

<b>UNITED STATES BANKRUPTCY COURT</b> <b>SOUTHERN DISTRICT OF NEW YORK (MANHATTAN)</b>		<b>PROOF OF CLAIM</b>		 <b>YOUR CLAIM IS SCHEDULED AS:</b> Schedule/Claim ID    s408	
In re: <div style="text-align: center; font-weight: bold;">Jennifer Convertibles, Inc.</div>		Case Number: <div style="text-align: center; font-weight: bold;">10-13779</div>		Amount/Classification \$18,406.60 Unsecured	
<small>NOTE: See Reverse for List of Debtors/Case Numbers/Important details. This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>					
Name of Creditor and Address: the person or other entity to whom the debtor owes money or property <div style="border: 1px solid black; padding: 5px;">     25239792001586  <b>LANDSBERG &amp; ASSOCIATES PC</b>          (RE: GGF HUNTINGTON, LLC)  <b>IAN S LANDSBERG ESQ.</b>          16030 VENTURA BLVD, STE 470          ENCINO, CA 91436       </div>				<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
Creditor Telephone Number (    ) Name and address where payment should be sent (if different from above):				<div style="border: 1px solid black; padding: 10px;"> <b>RECEIVED</b>   <div style="font-size: 24px; font-weight: bold;">OCT 28 2010</div>   <b>BMC GROUP</b> </div>	
Payment Telephone Number (    )					
<div style="display: flex; justify-content: space-between;"> <div> <b>1. AMOUNT OF CLAIM AS OF DATE CASE FILED</b>    \$ <b>31,639.93</b>  <small>If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.          If all or part of your claim is entitled to priority, complete item 5.          If all or part of your claim qualifies as an administrative expense under 11 U.S.C. § 503(b)(9), complete item 6.</small> </div> <div> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.       </div> </div>					
<b>2. BASIS FOR CLAIM:</b>		(See Instructions #2 and #3a on reverse side.)		<b>3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:</b> <b>2002.025</b> 3a. Debtor may have scheduled account as:	
<b>4. SECURED CLAIM</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information <b>Nature of property or right of setoff:</b> Describe: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Property: \$ _____ Annual Interest Rate: _____ % If any: \$ _____ Basis for Perfection: _____ Secured Claim Amount: \$ _____ <b>DO NOT</b> include the priority portion of your claim here. Unsecured Claim Amount: \$ _____ Amount of arrearage and other charges as of time case filed included in secured claim,					
<b>5. PRIORITY CLAIM</b> <input type="checkbox"/> Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. <b>You MUST specify the priority of the claim:</b> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). Unsecured Priority Claim Amount: \$ _____ Include <b>ONLY</b> the priority portion of your unsecured claim here. <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (    ). <small>* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>					
<b>6. AMOUNT OF CLAIM THAT QUALIFIES AS AN ADMINISTRATIVE EXPENSE UNDER 11 U.S.C. § 503(b)(9):</b> \$ _____ <small>See instruction #6 on reverse side</small>					
<b>7. CREDITS:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.					
<b>8. SUPPORTING DOCUMENTS:</b> Attach redacted copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See instruction 8 and definition of "redacted" on reverse side.) If the documents are not available, please explain. <b>DATE-STAMPED COPY:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. <b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b>					
The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before 5:00 pm, prevailing Eastern Time on October 25, 2010 for Non-Governmental Claimants OR on or before 5:00 pm, prevailing Eastern Time on January 18, 2011 for Governmental Units. BY MAIL TO: BMC Group, Inc Attn: Jennifer Convertibles Claims Processing PO Box 3020 Chanhassen, MN 55317-3020				<b>THIS SPACE FOR COURT USE ONLY</b>  Jennifer Convertibles  00341	
<b>DATE</b> <div style="font-weight: bold;">10/26/2010</div>		<b>SIGNATURE:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <div style="display: flex; align-items: center;"> <div style="flex: 1;">             Ian S. Landsberg, Esq.              LANDSBERG &amp; ASSOCIATES, A Professional Law Corporation           </div> <div style="flex: 1; text-align: center;"> </div> </div>			

**Attachment to GGF Huntington, LLC ("Landlord ")**

**Proof of Claim**

**In re: Jennifer Convertibles, Inc.**

<b>Claim summary</b>	<b>Amount</b>
<b>502(b)(6) – Pre-Petition Arrears</b>	<b>\$31,639.93</b>
<b>Total Claim</b>	<b>\$31,639.93</b>

Analysis supporting the above-referenced summary is attached hereto

Additional information and further supporting documentation for Landlord's Proof of Claim can be obtained by sending an appropriate written request to:

Ian S. Landsberg, Esq.  
LANDSBERG & ASSOCIATES, A Professional Law Corporation  
16030 Ventura Boulevard, Suite 470  
Encino, CA 91436

Landlord reserves the right to amend, revise or supplement this Proof of Claim or reclassify all or any portion of this Proof of Claim as an administrative claim. Landlord also reserves its jury trial right and its right to have non-core proceedings determined by a non-bankruptcy court.

3-72C-0

Ledger card

October 22, 2010

Page

1

NNIFER H.B. CA. INC.  
672 BEACH BLVD  
LINDALE CA 91210

GGF HUNTINGTON, LLC

ove in date 08/01/2003  
ase start date 01/18/2000  
ase stop date 5/31/2010  
ccount types C R  
ase rent 8,999.38

Square feet 4,250  
Security deposit  
Move out date Occupied

C26A ) Run:10/22/2010 11:24:39AM

Date	Tx	Remark	Charges	Payments	Balance
10/01/2010	IN	REIMB FIRE SPRNKLR SERVICE	2.32		31,642.31
10/01/2010	IN	MINIMUM RENT	9,899.31		41,541.62
10/01/2010	IN	COMMON AREA MAINTENANCE	823.79		42,365.41
10/01/2010	IN	TAXES	624.35		42,989.76
10/01/2010	IN	INSURANCE	212.90		43,202.66
10/01/2010	IN	ADMINISTRATION FEE	82.38		43,285.04
10/07/2010	P	Payment		(11,644.99)	31,640.05
		ABA: 031100267 Ck: 076051			
					31,640.05

Invoice	Date	Open Items	Balance
1244793	11/26/2008	LATE FEE FOR NOVEMBER 2008	1,074.52
1246249	12/17/2008	LATE FEE FOR DECEMBER 2008	1,074.28
1252599	03/12/2009	LATE FEE FOR MARCH 2009	1,074.28
1273545	12/14/2009	LATE FEE FOR DECEMBER	1,164.51
1277264	01/26/2010	LATE FEE JANUARY 2010	254.31
1284586	05/01/2010	MINIMUM RENT	2,543.36
1286163	06/01/2010	COMMON AREA MAINTENANCE	823.79
1286164	06/01/2010	TAXES	624.35
1286165	06/01/2010	INSURANCE	212.90
1286166	06/01/2010	ADMINISTRATION FEE	82.38
1286664	06/01/2010	REIMB FIRE SPRNKLR SERVICE	2.32
1286665	06/01/2010	MINIMUM RENT	9,899.31
1288164	07/01/2010	REIMB FIRE SPRNKLR SERVICE	2.32
1288165	07/01/2010	MINIMUM RENT	9,899.31
1288166	07/01/2010	COMMON AREA MAINTENANCE	823.79
1288167	07/01/2010	TAXES	624.35
1288168	07/01/2010	INSURANCE	212.90
1288169	07/01/2010	ADMINISTRATION FEE	82.38
1290181	07/08/2010	LATE CHARGE - JUNE, 2010	1,164.51
1290351	08/01/2010	ADMINISTRATION FEE	0.06
1292632	09/01/2010	ADMINISTRATION FEE	0.06
1294989	10/01/2010	ADMINISTRATION FEE	0.06
			31,640.05

REDLINED DRAFT  
DATED 1-5-02

ORIGINAL

Number 1 of

4 executed

counterparts.

## STANDARD LEASE AGREEMENT

between

~~The Shane Family Trust and The Maltzman Family Trust~~

"LANDLORD"

and

~~Jennifer H. B. CA Inc.~~

"TENANT"

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## BASIC LEASE PROVISIONS

Each reference in this Lease to any of the terms described in these Basic Lease Provisions shall mean and refer to the following; however, the other Sections of this Lease contain numerous other terms which are defined therein as well as numerous refinements and exceptions which qualify the provisions of the following Paragraphs:

- A. Date of Lease for Reference Purposes: January 3, 1999
- B. Landlord: The Shane Family Trust and the Maltzman Family Trust
- C. Tenant: Jennifer H.B. CA, Inc.
- D. Tenant's Trade Name: Jennifer Convertibles
- E. Shopping Center: The name of the Shopping Center is Huntington Collection, and it is located at [include address or nearest streets] NEC corner of the intersection of Beach and Terry in the City of Huntington Beach, County of Huntington Beach, State of California, is depicted on the Site Plan marked Exhibit "A" attached hereto and is legally described in Exhibit "B" attached hereto.
- F. Premises: The area shown by hatch-marks on Exhibit "A" located at the following address, and containing the following approximate measurements (Section 2):
- Address: 16672 "B" Beach Boulevard Exact address to follow:  
Frontage: Approximately \_\_\_\_\_ feet.  
Depth: Approximately \_\_\_\_\_ feet.  
Floor Area: Approximately 4,250 square feet.
- G. Term (Section 3): Ten (10) Lease Years (as defined in Section 4(b) hereof).
- H. Monthly Minimum Rent (Section 4):
- (i) \$ 7,437.50 per month (Initially). Upon the execution hereof, Tenant shall pay the first full month's installment of Minimum Rent to Landlord.
- (ii) Minimum Rent shall commence on the earlier of: Ninety (90) days after the Commencement Date of this Lease, or on the date Tenant opens for business to the public in the Premises, whichever occurs first.
- I. Percentage Rent Rate (Section 5): N/A percent (N/A%) of Gross Sales (as defined in Section 5(b) hereof).
- J. Security Deposit (Section 7): \$ N/A, which shall be deposited with Landlord upon the execution hereof.
- K. Use (Section 8): \_\_\_\_\_
- L. Tenant's Proportionate Share of Taxes, Building Expenses, Operating Expenses and Insurance Costs (Section 19):
- 4.5 %.
- M. Guarantor(s):
- Jennifer Convertibles, Inc.
- N. Landlord's Address, Telephone and Facsimile Numbers for Notices (Section 37):
- NEWMARK MERRILL COMPANIES  
18801 Ventura Blvd., Suite 300  
Tarzana, CA 91356  
Attention: Sandy Sigal  
Telephone: 818-996-0700  
Facsimile: 818-996-0760
- O. Tenant's Address, Telephone and Facsimile Numbers for Notices (Section 37):
- 419 Crossways Park Drive  
Woodbury, New York 11797  
Attention: Mr. Edward B. Seidner  
Telephone: 516-496-1900  
Facsimile: 516-496-4223
- P. Guarantor's Address, Telephone and Facsimile Numbers for Notices (Section 37):
- JENNIFER CONVERTIBLES, INC.  
Attention: EDWARD SEIDNER V.P.  
Telephone: 516-496-1900

Facsimile: \_\_\_\_\_

Q. Brokers or Finders (Section 38): NEWMARK MERRILL COMPANIES for the Landlord and Soboroff Partners for the Tenant.

R. Hazardous Materials: ~~Landlord shall be responsible for any hazardous substances which are found in the Premises prior to delivery to Tenant. Tenant will have the right to conduct an environmental survey within 30 days of Lease execution to determine whether any hazardous materials are present. In the event hazardous materials are substances are found, Landlord will be responsible to remove said substances up to a maximum cost of \$15,000.00. In the event the cost of remediation exceeds \$15,000.00, either party shall have the right to terminate this transaction upon giving written notice.~~

SR. Other: ~~Landlord shall contribute up to Five Thousand Dollars (\$5,000.00) towards Tenant's exterior sign.~~

T6. Addendum Attached:   x   Yes        No

If an Addendum is attached, same is incorporated herein by this reference.

#### STANDARD LEASE AGREEMENT

1. PARTIES. THIS STANDARD LEASE AGREEMENT is dated for reference purposes as the date set forth in the Basic Lease Provisions, and is made and entered into by and between The Shane Family Trust and the Maltzman Family ("Landlord"), and Jennifer Convertibles, Inc. ("Tenant").

*JENNIFER A.B. CO., INC.*

2. LEASED PREMISES. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain real property delineated on the plot plan attached hereto as Exhibit "A" and all improvements now or hereafter constructed thereon (the "Premises"), which Premises constitute a portion of that certain real property legally described in Exhibit "B" attached hereto (the "Shopping Center"). Wherever the term "square feet" or "square footage" is used in this Lease with respect to the Premises, it shall mean the area of the Premises measured from the outside of exterior walls to the center of the interior demising walls of the Premises, without deduction for openings, columns, sprinkler risers, roof drains, vents, piping, wastelines, conduit, ventilation shafts and other such items serving the Premises or other tenant spaces. Any statement of square footage set forth in this Lease, or that may have been used in calculating rental, is an approximation which Landlord and Tenant agree is reasonable, and the rental based thereon is not subject to change whether or not the actual square footage is more or less. Tenant hereby accepts the Premises in the condition existing as of the date of possession hereunder, subject to all applicable zoning, municipal, county, state and federal laws, statutes, ordinances, orders, rules and regulations (collectively "Laws") affecting the Premises and the Shopping Center and/or the use thereof, and accepts this Lease subject thereto. Tenant acknowledges that Landlord has not made any representation or warranty as to the suitability of the Premises for the conduct of Tenant's business. Tenant shall construct certain improvements upon the Premises as more fully described in Exhibit "C" attached hereto.

3. TERM. The Term of this Lease (the "Term") shall be for the period described in Paragraph G of the Basic Lease Provisions. The Term shall commence (the Commencement Date) on the date of this Lease, except that if Exhibit "C" attached hereto requires Landlord to perform any Landlord's Work (as defined in Exhibit "C-1" attached hereto), then the Commencement Date shall be the date Landlord's Work is substantially complete (as determined by Landlord's architect) and Landlord tenders possession of the Premises to Tenant. The certification by Landlord's architect of the substantial completion of Landlord's Work shall be conclusive and binding upon the parties hereto. Upon commencement of the Term, the parties hereto shall execute an amendment to this Lease stating the actual Commencement Date and the expiration date of the Term. Notwithstanding the foregoing definition of "Commencement Date," the parties agree that, excepting for the payment of Minimum Rent, Percentage Rent, if any, and Additional Rent, the obligations of Tenant hereunder shall commence upon the execution of this Lease by Landlord and Tenant, including, without limitation, the obligations of Tenant pursuant to Exhibit "C" attached hereto and Sections 9, 18, 20 and 23 of this Lease. To the fullest extent legally permissible, Tenant waives the provisions of all Laws now or hereafter existing which allows a tenant to terminate its lease for failure of the Landlord to deliver possession thereof. However, if the Term has not commenced within two (2) years of the date of this Lease, then this Lease shall automatically terminate, each party shall bear its own costs to date, and neither party shall be liable to the other except for liabilities accrued hereunder prior to such termination.

#### 4. MINIMUM RENT; RENT INCREASES.

(a) Tenant shall pay to Landlord as base monthly rent ("Minimum Rent") the amount described in Paragraph H(i) of the Basic Lease Provisions, which Minimum Rent shall be due and payable without prior notice or demand, in advance, without deduction or offset, beginning on the date set forth in Paragraph H(ii) of the Basic Lease Provisions, and continuing on or before the first

day of each calendar month thereafter throughout the Term. Upon the execution hereof, Tenant shall pay the first full month's installment of Minimum Rent to Landlord. Minimum Rent for any period during the Term which is for less than one month shall be prorated on the basis of a thirty day month. No payment by Tenant or receipt by Landlord of an amount less than the monthly Minimum Rent, Percentage Rent or Additional Rent herein stipulated shall be deemed to be other than on account of the earliest amounts owing under this Lease. No endorsement or statement on any check or any letter accompanying any check or payment shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of any amount owing to Landlord or to pursue any other remedy available to Landlord under this Lease or at law or in equity.

(b) Commencing as of the beginning of the ~~fourth~~second Lease Year (as hereinafter defined) and the beginning of each ~~three year period~~ Lease Year thereafter, "Minimum Rent" per month for the Premises shall be One Hundred ~~Ten~~Four Percent (11004%) of the Minimum Rent payable during the ~~previous three~~ Lease Years immediately preceding said Lease Year. For the purposes of this Lease, a Lease Year is each twelve (12) month period of the Term beginning on the Commencement Date, provided that if the Commencement Date does not fall on the first day of a month, the first Lease Year shall be the period commencing upon the Commencement Date and terminating one year after the last day of the month in which the Commencement Date occurs. Each subsequent Lease Year shall begin on the day after the end of the preceding Lease Year.

#### 5. PERCENTAGE RENT.

(a) In addition to the payment of Minimum Rent, as hereinabove provided, Tenant shall pay to Landlord monthly, as "Percentage Rent," on or before the tenth (10th) day of each month during the Term and on or before the tenth (10th) day of the month following the expiration or earlier termination of the Term, the amount, if any, by which the "Percentage Rent Rate," as set forth in Paragraph 1 of the Basic Lease Provisions, multiplied by the amount of all Gross Sales (as defined herein) resulting from business conducted in, on or from the Premises for the preceding month of the Term exceeds the Minimum Rent paid by Tenant with respect to such preceding month. Percentage Rent for each month of the Term shall be paid at the same place as Minimum Rent, without prior notice or demand and without deduction or offset. If the Term does not begin on the first day of a month or end on the last day of a month, then Percentage Rent shall be based upon the Gross Sales for such partial month.

(b) The term "Gross Sales" as used in this Lease shall mean all revenue of Tenant and of all licensees, concessionaires and subtenants of Tenant and any others and all other receipts or receivables whatsoever from all business and other activities conducted in, upon or from the Premises and whether such sales or other receipts be evidenced by check, cash, credit, open account, charge account, exchange or otherwise, and shall include, but not be limited to, the amounts received from the sale of goods, wares and merchandise (including gift and merchandise certificates) and for services performed on or at the Premises, together with the amount of all orders taken from the Premises or elsewhere, and whether such sales be made by means of merchandise or other vending devices in the Premises. Goods and merchandise shall include, but shall not be limited to, food, food stuffs and other items sold in a restaurant. Gross Sales shall not include sales of merchandise for which cash has been refunded, to the extent of the sales price therefor so refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided they shall have been previously included in Gross Sales; and there shall be deducted from Gross Sales the price of merchandise returned by customers for exchange, provided that such returned merchandise shall have been previously included in Gross Sales and provided that the sales price of merchandise delivered to the customer in exchange shall be included in Gross Sales. Gross Sales shall not include the amount of any sales tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein and paid by Tenant to such governmental authority. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of whether or not, or of the time when, Tenant shall receive payment (whether full or partial) therefor.

(c) For the purposes of ascertaining the amounts payable from time to time under this Lease as Percentage Rent or otherwise, Tenant agrees to prepare and keep at the Premises or at Tenant's principal office in the County where the Premises are located for a period of not less than thirty-six (36) months following the end of each calendar year, adequate books and records for such calendar year which shall show inventories and receipts of merchandise at the Premises, all sales and charges, and daily receipts from all sales and other transactions on or from the Premises by Tenant and any other persons conducting any business upon or from the Premises. Tenant and all other persons conducting business upon or from the Premises shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions whether for cash or credit in a cash register or in cash registers having a sealed cumulative total. Tenant further agrees to keep at the Premises or at Tenant's principal office in the County where the Premises are located for at least thirty-six (36) months following the end of each calendar year sales tax returns with respect to such calendar year and all pertinent original sales records.



(d) Tenant shall submit to Landlord on or before the tenth (10th) day of each month during the Term and on or before the tenth (10th) day following the expiration or earlier termination of the Term, at the place then fixed for the payment of rent, a written statement signed by Tenant and certified by it to be true and correct, showing in reasonably accurate detail satisfactory in scope to Landlord, the amount of Gross Sales during the preceding month. The statements referred to herein shall be in the form attached hereto as Exhibit "D" or such other form and style and containing such details as Landlord may reasonably require.

