permit and submit the same to inspection by Landlord, it being understood and agreed that Tenant's obligations under this lease shall in no wise be affected or impaired by reason of Tenant's inability to secure

and/or maintain the same. Tenant shall at all times comply with the terms and conditions of each license or permit affecting the premises.

(c) Tenant hereby covenants and agrees that Tenant will, at Tenant's own cost and expense, and in a good and workmanlike manner, perform such work and installations in and to the demised premises as may be necessary for Tenant to conduct its business in the demised premises.

(d) Notwithstanding that (1) Tenant is accepting the demised premises subject to all violations (whether or not of record) and (2) Landlord has no obligation to cure any violations, Tenant shall have no obligation to deliver the demised premises at the end of the term of this lease with any violations existing as of the Commencement Date cured and removed of record.

48. Limitation on Landlord's Liability.

(a) Tenant shall look only to Landlord's estate and interest in the building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or liability by Landlord hereunder, and no other property or assets of Landlord and no property of Landlord (other than the building) or of any officer, employee, director, shareholder, partner or principal of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this lease, the relationship of Landlord and Tenant hereunder or Tenant's use or occupancy of the demised premises.

49. Tenant's Insurance.

(a) Tenant shall obtain and keep in full force and effect during the term of this lease, at Tenant's own cost and expense, to protect Landlord, Landlord's agents, contractors, employees, mortgagees and ground lessors, and Tenant as insureds (i) comprehensive public liability insurance to afford protection against any and all claims for personal injury, death or property damage occurring in, upon, adjacent to or connected with the demised premises, the building and any appurtenances thereto, in an amount of not less than \$10,000,000 for injury or death arising out of any one occurrence, and \$2,000,000 for damage to property in respect of any one occurrence or in any increased amount reasonably required by Landlord, from time to time, during the term hereof, if any; (ii) insurance against loss or damage by fire (and such other risks and hazards as are insurable under then available standard forms of fire insurance policies with extended coverage) to Tenant's property (including without limitation, Tenant's improvements and betterments, personal property and business equipment) in or about the demised premises for the full insurable value thereof; and (iii) such other insurance as Landlord may reasonably require. Tenant shall carry builder's risk insurance, completed value form, covering all physical loss, in an amount reasonable satisfactory to, and to protect the Landlord and such others as Landlord shall reasonably designate, at all times when Tenant is constructing any improvements, alterations, additions or other installations in or about the demised premises. Notwithstanding the foregoing, if one or more Affiliates (as such term is defined in Section 46(c) above) of Tenant obtains liability insurance with respect to a store leased by it in New York City with limits of liability insurance that are higher than the limits set forth above, Tenant shall obtain liability insurance containing the highest limits obtained by any Affiliate of Tenant.

Notwithstanding the foregoing, Tenant shall not be required to maintain insurance with respect to its inventory.

(b) All such insurance required to be obtained by Tenant shall be written in form and substance reasonably satisfactory to Landlord by an insurance company reasonably satisfactory to Landlord with an A IX or better rating in Bests' authorized to do business in New York State. Upon failure of Tenant to procure, maintain and pay all premiums therefor, Landlord may, at its option after five days notice to Tenant, do so, and Tenant agrees to pay the cost thereof to Landlord as additional rent under this lease. Tenant shall cause to be included in all such insurance policies a provision to the effect that the same will be non-cancelable and not permitted to lapse except upon thirty (30) days' prior notice to Landlord. On the date hereof the original insurance policies or appropriate certificates shall be deposited with Landlord. Any renewals, replacements or endorsements thereto shall also be so deposited.

(c) Except to the extent expressly provided in Article 9 and paragraph (d) hereof, nothing contained in this lease shall relieve either Landlord or Tenant of any liability to the other, or to the insurance carrier of the other, which the other may have under law or the provisions of this lease, by reason of any damage to the demised premises or the building, as the case may be, by fire or other casualty.

(d) (i) Tenant agrees to include, if obtainable at no additional cost or expense, in its fire insurance policy or policies on its furniture, furnishings, fixtures and other property removable by Tenant under the provisions of this lease appropriate clauses pursuant to which the insurance company or companies (y) waive the right of subrogation against Landlord and/or any tenant of space in the building with respect to losses payable under such policy or policies and/or (z) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies. But should any additional premium be exacted for any such clause or clauses, Tenant shall be released from the obligation hereby imposed unless Landlord pays such additional premium.

(ii) Landlord agrees to include, if obtainable at no additional cost or expense, in its fire insurance policy or policies on the building appropriate clauses pursuant to which the insurance company or companies (y) waive the right of subrogation against Tenant with respect to losses payable under such policy or policies and/or (z) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies. But should any additional premium be exacted for any such clause or clauses, Landlord shall be released from the obligation hereby imposed unless Tenant pays such additional premium.

(iii) Provided that Landlord's right of full recovery under its policy or policies aforesaid is not adversely affected or prejudiced thereby, Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its servants, agents and employees, for loss or damage occurring to the Building and the fixtures, appurtenances and equipment therein, to the extent the same is covered by Landlord's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. Provided that Tenant's right of full recovery under its aforesaid policy or policies is

not adversely affected or prejudiced thereby, Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees, and against every other tenant in the building who shall have executed a similar waiver as set forth in this Section 49(d)(iii) for loss or damage to, Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions hereof to the extent that same is covered by Tenant's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees, or such other tenant and the servants, agents or employees thereof.

(iv) Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to subdivisions (i) and (ii) hereof cannot be obtained. Landlord and Tenant hereby also agree to notify the other promptly of any cancellation or change of the terms of any such policy which would affect such clauses.

(e) If by any reason of the use to which the demised premises are put by Tenant (including, without limitation, the use permitted hereunder) or the character of or the manner in which the Tenant's business is carried on, the insurance rates for fire and casualty insurance for the Building shall be increased above the rates that would be effective if the demised premises had been used for the retail sale of dry goods Tenant shall within 10 days after demand, pay to the Landlord as additional rent, the amount by which the premiums for such insurance are so increased. Such payment shall be paid with the next installment of fixed annual rent but in no case later than one month after such demand whichever occurs sooner.

50. Sidewalks.

Notwithstanding anything in Articles 4 and 30 to the contrary, Tenant shall have no right to install, erect, place or maintain or permit the installation, erection, existence, maintenance or placement of any vending or other machine or any fixture, equipment, installation, improvement, mannequin, sign or personal property on the sidewalks in front of or adjacent to the demised premises and shall, at its own cost and expense, remove any such machine, fixture, installation improvement, mannequin, sign or personal property.

51. Late Payment Charge.

If Tenant shall make any payment of fixed rent, additional rent or other charges more than five (5) days after the same is due and payable Tenant shall pay a late payment charge equal to five percent (5%) of the amount due; Such amount shall be payable as additional rent hereunder, and shall be payable in addition to any interest payable on such late payment of fixed rent, additional rent or other charges.

52. Use.

(a) Tenant shall use and occupy the demised premises as a store for the retail sale of furniture, convertible sofas, mattresses, home furnishings and all related and ancillary items typically sold in an Ashley Home store under the name "Ashley Home Store" and for no other purpose.

(b) Tenant covenants and agrees that it will:

- (i) at Tenant's expense, clean the interiors and exteriors of the windows and doors (including, in each case, the frames therefor) in the demised premises and in the perimeter walls thereof whenever in the reasonable judgment of Landlord necessary;
 - (ii) at Tenant's expense, keep the demised premises clean, and in a neat, sanitary condition, keep all plumbing in the demised premises and sanitary systems and installations serving the demised premises in a good state of repair and operating condition to the points they connect with the main vertical risers and stacks of the building, place all garbage in sealed waterproof containers at a location reasonably approved by Landlord and remove all garbage, rubbish and other debris from the demised premises daily between the hours of 7:00 P.M. and 6:30 A.M. through areas designated by Landlord to the building's designated disposal area under conditions approved by Landlord. Notwithstanding anything in Article 30 to the contrary, Tenant shall at Tenant's sole cost and expense, arrange for the removal of Tenant's refuse, rubbish, garbage and other debris;
 - (iii) at Tenant's expense, promptly replace any and all glass (including mirrors) in the demised premises and in the perimeter walls thereof, the frames for such glass, and any lettering and ornamentation on such glass, which may be broken or damaged, regardless of the cause of such damage even though the same may be occasioned by the negligence of Landlord, its servants or agents (unless the same was caused by the gross negligence of Landlord), it being the intent of this provision that Landlord be hereby indemnified to the full extent to which it would be were such glass, frames, lettering and ornamentation insured for the benefit of Landlord on the customary form of glass insurance carried by Landlord with respect to other premises in the building;
 - (iv) not use, play or operate or permit to be used, played or operated any sound making or sound reproducing device in the demised premises, except in such manner and under such conditions so that no sound shall be heard outside of the demised premises, and Tenant covenants and agrees that Tenant, at Tenant's expense, will observe, comply with and adopt such means and precautions as Landlord may from time to time reasonably request in such connection; and
 - (v) Tenant shall eliminate from the demised premises all obnoxious fumes, odors or gases, and all such fumes, odors or gases shall be prevented from entering any portion of the building of which the demised premises are a part. No fumes, odors or gases shall be exhausted to the building corridors, or to the street or sidewalk in front of or adjacent to the demised premises.
- (c) Tenant shall not suffer or permit the demised premises or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) constitute a public or private nuisance, (ii)

impair, in the reasonable opinion of Landlord, the appearance, character or reputation of the building, (iii) interfere with or tend to impair or interfere with the use of any of the other areas of the building by, or occasion discomfort, annoyance or inconvenience to, Landlord or any of the other tenants or occupants of the building, any such impairment or interference to be in the sole judgment of Landlord.

53. Covenants of Tenant.

(a) Tenant covenants and agrees that Landlord shall have no responsibility or obligation with respect to the security of the demised premises and that Tenant shall do whatever is necessary to insure proper security in the demised premises given the permitted use for the demised premises.

(b) Tenant covenants and agrees to:

- (i) keep and maintain the demised premises, and Tenant's personal property and signs therein and the exterior and interior portions of all doors, in a neat, clean, sanitary and safe condition and to keep the Premises free from rodents, pests and vermin; in connection therewith, Tenant shall cause the demised premises to be exterminated with such frequency and in such a manner as will, in Landlord's judgment, prevent the existence of vermin or other infestation;
- (ii) apply for, secure, maintain and comply with all licenses or permits which may be required for the conduct and occupancy by Tenant of its business and to pay, if, as and when due all license and permit fees and charges of a similar nature in connection therewith;
- (iii) not dispose of garbage, refuse, cooking oils or fats in the sanitary sewer system, but shall dispose of all garbage, refuse, cooking oils and fats in accordance with the provisions of this Article; and
- (iv) not place any garbage on the sidewalk prior to 6:00 p.m. and then only for pickup by not later than 7:30 a.m. next morning.