~~(e) The acceptance by Landlord of payments of Percentage Rent shall be without prejudice to Landlord's right to examine, audit, copy and make extracts of Tenant's books and records to be maintained pursuant to subparagraph (c) above or to Landlord's rights pertaining to audits of Tenant's Gross Sales. At its option, Landlord may, within thirty-six (36) months from the end of each calendar year, cause a complete audit to be made of Tenant's Gross Sales for such calendar year. Tenant shall promptly pay to Landlord the additional Percentage Rent shown by such audit to be due from Tenant. If such audit shall disclose Gross Sales of two percent (2%) or more in excess of the Gross Sales theretofore reported by Tenant for the period in question, Tenant shall promptly pay to Landlord the cost of such audit. Moreover, if any substantial or willful inaccuracies are found in the reporting of Gross Sales by Tenant, then, in addition to any and all rights and remedies of Landlord hereunder or at law or equity, Landlord shall have the right to terminate this Lease by written notice thereof to Tenant.~~

~~(f) During the Term, neither Tenant, nor any entity owned by or controlled directly or indirectly by or under common control with Tenant, nor any officer, director, shareholder, partner or member holding more than ten percent (10%) of the shares or interests, as the case may be, of Tenant shall own, operate or have any financial interest in any business similar to or in competition with the business of Tenant required to be conducted at the Premises if the other business is opened after the date of this Lease and is located within three (3) miles of the Premises. Without limiting Landlord's remedies for any breach of an obligation provided for in this paragraph, Landlord may include the Gross Sales (as the term "Gross Sales" is defined in this Lease) of such other business(es) (and of any similar business operated or controlled by any family member or relative of Tenant or any officer, director, shareholder, partner or member of Tenant) in the Gross Sales of the Premises for the purpose of computing Percentage Rent. The provisions of subsection 5(c) shall also be applicable to such other businesses.~~

6. **ADDITIONAL RENT.** This Lease is what is commonly called a "net, net, net Lease," it being understood that Landlord shall receive the Minimum Rent and Percentage Rent, if any, free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to the Minimum Rent and Percentage Rent, if any, payable hereunder, Tenant shall pay to the parties respectively entitled thereto all taxes, impositions, insurance premiums, operating charges, maintenance charges, security costs, and other charges, costs and expenses which arise or may be contemplated under any provision of this Lease or otherwise becoming due by virtue of the activities and/or business of Tenant prior to and during the Term hereof (collectively "Additional Rent"). In the event Tenant fails to pay any Additional Rent, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay Minimum Rent. ~~It is the intention of the parties hereto that this Lease shall not be terminable for any reason by Tenant, and that Tenant shall in no event be entitled to any abatement of or reduction in Minimum Rent, Percentage Rent or Additional Rent payable under this Lease, except as expressly provided herein.~~ The covenants of Landlord and Tenant hereunder are independent, except that Tenant's performance of its obligations under this Lease shall be a condition to Landlord's performance under this Lease. Any present or future law to the contrary shall not alter this agreement of the parties.

7. **SECURITY DEPOSIT.** ~~Upon the execution thereof, Tenant shall deposit with Landlord the Security Deposit described in Paragraph J of the Basic Lease Provisions (the "Security Deposit") for the performance by Tenant of its obligations hereunder. If Tenant is in default, Landlord may use the Security Deposit, or any portion thereof, to cure such default, or to compensate Landlord for any damage sustained by Landlord resulting from Tenant's default. Tenant shall pay to Landlord immediately upon demand an amount equal to the portion of the Security Deposit expended or applied by Landlord so as to maintain the Security Deposit in the amount initially deposited with Landlord. If Tenant is not in default at the expiration or earlier termination hereof, Landlord shall return the Security Deposit to Tenant. Landlord's obligations with respect to the Security Deposit are those of a debtor and not a trustee. Landlord may commingle the Security Deposit with Landlord's general and/or other funds, and Landlord shall have no obligation to pay Tenant interest upon the Security Deposit. Notwithstanding the foregoing, exercise of any one or more of the rights given Landlord under this Section 7 in no way shall affect or abrogate any other claim or remedy available to Landlord hereunder or as provided by law or equity.~~

#### 8. **USE; CONDUCT OF BUSINESS.**

(a) The Premises shall be used and occupied only for the use described in Paragraph K of the Basic Lease Provisions and for no other use or purpose whatsoever, and Tenant shall operate at the Premises only under the trade name set forth in Paragraph D of the Basic Lease Provisions and under no other trade name whatsoever.

(b) ~~Subject to Force Majeure~~ Tenant covenants and agrees that it shall continuously and uninterruptedly throughout the Term (i) operate and conduct the business described in Section 8(a) above within the entire Premises, (ii) staff the Premises with sufficient sales personnel, stock the Premises with adequate merchandise, and exercise sound business practices, due diligence and efficiency so as to maximize Gross Sales for the benefit of Landlord. During the Term hereof, Tenant shall keep the Premises continuously open for business and cause Tenant's business to be conducted therein during the usual business hours of each and every business day as is customary for businesses of like character in the city in which the Premises are located.

(c) If Tenant fails to comply with the requirements of Section 8(b) above, then in addition to any and all other rights and remedies of Landlord hereunder or at law or equity, Tenant shall pay to Landlord one-thirtieth (1/30) of the Minimum Rent for each day or portion thereof that Tenant fails to so comply. Such sum shall be in addition to, and not a part of, Minimum Rent otherwise due under this Lease.

(d) Tenant acknowledges that Landlord may grant, or may have previously granted, exclusive rights to other tenants at the Shopping Center and a material consideration to Landlord in entering into this Lease is Tenant's covenant to limit its use of the Premises to the permitted use of the Premises under Tenant's trade name as set forth above. The violation by Tenant of the exclusive rights granted to other tenant(s) of the Shopping Center will result in Landlord suffering irreparable harm and, therefore, in addition to the other rights and remedies available to Landlord under this Lease, Landlord may seek to enjoin Tenant's breach of this Section 8(d) and Tenant shall be liable for any damages incurred or sustained by Landlord to such other tenant whose exclusive use right was breached by Tenant. In no event shall Landlord be liable to Tenant for any failure of other tenants in the Shopping Center to operate their business, or for any loss or damage that may be occasioned by or through the acts or omissions of other tenants or third parties.

(e) Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord shall determine, in the exercise of its sole business judgment, is best to promote the interests of the Shopping Center. Whether any tenants are shown or described on Exhibit "A" attached hereto, Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number or type of tenants shall or shall not during the Term of this Lease occupy any space in the Shopping Center, nor does Tenant rely on any other tenant or tenants operating its or their business and affairs at the Shopping Center at any particular time or times. Moreover, no conduct by any tenant, subtenant, licensee, concessionaire, or other occupant of, customer of, supplier to or use of any portion of the Shopping Center shall constitute an eviction, constructive or otherwise, of Tenant from the Premises, and Tenant hereby waives any and all claims that, but for this sentence, it might have against Landlord by reason of such conduct by one or more of such persons and entities.

9. COMPLIANCE WITH LAW. Tenant shall, at its sole cost and expense, promptly comply with all Laws applicable to the Premises and/or the use thereof, including, without limitation, the obligation to alter, maintain, or restore the Premises in compliance with such Laws, and Tenant shall promptly comply with all governmental orders or directives for the correction, prevention or abatement of a nuisance in, upon, or connected with the Premises. Notwithstanding the foregoing, Tenant shall not be obligated to make any structural alterations to the Premises unless required as a result of the use or proposed use of the Premises by Tenant or its officers, directors, shareholders, partners, joint ventures, members, agents, employees, contractors, licensees, invitees, customers, sublessees and assignees (collectively the "Tenant Parties").

10. SHOPPING CENTER PROMOTION. Tenant agrees to include the name of the Shopping Center, as such name may change from time to time, in all materials (regardless of the type of media) used by Tenant to advertise or promote its business, including, without limitation, printed advertisements, business cards, and radio and television commercials.

11. SIGNS. Tenant shall not have the right to place, construct, or maintain on the glass panes or supports of the show windows of the Premises, the doors, exterior walls or the roof of the building in which the Premises are located (the "Building"), or anywhere else within the Shopping Center outside of the Premises, or on any interior portions of the Premises that may be visible from the exterior of the Premises, any signs, advertisements, names, insignia, trademarks, descriptive material or any other items without first procuring Landlord's written consent. Landlord shall designate the size, shape, color, design, and location of all exterior sign(s) to be installed by Tenant, and Tenant shall, at Tenant's sole cost and expense, fabricate, construct and install all such sign(s) in full compliance with Landlord's designation and in accordance with the sign criteria attached as Exhibit "E" hereto. Tenant agrees to submit to Landlord copies of plans and specifications for Tenant's sign(s) for Landlord's written approval within thirty (30) days after the full execution hereof and to install such sign(s) prior to opening for business at the Premises. Landlord, at Tenant's cost, may remove any item placed, constructed or maintained in, upon or about the Premises or the Shopping Center which does not comply with this Section. In the event there is a pole or pylon sign for the Shopping Center, Landlord shall have the right, but not the obligation, to install lettering designating Tenant's operations in the Shopping Center on such pole or pylon sign, at Tenant's expense, with Landlord's approval of location, size, style and color. All signs that are permanently

attached to the Premises shall become the property of Landlord at the expiration or earlier termination hereof; provided, however, that Tenant shall promptly remove all such signs if Landlord so elects, and Tenant shall promptly repair all damage to the Premises or the Building caused by such removal. Tenant shall not place, construct or maintain in, upon or about the Premises any search lights, flashing lights, loudspeakers, phonographs or other visual or audio media.

## 12. ALTERATIONS, ADDITIONS AND IMPROVEMENTS.

(a) Tenant shall not create any openings in the roof or exterior walls of the Premises or the Building, nor shall Tenant make any exterior or structural alterations, additions or improvements to the Premises, nor shall Tenant change or add any locks to the Premises, without the prior written consent of Landlord. If Landlord consents to Tenant's request to change or add locks to the Premises, Landlord's consent shall be deemed conditioned upon Tenant providing Landlord with a master key to any changed or additional locks in the Premises. In addition, Tenant shall not make interior alterations, additions or improvements to the Premises having a cost that exceed \$5,000.00 in the aggregate during the Term without Landlord's prior written consent thereto. Tenant shall, at Landlord's option, remove at the expiration or earlier termination of this Lease such items so installed or constructed by Tenant and shall repair all damage to the Premises or the Building caused by such removal. Tenant shall deliver plans and specifications of the alterations, additions and improvements proposed to be made by Tenant at the Premises, together with any other documents and information reasonably required by Landlord (collectively, the "Tenant's Plans") at least thirty (30) days prior to commencement of construction thereof. If such alterations, additions or improvements require Landlord's written consent before Tenant may commence construction thereof, then Tenant shall accompany the Tenant's Plans with written notice requesting Landlord's written consent thereto, and Tenant shall not commence such alterations, additions or improvements until Landlord has consented thereto in writing. All alterations, additions or improvements made by Tenant shall, unless Landlord requires their removal as provided above, become the property of Landlord at the expiration or earlier termination hereof, without compensation of any kind to Tenant. Any trade fixtures which are installed and paid for by Tenant shall remain the property of Tenant, but Tenant shall not remove any trade fixtures or personal property from the Premises at any time in which Tenant is in default of this Lease or an event has occurred which, with the passage of time or the giving of notice, or both, would become a default by Tenant. If Tenant otherwise has the right to remove trade fixtures installed and paid for by Tenant, such right shall be conditioned upon: (i) Tenant repairing any damage to the remaining portions of the Premises or the Building caused by the removal of such trade fixtures, and (ii) such removal not diminishing the value of the Premises. Any trade fixtures, moveable furniture or personal property that Tenant does not remove, or is not allowed to remove, at the expiration or earlier termination of this Lease shall, at Landlord's option, either become the property of Landlord or be removed by Landlord at Tenant's sole cost and expense. Tenant hereby grants Landlord a security interest in all trade fixtures, merchandise, equipment, supplies, furniture and all other personal property owned by Tenant and used or located at the Premises at any time during the Term and, if requested, Tenant shall on demand execute any document(s) required to perfect Landlord's interest therein.

(b) Tenant shall keep the Premises and the Shopping Center free from any and all liens arising out of any work performed, materials furnished or obligations incurred by Tenant. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's sole cost and expense, lien and completion bonds each in an amount equal to one and one-half (1½) times the estimated cost of all alterations, additions and improvements to the Premises, to insure Landlord against any liability for mechanics' and materialmen's liens and to insure completion of the work. Tenant shall provide Landlord at least ten (10) days' prior written notice of Tenant's commencement of any alterations, additions or improvements at the Premises, and Landlord shall have the right to file, post and/or record all appropriate notices of nonresponsibility or other documents having the effect of protecting the Landlord and the Shopping Center from any mechanics' or materialmen's liens arising from Tenant's alterations, additions or improvements.

## 13. UTILITY SERVICES.

(a) Tenant shall be solely responsible for, and promptly pay when due, all charges for gas, water, sewer, telephone, electricity, and all other utilities used by Tenant or consumed at the Premises during the Term. If Tenant refuses or neglects to pay any such utility charges, Landlord may, at Landlord's option, pay such charges, and Tenant shall, upon demand, pay to Landlord the amount paid by Landlord and all other costs incurred in connection therewith. In the event that any utility usage of Tenant is not separately metered or billed, Tenant agrees to pay to Landlord its equitable share of the charges for each utility as reasonably determined by Landlord.

(b) All times during the Lease Term, Landlord shall have the right to select the utility company or companies that shall provide electric services to the Premises and, subject to all applicable Laws, Landlord shall have the right at any time and from time to time during the Lease Term to either (a) contract for services from electric service provider(s) other than the provider with which Landlord has a contract as of the date of this Lease (the "Current Provider"), or (b) continue to contract for services from the Current Provider. Tenant shall at all times cooperate with Landlord and any electric service provider with which Landlord has contracted and, as reasonably necessary, shall allow Landlord or such electric service provider reasonable access to any electric lines, feeders,

risers, wiring and any other machinery within the Premises. Landlord shall not be liable in damages or otherwise for any loss, damage or expense that Tenant may sustain or incur by reason of any change, failure, interference, interruption or defect in the electric services provided to the Premises. No such change, failure, interference, interruption or defect shall entitle Tenant to terminate this Lease or to abate the payments Tenant is required to make under this Lease.

#### 14. PARKING AND COMMON AREA.

(a) The Common Area of the Shopping Center is defined as those areas beyond the exterior walls of all buildings now or hereafter located, from time to time, within the Shopping Center (collectively the "Buildings") and within the exterior boundaries of the real property described in Exhibit "B," which areas Landlord from time to time designates as available for the common use of tenants or customers of the Shopping Center.

(b) Landlord shall at all times have the right and privilege of determining and changing the nature and extent of the Common Area, and of modifying the layout of the Shopping Center as Landlord deems appropriate, including, without limitation, the rights and privileges, from time to time, to (i) close any of the Common Area to whatever extent required in the opinion of Landlord's counsel to prevent a dedication of any of the Common Area or the accrual of any rights of any person or of the public to the Common Area; (ii) close temporarily any of the Common Area for maintenance purposes or for purposes of constructing alterations, additions and/or improvements; (iii) designate other property outside of the boundaries of the Shopping Center to become part of the Common Area of the Shopping Center or to be entitled to use the Common Area on a reciprocal basis; (v) make changes to the Common Area, including, without limitation, changes in the location of driveways, entrances, exits, flow of traffic direction or vehicular parking spaces; (vi) change the size and/or location and/or elevation and/or nature of the Common Area or any part thereof, including, without limitation, the right to locate thereon kiosks, drive through areas, outdoor seating, tables and patio areas, outdoor sales areas, recycling centers, and/or other Buildings of any type; and (vii) to do and perform such other acts (whether similar or dissimilar to the foregoing) in, to and with respect to the Common Area as in the use of good business judgment Landlord shall determine to be appropriate for the Shopping Center. Landlord reserves the right, from time to time, to utilize portions of the Common Area for carnival type shows, rides and entertainment, outdoor shows, displays, product shows, advertising purposes, and other uses which, in Landlord's judgment, tend to attract the public to the Shopping Center.

(c) Landlord shall also have the right to establish, and from time to time change, modify and enforce against Tenant, and other users of the Common Area, such reasonable rules and regulations as Landlord deems necessary or advisable for the proper and efficient operation and maintenance of the Common Area. If Landlord currently has rules and regulations affecting the Shopping Center, then same shall be attached as Exhibit "F" hereto. Tenant shall observe and comply with all such rules and regulations including all modifications thereof and additions thereto from time to time put into effect by Landlord. Landlord shall not be responsible to Tenant for violation or non-performance by any other tenant or occupant of the Shopping Center of any rules or regulations. Tenant agrees that neither Tenant nor the Tenant Parties shall park in the Shopping Center unless Landlord designates a portion of the parking area for employee parking, in which case Tenant and the Tenant Parties shall park in the area so designated by Landlord. Furthermore, Tenant shall prohibit its agents, employees, contractors, licensees, subtenants, assigns, customers and invitees from using the Common Area for purposes not authorized by Landlord, which prohibited uses shall include, without limitation, changing oil, spark plugs, batteries, windshield wipers or fluids of vehicles or performing any other work on vehicles in the Common Areas.

#### 15. COMMON AREA IMPROVEMENTS.

(a) Landlord, in its sole discretion, may make such reasonable additions to or modifications of the Common Area as it deems necessary or desirable to preserve, protect, or promote the common good of the tenants of the Shopping Center, including, without limitation, pole or pylon signs, fountains, benches, or other similar or dissimilar improvements. In the event Landlord undertakes such reasonable additions or modifications, Landlord may require Tenant to pay its equitable share of the cost thereof, on such reasonable basis as Landlord may select, and Tenant shall pay same within ten (10) days following receipt of notice thereof.

(b) At any time during the Term, Landlord may remodel or expand, in any manner, the existing Shopping Center, which work may include the addition of shops and/or the addition of new buildings to the Shopping Center (collectively, "Remodeled Center"). If Landlord deems it necessary for construction personnel to enter the Premises in order to construct the Remodeled Center, Landlord shall give Tenant no less than fifteen (15) days' prior notice and Tenant shall allow such entry. Landlord shall use reasonable efforts to complete the work affecting the Premises in an efficient manner so as not to interfere unreasonably with Tenant's business. Tenant shall not be entitled to any damages or to reduction in Minimum Rent, Percentage Rent or Additional Rent for any interference or interruption of Tenant's business upon the Premises or for any inconvenience caused by such construction work. Landlord shall have the right to use portions of the Premises to

accommodate any structures required for the Remodeled Center. If, as a result of Landlord utilizing portions of the Premises for such purpose, there is a permanent increase or decrease in the floor area of the Premises of one percent (1%) or more, there shall be a proportionate adjustment of Minimum Rent and Tenant's Proportionate Share. During the course of construction, Tenant shall continue to pay Minimum Rent, Percentage Rent, and Additional Rent.

#### 16. TAXES AND ASSESSMENTS.

(a) Tenant shall pay before delinquency all taxes, assessments, license fees and other charges that accrue during the Term and which are levied or assessed against Tenant's Improvements, personal property, fixtures and equipment installed or located in, on or about the Premises. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of such payment.

(b) Tenant shall also pay to Landlord its proportionate share of all "Taxes" applicable to the Shopping Center accruing during the Term of this Lease in the manner set forth in Section 19. The term "Taxes" shall mean all general, special, ordinary, supplemental and extraordinary real and personal property taxes and assessments, license fees and taxes, rental taxes, levies, charges, penalties, sewer or water charges (hook-up or otherwise), improvement bonds and other governmental levies imposed by any authority having direct or indirect power to tax, including, but not limited to, any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, lighting, drainage or other improvement district, on, against, or with respect to the Shopping Center, any property of Landlord or Landlord's agents used principally in the operation, management, maintenance or repair of the Shopping Center, any legal or equitable interest of Landlord in the Shopping Center, Landlord's right to rent and other income therefrom or Landlord's business of leasing the Premises or other portions of the Shopping Center, together with any taxes or assessments imposed in addition to, in substitution of or as a supplement to any taxes or assessments previously included within the definition of Taxes, but excluding any federal, state or local personal income, estate or inheritance tax of Landlord. The term "Taxes" shall also include any tax, fee, levy, assessment or charge: (i) the nature of which was hereinbefore included within the definition of Taxes, (ii) which was imposed for a service or right not charged prior to June 1, 1978, or, if previously charged, has been increased since June 1, 1978, (iii) which is imposed or assessed during the Term as a result of any and all changes in ownership (as that term is used in Article 13A of the California Constitution and/or California Revenue and Taxation Code Sections 60, et seq.) of the Shopping Center, or any portion thereof, or which is added to a tax or charge hereinbefore included within the definition of Taxes by reason of such transfer(s), or (iv) which is imposed by reason of this transaction, any modifications or changes thereto or any transfers hereof.

#### 17. MAINTENANCE, REPAIRS AND OPERATING EXPENSES.

(a) Tenant shall, at its sole cost and expense, maintain all of the interior and other improvements of the Premises in good and safe order, condition and repair, including, but not limited to, all necessary repairs and replacements of the plumbing, electrical wiring, windows, window glass, plate glass, doors, floors, ceilings, painting and all other portions of the Premises (except those areas which are Landlord's obligation to maintain and repair). In addition, if the Premises is a "free-standing" building (i.e., Tenant leases the entire leasable area of the Building), Tenant shall provide, at such times and in such manner as determined by Landlord in its reasonable business judgment, the maintenance, repair, replacement, repainting and cleaning of all portions of the Building (including, without limitation, the roof, foundation, exterior walls, and all structural portions of the Building). Tenant shall install and maintain in the Premises fire extinguishers of the size and type required by each fire prevention authority having jurisdiction over the Premises. In the event that the Premises is used to operate a restaurant, Tenant shall (i) install an automatic fire extinguishing system covering all cooking areas, and (ii) cause all hoods, ducts, fans and other ventilating devices to be regularly maintained as required by law or any insurance company, but in no event less often than once during each three (3) month period of the Term. If Tenant does not maintain, repair or replace the Premises as required herein, Landlord shall have the right (but not the obligation) to cause maintenance, repairs, replacements and/or corrections to be made thereto, and all reasonable costs thereof shall be immediately due and payable by Tenant to Landlord. Landlord first shall give three (3) days' written notice to Tenant before any such maintenance, repairs, replacements and/or corrections are made by Landlord, except in the case of an emergency, in which case no prior notice shall be necessary.

(b) Except with respect to damage or destruction which is the subject of Section 21, Landlord shall provide, as necessary, maintenance, repair, replacement, repainting and cleaning of all exterior areas of all Buildings (including, without limitation, the roof, foundation, exterior walls, and all structural portions of the Buildings, but excluding windows and doors), the heating, ventilating and air conditioning systems and equipment servicing all or any portion of the Buildings and walls separating tenants' leased premises within the Buildings; provided, however, if the Premises is a "free-standing" building, Tenant shall perform the services described in subsection (a) above. Tenant shall pay to Landlord its proportionate share of the cost of such maintenance, repair, replacement, repainting, cleaning and utilities (collectively "Building Expenses", whether pertaining to the Building and/or any and all other Buildings in the Shopping Center) in the manner set forth in Section 19; provided, however, that the Tenant's obligation to pay its proportionate share of the

cost to maintain, repair and replace the heating, ventilating and air conditioning systems and equipment (collectively, "HVAC") shall be as provided below. If the HVAC services only the Premises, then Tenant shall pay the entire cost to maintain, repair and replace such HVAC; however, if the HVAC servicing the Premises also services other space within the Building, then Tenant shall pay its proportionate share of the cost to maintain, repair and replace the HVAC, based upon the square footage of the Premises as compared with the square footage of the portion of the leasable area of the Building serviced by such HVAC.

~~(c) Landlord shall have the right to elect to cause the maintenance and repair responsibility for the roof over and adjacent to the Premises (but in no event over the premises of any other tenant of the Shopping Center) to be shifted from Landlord to Tenant. If Landlord makes that election, Tenant shall maintain and repair that portion of the roof using a contractor (or contractors) of which Landlord has approved. All repair and maintenance work performed by or on behalf of Tenant shall be in full compliance with applicable Laws, shall be done by contractors approved in writing by Landlord, and shall be accompanied by a guaranty approved by Landlord from the contractors performing the work, and shall be performed so that the quality of the work and the materials used in the work are consistent with the remainder of the Shopping Center. Tenant shall indemnify, defend and hold Landlord harmless from and against all costs, damages and liabilities caused by, or incurred in connection with, all activities on the roof conducted by or on behalf of Tenant.~~

(d) Landlord shall cause the Shopping Center to be operated in a manner which is consistent with the quality and character of the Shopping Center as determined in Landlord's sole discretion. Tenant shall pay to Landlord its proportionate share of all costs and expenses of every kind and nature (collectively, "Operating Expenses") paid or incurred by Landlord in connection with the maintenance, repair, replacement, operation, protection, lighting and policing of the Common Area and the Shopping Center in the manner set forth in Section 19. To avoid duplication, such Operating Expenses shall not include the costs of Building Expenses; however, such Operating Expenses shall include, but not be limited to, the following: (i) total costs to maintain, repair, replace, clean and operate all portions of the Common Area (including, without limitation, sidewalks, parking areas, striping, bumpers, alleys, driving lanes and ways, any equipment supplying music to the Common Area, landscaping, lighting, signs (whether or not located in the Shopping Center), walls, fences, electrical, plumbing and other utilities servicing any Buildings and/or the Common Area and/or any signs or other portions thereof); (ii) total costs (including, without limitation, wages, salaries, worker's compensation insurance premiums, employment taxes and fringe benefits) of all persons engaged in the operation, maintenance, repair, replacement and security of the Shopping Center (including, without limitation, those persons working full time and exclusively in the on-site property management office, if any); (iii) license, permit and inspection fees and costs required or desirable in connection with the operation of the Shopping Center, (iv) auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Shopping Center, (v) the cost of supplies, uniforms, equipment, tools and materials used or necessary in connection with the operation, security, maintenance, repair and replacement of the Shopping Center, (vi) the cost of energy, water and other utilities, (vii) the cost of energy and water conservation efforts, (viii) depreciation of maintenance equipment used in the operation, maintenance and repair of the Shopping Center, (ix) reasonable reserves for Operating Expenses and Building Expenses; and (x) such other costs and expenses which are paid by other landlords for the purpose of operating, maintaining, repairing, replacing, securing or otherwise dealing with similar shopping centers in the county in which the Shopping Center is located.

(e) Tenant's obligations set forth in this Section 17 form a material part of the consideration for this Lease, and Tenant hereby waives all rights to make repairs at the expense of Landlord as provided by any Laws now or hereafter in effect, including, but not limited to, California Civil Code Sections 1941 and 1942.

#### 18. INSURANCE.

(a) Landlord shall obtain and maintain an insurance policy or policies covering fire, lightning, vandalism, malicious mischief, extended coverage, commercial or comprehensive general liability coverage, and such other risks which Landlord or its lender shall reasonably require and are reasonable and commercially available. Such policy(ies) shall also include rental interruption insurance coverage for any period up to twelve (12) months during which the Buildings or any of them are partially or totally untenable. Such insurance is sometimes referred to as the "Insurance." Tenant shall reimburse Landlord for its proportionate share of the cost of such Insurance coverage in the manner set forth in Section 19. Tenant acknowledges it will not be an additional insured or loss payee under such Insurance.

(b) At all times during the Term, Tenant shall, at Tenant's sole cost and expense, procure and maintain in full force and effect Two Million Dollars (\$2,000,000) combined single limit commercial or comprehensive general liability insurance covering death or injury to one or more persons and damage to property, and also covering the performance by Tenant of the indemnity provisions of this Lease. At all times during the Term, Tenant shall, at Tenant's sole cost and expense, procure and maintain in full force and effect fire and extended coverage insurance (including vandalism, malicious mischief and sprinkler leakage) and such other insurance coverage

as Landlord shall reasonably require, on all personal property, fixtures, equipment and leasehold improvements in, upon or about the Premises, at their full replacement cost. Such insurance policy or policies shall name Landlord as an additional insured, and certificate(s) indicating such coverage issued by the insurer(s) shall be delivered to Landlord within ten (10) business days after Landlord tenders delivery of the Premises to Tenant and renewal certificate(s) shall be delivered to Landlord at least thirty (30) days prior to the expiration of such policy or policies. Such certificates of insurance shall require thirty (30) days' prior written notice to Landlord before the policy or policies can be terminated or coverage reduced for any reason. Landlord may periodically require that Tenant reasonably increase the coverage required by this Section 18(b).

(c) Tenant shall not do, bring, or keep anything in or about the Premises that will cause the cancellation of or an increase in the cost of any insurance covering the Premises or other portions of the Shopping Center.

(d) Landlord and Tenant release each other, and their respective shareholders, directors, officers, partners, joint venturers, employees, agents and representatives, from any claims for damage to any Buildings or improvements within the Shopping Center that are caused by or result from risks to the extent insured against under any property insurance policies carried by either party pursuant to any provision of this Section to the extent of the proceeds from such policies. Such release does not apply to any deductible, any claims not required to be insured hereunder or any claims in excess of the insurance coverage required under this Section or that insurance coverage actually in effect, whichever is greater. Tenant shall cause each property insurance policy obtained by it pertaining to the Premises to provide that the insurer waives all right to recover by way of subrogation against Landlord or its officers, directors, shareholders, partners, joint ventures, members, agents, employees or contractors (collectively, "the Landlord Parties") in connection with any loss covered thereby.

#### 19. PAYMENT OF TAXES, BUILDING EXPENSES, OPERATING EXPENSES AND INSURANCE.

(a) Tenant shall pay its proportionate share of the cost of Taxes (see Section 16), Building Expenses and Operating Expenses (see Section 17) and Insurance (see Section 18(a)). Tenant's proportionate share of such costs shall be based on the proportion that the rentable area of the Premises bears to the total rentable area of all Buildings within the Shopping Center, which the parties agree is that percentage described in Paragraph L of the Basic Lease Provisions. However, if Landlord, in its absolute discretion, determines that such method is inequitable, Landlord may prorate such items on the basis of usage or other equitable considerations. Furthermore, if there are one or more Major Tenants (as hereinafter defined) within the Shopping Center, then, at Landlord's sole option, the amount(s) paid by such Major Tenant(s) to Landlord relating to Taxes, Building Expenses, Operating Expenses and Insurance shall be credited against the appropriate cost of Taxes, Building Expenses, Operating Expenses and Insurance and the respective difference in each such category shall be the amount of Taxes, Building Expenses, Operating Expenses and Insurance of which Tenant shall pay its proportionate share; provided, however, that if Landlord elects to so proceed, the rentable area of the portions of the Buildings leased to such Major Tenant(s) shall be excluded from the rentable area of the Shopping Center for purposes of determining Tenant's proportionate share of such costs, notwithstanding the percentage set forth in Paragraph K of the Basic Lease Provisions. The term "Major Tenant" shall mean a tenant leasing at least 10,000 square feet of rentable area within the Shopping Center. Tenant shall pay to Landlord, in advance, on the first day of each calendar month during the Term, the amount reasonably estimated by Landlord of Tenant's proportionate share of such costs.

(b) In addition to the stated Minimum Rent and Percentage Rent, if any, payable hereunder, Tenant shall pay to Landlord ~~a property management and administration fee equal to three ten percent (3%)-(10%) of Tenant's Minimum Rent/Operating Expenses~~, including all increases, payable from time to time pursuant to this Lease. Tenant shall pay to Landlord, in advance, on the first day of each calendar month during the Term, the amount of such property management ~~administration fee~~.

(c) Landlord shall furnish to Tenant, annually or semi-annually, an expense statement setting forth the actual costs for Taxes, Insurance, Building Expenses and Operating Expenses incurred for the annual or semi-annual period covered by the expense statement, together with the actual amount of estimated monthly charges collected from Tenant for the period covered. In the event that the statement shows that Tenant has paid less than the amount owed for the period covered by the statement, then Tenant shall, within ~~ten (10)~~ twenty-one (21) days after delivery of such statement to Tenant, pay Landlord the underpaid amount. In the event that the statement shows that Tenant has paid more than the amount owed for the period covered by the statement then that overpayment shall be credited against amounts owing under this Section 19, following Tenant's receipt of that statement. Landlord may from time to time during the term hereof, but not more frequently than once during any six (6) month period, adjust the estimated monthly charges due and payable by Tenant hereunder.

#### 20. INDEMNIFICATION; WAIVER.

(a) Tenant hereby agrees to indemnify and hold Landlord and the Landlord Parties harmless from and against any and all liabilities, damages, losses, demands, claims, costs, expenses (including reasonable attorneys' fees and costs), obligations, liens, actions, causes of action and lawsuits (herein collectively "Liabilities"), which Landlord may suffer or incur arising out of, in connection with or resulting from this Lease, including, but not limited to, Tenant's and the Tenant Parties' failure to observe or comply with any Laws, the conduct of Tenant's business, any activity, work or other things done, permitted or suffered by Tenant or the Tenant Parties in or about the Premises or other portions of the Shopping Center, or the breach or default of any of Tenant's obligations under this Lease. Tenant further agrees that in case of any one or more Liabilities, threatened or actual, arising against Landlord, Tenant shall, upon notice from Landlord, defend Landlord at Tenant's sole cost and expense by counsel satisfactory to Landlord. Tenant's indemnification shall not include an indemnification for liability to the extent arising from the willful misconduct or active gross negligence of Landlord. Landlord shall not be liable to Tenant or the Tenant Parties for any negligence, act or omission of any occupant of the Shopping Center or any owner or occupant of any property adjoining the Shopping Center.

(b) Tenant, as a material part of the consideration to Landlord for this Lease, hereby assumes all risk of damage to property or injury to or death of persons, in, upon or about the Premises from any cause, including, but not limited to, fire, explosion, falling plaster, steam, gas, electricity, dampness, water or rain (whether same may leak from any part of the Building or from the pipes, appliances or plumbing works therein, or from the roof, street or subsurface, or from any other place), and Tenant hereby waives any and all claims with respect thereof against Landlord and the Landlord Parties. Landlord and the Landlord Parties shall not be liable for interference with the light or other incorporeal hereditaments, loss of business or profits of Tenant, damage to property entrusted to Landlord or the Landlord Parties, or for loss of or damage to any property, by theft or otherwise, resulting from any cause whatsoever, except to the extent arising from the willful misconduct or gross negligence of Landlord or Landlord's agents or employees. Landlord and the Landlord Parties shall not be liable for any one or more latent or patent defect(s) in the Shopping Center. Tenant shall give prompt notice to Landlord in case of fire or accidents occurring in, on or about the Shopping Center.

## 21. DAMAGE OR DESTRUCTION.

(a) If the Premises or the Building are totally or partially damaged or destroyed by a risk covered by the insurance expressly set forth in Section 18(a), rendering the Premises totally or partially inaccessible or unusable and insurance proceeds paid to Landlord are sufficient to cover the full cost to repair, replace and restore the same, Landlord shall promptly repair, replace or restore the Premises or the Building to substantially the same condition as they were in immediately before such damage or destruction. Such damage or destruction shall not terminate this Lease. However, if the Premises or the Building do not appear to be capable of being repaired, replaced or restored within six (6) months after the date of damage or destruction, as determined by Landlord in the exercise of its reasonable judgment within sixty (60) days following such damage or destruction, then either party may terminate this Lease. Such termination shall occur, if at all, by written notice thereof delivered to the other party within ten (10) days after written notice of Landlord's determination is delivered to Tenant. If this Lease is so terminated, then all insurance proceeds relating to the Premises or the Building and any other property of Landlord shall be paid to Landlord, and neither party shall be liable to the other except with respect to accrued but unpaid obligations, and except as provided in Section 18(d). During any period that the Premises are totally or partially inaccessible or unusable, there shall be equitable abatement of Minimum Rent and Additional Rent, but in no event shall such abatement exceed the amount of rental interruption insurance proceeds received by Landlord relating to Tenant or the Premises pursuant to the insurance coverage described in by Section 18(a) hereof. Tenant shall be liable for the balance, if any, of the Minimum Rent and Additional Rent for which Landlord does not receive such rental interruption insurance proceeds, and, in addition, Tenant shall also be liable for all Percentage Rent, if any. If the cost of the repair, replacement or restoration of the Premises and/or the Building exceeds the amount of the proceeds received by Landlord for such repair, replacement and restoration from the insurance required under Section 18(a), which proceeds are not applied to the outstanding amounts owing to any lienholder with an encumbrance upon all or any portion of the Shopping Center, then Landlord can elect to terminate this Lease by giving written notice thereof to Tenant within fifteen (15) days after determining that the repair, replacement or restoration cost will exceed such insurance proceeds received.

(b) If the Premises or the Building are totally or partially damaged or destroyed by a risk not covered by the insurance expressly described in Section 18(a) or such additional insurance as was then actually in effect, Landlord shall have the right to either repair, replace or restore the Premises or Building or to terminate this Lease. However, if the Premises or the Building do not appear to be capable of being repaired, replaced or restored by Landlord within six (6) months after the date of such uninsured damage or destruction, as determined by Landlord in the exercise of its reasonable judgment within sixty (60) days following such uninsured damage or destruction, then either party may terminate this Lease. Such termination shall occur, if at all, by written notice thereof delivered to the other party within ten (10) days after written notice of Landlord's determination is delivered to Tenant. If this Lease is so terminated, then neither party shall be liable



to the other except with respect to accrued but unpaid obligations, and except as provided in Section 18(d).

(c) Nothing contained in this Section shall obligate Landlord to repair or restore any of Tenant's Improvements, or Tenant's equipment, materials, supplies, inventory or other personal property. Moreover, except as provided in Section 18(d), if the acts or omissions of Tenant or the Tenant Parties causes any damage or destruction within the Shopping Center, Tenant shall pay to Landlord the entire cost to repair, replace or restore same as soon as such cost is determined.

(d) Notwithstanding anything herein to the contrary, if the Premises or any of the Buildings or other improvements within the Shopping Center (including, without limitation, Common Area) are damaged or destroyed by any risk either (i) during the final two years of the Term or (ii) to the extent that the cost of repair, replacement or restoration of the damaged areas as reasonably estimated by Landlord exceeds 30% of the replacement cost of either the Premises or the Buildings or improvements so damaged or destroyed, respectively, Landlord may terminate this Lease upon ten (10) days' written notice to Tenant.

(e) Tenant waives the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage to or destruction of the Premises or other areas of the Shopping Center.

## 22. CONDEMNATION.

(a) If all or any part of the Shopping Center or any interest therein is taken by condemnation, or is sold to the condemning authority under threat of condemnation (collectively a "taking"), the rights and obligations of Landlord and Tenant shall be determined pursuant to this Section 22, and the parties hereby waive the provisions of California Code of Civil Procedure Section 1265.130. If there is a total taking of the Shopping Center or the Premises, this Lease shall terminate on the date of such taking. If there is not a total taking of the Shopping Center or the Premises, but there has been a partial taking of the Shopping Center, Landlord may, in its sole discretion, either (i) restore the remaining portion of the Shopping Center to the extent of severance damages actually received by Landlord (excluding the amount applied to the outstanding amounts owing to a lienholder with an encumbrance upon all or any portion of the Shopping Center), in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease at any time thereafter upon ten (10) days' written notice to Tenant.

(b) If any portion of the Premises is taken and this Lease remains in full force and effect, the Minimum Rent shall be abated in proportion to the degree to which Tenant's reasonable use of the Premises is impaired. Except for such abatement, if any, Tenant shall have no claim against Landlord in the event of any taking, and Tenant hereby assigns to Landlord all awards and other consideration paid with respect to any taking of all or any portion of the Shopping Center, except any award, or portion thereof, relating to the unamortized value of improvements (including trade fixtures) that Tenant has a right to remove at the expiration or earlier termination of this Lease, but elects not to remove.