(c) Tenant covenants and agrees that it shall not during the term of this lease, (i) store any materials or other property of Tenant on the roof of the building or otherwise use in any way the roof of the building, (ii) enter onto the roof of the building except to maintain or repair the roof in accordance with the provisions of this lease or (iii) place, install or permit the placement or installation of any sign on the roof of the building. Landlord and its designees will have access to the roof at all times.

(d) In no event may Tenant sell any food from the demised premises or cook or store any food in the demised premises.

(e) Tenant shall not install, place or permit any awning or sign on the perimeter walls of the building, and shall not install any advertising fixture outside of the building, unless in each instance consented to in advance in writing by Landlord such consent not to be unreasonably

withheld. Each such awning or sign so consented to shall, to the reasonable satisfaction of Landlord, be kept clean and in good order and state of repair and appearance by and at the expense of Tenant. Each sign and awning installed by Tenant must at all times comply with all Legal Requirements; and any consent to a sign by Landlord does not constitute Landlord's representation that it complies with Legal Requirements. Notwithstanding the foregoing, Landlord's consent shall not be required with respect to dignified and customary signs which (i) comply with all Legal Requirements, (ii) are located on the exterior of the building, but not on the roof of the building or (iii) only name and advertise Tenant or Tenant's store at the demised premises.

(f) Landlord and Tenant mutually acknowledge that irreparable injury will result to Landlord in the event of a breach of the provisions of Article 2 of this lease, or this Article 53, and in the event of any such breach by Tenant, Landlord shall be entitled, in addition to any other remedies available to it, to an injunction to restrain the breach of any of said provisions.

54. Additional Event of Default.

The commencement of any action or proceeding by any governmental authority alleging that the demised premises is being used for an illegal or pornographic use which is not dismissed within 30 days after the filing thereof shall constitute an event of default hereunder entitling Landlord to terminate this lease.

55. Brokerage.

Each of Tenant and Landlord covenants, represents and warrants to the other that it has had no dealings or communications with any broker or agent in connection with the consummation of this lease other than CB Richard Ellis and Grill Group Ltd. and each of Tenant and Landlord covenants and agrees to pay, hold harmless and indemnify the other party from and against any and all cost, expense (including, without limitation, reasonable attorneys' fees) or liability incurred by the indemnified party resulting from a breach of such covenant, representation and warranty by the indemnifying party. The provisions of this Article 55 will survive the termination of this lease.

56. Hazardous Materials.

(a) Tenant and the demised premises will remain in compliance with all applicable laws, ordinances, and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in Section 56(g), all as amended and modified from time to time (collectively, "environmental laws"). All governmental permits relating to the use or operation of the demised premises required by applicable environmental laws are and will remain in effect, and Tenant will comply with them.

(b) Tenant will not permit to occur (i) any release, generation, manufacture, treatment, or disposal of any hazardous material, as that term is defined in Section 56(g), on, in, under, or from the demised premises or (ii) any storage or transportation of any hazardous material in or to or from the demised premises in violation of any environmental laws. Tenant will promptly notify Landlord, in writing, if Tenant has or acquires notice or knowledge that any

hazardous material has been or is threatened to be released, generated, manufactured, treated, or disposed of, on, in, under, or from the demised premises; and if any hazardous material is released or disposed of on the demised premises or is otherwise found in the demised premises in violation of environmental laws, Tenant, at its own cost and expense, will immediately take such action as is necessary to detain the spread of and remove the hazardous material in accordance with all environmental laws.

(c) Tenant will immediately notify Landlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices Tenant receives relating to the condition of the demised premises or compliance with environmental laws. Tenant will promptly cure and have dismissed with prejudice any of those actions and proceedings to the satisfaction of landlord. Tenant will keep the demised premises free of any lien imposed pursuant to any environmental laws.

(d) Landlord will have the right at all reasonable times and from time to time to conduct environmental audits of the demised premises, and Tenant will cooperate in the conduct of those audits. The audits will be conducted by a consultant of Landlord's choosing, and if such audit reveals that Tenant's activities has caused a release of hazardous material in violation of environmental laws or resulted in a violation of any of the warranties, representations, or covenants contained in this Article, the fees and expenses of such consultant will be borne by Tenant and will be paid as additional rent under this lease on demand by landlord.

(e) If Tenant fails to comply with any of the foregoing warranties, representations, and covenants, Landlord may cause the removal (or other cleanup acceptable to landlord) of any hazardous material from the demised premises. The costs of hazardous material removal and any other cleanup (including transportation and storage costs) will be additional rent under this lease, whether or not a court has ordered the cleanup (unless the hazardous material was released or disposed of at or in the demised premises prior to the Commencement Date or was introduced to the demised premises by Landlord, in which event such costs will be borne by Landlord), and those costs will become due and payable on demand by Landlord. Tenant will give Landlord, its agents, and employees reasonable access to the demised premises to remove or otherwise clean up any hazardous material required to be removed by this lease or the environmental laws. Landlord, however, has no affirmative obligation to remove or otherwise clean up any hazardous material, and this lease will not be construed as creating any such obligation.

(f) Other than hazardous materials in the demised premises prior to the execution of this lease for which Tenant shall have no responsibility and for which Landlord shall indemnify Tenant, Tenant agrees to indemnify, defend (with counsel reasonably acceptable to landlord and at Tenant's sole cost), and hold Landlord and Landlord's affiliates, shareholders, directors, officers, employees, and agents free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements, or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, asserted, or awarded against Landlord or any of them in connection with or arising from or out of:

1. any hazardous material on, in, under, or affecting all or any portion of the demised premises;
2. any misrepresentation, inaccuracy, or breach of any warranty, covenant, or agreement contained or referred to in this Article;
3. any violation, or claim of violation by Tenant of any environmental law; or
4. the imposition of any lien for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of any hazardous material.

This indemnification is the personal obligation of Tenant and will survive the termination or expiration of the term of this lease. Tenant, its successors, and assigns waive, release, and agree not to make any claim or bring any cost recovery action against Landlord under CERCLA, as that term is defined in Section 56(g), or any state equivalent or any similar law now existing or enacted after this date. To the extent that Landlord is strictly liable under any such law, regulation, ordinance, or requirement, Tenant's obligation to Landlord under this indemnity will also be without regard to fault on the part of Tenant with respect to the violation or condition that results in liability to Landlord.

(g) For purposes of this lease, "hazardous material" means:

5. "hazardous substances" or "toxic substances" as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601, et seq., or the Hazardous Material Transportation Act, 49 U.S.C. § 1801, et seq., both as amended to and after this date;
6. "hazardous wastes", as that term is defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et seq., as amended to and after this date;
7. any pollutant or contaminant or hazardous, dangerous, or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste substance or material, all as amended to and after this date;
8. crude oil or any fraction of it that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute);
9. any radioactive material, including any source, special nuclear, or by-product material as defined at 42 U.S.C. § 2011, et seq., as

amended to and after this date;

10. asbestos in any form or condition; and

11. polychlorinated biphenyls (PCB's) or substances or compounds containing PCB's.

(h) Tenant, at its sole cost and expense, will comply with:

12. all federal, state, and municipal laws, ordinances, notices, orders, rules, regulations, and requirements;

13. any requirements of the National Board of Fire Underwriters or any other body exercising similar functions; and

14. the requirements of all public liability, fire, and other policies of insurance covering the demised premises relating to the treatment, production, storage, handling, transfer, processing, transporting, use disposal, and release of hazardous substances, toxic, radioactive matter.

(i) Notwithstanding anything herein to the contrary, Tenant shall have no liability with respect to any hazardous material located in the demised premises prior to the execution of this lease.

57. Miscellaneous.

(a) If any of the provisions of this lease, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this lease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this lease shall be valid and enforceable to the fullest extent permitted by law.

(b) This lease shall be governed in all respects by the laws of the State of New York.

(c) If, in connection with obtaining financing for the building, a bank, insurance company or other lending institution shall request reasonable modifications in this lease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications do not (i) change the permitted uses hereunder, (ii) reduce the usable area of the demised premises, (iii) increase the monetary obligations of Tenant hereunder or (iv) increase (other than in an insubstantial manner) any other obligations of Tenant hereunder created.

(d) Tenant agrees that its sole remedies in cases where Landlord's reasonableness in exercising its judgment or withholding its consent or approval is applicable pursuant to a specific provision of this lease, or any rider or separate agreement relating to this lease, if any, shall be those in the nature of an injunction, declaratory judgment, or specific performance; only the rights to money damages or other remedies being hereby specifically waived. Notwithstanding

the foregoing, the provisions of this Section 57(d) shall not apply, and Tenant's rights to money damages shall not be deemed waived, in any instance in which there has been a final judicial determination of a court of competent jurisdiction that Landlord has withheld or delayed its consent maliciously and in bad faith with respect to any consent that Landlord is asked to grant in accordance with this lease and which such consent is not in accordance with this lease to be unreasonably withheld or delayed.

(e) This lease shall not be binding upon Landlord unless and until it is signed by Landlord and a fully executed copy thereof is delivered to Tenant. If any check delivered to Landlord in payment of the security deposit or the first month's annual fixed rent does not clear, then this Lease shall be null and void.

(f) The Schedules and Exhibits annexed to this lease shall be deemed part of this lease with the same force and effect as if such Schedules were numbered Articles of this lease.

(g) If the rent hereunder shall commence on any day other than the first day of a calendar month, the rent for such calendar month shall be prorated.

(h) If there shall be any conflict between the provisions of this rider and the provisions contained in the printed form to which this rider is annexed, the provisions of this rider shall govern.

(i) Any and all payments and charges to be paid by Tenant hereunder other than the rent provided to be paid in the preamble to this lease shall be additional rent hereunder for non-payment of which Landlord shall have all of the remedies provided herein or at law for the nonpayment of rent.

(j) If any of the annual fixed rent or additional rent payable under the terms and provisions of this lease shall be or become uncollectible, reduced or required to be refunded because of any Legal Requirement (as such term is defined in Article 40 hereof) other than a Legal Requirement imposed as a result of Landlord's failure to provide services required hereunder, Tenant shall enter into such agreement(s) and take such other steps (without additional expense to Tenant) as Landlord may request and as may be legally permissible to permit Landlord to collect the maximum rents which from time to time during the continuance of such legal rent restriction may be legally permissible (and not in excess of the amounts reserved therefor under this Lease). Upon the termination of such legal rent restriction, (a) the rents shall become and thereafter be payable in accordance with the amounts reserved herein for the periods following such termination and (b) Tenant shall pay to Landlord, to the maximum extent legally permissible, an amount equal to (i) the rents which would have been paid pursuant to this lease but for such legal rent restriction less (ii) the rents paid by Tenant during the period such legal rent restriction was in effect.