23. ASSIGNMENT AND SUBLETTING. Tenant shall not assign, transfer or encumber (collectively, "assign") this Lease, or any interest herein, and shall not sublet the Premises, or any part thereof, or permit any other person or entity (except the employees of Tenant) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. In determining whether to consent or object to an assignment or sublease, it shall be deemed reasonable for Landlord to object to a proposed assignment or subletting if:

(a) The proposed use by the assignee or sublessee will conflict with or is incompatible with the existing or proposed uses (whether or not exclusive) of other occupants of the Shopping Center.

(b) The proposed assignee or sublessee has inadequate financial strength or lacks business or management experience or reputation.

(c) The proposed use by the assignee or sublessee would cause a diminution in the reputation of the Shopping Center or unfairly burden the use of the Common Area, as determined by Landlord in its sole business judgment.

(d) The Gross Sales from the Premises which would reasonably be expected from the business of the assignee or sublessee would be less than that of Tenant hereunder or result in a reduced Percentage Rent to be received by Landlord hereunder.

(e) The proposed assignment, sublease or change in use would apply to less than all of the Premises or would result in two or more businesses operating at the Premises, the parties hereby acknowledging that such uses would result in an increased administrative burden to Landlord.

(f) The proposed assignee or sublessee would, in Landlord's sole discretion, likely violate one or more of the terms, covenants, conditions or restrictions imposed upon Tenant under

this Lease or on Landlord as set forth in any other lease, license, occupancy or other agreement for the lease or use of space within, or other agreement entered into with respect to, the Shopping Center.

The foregoing shall not restrict Landlord from reasonably deciding not to consent for any reason other than those designated above. Notwithstanding the foregoing, Landlord reserves the right, at its option, to terminate this Lease in its entirety rather than consent or object to such assignment or subletting (even a subletting for less than all of the Premises), unless Tenant rescinds its request for Landlord's consent to allow Tenant to assign or sublet within ten (10) days following notice to Tenant of Landlord's election to so terminate this Lease. Tenant acknowledges such termination right and consents to the exercise thereof by Landlord in such event. Consent by Landlord to any assignment or subletting shall not be deemed to be a consent to any subsequent assignment or subletting. Consent by Landlord to an assignment or subletting shall not release the original Tenant or any of Tenant's permitted successors or assigns from liability hereunder, and the original Tenant and all successors and assigns shall be primarily liable, jointly and severally, for all obligations of Tenant under this Lease. As a condition to Landlord's consent to an assignment of this Lease or a subletting of the Premises, Landlord shall have the option to require that the amount of any increased rental or other payments or consideration payable to Tenant pursuant to such assignment or subletting be paid to Landlord as additional rent hereunder. Tenant shall pay Landlord Five Hundred Dollars (\$500.00), to cover Landlord's administrative costs in reviewing and analyzing Tenant's request to assign or sublet, and shall reimburse Landlord for Landlord's reasonable expenses (including, without limitation, all reasonable attorneys' fees incurred by Landlord) relating to any assignment or subletting or the activities of Landlord in considering whether to consent to the same. Such sums shall be payable whether or not Landlord consents to Tenant's request to assign or sublet and shall be deemed Additional Rent hereunder. Any attempted assignment or subleasing without Landlord's consent shall be null and void, and any acceptance of rent from any person other than Tenant shall not be construed as Landlord's consent to any assignment or sublease.

**24. SURRENDER OF PREMISES BY TENANT.** Upon the expiration or earlier termination hereof, Tenant shall surrender the Premises to Landlord in broom clean condition, and all of Tenant's Improvements and alterations shall be in good condition (except for ordinary wear and tear, and except for alterations that Tenant has the right or is obligated to remove under the provisions of Section 12 hereof). Any damage or deterioration shall not be considered ordinary wear and tear if same could have been prevented by good maintenance and repair practices of Tenant. Prior to the expiration or earlier termination of this Lease, Tenant shall remove all of its personal property from the Premises and shall perform all repairs and restoration of the Premises made necessary by the removal of any of Tenant's Improvements, alterations or personal property in order to cause the Premises to be restored to its original condition at the time the Tenant's Improvements were completed.

**25. HOLDING OVER.** If Tenant, with Landlord's consent, remains in possession of the Premises after expiration or earlier termination of the Term, or after the date set forth in any notice given by Landlord to Tenant terminating this Lease, such possession by Tenant shall, in the absence of a written notice to the contrary from Landlord, be deemed to create a month-to-month tenancy on all of the terms hereof applicable to a month-to-month tenancy, including, without limitation, the payment of all Minimum Rent, Percentage Rent, Additional Rent and all other fees, costs and charges required hereunder; provided, however, that the Minimum Rent shall be increased to two hundred percent (200%) of the Minimum Rent in effect immediately prior to such expiration or earlier termination. If Tenant fails to surrender possession of the Premises to Landlord on the expiration or earlier termination of this Lease, and Landlord does not consent thereto in writing, then Tenant hereby agrees to indemnify, defend, protect and hold Landlord harmless from and against any and all Liabilities arising out of or resulting from such failure, including, without limitation, the claims by any succeeding tenant or tenants, delays in Landlord's ability to deliver the Premises or any portion thereof to a succeeding tenant or tenants and all consequential damages relating thereto.

**26. DEFAULT.**

(a) The occurrence of any of the following shall constitute a material default by Tenant:

(i) Tenant fails to pay any installment of the Minimum Rent, Percentage Rent, if payable hereunder, Additional Rent, or any other fee, cost or charge payable by Tenant hereunder (collectively, "Rent"), on the date that same is due, and such failure shall continue for a period of three (3) days after written notice thereof to Tenant. Any notice given pursuant to the foregoing provision shall constitute the notice required by Section 1161 of the California Code of Civil Procedure.

(ii) Tenant fails to comply with any term, covenant or condition of this Lease, other than the payments described in Section 26(a)(i) above and does not cure such failure within ten (10) days after written notice thereof to Tenant. If such failure cannot reasonably be cured within ten (10) days, Tenant shall not be in default hereof if Tenant commences to cure the default within the ten (10) day period and diligently and in good faith prosecutes such cure to completion within sixty (60) days thereafter. Any notice given pursuant to the foregoing provision shall constitute the notice required by Section 1161 of the California Code of Civil Procedure.

(iii) The failure by Tenant to pay its obligations as they become due; the making of any general assignment or general arrangement for the benefit of creditors by Tenant; Tenant becomes insolvent or makes a transfer in fraud of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under bankruptcy law or law affecting creditor's rights unless, in the case of a petition filed against Tenant, such petition is dismissed within sixty (60) days; the appointment of a trustee or a receiver to take possession of the Premises, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged in thirty (30) days.

(iv) The vacation or abandonment of the Premises by Tenant. It shall be deemed that Tenant has vacated the Premises if Tenant fails to continuously operate from the Premises for five (5) consecutive days; however, the foregoing shall not limit the events constituting vacation of the Premises.

(v) The failure by Tenant to make any payment of Rent required to be made by Tenant hereunder, or to satisfy any other obligation imposed on it under this Lease, as and when due, and whether or not subsequently cured, on more than three (3) occasions during any consecutive period of twelve (12) months during the Term of the Lease. Tenant acknowledges that the purpose of this provision is to prevent repetitive defaults by Tenant hereunder, because such repetitive defaults likely will impose a hardship upon Landlord.

(b) Upon the occurrence of a default by Tenant, Landlord shall have the option to pursue any one or more of the following remedies:

(i) Landlord may continue this Lease in full force and effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect any and all Rent as and when it becomes due or payable hereunder. During the period Tenant is in default, Landlord can enter the Premises and relet them, or any portion thereof, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs that Landlord incurs in reletting the Premises, including, without limitation, costs of recovering possession, advertising costs, brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining Term. Tenant shall pay to Landlord all Rent due hereunder on the dates same is due, reduced by any net amount that Landlord receives from any reletting. No act by Landlord allowed by this Section 26 shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

(ii) Landlord may terminate Tenant's right to possession of the Premises at any time. However, no act by Landlord other than giving written notice of termination to Tenant shall terminate this Lease. Upon termination, Landlord may recover any damages proximately caused by Tenant's failure to perform under this Lease, or which are likely in the ordinary course of business to be incurred, including any amount expended or to be expended by Landlord in an effort to mitigate damages, as well as any other damages to which Landlord is entitled to recover under any statute now or later in effect (including, without limitation, California Civil Code Section 1951.2). Landlord's damages include the worth, at the time of any award, of the amount by which the unpaid Minimum Rent, Percentage Rent, if any, Additional Rent and all other fees, costs and charges for the balance of the Term after the time of the award exceeds the amount of the rental loss that the Tenant proves could be reasonably avoided. The worth at the time of award shall be determined by discounting to present value such amount at one percent (1%) more than the discount rate of the Federal Reserve Bank in San Francisco in effect at the time of the award. Other damages to which Landlord is entitled shall bear interest at the maximum rate allowed by law.

(ii) Landlord, at any time after Tenant commits a default, may have a receiver appointed to collect Rent, and to conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate this Lease.

(iii) Landlord, at any time after Tenant commits a default, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, incurs any costs, including, without limitation, attorney's fees and/or costs to cure any defaults of Tenant, the costs so incurred by Landlord shall be immediately due and payable from Tenant to Landlord.

(iv) If Tenant becomes a debtor under any bankruptcy law or otherwise becomes subject to any bankruptcy law, Landlord shall have the right to apply the Security Deposit first toward the payment of unpaid pre-petition Rent, and the balance of such Security Deposit, if any, shall be applied toward post-petition administrative claims for such amounts owing hereunder.

(c) In accordance with California Civil Code Section 1951.4 (or any successor statute), Tenant acknowledges that in the event Tenant breaches this Lease and abandons the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all of its rights and remedies under this Lease, including, without limitation, the right to recover Rent as it becomes due under this Lease. Acts of maintenance or

preservation or efforts to re-let the Premises or the appointment of a receiver upon Initiative of Landlord to protect Landlord's interests under this Lease shall not constitute a termination of Tenant's right to possession.

(d) Pursuit of any of the foregoing remedies set forth in Subsection 26(b) shall not preclude pursuit of any of the other remedies provided in this Lease, or any other remedies currently or hereafter provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rent due to Landlord hereunder, or of any damages accruing to Landlord by reason of the violation of any of the terms, covenants or conditions contained herein. No notice given to Tenant by Landlord under this Section 26 shall be deemed a forfeiture or termination hereof unless Landlord expressly so states in writing.

(e) Any sum accruing to Landlord under the terms and provisions of this Lease which is not paid when due shall bear interest at the highest rate allowed by law from the date the same becomes due and payable by the terms and provisions of this Lease until paid. Accrual of a late charge as provided under the terms and provisions of this Lease shall not be construed as prohibiting accrual of interest as stated herein. Acceptance of such interest shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

(f) Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or deed of trust covering the Shopping Center or any portion thereof. Accordingly, if any installment of Rent due from Tenant or any portion thereof shall not be received by Landlord or Landlord's designee within five (5) business days following the date same is due, then Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder or at law or equity.

(g) Any agreement by Landlord to provide Tenant with free or abated rent or other charges applicable to the Premises, or to give or pay any cash or other bonus inducement or consideration for Tenant's entering into this Lease (including, without limitation, moving allowance, tenant improvement allowance, Landlord's work to improve the Premises, etc.), all of which concessions are referred to herein as "Inducement Provisions", shall be deemed conditioned upon Tenant's full and faithful performance of all of the terms, covenants and conditions of this Lease from the date of this Lease and continuing through the Term, as it may be extended. Upon the occurrence of a breach or default by Tenant under this Lease which continues beyond the applicable cure period, such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Landlord under such Inducement Provision shall be immediately due and payable by Tenant to Landlord and recoverable by Landlord as Additional Rent hereunder, notwithstanding the subsequent cure of such breach or default by Tenant. The acceptance by Landlord of Rent or the cure of the breach or default by Tenant which initiated the operation of this Section shall not be deemed a waiver by Landlord of the provisions of this Section unless specifically so stated in writing by Landlord at the time of such acceptance.

27. **WAIVER.** Failure by Landlord to insist upon compliance with any of the provisions of this Lease shall not be deemed a waiver by Landlord of such provisions nor shall any waiver by Landlord of any right or power hereunder at any one or more times be a waiver by Landlord of such rights or powers at any other time(s) or under any other circumstances. No waiver by the parties hereto of the default of any term, covenant or condition of this Lease shall be deemed to be a waiver of any subsequent default of the same or any other term, covenant or condition contained herein. The subsequent acceptance by Landlord of Rent or any other payment hereunder shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent or other payment so accepted, regardless of Landlord's knowledge of such preceding default at the time of acceptance of such Rent or other payment.

#### 28. SUBORDINATION.

(a) Tenant accepts this Lease subject to and subordinate to any recorded mortgage, deed of trust, ground or master lease, or other lien presently encumbering the Premises. Landlord is hereby vested with full power and authority to subordinate Tenant's interest hereunder to any mortgage, deed of trust, ground or master lease, or other lien hereafter placed on the Premises. Tenant agrees upon demand to execute such instruments subordinating this Lease as Landlord may reasonably request or, if Landlord shall so request, Tenant shall upon demand execute such instruments making this Lease prior to any mortgage, deed of trust, ground or master lease, or other lien affecting the Shopping Center. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises, or eviction of Landlord or its successors or other termination of their rights

under any ground lease, Tenant shall attorn to the purchaser upon any such foreclosure or sale or ground lessor under such ground lease, respectively, and recognize such purchaser or ground lessor, as the case may be, as Landlord under this Lease. Landlord agrees that, so long as Tenant shall continue to duly perform all of its obligations hereunder, Tenant's right of possession of the Premises shall not be disturbed unless this Lease is otherwise terminated pursuant to its terms. If Tenant fails to execute any instruments required to effectuate such subordination or to make this Lease prior to the lien of any mortgage, deed of trust, ground or master lease, or other lien, as the case may be, and such failure continues for three (3) days after written demand, Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead to do so; provided, however, that such appointment shall not relieve Tenant of its obligation to provide such instruments or avoid Tenant's default of this Lease for failure to timely deliver such instruments.

(b) Tenant shall not cause or allow to be filed or recorded any Uniform Commercial Code ("UCC") financing statements which encumber Tenant's removable personal property, fixtures or other property and which contain the legal description of the Shopping Center, unless such UCC financing statements expressly disclose that the security interest is limited to Tenant's interest in the collateral described therein and does not extend to the interests of Landlord in the Premises or the Shopping Center. Tenant represents and warrants that Tenant has not, prior to the date of this Lease, entered into, caused to be filed or recorded, or allowed to be filed or recorded, any such UCC financing statement. In the event any such UCC financing statement is filed or recorded against the Shopping Center or any portion thereof or against any of Landlord's property or any property in which Landlord may have an interest, Tenant shall, within five (5) days after a written or oral request from Landlord, immediately cause such UCC financing statement to be released from Landlord's property and from the Shopping Center.

(c) In no event shall this Lease, or any of Landlord's rights and remedies hereunder, be subject or subordinate to any lien, leasehold deed of trust, chattel mortgage or other encumbrance against Tenant's interest in the leasehold created by this Lease or encumbering any property of Tenant located in or about the Premises, it being expressly understood and agreed that nothing contained in this Lease shall expressly or impliedly obligate Landlord to subordinate or waive any of Landlord's rights under this Lease or under the laws of the jurisdiction in which the Shopping Center is located.

#### 29. TRANSFER BY LANDLORD; LANDLORD'S LIMITED LIABILITY.

(a) If Landlord sells or transfers its interest in the Premises or the Shopping Center, Landlord on consummation of the sale or transfer shall be released from any and all liability thereafter accruing hereunder. If any Security Deposit, prepaid rent or other sums have been paid by Tenant, Landlord can transfer the Security Deposit, prepaid rent or other sums to Landlord's successor, and on such transfer Landlord shall be discharged from any further liability relating to such Security Deposit, prepaid rent or other sums.

(b) Tenant agrees that if Landlord is a general or limited partnership, a limited liability partnership or a joint venture, or if Landlord at any time becomes a general partnership, limited partnership, limited liability partnership or joint venture, Tenant shall not make any claims against any partner (whether general or limited) or joint venturer thereof by reason of any matter arising under the terms of this Lease or arising in connection with the use or occupancy of the Premises or Shopping Center. No personal asset of any partner (whether general or limited) in such partnership or joint venturer in such joint venture shall be subject to levy, execution, attachment or other enforcement procedures by Tenant or any successor or assignee of Tenant on account of any matter whatsoever relating to this Lease or the use or occupancy of the Premises or Shopping Center. Consistent with the intention expressed in the preceding portion of this Section, and notwithstanding anything to the contrary contained in this Lease, Tenant agrees that in all events it shall look solely to the estate and property of Landlord in the Shopping Center, regardless of whether the entity constituting Landlord is a corporation, partnership, limited liability partnership, limited liability company, joint venture, trust, individual or otherwise, for the collection of any judgment or other judicial process requiring the payment of money by Landlord with respect to any of the terms, covenants or conditions of this Lease, and no other property or assets of Landlord shall become subject to levy, execution, attachment or other enforcement procedures for the satisfaction of Tenant's remedies.

#### 30. ESTOPPEL CERTIFICATES; FINANCIAL STATEMENTS; GUARANTY.

(a) Tenant shall upon ~~five (5)~~ fifteen (15) days' written notice from Landlord execute, acknowledge before a notary public and deliver to Landlord or any then existing or potential lessor, purchaser, or encumbrancer of the Shopping Center a Tenant's Estoppel Certificate in the form of or containing the information and covenants set forth in Exhibit "G" attached hereto and incorporated herein by this reference, together with such other information and covenants as reasonably requested by Landlord or any then existing or prospective lessor, purchaser or encumbrancer of the Shopping Center. Any such statement may be relied upon by a then existing or prospective lessor, purchaser or encumbrancer of all or any portion of the Shopping Center.

Tenant's failure to deliver such statement within such time period shall be a material default of this Lease and shall also be conclusive upon Tenant that: (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults in Landlord's performance under this Lease or otherwise, and (c) not more than one month's installment of Rent due hereunder has been paid in advance. If Tenant fails to deliver such a statement within such five (5) day period, then Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead to execute such a statement; provided, however, such appointment shall not relieve Tenant of its obligation to provide such a statement or avoid Tenant's default of this Lease for failure to timely provide such statement.

(b) From time to time after the date of execution of this Lease, ~~no more often than once per year~~, and continuing until the end of the Term, Tenant shall, upon ~~five (5) fifteen (15) days'~~ prior written notice from Landlord, provide Landlord with a current financial statement of Tenant and any and all guarantors of this Lease, and financial statements of Tenant and any and all guarantors of this Lease for the two (2) years preceding the period covered by the current financial statement, all of which financial statements shall be certified in writing by Tenant or such guarantors, as applicable, to be true and correct. Such financial statements shall be prepared in accordance with generally accepted accounting principles, consistently applied, and, if such is the normal practice of Tenant or such guarantors, shall be audited by an independent certified public accountant. In addition, Tenant hereby authorizes, and, by their signature and delivery of any guarantees, the guarantors of this Lease hereby authorize, Landlord to submit for and obtain credit reports at any time and from time to time from any one or more credit reporting agencies which will disclose the credit worthiness and payment histories of Tenant and any and all guarantors of this Lease.

(c) If any guarantor(s) are listed in the Basic Lease Provisions, then the obligations of Tenant under this Lease shall be guaranteed by such guarantor(s) on the Guaranty of Lease form attached hereto as Exhibit "H" and incorporated herein by this reference, or such other form as is acceptable to Landlord in its sole discretion.