(k) No canopies, marquees, banners, flags or other projections of any kind shall be permitted on any part of the demised premises or over the sidewalk abutting same or the exterior of the building without Landlord's consent, such consent not to be unreasonably withheld. No (i) security gates, grates and the like or (ii) signs, lettering, inscriptions, announcements, displays or exhibits on or about any part of any doorways, windows and storefronts of the demised

premises, or within the demised premises which are visible from outside of the demised premises, shall be permitted without the prior written consent of Landlord, such consent not to be unreasonably withheld.

(l) Tenant shall indemnify and save harmless Landlord against and from all liabilities, obligations, damages, penalties, claims, costs and expenses, including reasonable attorneys' fees and disbursements, paid, suffered or incurred as a result of the failure by Tenant to surrender the demised premises upon the date of the expiration of the term or earlier termination of this lease, including, without limitation, any claims made by any succeeding tenant or prospective succeeding tenant.

(m) If possession of the demised premises is not surrendered to Landlord within one day after the date of the expiration of the term or earlier termination of this lease, then Tenant shall pay to Landlord, for the use and occupancy of the demised premises for each month and for each portion of any month during which Tenant holds over the demised premises after the expiration of the term or earlier termination of this lease, a sum equal to two times the rent and additional rent which was payable per month under this lease during the last full month of the term hereof.

(n) Notwithstanding the provisions of Article 36 of this lease, Tenant shall insure all plate and other glass in the demised premises for and in the name of Landlord. Such insurance shall be in an amount and with a carrier satisfactory to Landlord. Such policy or a certificate thereof shall be delivered to Landlord.

(o) The obligations of Tenant hereunder shall be in no wise affected, impaired or excused, nor shall Landlord have any liability whatsoever to Tenant, because (i) Landlord is unable to fulfill, or is delayed in fulfilling, any of its obligations under this lease by reason of strike, other labor trouble, 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 reasonable control; or (ii) of any failure or defect in the supply, quantity or character of electricity or water furnished to the demised premises, by reason of any requirement, act or omission of the public utility or others serving the building of which the demised premises form a part with electric energy, steam, oil, gas or water, or for any other reason whether similar or dissimilar, beyond Landlord's reasonable control.

(p) If Landlord or Tenant commences any action or proceeding relating to or arising under this lease (including, without limitation, (1) any action commenced by Landlord to enforce its rights under this lease or to collect rent or additional rent and (2) any action commenced by Tenant for a declaratory judgment relating to Landlord's consent hereunder), the prevailing party shall be entitled to collect from the losing party all reasonable attorney's fees incurred by the prevailing party in such action or proceeding. If Tenant shall fail to pay any payment of annual fixed rent, additional rent or other charges when due and payable hereunder, Tenant shall pay interest on such late payment from its due date to the date paid at the rate which is the lesser of one and one-half percent per month and the maximum rate of interest permitted under New York State law.

(q) If Tenant shall be in default under this lease, all attorneys's fees and all other reasonable costs and expenses incurred by Landlord in enforcing Landlord's rights hereunder or in collecting any rent or additional rent hereunder shall be additional rent hereunder and shall be payable by Tenant within five days after notice from Landlord.

(r) In no event will Landlord be liable to Tenant hereunder for any consequential, indirect, or punitive damages or lost profits.

(s) No modification, amendment, extension, discharge, termination or waiver of any provision of this lease, nor consent to any departure by Tenant therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Tenant shall entitle Tenant to any other or future notice or demand in the same, similar or other circumstances.

(t) Neither any failure nor any delay on the part of Landlord in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this lease, Landlord shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this lease, or to declare an event of default for failure to effect prompt payment of any such other amount.

(u) Acceptance of any check for rent or additional rent from any person or entity other than Tenant shall not be deemed a consent by Landlord to an assignment or sublease to such payor or any other right of occupancy in favor of such payor.

(v) Tenant shall arrange, at its cost and expense, for extermination service by a reputable licensed exterminator (when reasonably necessary) so that the demised premises shall be free from insects, rats, and other vermin and rodents at all times.

(w) Tenant hereby represents and warrants to Landlord that neither Tenant, nor any individual who owns 20% or more of the ownership interests in Tenant nor any affiliate of any such individual has been made a party to or subject of a voluntary or involuntary bankruptcy proceeding for the past ten (10) years. Any breach of this representation and warranty will constitute an event of default under this lease.

(x) Neither Tenant nor any shareholder, partner or member of Tenant nor any owner of a direct or indirect interest in Tenant (i) is listed on any Government Lists (as defined below), (ii) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude

or for any Patriot Act Offense (as defined below), or (d) is currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "*Patriot Act Offense*" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (1) the criminal laws against terrorism; (2) the criminal laws against money laundering, (3) the Bank Secrecy Act, as amended, (4) the Money Laundering Control Act of 1986, as amended, or the (5) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control ("*OFAC*"), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that is now included in "Governmental Lists", or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America is included in "Governmental Lists".

58. Waiver of Landlord's Lien. Landlord hereby waives any lien it has in Tenant's inventory or other personal property. Upon request of Tenant, Landlord will execute and delivery to Tenant a certificate evidencing such waiver.

59. Addendum to Article 3.

(a) Supplementing the provisions of Article 3 hereof, the following conditions shall apply to making any alterations, additions, improvements or installations to the demised premises (hereinafter called "Tenant's Changes"):

(i) Tenant shall pay Landlord, as additional rent, promptly upon being billed therefor, Landlord's reasonable out of pocket costs and expenses in reviewing Tenant's plans and specifications, and inspecting Tenant's Changes

(ii) Tenant shall give Landlord five (5) days prior written notice before performing any Tenant Changes in the demised premises.

(iii) Tenant shall not perform any Tenant Change unless Tenant first delivers to Landlord (1) certificates of insurance evidencing the insurance coverage required under the last sentence of Section 49(a) and (2) all permits, approvals and certificates required under any Legal Requirement with respect to such Tenant Changes.

(b) With respect to any Tenant Change commenced after April 1, 2012 which Landlord reasonably estimates will cost more than \$100,000, Landlord may, as one of the conditions to its giving its consent thereto, require that Tenant deliver to Landlord security for the payment of the cost of such Tenant Change in an amount equal to 120% of the cost of the Tenant Change as reasonably estimated by Landlord.

(c) Notwithstanding anything herein to the contrary, Tenant may, without Landlord's

consent and without giving Landlord prior notice, perform painting and other decorative work to the demised premises.

60. Addendum to Article 4.

Except as otherwise specifically set forth in Article 9, Landlord shall have no obligation to maintain or repair the roof, the exterior, the structural components or any other portion of the building; and Tenant shall, at Tenant's sole cost and expense, maintain in good and lawful order and condition the building (including, without limitation, all mechanical, electrical, HVAC and plumbing fixtures, equipment and systems in the building and the roof, the exterior and the structural components of the building) and make all necessary repairs and replacements to keep the building and said fixtures, equipment and systems in good and lawful order and condition.

61. Addendum to Article 6.

Tenant shall, throughout the term, at Tenant's own cost and expense, promptly comply, or cause compliance, with all Legal Requirements foreseen or unforeseen, ordinary as well as extraordinary, and whether or not the same shall presently be within the contemplation of the parties or shall involve any change of governmental policy or require structural or extraordinary repairs, alterations or additions, and irrespective of the cost thereof. Tenant shall give prompt notice to Landlord of any notice it receives of the violation of any law or requirement of any public authority with respect to the demised premises or the use or occupation thereof. Tenant, at its sole cost and expense, shall (i) procure, comply with and thereafter maintain all necessary licenses, permits, certificates and other permissions required from time to time by any governmental authority having jurisdiction over the demised premises, for the proper and lawful operation of Tenant's business in the demised premises and the use thereof or which from time to time may become or are necessary with respect to any alteration, repair or improvement of the demised premises, (ii) submit copies of all such licenses, permits and certificates to Landlord, for its inspection, not later than the commencement date of the term of this lease if available; but in any event prior to Tenant opening the demised premises for the conduct of business, and (iii) submit copies of new or renewal licenses, permits and certificates within ten (10) days after written request from Landlord.

62. Addendum to Article 8.

Tenant shall indemnify, defend and save harmless Landlord, Landlord's managing agent and any mortgagee against and from (i) any and all claims of whatever nature arising from any act, omission or negligence of Tenant, its agents and employees; (ii) all claims arising from any accident, injury or damage whatsoever caused to any person or to the property of any person and occurring during the term of this lease in or about the demised premises, where such accident, injury or damage results or is claimed to have resulted from any act, omission or negligence of Tenant or Tenant's agents, or employees; (iii) any breach, violation or non-performance of any covenant, condition or agreement in this lease set forth and contained on the part of Tenant to be fulfilled, kept, observed and performed, except for a breach, violation or non-performance caused by Landlord, its agent or invitees; and (iv) any cost, liability or responsibility for the payment of any sales tax with respect to any installations, furniture, furnishings, fixtures or other improvements located, installed or construed in the demised premises, or the filing of any tax

return in connection therewith (although Landlord agrees to execute any such return if required by law) regardless of whether such tax is imposed upon Landlord or Tenant. This indemnity and hold harmless agreement shall include indemnity from and against any and all liability, fines, suits, demands, costs and expenses of any kind or nature incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof. Notwithstanding anything to the contrary contained in this Article 62, Tenant shall have no liability under this Article 62 for any claims arising out of the gross negligence of Landlord or its agents.

63. Addendum to Article 9.

(a) All references in Article 9 to rent shall mean rent and additional rent.

(b) If the demised premises are damaged by fire or other casualty and Landlord does not within eighteen (18) months after the occurrence of such fire or other casualty substantially complete the repairs to the demised premises (but not Tenant's betterments, improvements, furniture, furnishings, fixtures, equipment or other personal property which Landlord has no obligation to repair or restore under this lease), then Tenant may give a notice to Landlord electing to terminate this Lease and if the repairs of the demised premises are not substantially completed by the date Landlord receives such notice, this lease will terminate.

64. Addendum to Article 16.

This lease may be cancelled by Landlord by the sending of written notice to Tenant at any time after (a) the happening to Guarantor of any of the events described in Section 16(a) of this lease or (b) any judgment against Tenant or Guarantor in an amount in excess of \$250,000 remaining unsatisfied or unbonded for thirty (30) days.

65. Addendum to Article 17.

If Tenant shall fail to pay any installment of annual fixed rent or any item of additional rent on the date that it is due under this lease, Landlord may at any time thereafter serve a written three (3) day notice of cancellation of this lease upon Tenant and upon the expiration of said three (3) days this lease and the term hereof shall end and expire as fully and completely as if the expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this lease and the term hereof and Tenant shall then quit and surrender the demised premises to Landlord but Tenant shall remain liable as provided in this lease.