31. ~~BUILDING PLANNING. Landlord shall have the right at any time and from time to time after the date of this Lease and continuing until the end of the Term, upon giving Tenant sixty (60) days' written notice, to provide and furnish Tenant with space of not less than the usable area of the Premises elsewhere within any of the Buildings within the Shopping Center and to move Tenant into such new space, provided that all expenses of moving Tenant's personal property shall be at Landlord's sole cost and expense. Except as provided in the immediately preceding sentence, Landlord shall have no obligation or liability to improve such space or pay any construction allowance or any other costs or expenses incurred by Tenant as a result of such relocation. On such relocation, the terms and conditions of this Lease shall remain in full force and effect, including the Minimum Rent payable hereunder (even if the usable area of such relocated Premises is in excess of the usable area of the Premises), save and except that the Premises shall be in such new location within one of the Buildings, a revised Exhibit "A" shall become part of this Lease and shall reflect the location of the new space, and the Basic Lease Provisions of this Lease shall be amended to include and state all correct data as to the new space. However, if the new space does not meet with Tenant's approval, which approval Tenant agrees not to unreasonably withhold, Tenant shall have the right to cancel this Lease upon giving Landlord written notice thereof within ten (10) days of receipt of Landlord's notification of its intent to relocate Tenant. In addition to the foregoing, Landlord shall have the right, at any time prior to Landlord's delivery of possession of the Premises to Tenant, to alter the size, dimensions and/or location of the Premises and/or any other Building(s) in the Shopping Center if Landlord feels same is necessary or appropriate in connection with the development or alteration of the Shopping Center or any portion thereof; provided, however, in no event shall the rentable square footage of the Premises or the lineal feet of the front wall of the Premises be decreased by more than ten percent (10%) without Tenant's prior written consent.~~

32. **LANDLORD'S RIGHT OF ENTRY.** Landlord, or its authorized agents, shall have the right, upon reasonable notice, to enter the Premises during normal working hours (or at any time in the case of an emergency) for the following purposes: (a) inspecting the general condition and state of repair of the Premises, (b) making repairs required by Landlord, and (c) showing the Premises to any prospective purchaser or lessee. If Tenant has not renewed or extended this Lease prior to the final ninety (90) days of the Term, Landlord, or its authorized agents, shall have the right to erect on or about the Premises a customary sign advertising the Premises ~~(excluding display windows and doors)~~ for lease or for sale. At all times Landlord shall have a key or keys with which to unlock the doors on the Premises, excluding Tenant's vaults and safes.

33. **SUCCESSORS.** The terms, covenants and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives, except as otherwise expressly provided herein. All rights, powers, privileges and duties of Landlord under this Lease, including, but not limited to, any notice required or permitted to be delivered by Landlord to Tenant hereunder may, at Landlord's option, be exercised or performed by Landlord's agent or attorney.

34. **AUTHORITY TO EXECUTE.** Each individual executing this Lease on behalf of Tenant represents and warrants: (a) that he is duly authorized to execute and deliver this Lease on behalf of Tenant in accordance with: (i) a duly adopted resolution of Tenant's board of directors, (ii) in

accordance with Tenant's by-laws, or (iii) pursuant to Tenant's partnership agreement or other controlling documents, and (b) that this Lease is binding upon Tenant in accordance with its terms. Tenant shall deliver to Landlord upon execution hereof a copy of such documents establishing the authority of the signatories of Tenant.

**35. ENTIRE AGREEMENT; LEASE NOT OFFER.** This Lease, together with any exhibits, attachments or addenda, contains all of the agreements of the parties with respect to the subject matter hereof. No prior agreement or understanding pertaining to the subject matter hereof shall be effective unless set forth herein. Statements, agreements, representations or warranties, if any, by any agents or brokers of Landlord shall have no effect whatsoever and shall not be binding upon Landlord unless expressly contained in this Lease. This Lease may be amended in writing only, signed by the parties in interest at the time of such amendment. Preparation of this Lease by Landlord and the submission of same to Tenant shall not be deemed an offer to lease the Premises or any other premises to Tenant. This Lease shall become binding upon Landlord and Tenant only when fully executed by both parties.

**36. ATTORNEYS' FEES.** In the event suit is brought to enforce or interpret any part of this Lease, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, all ~~reasonable~~ attorneys' fees actually incurred (regardless of any otherwise applicable court schedule for the determination thereof). In addition, should it become necessary for Landlord to utilize legal counsel to collect any sums from Tenant or to enforce any of the provisions contained herein, Tenant agrees to pay all ~~reasonable~~ legal fees and other costs incurred by Landlord, whether or not a suit is instituted or prosecuted to final judgment.

**37. NOTICE.** Except as otherwise required by law, any notice or document required or permitted to be delivered hereunder shall be delivered personally or sent by mail. If notice is sent by mail it shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, addressed to the parties hereto at the respective addresses set forth in Paragraphs M and N of the Basic Lease Provisions, or at such other addresses as they have theretofore specified by written notice delivered in accordance herewith. Rejection or other refusal to accept notice or the inability to deliver notice because of a changed address (of which no notice was given as required hereunder) shall be deemed to be receipt of the notice when sent.

**38. BROKERS.** Tenant represents and warrants to Landlord that it has not had dealings with any broker, finder, or other person except those persons or entities described in Paragraph Q of the Basic Lease Provisions in locating the Premises or negotiating this Lease and that it knows of no other person who is or might be entitled to a commission, finder's fee or other like payment in connection herewith.

**39. RELATIONSHIP OF PARTIES.** Neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the parties shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, other than the relationship of landlord and tenant.

**40. RECORDING.** Tenant shall not record this Lease or a short form memorandum hereof; provided, however, upon request of Landlord, Tenant shall execute, acknowledge and deliver to Landlord, within five (5) days following written request thereof by Landlord, a short form memorandum of this Lease for recording purposes. On termination of this Lease, Tenant shall execute and deliver to Landlord immediately upon Landlord's request a quitclaim deed in recordable form transferring to Landlord all interest, if any, of Tenant in the Premises and the Shopping Center.

**41. MERCHANTS' ASSOCIATION; ADVERTISING.**

(a) Association Membership. Tenant shall become a member of the Merchants' Association upon formation thereof or upon execution of this Lease, whichever occurs later, and will maintain such membership in good standing, will abide by the bylaws and regulations and will cooperate in the activities of such Association throughout the Term. The purpose of the Merchants' Association shall be to encourage its members to deal fairly and courteously with their customers, to follow ethical business practices, and to assist the business of its members by sales promotions and centerwide advertising. If Landlord shall elect to provide promotional services and personnel to formulate and effect the advertising, promotional and public relations program for the Shopping Center, Landlord shall be reimbursed by the Merchants' Association for the cost of such promotional services and personnel. Any promotional services and personnel so provided shall be under the exclusive control and supervision of Landlord who shall have the sole authority to employ and discharge such personnel. Tenant agrees to pay annual dues to the Merchants' Association in the amount established by the Merchants' Association, which amount shall be no less than the product obtained by multiplying the number of square feet of Floor Area within the Premises by \$0.50\$0.35. Said annual dues shall be payable at the time of execution of this Lease and thereafter on the first of each January throughout the Term. In any event, Tenant's annual dues to the Merchant's Association will be increased annually on the first day of January of each year during the Term by five percent (5%) of the amount of the preceding year's annual dues payable by Tenant. The

provisions of this Lease shall take precedence over any contradictory provision in the bylaws or regulations of the Merchants' Association, and the bylaws, rules or regulations of the Merchants' Association shall not affect the rights of Landlord. The provisions of this Section shall be deemed to be covenants for the benefit of the Landlord and said Association and shall be enforceable by each of them. The Merchant's Association dues payable by Tenant shall be deemed Additional Rent hereunder. Nothing contained in this Section 41 shall be interpreted as requiring Landlord to establish a Merchant's Association.

(b) Advertising. The Merchants' Association may, at its discretion (but without obligation to do so), place advertisements in media which the Merchant's Association deems appropriate, and in which Tenant and other tenants of the Shopping Center may advertise. Tenant shall be obligated to include its advertisements in all of the Merchants' Association advertisements (but Tenant shall not be obligated to include its advertisements in more than twelve (12) Merchants' Association advertisements per year). Tenant's advertisements in the Merchant's Association advertisements shall be at least one-quarter ( $\frac{1}{4}$ ) page in size, and Tenant will be charged at the regular price to Tenant and a majority of the other tenants in the Merchants' Association. Tenant shall cooperate with Landlord in preparing its advertisement in a timely manner and in paying for the advertising costs. If Tenant does not provide its prepared advertisement copy within ten (10) days of Landlord's or the Merchants' Association's written notice thereof, then Landlord may, and is hereby authorized by Tenant to, prepare an advertisement for Tenant which will be utilized in the Merchants' Association's advertisements, and Tenant will reimburse Landlord for the costs and expenses incurred by Landlord due to Tenant's failure to comply with this provision and for preparing and producing Tenant's advertisement. Landlord shall not be obligated to provide advertising copy to enable Tenant's advertisement to be included in the Merchants' Association advertisements, and Tenant hereby agrees to hold Landlord, the Landlord Parties and the Merchants' Association harmless of any and all liabilities, losses, costs and expenses (including attorneys' fees) which may arise due to the failure to include Tenant's advertisement in the Merchants' Association advertisements and/or due to the advertising copy created due to Tenant's failure to provide the same. The Merchants' Association advertising fees and all of Landlord's costs and expenses incurred due to Tenant's default of this provision shall be deemed Additional Rent.

(c) Hold Harmless. Tenant hereby acknowledges that the Merchants' Association is operated by tenants, although Landlord may also be involved in such operation. To encourage the continuation of the Merchants' Association, once it is formed, Tenant hereby agrees to hold Landlord, the Landlord Parties, and the Merchants' Association harmless from and against any and all liabilities, losses, costs and expenses arising out of any conduct done in good faith in connection with the operation of the Merchants' Association and the conduct of activities by the Merchants' Association.

42. SECURITY. While Landlord does not assume any responsibility to provide any security measures, or any liability for failure to provide same or for any inadequacy thereof, Landlord shall have the authority to institute or continue such security measures, devices, programs, restrictions and combinations thereof as Landlord in its sole discretion deems necessary or appropriate from time to time, taking into account the protection of persons and property of Landlord, Tenant and employees, agents and invitees of each of them and taking into account the business interests of the Shopping Center. The costs and expenses of instituting and maintaining such measures, devices, programs, restrictions and combinations thereof, if any, shall be borne by Tenant as a part of the Operating Expenses, or, if Landlord so elects, as a separate additional charge to Tenant based on Tenant's proportionate share (determined in the same manner as Tenant's share of the Operating Expenses and/or as a direct contribution to the governmental or non-governmental entity supplying any portion of the measures, devices or programs instituted, provided that the cost of such services to tenants at the Shopping Center shall be allocated in a manner deemed reasonable by Landlord), taking into account, if Landlord deems applicable, the size, location and any special requirements and conditions of the Premises and Tenant's business and activities. To the degree directed by Landlord, Tenant shall coordinate the security measures at the Premises with the measures, devices and restrictions instituted by Landlord, if any. Tenant shall, at Landlord's direction, join such association organized for any of the aforesaid purposes as Landlord may designate, whether or not membership in same is limited to tenants at the Shopping Center, shall participate fully therein, shall pay its share of any additional tax or assessment arising out of any special taxing district or special assessment and shall take all such other action as Landlord reasonably may direct to protect the security interests of the Shopping Center and that of the other tenants at the Shopping Center. It is understood and agreed that the potential severity of security problems and the mutual importance of dealing with same in an expeditious and conclusive manner justify that Landlord, in the mutual interest of the parties hereto, shall have unfettered discretion hereunder.

43. TENANT'S RESPONSIBILITY REGARDING HAZARDOUS MATERIALS. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials or substances or materials now or subsequently found to have an adverse effect on the environment or the health or safety of persons (collectively, "Hazardous Materials"). Tenant shall not allow the storage or use of Hazardous Materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, and Tenant shall not bring or allow to be brought into the Shopping Center any such Hazardous Materials, except such Hazardous



Materials as are approved of in writing by Landlord. Landlord's approval shall not be required for ordinary cleaning products which are not regulated by governmental authorities and are used in the ordinary course of Tenant's business. Without limitation, the term "Hazardous Materials" shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 6901, et seq., any applicable state or local laws, and the regulations adopted under those acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of Hazardous Materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional rent if such requirement applies to the Premises. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of Hazardous Materials on the Premises. In all events, Tenant shall indemnify, defend and hold Landlord and the Landlord Parties harmless from and against any and all liabilities, costs, expenses, claims, actions, causes or action, judgments, damages, penalties, fines or losses (including, without limitation, diminution in value of the Premises or other portions of the Shopping Center, damages arising from any adverse impact on marketing of space in the Premises or other portions of the Shopping Center, and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees) occurring while Tenant is in possession of the Premises, or elsewhere if caused by Tenant, the Tenant Parties or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the Term of this Lease.

44. **SPECIFIC PERFORMANCE.** With respect to any provision of this Lease which provides, in effect, that Landlord shall not unreasonably withhold or unreasonably delay any consent or any approval, Tenant, in no event, shall be entitled to make, nor shall Tenant make, any claim for, and Tenant hereby waives any claim for, money damages; nor shall Tenant claim any money damages by way of setoff, rent abatement, counterclaim or defense, based upon any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed any consent or approval; Tenant's sole remedy shall be an action or proceeding for specific performance, injunction or declaratory relief to enforce such provision.

45. **WAIVER OF TRIAL BY JURY.** LANDLORD AND TENANT DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE OR OCCUPANCY OF THE PREMISES.

46. **MODIFICATION.** If, in connection with obtaining construction, interim or permanent financing, the lender shall request reasonable modifications to this Lease as a condition to such financing, Tenant shall execute such modifications hereto within ten (10) days following written request therefor, provided that such modifications do not increase the financial burdens of Tenant hereunder. Tenant's failure to so execute such modifications hereto shall be a noncurable default hereof and provide grounds for Landlord's termination of this Lease, among all other rights and remedies of Landlord.

47. **NONDISCRIMINATION.** Lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the following conditions: There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, handicap, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased nor shall Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises herein leased.

48. **FORCE MAJEURE.** Landlord shall not be chargeable with, liable for, or responsible to Tenant for anything or in any amount for any delay caused by fire or other casualty, earthquake, flood, inclement weather, explosion, acts of God or the public enemy, any action, inaction, delay or interference by governmental authorities (including, without limitation, delays in promptly obtaining the permits and approvals required for any construction), war, invasion, insurrection, rebellion, riots, strikes or lockouts, acts or omissions of Tenant or the Tenant Parties or any other cause, whether similar or dissimilar to the foregoing, which is beyond the reasonable control of Landlord (collectively, "Force Majeure Delays"). Any delay in Landlord's performance under this Lease arising out of or in connection with Force Majeure Delays shall not be deemed to be a breach by Landlord under this Lease, and any time period within which Landlord is obligated to perform under the Lease shall be extended for a period of time which is reasonable in light of such Force Majeure Delays (which extension shall in no event be less than the duration of the events causing such delay).

49. **MISCELLANEOUS PROVISIONS.** The invalidity, illegality, or unenforceability of any provision of this Lease shall in no way affect the validity, legality or enforceability of any other provision hereof. If more than one person or entity is Tenant, the obligations imposed on each such person or entity shall be joint and several. This Lease shall be construed and interpreted in accordance with the laws of the State of California in force from time to time. Time is of the essence

in this Lease. The captions of the paragraphs of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Lease, but shall be interpreted according to the application of rules of interpretation of contracts generally. Where the context so indicates, references to the singular includes the plural; references to the masculine includes the feminine and neuter, and references to the neuter includes the masculine and feminine. Each term and provision of this Lease performable by Tenant shall be deemed both a covenant and a condition to Landlord's performance hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date set forth beneath each party's respective signature hereon, but such execution shall be as of the date first mentioned above.

Landlord:  
The Shane Family Trust and the Maltzman Family

Tenant: JENNIFER H.B. CA, INC  
Jennifer Convertibles, Inc.

\_\_\_\_\_  
\_\_\_\_\_

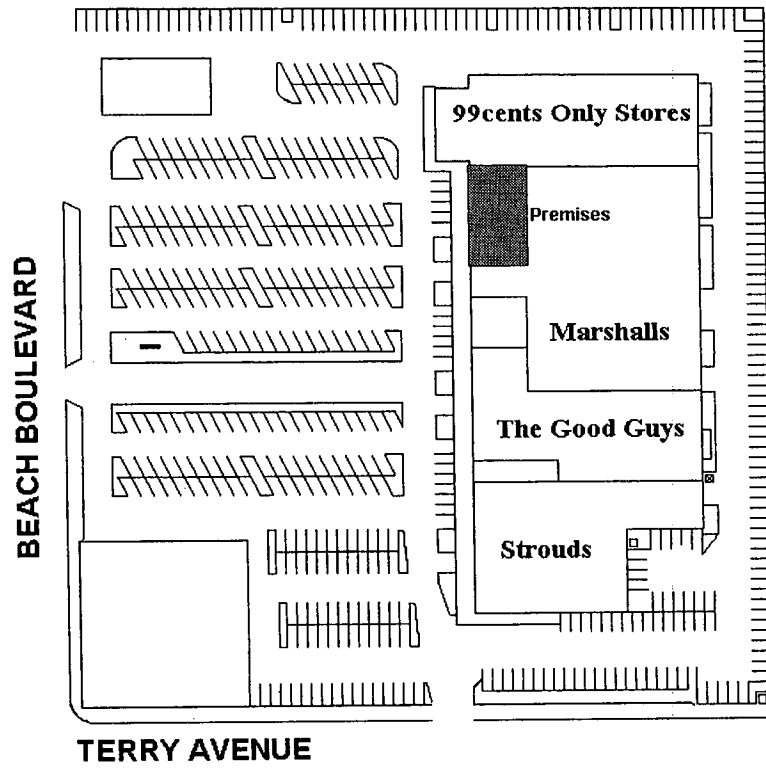
BY EDWARD SEIDNER  
VICE PRESIDENT

By: [Signature] By: \_\_\_\_\_  
Name: Sandy Suss Name: \_\_\_\_\_  
Title: Manager Title: \_\_\_\_\_  
Date: 1/17/00

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_

# SITE PLAN

DISCLAIMER- This drawing is for general information purposes only. Any and all features, matters and other information depicted hereon or contained herein are for illustrative marketing purposes only, are subject to modification without notice, are not intended to be relied upon by any party and are not intended to constitute representations and warranties as to the size and nature of improvements to be constructed (or that any improvements will be constructed) or as to the identity or nature of any occupants thereof.



LEGAL DESCRIPTION OF SHOPPING CENTER

Parcels 1 and 2 in the City of Huntington Beach, County of Orange, State of California, as shown on a map filed in Book 55, Page 4 of Parcel Maps, in the Office of the County Recorder of said office.

## CONSTRUCTION WORK LETTER

The construction of the improvements which are to be a part of the Premises and which are Tenant's responsibility (referred to in the Lease and this Exhibit "C" as the "Tenant's Improvements") shall be constructed in accordance with the following:

1. Landlord shall tender possession of the Premises to Tenant improved with those certain improvements (the "Landlord's Work") more particularly described on Exhibit "C-1" attached hereto. In the event this Lease is executed prior to or concurrently with Landlord's construction of the Common Area or other portions of the Shopping Center, it is contemplated that Tenant shall, subject to the terms of this Exhibit "C," construct all improvements to the Premises, including the Building, and Landlord's sole obligation shall be to tender delivery of the Premises to Tenant, unimproved, except as noted on Exhibit "C-1" attached hereto.

2. Tenant shall, at its sole cost and expense, construct the Tenant's Improvements in accordance with the plans and specifications hereinafter provided.

3. Tenant will prepare, or cause to be prepared, preliminary plans (the "Preliminary Plans") for the Tenant's Improvements and shall deliver two (2) copies of same to Landlord within twenty (20) days after the full execution of the Lease. The Preliminary Plans shall show all existing and planned walls, plumbing, electrical improvements (including wall outlets), telephone outlets, restrooms and doors. The scale of the Preliminary Plans shall not be less than 1/8" = 1'0", and must be drawn on sheets having a minimum size of 18" x 24". All planned structural changes shall be clearly shown and noted on the Preliminary Plans. The Preliminary Plans shall also describe all proposed floor finishes, fixtures, equipment, hoods, vents, appliances, desks, tables, seating arrangements and all other improvements required by Tenant's planned use of the Premises. If Tenant plans to make any change in the existing ceiling or roof of the Premises, Tenant shall submit, as a part of the Preliminary Plans, ceiling, ceiling electrical and/or roof plans clearly showing all proposed changes (including, without limitation, equipment, methods of attachment, roof penetrations and structures, and all weights and sizes associated with each change). No contractor shall perform any work upon or affecting the roof without first being approved of in writing by Landlord, and all work to or affecting the roof shall be performed so that no warranty pertaining to the roof is voided or impaired thereby. The Preliminary Plans shall be subject to approval by Landlord in accordance with the approval procedure for the Final Plans as described in Paragraph 4 below. Two (2) copies of said approved Preliminary Plans shall thereafter be initialed by each party hereto and incorporated herein by this reference.