66. Addendum to Article 18.

If Tenant shall default under this lease and such default shall remain uncured beyond the expiration of the applicable grace or cure period set forth herein, if any, whether or not Landlord shall have collected any monthly deficiency as provided in clause (c) of Article 18, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any further deficiency as and for liquidated and agreed final damages, a sum equal to the amount by which the fixed annual rent, additional rent under Article 43 hereof, and all other additional rent for the period which otherwise would have constituted the unexpired portion of the term of this Lease exceeds the then fair and reasonable rental value of the demised premises for the same period, both discounted to present worth at four percent (4%) per annum less the aggregate

amount of deficiencies theretofore collected by Landlord pursuant to the provisions of clause (c) of Article 18 for the same period; if, before presentation of proof of such liquidated damages to any court, commission or tribunal, the demised premises, or any part thereof, shall have been relet by Landlord for the period which otherwise would have constituted the unexpired portion of the term of this Lease, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value of the part of the whole of the demised premises so relet during the term of the reletting.

67. Addendum to Article 27.

All notices to Landlord or Tenant, if mailed, shall be sent certified or registered mail, return receipt requested. Copies of all notices to Landlord shall be sent to Troutman Sanders LLP, 405 Lexington Avenue, New York, New York 10174, Attention: Simon Cices. Copies of all notices (other than rent bills) to Tenant shall be sent to:

Hartsdale Convertibles
417 Crossways Park Drive
Woodbury, New York 11797
Attn: Edward B. Seidner

and

Law Office of Wincig & Wincig
137 Fifth Avenue, 9th Floor
New York, New York 10010
Attn: Owen Wincig, Esq.

68. Addendum to Article 31.


(a) If at any time Landlord applies all or part of the security deposit pursuant to Article 31, then within 10 days after demand from Landlord, Tenant shall deposit with Landlord funds in an amount equal to the sum so applied by Landlord.

(b) Tenant will not be entitled to any interest on the security deposit.

(c) Landlord agrees to apply the security deposit to payment of monthly installments of annual fixed rent commencing on the second anniversary of the Commencement Date, provided that on the date of each such application, Tenant is not then in default under this lease and Tenant shall have no obligation to replenish the security deposit so applied by Landlord.

TENANT:

HARTSDALE CONVERTIBLES, INC.

By: 
Name: EDWARD B. SEIDNER
Title: EXECUTIVE V.P.

LANDLORD:

BINA REALTY LLC

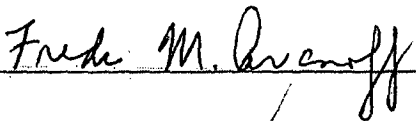
By: 
Name: FRED M. ARONOFF
Title: manager

EXHIBIT A

Wiring Instructions of Landlord

EXHIBIT B

Ownership of Tenant

Guarantor owns 100% of the authorized, issued and outstanding shares of Tenant.

GUARANTY OF LEASE

GUARANTY OF LEASE (this "Guaranty") dated as of March 29, 2010 made by **JENNIFER CONVERTIBLES, INC.**, a Delaware corporation, having an address at 417 Crossways Park Drive, Woodbury, New York 11797 ("Guarantor") to and for the benefit of **BINA REALTY LLC**, a New York limited liability company, having an address of 200 Winston Drive, Unit #221, Cliffside Park, New Jersey 07010 (collectively, "Landlord").

WITNESSETH

WHEREAS, Landlord, and **Hartsdale Convertibles, Inc.** ("Tenant") have entered into a lease dated as of the date hereof (the "Lease"), covering the property known as 552-572 86th Street, Brooklyn, New York (the "Premises"); and

WHEREAS, Landlord, as a condition to its executing the Lease, has required Guarantor to guaranty the Lease pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of Landlord's execution of the Lease and other good and valuable consideration, receipt of which is hereby acknowledged, Guarantor hereby covenants and agrees and represents and warrants the following:

AGREEMENT

1. Guarantor hereby irrevocably, unconditionally and absolutely guarantees to Landlord, and the successors and assigns of Landlord (a) the full and punctual payment by Tenant of all of the rent, additional rent and other amounts on Tenant's part to be paid under the Lease and all damages and other amounts payable by the Tenant pursuant to the Lease and (b) the full and timely performance of all the obligations required to be performed by Tenant under the Lease (collectively, the "Obligations").

2. This Guaranty is an absolute, present, primary, continuing, unlimited and unconditional guaranty and undertaking of payment, performance and observance of all the Obligations, and not of collection merely, and without limitation, is in no way conditioned or contingent upon any effort or attempt by the Landlord to seek performance or payment from the Tenant or any other person or upon any other condition or contingency. Irrespective of whether or the extent to which the Tenant or any other person may have undertaken to the Landlord to pay or perform any of the Obligations, the Landlord is not and shall not be required first to pursue any right or remedy against or seek any redress from the Tenant or any other person. The obligation and liabilities of Guarantor hereunder shall be primary and not secondary. The liability of the Guarantor hereunder shall be direct and primary and Landlord shall not be obligated to enforce and/or exhaust remedies against another party having such liabilities before proceeding against the Guarantor.

3. The Guarantor hereby waives diligence, presentment, protest, notice of dishonor, notice of acceptance of this Guaranty and notice of default by the Tenant under the Lease. The Guarantor expressly waives and relinquishes all rights and remedies accorded by applicable law

to guarantors, but the foregoing shall not terminate or otherwise affect any defense available to Tenant.

4. This Guaranty shall continue to be effective or be reinstated, as the case may be, as provided in paragraph 1 herein, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Landlord upon the insolvency, bankruptcy or reorganization of the Tenant or otherwise, all as though such payment had not been made.