4. Within thirty (30) days following the date Landlord approves of the Preliminary Plans, Tenant will prepare or cause to be prepared for the Tenant's Improvements final plans and specifications and working drawings (hereinafter referred to as the "Final Plans") based on the approved Preliminary Plans, and Tenant shall deliver same to Landlord within such thirty (30) day period. Landlord shall either accept said Final Plans or totally or partially reject them within ten (10) days from the date they are delivered to Landlord. If Landlord rejects the Final Plans in whole or in part and if the Final Plans cannot be modified to be satisfactory to Landlord within thirty (30) days thereafter, this Lease shall, at the option of Landlord, terminate and neither party shall be liable to the other provided that Landlord shall return to Tenant its Security Deposit and prepaid rent and each party shall otherwise bear its own costs to the date of termination.

5. As soon as practicable, but in no event later than ten (10) days following Landlord's approval of the Final Plans, Tenant shall, at its sole cost and expense, submit the Final Plans to all appropriate governmental authorities and other persons and entities having jurisdiction or other approval rights over the Shopping Center (herein collectively referred to as the "Approving Parties") and obtain all permits and approvals (the "Permits and Approvals") necessary or appropriate to allow the construction, installation and completion (collectively "construction") of the Tenant's Improvements. Tenant shall, at its sole cost and expense, expeditiously and diligently comply with all requirements and conditions related to obtaining the Permits and Approvals for the Final Plans, subject to the right of Landlord to approve any changes thereto. If such Permits and Approvals are not obtained within ninety (90) days following Landlord's approval of the Final Plans, then Landlord shall have the option of terminating the Lease at any time thereafter, but prior to Tenant obtaining such Permits and Approvals for the Final Plans, upon at least ten (10) days' prior written notice thereof to Tenant. In the event of such termination each party shall be released of all further liability arising under the Lease (except for those liabilities accruing prior to the termination), all prepaid rent and the Security Deposit will be returned to Tenant, and Landlord and Tenant will each bear its own costs to the date of such termination.

6. Upon Landlord's approval of the Final Plans, Tenant shall expeditiously and diligently select contractors licensed under the laws of the State of California to bid the construction of the items set forth in the Final Plans. In the event the Final Plans require modification in order to obtain all requisite Permits and Approvals and such modifications are acceptable to Landlord and Tenant, then the modified Final Plans shall be resubmitted to the bidding contractors for revisions, if any, in their bids. Such construction shall include, without limitation, compaction of the soil and grading of the Premises pad.

7. Within five (5) days after the availability of all Permits and Approvals for the Tenant's Improvements, Tenant shall obtain such Permits and Approvals and shall enter into a contract with a contractor mutually acceptable to Landlord and Tenant, which contract must contain terms which are mutually acceptable to Landlord and Tenant. Within ten (10) days after obtaining all such Permits and Approvals, such contractor shall commence construction of the Tenant's Improvements and diligently prosecute same to completion. Tenant shall bear and promptly pay the cost of construction of the Tenant's Improvements, including, without limitation, the cost of all utilities consumed at the Premises following the substantial completion of Landlord's Work. Tenant and Tenant's contractor shall comply and conform with all requirements of the Occupational Safety and Health Act. Landlord shall have no obligation whatsoever to make any improvements for, or construct any portion of, the Tenant's Improvements.

8. The "substantial completion" of the Tenant's Improvements shall be deemed to have occurred when the Tenant's Improvements are completed to such a degree that Tenant is reasonably able to utilize the Premises and the Tenant's Improvements for the purposes contemplated by the Lease.

9. The "completion" of the Tenant's Improvements shall be deemed to occur when all of the following have occurred:

(a) The construction of the Tenant's Improvements has been completed in accordance with the Final Plans such that the Tenant's Improvements are immediately available for the operation of Tenant's business upon the Premises and the cost to fully complete the balance of the Tenant's Improvements will not exceed Two Thousand Dollars (\$2,000.00);

(b) The Tenant's Improvements comply with all Laws, and all Permits and Approvals and certificates have been issued therefor;

(c) Tenant's architect certifies to Landlord that the Tenant's Improvements fully comply with all Laws and with the Final Plans;

(d) An unconditional Certificate of Occupancy has been issued for the Premises; and

(e) All claims of contractors, subcontractors and materialmen relating to the Tenant's Improvements have been paid, no mechanic's liens have been recorded against the Shopping Center or any portion thereof, and the statutory period for the recording of such liens has expired.

10. Tenant hereby agrees to indemnify and hold Landlord and the Landlord Parties completely harmless from and against any and all liabilities, costs, expenses and damages arising out of, in connection with, or resulting from the Tenant's Improvements and all mechanic's or materialmen's liens recorded or otherwise existing against the Premises or the Shopping Center, and, in the event of any such liens, Tenant shall, at its sole cost and expense, provide Landlord with a bond or other security acceptable to Landlord to delete such lien(s) of record and to otherwise protect the Shopping Center and Landlord therefrom within ten (10) days following written notice thereof to Tenant.

11. Tenant shall notify Landlord of Tenant's intent to commence construction of the Tenant's Improvements at least ten (10) days prior to the commencement thereof, to enable Landlord to post and record, as applicable, any notices of nonresponsibility or similar notices having the effect of protecting Landlord and the Shopping Center from mechanic's liens arising out of work performed and materials delivered on behalf of Tenant.

12. Prior to commencement of construction of the Tenant's Improvements, either Tenant or Tenant's contractor shall procure and maintain, at no cost to Landlord, builder's risk insurance covering Landlord, Tenant and the contractor, as their interests may appear, against loss or damage by fire, vandalism and malicious mischief and such other risks as are customarily covered by a so-called "extended coverage endorsement" upon all of the Tenant's Improvements in place and all materials stored by the site, and all materials, equipment, supplies and temporary structures of all kinds incidental thereto, all while forming a part of or contained in such Tenant's Improvements or temporary structures, or while on the Premises, the Shopping Center or within one hundred (100) feet thereof, or, when adjacent thereto, while on sidewalks, streets or alleys, all to the full insurable value thereof at all times. In addition, Tenant agrees to indemnify and hold Landlord and the Landlord Parties harmless from and against any and all claims and liabilities for injury to or death of persons or damage to property by reason of the use of the Premises or other portions of the Shopping Center in connection with the construction of the Tenant's Improvements and claims, liabilities, fines, and penalties arising out of any failure of Tenant, the contractor or any of its respective agents, contractors and employees, to comply with any applicable Laws. Tenant agrees to require the contractor and subcontractors engaged in the construction of the Tenant's Improvements to effect, maintain and deliver to Landlord certificates evidencing the existence of, and covering Landlord, Tenant and the contractor, prior to commencement of the construction of the Tenant's Improvements and until completion thereof, the following insurance coverages:

(a) Worker's Compensation Insurance in accordance with the laws of the State of California, including Employer's Liability Insurance, to the limit of \$100,000.00 or such additional amount as required by law;

(b) Comprehensive General Liability Insurance, excluding "automobile liability" against personal injury, including death resulting therefrom, and property damage to the limits of \$1,000,000.00 single limit liability; and

(c) Automobile Insurance, including "non-owned" automobiles, against personal injury, including death resulting therefrom, and property damage to the limits of \$1,000,000.00 single limit liability.

13. Landlord, and/or Landlord's agents, employees or contractors, shall at all times have the right to enter upon the Premises and inspect the progress of completion of the Tenant's Improvements and to ensure same are being constructed in accordance with the Final Plans. In this regard, Tenant shall notify Landlord in writing as soon as practicable as to when Tenant or Tenant's contractor will cover up any portion of the Tenant's Improvements, and Tenant or Tenant's contractor shall allow Landlord a reasonable period of time following such notice and before covering up such portion of the Tenant's Improvements to inspect same to ensure it complies with the Final Plans. If Landlord in its reasonable judgment shall determine that there is faulty construction or other deviations from the Final Plans and if Landlord shall give written notice thereof to Tenant, Tenant shall promptly repair or correct the faulty construction or other deviation from said Final Plans or Tenant shall cause its contractor to do the same. However, nothing contained herein shall obligate Landlord to inspect the Tenant's Improvements or any portion thereof or to notify Tenant of faulty construction thereof or a deviation from the Final Plans or release Tenant from any obligations or liabilities hereunder.

14. The terms contained in this Exhibit "C" shall have the same meanings as those contained in the Lease unless expressly contradicted herein.

15. ARBITRATION OF DISPUTES. IN THE EVENT OF A DISPUTE REGARDING THE CONSTRUCTION, SUBSTANTIAL COMPLETION OR COMPLETION OF THE TENANT'S IMPROVEMENTS, THE MATTER SHALL BE SUBMITTED TO ARBITRATION IN THE COUNTY WHERE THE SHOPPING CENTER IS LOCATED, ANY DISPUTE BETWEEN THE LANDLORD AND TENANT ARISING OUT OF OR RELATING TO THIS LEASE OR THE BREACH HEREOF SHALL BE RESOLVED PURSUANT TO THE FOLLOWING ARBITRATION PROCEDURES:

(a) ARBITRATION OF DISPUTES. THE PARTIES INTEND TO AND DO HEREBY ESTABLISH A QUICK, FINAL AND BINDING OUT-OF-COURT DISPUTE RESOLUTION PROCEDURE TO BE FOLLOWED IN THE EVENT CONTROVERSY SHOULD ARISE BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE BREACH HEREOF (THE

"ARBITRATION DISPUTES"). SHOULD ANY DISPUTE(S) ARISE WITH REGARD TO THE ARBITRATION DISPUTES, WHICH DISPUTE(S) THE PARTIES CANNOT RESOLVE, THEN THE PARTIES SHALL SUBMIT SUCH ARBITRATION DISPUTES FOR DETERMINATION BY BINDING ARBITRATION AS PROVIDED BELOW.

(b) ARBITRATION BY JAMS OF ARBITRATION DISPUTES. A PARTY SHALL INITIATE ARBITRATION OF AN ARBITRATION DISPUTE BY SERVING, EITHER PERSONALLY OR BY MAIL, ALL PARTIES WITH A DEMAND FOR ARBITRATION AND NOTICE OF CLAIM, AND FILING A COPY OF THE DEMAND FOR ARBITRATION AND NOTICE OF CLAIM WITH THE LOS ANGELES OFFICE OF THE JUDICIAL ARBITRATION AND MEDIATION SERVICE ("JAMS"), OR THE OFFICE OF JAMS THEN NEAREST TO LOS ANGELES, CALIFORNIA, WITHIN FIFTEEN (15) DAYS FOLLOWING THE DATE SUCH DISPUTE ARISES. THE DEMAND FOR ARBITRATION AND NOTICE OF CLAIM SHALL INCLUDE A STATEMENT SETTING FORTH THE NATURE OF THE DISPUTE, THE AMOUNT INVOLVED, IF ANY, REMEDY SOUGHT, A SWORN PROOF OF SERVICE ON THE OTHER PARTY AND THE ADDRESS AND TELEPHONE NUMBER OF THE OTHER PARTY. THE CLAIMANT SHALL PROVIDE A COMPLETE COPY OF THIS CONTRACT TO JAMS AT THE TIME OF FILING THE DEMAND FOR ARBITRATION AND NOTICE OF CLAIM.

(c) RESPONSE. IF THE RESPONDING PARTY WISHES TO FILE A RESPONSE AND/OR COUNTERCLAIM, SUCH PARTY MUST DO SO WITHIN FIFTEEN (15) DAYS OF SERVICE OF THE DEMAND. FAILURE TO FILE A COUNTERCLAIM OR RESPONSE WILL NOT OPERATE TO DELAY THE ARBITRATION PROCEEDINGS. AFTER THE FILING OF THE CLAIM, RESPONSE AND COUNTERCLAIM, NO FURTHER CLAIMS OR COUNTERCLAIMS MAY BE MADE EXCEPT ON MOTION TO THE ARBITRATOR. NO COUNTERCLAIMS SHALL BE PERMITTED THAT EXPAND THE SCOPE OF THE ISSUE(S) BEYOND THE ARBITRATION DISPUTE, AND NO ARBITRATION DECISION SHALL BE RES JUDICATA OR HAVE COLLATERAL ESTOPPEL EFFECT EXCEPT AS TO THE ARBITRATION DISPUTE.

(d) APPOINTMENT AND POWERS OF SOLE ARBITRATOR. WITHIN FIFTEEN (15) DAYS OF THE FILING OF A DEMAND FOR ARBITRATION AND NOTICE OF CLAIM, JAMS SHALL PROVIDE EACH PARTY WITH A LIST OF PROSPECTIVE ARBITRATORS NUMBERING ONE MORE THAN THERE ARE PARTIES TO THE DISPUTE. IF JAMS FAILS TO PROVIDE A LIST OF PROSPECTIVE ARBITRATORS WITHIN SAID FIFTEEN (15) DAYS, THE ARBITRATION PROCESS SHALL START OVER WITH THE LOS ANGELES REGIONAL OFFICE OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") ACTING AS THE ARBITRATING OFFICE. EACH PARTY MAY STRIKE ONE ENTIRE PANEL OF ARBITRATORS AND MAY ALSO STRIKE ONE NAME FROM A PANEL BY INFORMING JAMS WITHIN TEN (10) DAYS. IF A PARTY STRIKES A WHOLE PANEL, JAMS WILL PROVIDE A SUBSEQUENT PANEL WITHIN TEN (10) DAYS. IF A PARTY FAILS TO EXERCISE ITS RIGHT TO STRIKE A NAME/PANEL WITHIN SUCH TIME PERIOD, SUCH PARTY SHALL LOSE ITS RIGHT TO STRIKE A NAME. IF MORE THAN ONE PROSPECTIVE ARBITRATOR REMAINS, THEN THE ARBITRATION ADMINISTRATOR OF JAMS SHALL CHOOSE A SINGLE ARBITRATOR FROM THE LIST OF REMAINING PROSPECTIVE ARBITRATORS.

(e) DISCOVERY SHALL BE LIMITED. NO DEPOSITIONS, INTERROGATORIES OR REQUESTS FOR ADMISSIONS SHALL BE ALLOWED. THE ARBITRATOR SHALL HAVE DISCRETION TO ORDER PRE-HEARING EXCHANGES OF REQUESTED DOCUMENTS AND SUMMARIES OF TESTIMONY OF PROPOSED WITNESSES.

(f) TIME OF HEARING. HEARINGS SHALL COMMENCE AT JAMS' OFFICE IN LOS ANGELES, CALIFORNIA, WITHIN FORTY-FIVE (45) DAYS OF THE FILING OF DEMAND FOR ARBITRATION AND NOTICE OF CLAIM WITH JAMS.

(g) USE OF JAMS RULES OF PRACTICE AND PROCEDURES. EXCEPT WHERE SPECIFICALLY STATED OTHERWISE IN THIS AGREEMENT, THE THEN CURRENT JAMS RULES OF PRACTICE AND PROCEDURE SHALL CONTROL.

(h) APPLICABLE LAW. THE ARBITRATOR SHALL APPLY THE SUBSTANTIVE LAW OF THE STATE OF CALIFORNIA.

(i) ENFORCEABILITY OF AWARD. THE AWARD MAY BE JUDICIALLY ENFORCED BY EX PARTE APPLICATION. ADDITIONALLY, THE PREVAILING PARTY AS DETERMINED BY THE ARBITRATOR SHALL BE ENTITLED TO RECOVER FROM THE OTHER PARTY ALL REASONABLE FEES, EXPENSES, COSTS AND ATTORNEYS' FEES, INCLUDING FEES PAID TO EXPERT WITNESSES, INCURRED IN PROSECUTING THIS CLAIM.

(j) SUCCESSOR DISPUTE RESOLUTION ENTITY. SHOULD JAMS OR A SUCCESSOR ENTITY NO LONGER BE IN EXISTENCE AT THE TIME AN ARBITRATION DISPUTE ARISES, THEN THE PARTIES HEREBY AGREE TO BINDING ARBITRATION OF THE ARBITRATION DISPUTE BEFORE THE LOS ANGELES REGIONAL OFFICE OF THE AAA, PURSUANT TO THE COMMERCIAL ARBITRATION RULES OF THE AAA, WHICH SHALL SUPERSEDE ANY INCONSISTENT PROVISION HEREIN. AWARD IN SUCH PROCEEDINGS MAY BE JUDICIALLY ENFORCED.

NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN SHALL PRECLUDE, PROHIBIT OR LIMIT LANDLORD FROM FILING AN ACTION OR LAWSUIT (INSTEAD OF AN ARBITRATION PROCEEDING) AND LITIGATING ANY DISPUTE PERTAINING TO OR ARISING OUT OF THE TENANT'S FAILURE TO PAY ANY MINIMUM RENT, ADDITIONAL RENT OR ANY OTHER SUM UNDER THE LEASE (INCLUDING, WITHOUT LIMITATION, AN ACTION FOR UNLAWFUL DETAINER), AND LANDLORD RESERVES ALL SUCH RIGHTS AND REMEDIES (INCLUDING ALL RIGHTS TO SEND NOTICES PREREQUISITE TO SUCH ACTIONS).

NOTICE: BY INITIALLING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY ARBITRATION DISPUTES ARISING OUT OF THE MATTERS DESCRIBED IN THIS ARBITRATION PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED


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
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TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTOOD THE FOREGOING AND AGREE TO SUBMIT ARBITRATION DISPUTES ARISING OUT OF THE MATTERS DESCRIBED IN THIS ARBITRATION PROVISION TO NEUTRAL ARBITRATION AS PROVIDED HEREIN.

  
INITIALS

  
INITIALS

  
INITIALS



LANDLORD'S WORK

No Landlord's Work shall be required under this Lease, and Tenant hereby accepts the Premises in the condition as of the date of possession hereunder on an "as is" "where is" basis, without warranty of any kind, with all faults and defects and subject to all Laws affecting the Premises and the Shopping Center. ~~SUBJECT~~

TO RIDER # 56

**SIGN CRITERIA**

To be supplied by Landlord at a future time.

## RULES AND REGULATIONS

The following are rules and regulations applicable to the Shopping Center:

1. Landlord shall have the right and authority to designate specific areas within the Shopping Center in which automobiles and other transportation vehicles of Tenant, its authorized subtenants, and any of their respective agents, employees, contractors, licensees and concessionaires (collectively, "Employees") shall be parked. Neither Tenant nor any of the Employees shall use any area within the Shopping Center for motor vehicle parking, except the area or areas specifically designated for employee parking and for the particular period of time such use is to be made as determined or as established by Landlord. Tenant shall furnish to Landlord upon request a complete list of license numbers of all such automobiles and other transportation vehicles of Tenant or the Employees.
2. No person shall use any parking area, except for the parking of motor vehicles during the period of time such person or the occupants of such vehicle are customers or business invitees of the businesses operating within the Shopping Center. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking spaces. Limitations may be imposed as to the length of time for parking use within a specified area or areas of the Shopping Center.
3. All loading and unloading of goods shall be done only at such times, in the areas and through the entrances as shall be designated from time to time for such purposes by Landlord. Tenant shall use its best efforts to cause all deliveries, loading, unloading and services to the Premises to be completed before 10:00 a.m. each day. Tenant shall also use its best efforts to prevent any delivery trucks or other vehicles servicing the Premises from parking or standing in front of, or at the rear of, the Premises from 10:00 a.m. to 9:00 p.m. of each day. Landlord reserves the right to further regulate the activities of Tenant in regard to shipping of merchandise, supplies and fixtures to and from the Premises, and Tenant agrees to abide by such further rules and regulations of Landlord.
4. Roadways shall not be used at a speed in excess of twenty (20) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers within designated areas.
5. No person shall use any utility area, truck facility, parking area, driving lane, sidewalk, other Common Area or other area reserved for use in connection with the conduct of business except for the specific purpose for which such area is designated.
6. Except as permitted in Tenant's lease or except as permitted by Landlord's prior written consent, no person shall, within the Shopping Center:
  - 6.1 Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever;
  - 6.2 Exhibit any sign, placard, banner, notice or other materials outside of the leased premises or visible outside of the leased premises of such person;
  - 6.3 Distribute any circular, booklet, handbill, placard or other materials, except at such times and places as previously authorized by Landlord in writing;
  - 6.4 Solicit membership in any organization, group or association or contribution for any purpose, except at such times and places as previously authorized by Landlord in writing;
  - 6.5 Parade, patrol, picket, demonstrate, or engage in any conduct that might tend to interfere with or impede the use of the Common Area or other portions of the Shopping Center by Landlord or any occupant of the Shopping Center or any of their respective employees or invitees, create a disturbance, attract attention or harass, annoy, disparage, or be detrimental to the interests of any business establishments within the Shopping Center;
  - 6.6 Use the Common Area for any purpose when none of the business establishments within the Shopping Center is open for business;
  - 6.7 Throw, discard, or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind;
  - 6.8 Conduct any auction, fire, bankruptcy or going-out-of-business sale in, at or about the Shopping Center or any portion or portions thereof, except pursuant to court order;
  - 6.9 Use any sound-making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant or distasteful to occupants or invitees;
  - 6.10 Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvements or property situated within the Common Area or other portions of the Shopping Center; and
  - 6.11 Solicit business or display any merchandise within the Common Area.
7. The outside areas immediately adjoining the leased premises of Tenant shall be kept clean and free from dirt and rubbish by Tenant to the reasonable satisfaction of Landlord.
8. The Common Area plumbing facilities shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown in any toilet, urinal or sink, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant, if Tenant or its employees caused it.
9. Each tenant shall regularly remove all trash, refuse and waste material from its leased premises and shall place same into trash bins designated by Landlord, and until removal from such premises such trash, refuse and

waste shall be stored (i) in adequate containers, which shall be located so as not to be visible to the general public, and (ii) so as not to constitute any health or fire hazard or nuisance to any tenant or occupant.

10. No portion of the Common Area of the Shopping Center shall be used for any cooking, washing, lodging or illegal purposes.
11. No use shall be made of the Shopping Center or any portion or portions thereof that would (i) violate any law, ordinance or regulation, (ii) constitute a nuisance, (iii) constitute a hazardous use, or (iv) violate, suspend, or void any policy or policies of insurance.
12. The sidewalks, halls, passages, exits, entrances, elevators, shopping malls and stairways of the Common Area or the Shopping Center shall not be obstructed by Tenant or its Employees or used by Tenant or its Employees for any purpose other than for ingress to and egress from its leased premises.
13. Tenant shall not place or permit any radio or television antenna, loudspeaker, amplifier or other device in the Common Area or where the same can be seen or heard in the Common Area without the prior written consent of Landlord.
14. No use or operation shall be made, conducted or permitted on any part of the Shopping Center that is objectionable to the development or operation of the Shopping Center. Included among the uses or operations that are objectionable are uses or operations that produce or are accompanied by the following characteristics. This list is not intended to be all-inclusive:
  - 14.1 Any noise, litter, dust, dirt, odor or other activity that may constitute a public or private nuisance;
  - 14.2 Any activity which may cause dangerous hazards;
  - 14.3 Any warehouse operation, or any assembling, manufacturing, distilling, refining, smelting, industrial, agricultural, drilling or mining operation; provided, however, that any area used for the storage of goods to be sold at any retail establishment in the Shopping Center shall not be deemed to be a warehouse operation;
  - 14.4 Any trailer court, mobile home park, lot for sale of new or used motor vehicles, labor camp, junkyard, stockyard, or animal raising (other than pet shops if this Lease expressly permits such use);
  - 14.5 Any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the Premises from authorized uses and if handled in a reasonably clean, sanitary and noiseless manner;
  - 14.6 Any car washing establishment or mortuary; and
  - 14.7 Any automobile body repair work.
15. Landlord may waive any one or more of these rules and regulations for the benefit of any particular tenant but no such waiver by Landlord shall be construed as a waiver of such rules and regulations in favor of any other tenant nor prevent Landlord from thereafter enforcing any such rules and regulations against any or all of the tenants of the Shopping Center.
16. These rules and regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of the Lease. In the event any provisions of these rules and regulations shall conflict with specific provisions of the Lease to which these rules and regulations are attached, the provisions of the Lease shall control.
17. Landlord reserves the right to change or make such other reasonable rules and regulations as, in its judgment, may from time to time be needed for safety, security, care and cleanliness of the Shopping Center and for preservation of good order therein. Tenant agrees to abide by all such rules and regulations hereinabove stated and any additional rules and regulations which are adopted.
18. Tenant shall be responsible for the observance of all the foregoing rules by Tenant's clients, customers, invitees and guests.

# TENANT'S ESTOPPEL CERTIFICATE

The undersigned, as "Tenant" under that certain lease, dated \_\_\_\_\_, (herein "Lease") for the property located at \_\_\_\_\_, made with \_\_\_\_\_, as "Landlord," holds all of the interest of the Tenant under the Lease and understands that (1) Landlord has entered into an agreement to [sell] [encumber] to \_\_\_\_\_, (collectively "Buyer"), certain real property ("Subject Property") located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, including, among other property, the premises described in such Lease; and (2) Landlord and Buyer are relying upon this certificate in connection with the transactions contemplated by such agreement. With such understanding, Tenant agrees, on behalf of himself or itself and his or its successors and assigns, for the benefit of Landlord, Buyer and their respective successors and assigns, that:

1. That the undersigned has entered into occupancy of the premises described in said Lease;
2. That the Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way, except \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. That the Lease represents the entire agreement between the parties as to said leasing;
4. That the commencement date of the Lease is \_\_\_\_\_;
5. That the Lease expires on \_\_\_\_\_, 199\_\_\_\_\_, and there are no options to extend the term thereof except as follows:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. That all conditions of said Lease to be performed by Landlord and necessary to the enforceability of said Lease have been satisfied;
7. That there are no defaults by either Tenant or Landlord under the Lease, nor has any event occurred or failed to have occurred which, with the passage of time or the giving of notice, or both, would ripen into such default;
8. Minimum Rent and other monthly obligations of Tenant under the Lease have commenced and are currently due and payable in full on the \_\_\_\_\_ day of each month in the following amounts:
 

(a) Minimum Rent:	\$ _____
(b) Building Expenses, Taxes and Insurance Charges:	\$ _____
(c) Other (explain):	\$ _____
9. Minimum Rent and other monthly obligations of Tenant under the Lease have been paid in full through \_\_\_\_\_, 199\_\_\_\_\_, and no Minimum Rent or other sums have been prepaid;
10. Tenant has delivered to Landlord the sum of \$ \_\_\_\_\_, as a Security Deposit or other similar deposit under the Lease;
11. That on this date there are no existing defenses or offsets which the undersigned has against the enforcement of said Lease by Landlord;
12. There are no rights of first refusal held by Tenant under the Lease.
13. No interest in the Lease has been assigned and no portion of the premises described in the Lease has been sublet except: \_\_\_\_\_
14. All improvements to the premises described in the Lease that pursuant to the Lease are required to be constructed by Landlord have been completed, and any amount required to be paid to or on behalf of Tenant in connection with the construction and installation of any improvements to the premises described in the Lease has been fully paid.

The undersigned hereby:

1. Disclaims all right, title or interest in said premises except the rights granted by said Lease;

2. Agrees to send a copy of any notice or demand given or made to the Landlord pursuant to the provisions of said Lease, by registered mail to the holder of a first mortgage on the demised premises, or its assignee, upon being notified in writing of such holder's or assignee's name and address;

3. Agrees to give to the holder of said mortgage or its assignee the same right as the Landlord has to cure any default complained of in said notice or demand;

4. Agrees that Buyer shall have no obligation or liability for, and Tenant shall not have the right to offset or withhold Minimum Rent or any other sums as a result of, any defaults of Landlord under the Lease accruing prior to the date Buyer acquires an interest in the Subject Property;

5. Agrees that Buyer shall have no obligation to credit Tenant with any prepaid Minimum Rent or other sums in excess of the current month or return any Security Deposit unless Buyer shall have actually received the benefit of such prepaid Minimum Rent or other sums or shall have received such Security Deposit or credit therefor from Landlord; and

6. Agrees that no modification or amendment to the Lease (except as herein disclosed to Buyer) shall be valid, unless agreed to in writing by the Buyer.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 199 \_\_\_\_\_.

Tenant:

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_

\_\_\_\_\_

ORIGINAL  
Number 1 of  
4 executed  
counterparts

Rider attached to Lease dated January , 2000

Landlord: **THE SHANE FAMILY TRUST and THE MALTZMAN FAMILY**

Tenant: **JENNIFER H. B. CA, INC.**

Relating to property known as 6672 "B" Beach Boulevard, Huntington Beach, CA

Consisting of provisions numbered: 50 through 88

50. Rider Controls - The printed part of this Lease is hereby modified and supplemented as follows, it being agreed that wherever there is any conflict between this Rider and the printed part of this Lease and/or other riders to this Lease (if any), the provisions of this Rider are paramount and shall govern, and this Lease shall be construed accordingly. As used in this Rider, the phrase "to the best of Landlord's knowledge" or words of similar import means the actual subjective knowledge of Brad Pearl, without investigation or inquiry.

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

52. Character of Shopping Center Tenant has entered into this Lease in reliance upon the representation by Landlord that the shopping Center is, and will remain, retail in character, and further, that no part of same shall be used as a theater, auditorium, gymnasium, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, night club or adult book or adult video tape store (which are defined as stores in which at least ten percent (10%) of the inventory is not available for sale or rental to children under 18 years old because such inventory explicitly deals with or depicts human sexuality).

53. Commencement of Term and Rent Commencement Date The first "lease year" during the term hereof shall be the period commencing on the rent commencement date if it occurs on the first day of a calendar month, or the first day of the next succeeding calendar month if the rent commencement date occurs on any date other than the first day of a calendar month, and shall terminate twelve (12) full calendar months thereafter:

(a) Notwithstanding anything in this Lease to the contrary, all payments under this Lease shall not commence or begin to accrue until one hundred and twenty (120) days after delivery to Tenant of the Premises in the condition called for under this Lease and written notice to Tenant thereof.

(b) Within five (5) days of the date of the tendered possession of the leased premises to the Tenant, both Landlord and Tenant agree to execute a certificate in form annexed herewith marked as Possession Agreement.

55. Access to Building - Landlord covenants and agrees that (other than as is necessary for repair or maintenance) during the Lease Term (i) there shall be direct and unencumbered access between the public ways and the sidewalk on either side thereof on the one hand and the Premises on the other hand and (ii) no additional buildings (other than the construction of an approximately 12,000 square foot building upon the pad previously occupied by Sherwin Williams), structures, obstructions, barriers and the like constructed upon, attached or placed adjacent to the Building and/or the Premises, which

would materially and adversely affect the access to or visibility of the Building and/or the Premises and/or Tenant's sign(s). In addition, Landlord covenants and agrees that it will not reduce the space nor the dimension of the Demised Premises.

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

58. Real Estate Taxes - (a) Landlord covenants and agrees that except to the extent caused by a default by Tenant, it shall timely and fully pay, or cause to be paid, the real estate taxes and assessments levied against the Building, including the Premises and all improvements therein.

(b) Abatements - If Landlord shall obtain any abatement, refund or rebate in Real Estate Taxes, Landlord shall promptly credit to Tenant its share of such abatement, refund or rebate (less Tenant's share of the reasonable cost and reasonable expense of obtaining them against the Taxes, Operating Expenses or Building Expenses next due.

59. Alterations - Tenant shall have the right, without consent of Landlord, to make non-structural repairs and alterations provided disbursements do not exceed \$50,000.00 per annum for the first Lease Year and \$15,000.00 per annum per Lease Year thereafter.

60. Use of the Premises - Tenant shall use the Premises for the purpose of conducting the business of the sale of sofas, furniture, home furnishings and related items and ancillary items. Subject to the rights of tenants under existing leases, and except for incidental uses by other tenants, the use of the premises shall include the exclusive right to sell convertible sofas. Landlord represents and warrants that to the best of Landlord's knowledge, there is presently issued and shall remain outstanding a certificate of occupancy for the Premises pursuant to which Tenant may occupy the Premises for the purpose permitted hereunder, that there is presently issued and shall remain outstanding all required permits for equipment utilized as part of or by which services are provided to the Premises, that Tenant's use and occupancy of the Premises for the purpose permitted hereunder will not be in violation of any certificate of occupancy hereafter issued for the Premises or any covenant, restriction, agreement or other instrument now or hereafter affecting the Premises.

61. Yield Up - Tenant agrees, at no later than the Expiration Date, to remove all trade fixtures and personal property, to repair any damage caused by such removal, to remove all Tenant's signs wherever located and to surrender all keys to the Premises and yield up the Premises, in the same good order and repair in which Tenant is obliged to keep and maintain the Premises by the provisions of this Lease, reasonable wear and tear and damage by fire, casualty or taking excepted. Any property not so removed shall be deemed abandoned and may be removed and disposed of by Landlord in such manner as Landlord shall determine, without any obligation on the part of Landlord to account to Tenant for any proceeds therefrom, all of which shall become the property of Landlord.

62. Rules and Regulations - All rules and regulations that Landlord may make shall be uniform, reasonable, and applied equally on a non-discriminatory basis to all of the Tenants.

63. Ownership - Landlord warrants and represents that it is the sole owner of the fee simple interest in the entire Building; and Landlord further warrants and represents that to the best of Landlord's knowledge, there are no zoning regulations, governmental use restrictions, restrictive agreements, leases, environmental laws or other instruments or limitations that prevent or restrict the use



of the Building or any part of the Building, or prevent or limit the use of the Premises, for the business Tenant initially intends to conduct therein, with which intended use Landlord is familiar, or otherwise conflict with any of the provisions of this Lease.

64. Maintenance - Landlord agrees to transfer or enforce for the benefit of Tenant the unexpired portions, if any, of any warranties relating to the Premises, the equipment that is a part thereof, the HVAC system and the like. Landlord covenants and agrees that it will, at all times during the Lease Term, maintain and keep in good order and repair the foundation, floorslab, exterior, exterior walls, steel frame, roof, structural portions, gutters, downspouts, if any, and underground utility lines of the Premises and the Building, and all utility lines serving the Premises. Landlord shall make all repairs and replacements within a commercially reasonable time period and without, to the extent practicable, not interfering with the conduct of Tenant's business. If during such repairs and replacements the Building or the Premises are wholly unsuitable for their use as provided in this Lease for a period in excess of ten (10) days, there shall be an equitable abatement of Minimum Annual Rent, Percentage Rent and all other additional rent until such time as such repairs and replacements have been completed.

65. Total or Partial Destruction - If the Premises shall be damaged by fire, the elements, accident, or other cause or casualty, but are not thereby rendered untenantable or unusable for its intended purpose, Landlord shall to the extent of available insurance proceeds, cause such damage to be promptly repaired and the Premises restored. If the Premises shall be damaged by fire, the elements, accident, or other cause or casualty, such that the Premises shall be rendered untenantable or unusable for its intended purpose only in part, Landlord shall to the extent of available insurance proceeds cause the damage to be repaired and all rent payments shall abate proportionately as to the portion of the Premises rendered untenantable or unusable based upon the reduction in rentable area caused by such damage. If the Premises shall be rendered wholly untenantable or unusable for its intended purpose, Landlord shall, to the extent of available insurance proceeds, cause such damage to be repaired and all rent shall abate until the Premises have been restored and rendered tenantable and usable for its intended purpose, or Landlord may, at its election, terminate this Lease and the tenancy hereby created by giving to Tenant, within sixty (60) days following the date of said occurrence, written notice of Landlord's election to do so, and in the event of such termination, rent shall be adjusted as of the date of said occurrence; provided, however, if within four (4) months after the occurrence, Landlord shall not have fully restored the Premises and enabled Tenant to lawfully occupy the Premises for the purposes permitted under this Lease; then, at Tenant's election, Tenant may terminate this Lease by written notice to that effect and in the event of such termination, rent shall be adjusted as of the date of said occurrence.

66. Condemnation - Tenant may terminate this Lease if there is any material adverse impairment of ingress or egress from or to the shopping center through condemnation or if the following property, or any interest in it, is condemned for public or quasi-public use:

- (a) Any part of the demised premises; or
- (b) More than fifteen percent (15%) of the parking spaces in the common area of the shopping center.

Tenant will not have any claim or be entitled to any award for diminution in value of its rights under this Lease or for the value of any unexpired term of this Lease; however, tenant may make its own claim for any separate award that may be made by the condemnor for tenant's loss of business or for the taking of or injury to tenant's improvements, or on account of any cost or loss tenant may sustain in the removal of tenant's trade fixtures, equipment, and furnishings, or as a result of any alterations, modifications, or repairs that may be reasonably required by tenant in order to place the remaining portion of the premises not taken in a suitable condition for the continuance of tenant's occupancy.

If this Lease is terminated pursuant to the provisions of this paragraph, then all rentals and other charges payable by tenant to landlord under this Lease will be paid to the date of the taking, and any rentals and other charges paid in advance and allocable to the period after the later of (i) the date of the taking or (ii) the date Tenant ceases to conduct business from the Premises, will be repaid to tenant by landlord. Landlord and tenant will then be released from all further liability under this Lease.

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

69. Right to Cure Defaults - (a) Tenant shall have a right to cure any default of Landlord including, but not limited to, any failure of Landlord to perform and/or complete Landlord's Work in accordance with and in the manner required by the provisions of this Lease provided Tenant shall first give Landlord and the beneficiary of any trust deed encumbrance upon the Premises or Shopping Center ("Landlord's Lender") at least thirty (30) days prior written notice, specifying the nature of such default and during such thirty (30) day period, Landlord or Landlord's Lender does not commence to cure such default and thereafter prosecute such cure to completion. Notwithstanding the foregoing, in the event that such cure would reasonably require Landlord's Lender to obtain possession of the Shopping Center and/or Premises, then Landlord's Lender shall have such additional time in which to cure Landlord's default as is necessary to allow Landlord's Lender to obtain such possession except in the case of emergency, and Tenant may reimburse itself for the reasonable cost thereof out of succeeding rental payments.

(b) With regard to any monetary default, Tenant shall have the right to cure said default within ten (10) days after notice and Landlord will not impose late fee penalties nor any interest on said amount nor any other late charges or fees but not limited to same.

(c) With regard to non-monetary default, Tenant shall have a right to commence to cure and consummate such cure of default or perform within thirty (30) days after notice.

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

71. Assignment, Subletting, etc. - (a) Tenant shall have the right to make any assignment, transfer or subletting of the Premises, or any part thereof, only upon the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, delayed or charged for to any other entity or person.

(b) Notwithstanding the above, no consent shall be required for, and Tenant shall have the right to make, any assignment, transfer or subletting of the Premises, or any part thereof (i) to a parent, subsidiary or affiliated company, (ii) directly or indirectly, in any manner, in connection with a merger, or a consolidation or a combination, or a sale of substantially all of the assets constituting a portion and/or all of the retail chain of which the business in the Premises is a part in the state in which the Premises is located.

(c) Tenant shall have the right upon prior written notice to Landlord to assign, sublet or otherwise transfer its interest in this Lease to a Licensee, Franchisee or operating subsidiary of Tenant, without Landlord's approval, written or otherwise. No assignment, sublet, license or transfer of Tenant's interest in this Lease pursuant to this Section 71(a)-(c) shall relieve Tenant from liability for the full and timely performance of all obligations of Tenant under this Lease.

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

To Landlord: NewMark Merrill Companies  
18801 Ventura Blvd. - Suite 300  
Tarzana, CA 91356  
Attn: Sandy Sigal

To Tenant: Jennifer H. B. CA, Inc.  
c/o Jennifer Convertibles, Inc.  
419 Crossways Park Drive  
Woodbury, New York 11797  
Attn: Edward Seidner, Exec. V.P.