5. Any act of Landlord, or the successors or assigns of Landlord, consisting of a waiver of any of the terms or conditions of the Lease, or the giving of any consent to any matter or thing relating to the Lease, or the granting of any indulgences or extensions of time to Tenant, may be done without notice to or consent from Guarantor, and without releasing any obligations of Guarantor hereunder.

6. The liability hereunder of Guarantor shall in no way be affected by (a) the release or discharge of Tenant in any creditors' receivership, bankruptcy or other proceedings; (b) the impairment, limitation or modification of the liability of Tenant or its estate in bankruptcy, or of any remedy for the enforcement of Tenant's said liability under the Lease, resulting from the operation of any present or future provision of the Bankruptcy Code; (c) the rejection or disaffirmance of the Lease in any such proceedings; (d) the assignment or transfer of the Lease by Tenant; (e) any disability or other defense of Tenant; (f) any sublease of all or any part of the Premises demised under the Lease; or (g) the sale or conveyance by Landlord of its interest in the Lease or of said Premises. Landlord agrees that if the Lease is assigned by Tenant with the consent of Landlord, Landlord will give copies of all written notices of default given by Landlord to Tenant under the Lease to Guarantor at Guarantor's address set forth below. The obligations hereunder of Guarantor shall not be released by Landlord's receipt, application or release of any security given for the payment, performance and observance of covenants and conditions in the Lease contained on Tenant's part to be paid, performed and/or observed; nor by any modification of the Lease, but in the case of any such modification the liability of Guarantor shall be deemed modified in accordance with the terms of any such modification of the Lease.

7. Until all the covenants and conditions in the Lease on Tenant's part to be paid, performed and/or observed are fully paid, performed and/or observed, Guarantor: (a) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by Guarantor in compliance with the obligation of Guarantor hereunder; (b) waives any right to enforce any remedy which Guarantor now has or hereafter may have against Tenant by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor hereunder; and (c) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to Landlord under the Lease.

8. Landlord may, at its option, join Guarantor as a party in any action, suit or proceeding commenced against Tenant arising out of or in connection with the Lease, and recovery may be had against Guarantor, whether or not judgment is also taken or had against Tenant. Further, this Guaranty may be enforced against Guarantor without first proceeding against Tenant. In addition, if Landlord shall obtain a judgment against Tenant in any jurisdiction, Guarantor agrees that it shall be bound thereby, as if Guarantor were a party to the

action, suit or proceeding in which the judgment was obtained (even though Guarantor was not a party thereto).

9. Guarantor agrees that if this Guaranty is or shall be enforced by any action, suit or proceeding it will reimburse Landlord for all reasonable costs and expenses incurred by Landlord in connection therewith, including, without limitation, reasonable counsel fees.

10. Guarantor waives trial by jury of any and all issues arising in any action, suit, or proceeding to which Landlord and Guarantor may be parties upon, under or connected with this Guaranty or any of its provisions, directly or indirectly. This Guaranty shall apply to the Lease and to any renewal or extension thereof, it being intended that this Guaranty shall include and apply to any such extension or renewal of the Lease as well as to the original term thereof. This Guaranty shall inure to the benefit of and may be enforced by Landlord, its successors and assigns, and shall be binding upon and be enforceable against Guarantor and its successors and assigns.

11. Guarantor hereby (a) irrevocably consents and submits to the jurisdiction of any Federal, State, County or Municipal Court sitting in the State of New York in respect to any action or proceeding brought therein by Landlord against Guarantor concerning any matters arising out of or in any way relating to the Lease and/or this Guaranty; (b) expressly waives any right of Guarantor pursuant to the laws of any other jurisdiction by virtue of which exclusive jurisdiction of the courts of any other jurisdiction might be claimed; (c) irrevocably waives personal service of any summons and complaint and consents to the service upon it of process in any such action or proceeding by the mailing of such process to Guarantor by certified mail, return receipt requested at the address of Guarantor set forth above and hereby agrees that such service shall be deemed sufficient; (d) irrevocably waives all objections as to venue and any and all rights it may have to seek a change of venue with respect to any such action or proceeding; (e) agrees that the laws of the State of New York shall govern in any such action or proceeding and waives any defense to any action or proceeding granted by the laws of any other country or jurisdiction unless such defense is also allowed by the laws of the State of New York; and (f) agrees that any final judgment rendered against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

12. This Guaranty may not be changed, modified, discharged or terminated orally or in any manner other than by an Lease in writing signed by Guarantor and Landlord.

13. If Guarantor consists of two or more individuals, such individuals will be jointly and severally liable for the obligations of Guarantor under this Guaranty.

14. Guarantor represents and warrants to Landlord that Guarantor owns 100% of the ownership interests in Tenant.

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty as of the date first written above.

JENNIFER CONVERTIBLES, INC.

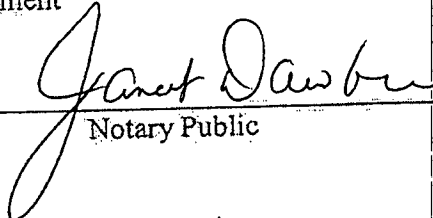
By: 

Name: EDWARD B. SADNER

Title: EXECUTIVE VP

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On the 21 day of March in the year 2010, before me, the undersigned, a Notary Public in and for said state, personally appeared Edward Seid, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument



Notary Public

JANET DAWBER
Notary Public, State Of New York
No. 01DA6083157
Qualified In Nassau County
Commission Expires November 12, 20 11