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

73. Waiver of Subrogation - Notwithstanding anything contained herein to the contrary, each party hereto waives all rights of recovery against the other for all losses, damages or injuries to the Premises, the Building and any improvements, and other property of either party thereon. All insurance that is carried by either party with respect to the Premises, the Building or other property thereon, whether or not required, shall include provisions that either designate the other party as one of the insureds or deny to the insurer acquisition by subrogation of rights of recovery against the other party. Neither party shall acquire as insured under any insurance carried by the other any right to participate in the adjustment of loss or to receive insurance proceeds and agrees upon request promptly to endorse and deliver to the other party any checks or other instruments in payment or loss in which it is named as payee.

74. Subordination and Rights of Mortgagee - Tenant agrees at the request of Landlord to subordinate this Lease to any institutional first mortgage or deed of trust (utilizing such institutional lender's customary form) placed or to be placed upon the Premises by Landlord, provided holder agrees not to disturb the possession and other rights of Tenant under or pursuant to this Lease during the Lease Term, so long as Tenant continues to perform its obligations hereunder and in the event of acquisition of title, or coming into possession, by said holder through foreclosure proceedings or otherwise, to accept Tenant as Tenant of the Premises under the terms and conditions hereunder and to assume and perform all of Landlord's obligations hereunder.

75. (a) Government Requirements - In regard to any provision regarding work to be performed as required by government or other authorities, Tenant shall not be obligated to make any repairs, changes, alterations or additions that are otherwise the obligation of Landlord under this Lease. Specifically, but without limiting the generality of the foregoing, Landlord shall be responsible for abating any and all hazards relating to lead paint or asbestos in or about the Premises or the Building, as may be required by governmental regulation including such abatement as may be required in connection with the issuance of any building permits or otherwise.

(b) Laws and Ordinances - Landlord shall, at Landlord's sole cost and expense, promptly observe and comply with all present or future laws, rules, requirements, recommendations, orders, directions, ordinances, and regulations of the United States of America, the State, county, and any other municipal, governmental or lawful authority whatsoever affecting the common areas, and of any and all of its or their departments, bureaus and officials, except when such observance or compliance is required by reason of any act or omission of Tenant in violation of such laws, rules or regulations, or

due to the particular nature of Tenant's business, or the location by Tenant of partitions or trade fixtures in which event Tenant, at its sole cost and expense, shall observe and comply with same.

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

77. Damages - In determining any damages hereunder, Landlord shall use its best efforts to mitigate its damages.

78. Authority - The individuals executing this Lease hereby represent that they are empowered and duly authorized to so execute this Lease on behalf of the parties they represent.

79. Mutuality of Lease Provisions - All provisions of said Lease relating to (i) payment of attorneys' fees, (ii) effect of waivers (or lack of waivers), and (iii) delays ("force majeure"), shall be deemed mutual, Tenant having the same rights with respect thereto as Landlord.

80. Powers of Attorney - Any: (i) powers of attorney or other such rights granted by Tenant to Landlord, and (ii) penalties, liquidated damages or other such obligations upon Tenant as a result of a breach by Tenant of any provision(s) of said Lease, and (iii) self-help provisions granted to the Landlord, shall be of no force or effect if enforcement thereof would be prohibited by applicable law.

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

83. Payment for Services - In no event shall Tenant be required to pay with respect to any utility service or service provided or designated by Landlord, an amount in excess of the amount that Tenant would be required to pay if purchasing directly from such utility or other company.

84. Warranties - (a) Landlord represents and warrants that to the best of Landlord's knowledge the HVAC system, plumbing system and electrical system will be in good working order at date of delivery of the premises and to the best of Landlord's knowledge, that the roof will be free of leaks.

(b) The air conditioning unit which is presently installed in the demised premises is the property of the Landlord. Tenant is hereby granted the right to use said equipment and is required to keep it in good repair. It is understood that during the first twelve (12) months commencing from the rent commencement date of the Lease, Landlord will pay for all costs of maintenance, repairs and replacements of the air conditioning equipment; thereafter Tenant will pay all costs of operation, maintenance, repairs and replacements of the air conditioning equipment.

85. Landlord's Cash Contribution, Tenant's Inducement - As an inducement to enter into this Lease agreement Landlord will pay Tenant no later than forty-five (45) days after the rent commencement date of this Lease a cash contribution of Five Thousand Dollars \$5,000.00. Said payment shall be made simultaneously with the opening of the store's retail business.

86. Imputation - For purposes of this Lease, the negligence, affirmative act or violation of the provisions of this Lease by an employee or agent of Landlord or Tenant, or by a contractor, employed

by Landlord or Tenant, shall be the negligence, affirmative act or violation of the provisions of this Lease of Landlord or Tenant, as the case may be.

87. Operating Expenses - (a) It shall not include (i) expenses for any capital improvements made to Land or Building, (except that capital expenses for improvements which result in savings of labor or other costs shall be included at the cost or such improvements amortized over the useful life of the improvements); (ii) expenses for repairs or other work occasioned by fire, windstorm or other insured casualty; (iii) expenses incurred in leasing or procuring new Tenants (i.e. lease commissions, Tenant inducements, advertising expenses and expenses of renovating space for new Tenant); (iv) legal expenses in enforcing the terms of any lease; (v) interest or amortization payments on any mortgage or mortgages and/or capital improvements; (vi) administrative expenses of Landlord in excess of ten (10%) percent; (vii) expenses in connection with maintaining and operating any garage operated by Landlord incident to the operation of the shopping center; (viii) removal of hazardous material; (ix) direct settlement payments by Landlord in personal injury or property claims. It is expressly understood and agreed that the calculation of operating expenses should not include the expenses for real estate taxes and insurance premiums if inclusion of the same would be duplicative of other charges assessed to Tenant.

(b) All operating expenses shall be based upon competitive charges for similar services and/or materials that are available in the general vicinity of the shopping center.

(c) Based upon costs incurred in 1999, the costs for operating expenses, taxes and insurance for the first lease year are estimated to be as follows:

Operating Expenses	\$7,953.74
Insurance	\$ 697.98
Real Estate Taxes	\$4,324.04

The foregoing are estimates only and shall not be binding upon Landlord..

(d) However, in no event will Landlord be entitled to collect in excess of 100% of the total expense from all the Tenants in the center. Generally accepted accounting principles, consistently applied will be used to determine expenses.

88. Tenant dispute of Operating Expenses - Any statement rendered by Landlord to Tenant for Tenant's share of Landlord's Operating Expenses shall be deemed accepted by Tenant unless, within nine (9) months after the receipt of such statement, Tenant shall notify Landlord in writing of the items it disputes ("Notice of Dispute"). Pending the determination of such dispute, Tenant shall pay all amounts due as indicated on the statement and such payments shall be without prejudice to Tenant. In connection with determining and resolving such dispute, Tenant may upon reasonable prior written notice and at Landlord's home office, audit and review the books of Landlord kept in connection with Landlord's Operating Expenses. If the dispute is not amicably settled between Landlord and Tenant within sixty (60) days after completion of Tenant's audit or review, either party may refer the disputed items to a reputable firm of independent certified public accountants, selected by Landlord and approved by Tenant, for a decision, and the decision of such firm shall be conclusive and binding upon Landlord and Tenant. The expenses involved in such determination shall be borne by the party against whom a decision is rendered by such accountants, provided that if more than one (1) item is disputed and the decision shall be against both parties, then the expenses shall be apportioned according to the monetary value of the items decided against each party. If the dispute on any item shall be determined

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in Tenant's favor, the amount of Tenant's overpayment shall be refunded to Tenant within thirty (30) days of such accounting firm's notice of its decision.

**Landlord:**

The Shane Family and the Maltzman Family

By: 

Name: Sandy Seid

Title: Manager

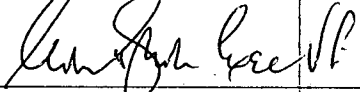
By: \_\_\_\_\_

Name:

Title:

**Tenant:**

Jennifer H. B7CA, Inc.

By: 

Edward Seidner

Executive Vice President

Date: JANUARY 1000

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LETTER OF POSSESSION

PURSUANT TO AGREEMENT dated \_\_\_\_\_, 199\_ between:

Landlord: THE SHANE FAMILY and the MALTZMAN FAMILY

Tenant: JENNIFER H. B. CA., INC.

WHEREAS, the parties hereto entered into a Lease of the premises at:

16672 "B" Beach Boulevard, Huntington Beach, CA

WHEREAS, the Landlord has complied with all the terms and conditions of such Lease on the Landlord's part to be performed, and

THEREFORE, in consideration of the mutual covenants herein contained, and for the sum of \$1.00 each to the other in hand paid, receipt of which is hereby acknowledged, it is agreed as follows:

1) The Tenant acknowledges that the Landlord has complied with all the terms, covenants, and the conditions of said Lease on Landlord's part to be performed. The Tenant agrees that he has taken possession of the premises on \_\_\_\_\_, 2000.

2) Tenant is to commence rental payments on \_\_\_\_\_, 2000 as provided for in the Lease. The termination of said Lease shall be \_\_\_\_\_, 200\_.

**Landlord:**

The Shane Family and the Maltzman Family

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

Name:

Title:

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

Name:

Title:

**Tenant:**

Jennifer H. B. CA, Inc.

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

Edward Seidner

Executive Vice President

Dated: January \_\_\_, 20000

ORIGINAL

Number 1 of  
4 executed  
counterparts.

### GUARANTY OF LEASE

THIS GUARANTY OF LEASE ("Guaranty") is entered into as of the \_\_\_ day of January, 2000, by JENNIFER CONVERTIBLES, INC. a Delaware corporation ("Guarantor"), for the benefit of THE SHANE FAMILY TRUST and THE MALTZMAN FAMILY ("Landlord"), with reference to the following facts:

### RECITALS

- A. Landlord and Jennifer H.B. CA, Inc., a Delaware corporation ("Tenant") have entered or will enter into a Shopping Center Lease of even date herewith (the "Lease").
- B. By its covenants herein set forth, Guarantor has induced Landlord to enter into the Lease, which was made and entered into in consideration for Guarantor's said covenants.
- C. Unless otherwise defined herein, all capitalized terms have the meanings defined in the Lease.

### AGREEMENT

- 1. The recitals set forth above are not merely recitals, but are an integral part of this Guaranty and are incorporated herein by reference
- 2. Guarantor unconditionally guarantees, without deduction by reason of setoff, defense or counterclaim, to Landlord and its successors and assigns the full and punctual payment, performance and observance by Tenant, of all of the amounts, terms, covenants and conditions in the Lease contained on Tenant's part to be paid, kept, performed and observed.
- 3. If Tenant shall at any time default (after any applicable cure period) in the punctual payment, performance and observance of any of the amounts, terms, covenants or conditions in the Lease contained on Tenant's part to be paid, kept, performed and observed, Guarantor will pay, keep, perform and observe same, as the case may be (and subject to the limitations applicable after the expiration of the Full Guaranty Period (as defined below)), in the place and stead of Tenant. Guarantor shall also pay to Landlord all reasonable and necessary incidental damages and expenses incurred by Landlord as a direct and proximate result of Tenant's failure to perform, which expenses shall include reasonable attorneys' fees and interest on all sums due and owing Landlord by reason of Tenant's failure to pay same, at Bank of America's prime rate of interest, plus two percent (2%). Notwithstanding anything to the contrary contained herein, Guarantor's liability hereunder following the expiration of the thirty sixth (36th) month following the date of the commencement of Tenant's obligation to begin payment of Minimum Rent (the "Full Guaranty Period") shall be limited to an amount (the "Termination Amount") equal to three (3) months of the then applicable Minimum Rent plus and amount equal to the aggregate Additional Rent which was applicable to the three (3) month period immediately preceding Tenant's default. It is expressly understood and agreed that prior to the expiration of the Full Guaranty Period, Guarantor's liability shall not be limited to and may exceed the Termination Amount. This is a guaranty of payment and not merely of collection of Tenant's failure to perform, which expenses shall include reasonable attorneys' fees and interest on all sums due and owing Landlord by reason of Tenant's failure to pay same, as provided above. Notwithstanding the foregoing, this Guaranty shall terminate and be of no force after thirty six (36) months following expiration of the Full Guaranty Period.
- 4. Any act of Landlord, or its successors or assigns, consisting of a waiver of any of the terms or conditions of the Lease, the giving of any consent to any matter or thing relating to the Lease, or the granting of any indulgence or extension of time to Tenant may be done without notice to Guarantor and without releasing Guarantor from any of its obligations hereunder.
- 5. The obligations of Guarantor hereunder shall not be released by Landlord's receipt, application or release of any security given for the performance and observance of any covenant or condition in the Lease contained on Tenant's part to be performed or observed, nor by



any modification of the Lease, regardless of whether Guarantor consents thereto or receives notice thereof.

6. The liability of Guarantor hereunder shall in no way be affected by: (a) the release or discharge of Tenant in any creditor's, receivership, bankruptcy or other proceeding; (b) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease resulting from the operation of any present or future provision of the national bankruptcy act or other statute or from the decision of any court; (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) the cessation from any cause whatever of the liability of Tenant; (g) the exercise by Landlord of any of its rights or remedies reserved under the Lease or by law; or (h) any termination of the Lease.

7. If Tenant shall become insolvent or be adjudicated bankrupt, whether by voluntary or involuntary petition, if any bankruptcy action involving Tenant shall be commenced or filed, if a petition for reorganization, arrangement or similar relief shall be filed against Tenant, or if a receiver of any part of Tenant's property or assets shall be appointed by any court, Guarantor shall pay to Landlord the amount of all accrued, unpaid and accruing Fixed Minimum Rent, Additional Rent, and other charges due under the Lease to the date when the debtor-in-possession, the trustee or administrator accepts the Lease and commences paying same. At such time as the debtor-in-possession, the trustee or administrator rejects the Lease, however, Guarantor shall pay to Landlord all accrued, unpaid and accruing Fixed Minimum Rent, Additional Rent, and other charges under the Lease for the remainder of the Lease Term. At the option of Landlord, Guarantor shall either: (a) pay Landlord an amount equal to the Fixed Minimum Rent, Additional Rent, and other charges which would have been payable for the unexpired portion of the Lease Term reduced to present-day value; or (b) execute and deliver to Landlord a new lease for the balance of the Lease Term with the same terms and conditions as the Lease, but with Guarantor as tenant thereunder. Any operation of any present or future debtor's relief act or similar act, or law or decision of any court, shall in no way affect the obligations of Guarantor or Tenant to perform any of the terms, covenants or conditions of the Lease or of this Guaranty.

8. Guarantor may be joined in any action against Tenant in connection with the obligations of Tenant under the Lease and recovery may be had against Guarantor in any such action. Landlord may enforce the obligations of Guarantor hereunder without first taking any action whatever against Tenant or its successors and assigns, or pursuing any other remedy or applying any security it may hold. Guarantor hereby waives all rights to assert or plead at any time any statute of limitations as relating to the Lease, the obligations of Guarantor hereunder and any surety or other defense in the nature thereof including, without limitation, and other defenses which can be waived under the laws of the state in which the Premises are located.

9. Until all of the covenants and conditions in the Lease on Tenant's part to be performed and observed are fully performed and observed, Guarantor: (a) shall have no right of subrogation against Tenant by reason of any payment or performance by Guarantor hereunder; and (b) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to Landlord under the Lease.

10. If Landlord desires to sell, finance or refinance the project to which the Lease relates, or any part thereof, Guarantor shall deliver to any lender or buyer designated by Landlord such financial statements of Guarantor as may be reasonably required by such lender or buyer. Such statements shall include the past three years' financial statements of Guarantor. All such financial statements shall be received by Landlord in confidence and shall be used only for the foregoing purposes.

11. This Guaranty shall apply to the Lease, any extension, renewal, modification or amendment thereof, to any assignment, subletting or other tenancy thereunder and to any holdover term following the Lease Term granted under the Lease, or any extension or renewal thereof, without requiring guarantor's consent to any of the foregoing.

12. If this Guaranty shall be held ineffective or unenforceable by any court of competent jurisdiction or in the event of any limitation of Guarantor's liability hereunder other than as expressly provided herein, Guarantor shall be deemed to be a tenant under the Lease with the same force and effect as if Guarantor were expressly named as a joint and several tenant therein with respect to the obligations of Tenant thereunder hereby guaranteed.

13. In the event of any litigation between Guarantor and Landlord with respect to the subject matter hereof, the unsuccessful party in such litigation shall pay to the successful party all fees, costs and expenses thereof, including reasonable attorneys' fees and expenses.

14. If there is more than one undersigned Guarantor, (a) the term "Guarantor", as used herein, shall include all of the undersigned; (b) each provision of this Guaranty shall be binding on each one of the undersigned, who shall be jointly and severally liable hereunder; and (c) Landlord shall have the right to join one or all of them in any proceeding or to proceed against them in any order.

15. This instrument constitutes the entire agreement between Landlord and Guarantor with respect to the subject matter hereof, superseding all prior oral and written agreements and understandings with respect thereto. It may not be changed, modified, discharged or terminated orally or in any manner other than by an agreement in writing signed by Guarantor and Landlord.

16. This Guaranty shall be governed by and construed in accordance with the laws of the state in which the Premises are located.

17. Every notice, demand or request (collectively "Notice") required hereunder or by law to be given by either party to the other shall be in writing. Every provision of this Guaranty which provides that either party shall notify the other of any particular matter shall be governed by this Section. Notices shall be given by personal service or by United States certified or registered mail, postage prepaid, return receipt requested, or by telegram, mailgram or same-day or overnight private courier, addressed to the party to be served at the address indicated below or such other address as the party to be served may from time to time designate in a Notice to the other party. Notice personally served shall be effective when delivered to the party upon whom such Notice is served. If served by registered or certified mail, Notice shall be conclusively deemed served on the date shown on the return receipt, but if delivery is refused or the Notice is unclaimed, Notice shall conclusively be deemed given forty eight (48) hours after mailing. If served by telegram, mailgram or private courier, Notice to the addressee shall be conclusively deemed given as confirmed by the telegraphic agency or private courier service making delivery. Copies of any Notice shall be sent to the addresses, if any, designated for service of copies of Notices below; but the inadvertent failure to serve a copy of a Notice, either to the address so designated or in the manner provided in this Section, shall not render service of Notice invalid if the original Notice is served in accordance with this Section. Notice given by facsimile or telecopy shall not be effective unless receipt of such Notice is acknowledged by the recipient in writing, in which case the effective date of such Notice shall be the date of such written acknowledgment.

18. Any action to declare or enforce any right or obligation under the Lease may be commenced by Landlord in the applicable court in the County in which the Premises are located. Guarantor hereby consents to the jurisdiction of such Court for such purposes. Any notice, complaint or legal process so delivered shall constitute adequate notice and service of process for all purposes and shall subject Guarantor to the jurisdiction of such Court for purposes of adjudicating any matter related to this Guaranty. Landlord and Guarantor hereby waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Landlord against Guarantor or Guarantor against Landlord on any matter whatever arising out of, or in any way connected with, the Lease or this Guaranty, the relationship of Landlord and Guarantor, the use or occupancy of the Premises, any claim of injury or damage, or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise, now or hereafter in effect.

19. This Guaranty may be assigned in whole or part by Landlord upon written notice to Guarantor, but it may not be assigned by Guarantor without Landlord's prior written consent, which may be withheld in Landlord's sole and absolute discretion.

20. Guarantor represents and warrants to Landlord and Landlord's successors and assigns that Guarantor has established adequate means of obtaining from Tenant, on a continuing basis, financial and other information pertaining to Tenant's operations and condition (financial or otherwise). Guarantor expressly waives and relinquishes the performance of any duty on the part of Landlord (should any such duty exist) to disclose to Guarantor any fact, matter or thing related to Tenant, its assets, operations and condition (financial or otherwise) whether now known or hereafter discovered by Landlord during the life of this Guaranty.

The terms and provisions of this Guaranty shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and permitted assigns of the parties hereto.

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

"GUARANTOR"

JENNIFER CONVERTIBLES, INC.,  
a Delaware corporation

By: [Signature]  
Print Name: EDWARD SEIDNER  
Its: VICE - PRESIDENT

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Landlord's Address for Notices:

AS PROVIDED FOR  
IN THE NOTICE  
PROVISION

Guarantor's Address for Notices:

AS PROVIDED FOR  
IN THE NOTICE  
PROVISION