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Attorneys for *Crosspointe Plaza, LLC*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

JENNIFER CONVERTIBLES, INC. *et al.*,

Debtors.

: Chapter 11

: Case No.: 10-13779 (ALG)

: Jointly Administered

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NOTICE OF REQUEST FOR PAYMENT OF ADMINISTRATIVE CLAIM

PLEASE TAKE NOTICE that upon the annexed motion, dated November 8, 2011 of CROSSPOINTE PLAZA, LLC, by its attorneys, Wasserman, Jurista & Stolz P.C., the undersigned will move for a hearing before the Hon. Allan L. Gropper, United States Bankruptcy Judge, United States Bankruptcy Court, One Bowling Green, New York, NY 10004, on December 6, 2011 at 10:00 a.m., or as soon thereafter as counsel can be heard for the entry of an order allowing payment of administrative expenses.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the motion shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall set forth the grounds with specificity, and shall be filed with this Court electronically in accordance with Superseding Order M-399, and served in accordance with, and upon the party specified in, the Order Establishing Certain Notice, Case Management and Administrative Procedures dated December 14, 2010, including, among other parties, attorneys for CROSSPOINTE PLAZA, LLC, Wasserman, Jurista & Stolz P.C., 225 Millburn Ave., Suite 207,

Jennifer Convertibles



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Millburn, NJ 07041, Attn: Steven Z. Jurista, Esq., so as to be received no later than seven (7) days prior to the hearing.

PLEASE TAKE FURTHER NOTICE that the relief requested in the motion may be granted without a hearing in the event that the objection is filed with the court in accordance with the notice procedures order.

WASSERMAN, JURISTA & STOLZ, P.C.
Attorneys for Crosspointe Plaza, LLC

/s/ STEVEN Z. JURISTA

Dated: November 8, 2011

STEVEN Z. JURISTA

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**UNITED STATES BANKRUPTCY COURT
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In re:

: Chapter 11

JENNIFER CONVERTIBLES, INC. *et al.*,

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Debtors.

**APPLICATION IN SUPPORT OF REQUEST FOR
PAYMENT OF ADMINISTRATIVE CLAIM**

CROSSPOINTE PLAZA, LLC ("Landlord") by and through its attorney Wasserman, Jurista & Stolz P.C., respectfully moves before this Court for an Order directing payment of administrative rent by JENNIFER CONVERTIBLES, INC. (the "Debtor," or "Tenant") pursuant to 11 U.S.C. §§ 503(b)(1)(A) and 365(d)(3) and in support thereof respectfully sets forth as follows:

BACKGROUND

1. On July 18, 2010 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case is pending before this Court as case number 10-13779 (ALG).

2. The Debtors have continued to operate their business and manage their properties as debtors-in-possession.

3. The Debtor was the Tenant under a lease dated February 14, 1995 (the "Lease") with the Landlord, which Lease was extended by an Addendum to Lease Agreements (the "Addendum," collectively with the Lease, the "Lease Agreement"), signed in January of 2005.

4. Under the Lease Agreement, the Debtor occupied a portion of the shopping center located at 285-291 Route 18 South, East Brunswick, New Jersey (the "Premises"). Pursuant to the terms of the Lease Agreement (annexed hereto as Exhibit A), Debtor is obligated to pay a fixed annual rent ("Fixed Rent"), as well as "Additional Rent," defined as "any sums other than Fixed Rent...required under the lease." See Exhibit A, Art. I, § 1.01. Additional Rent includes, but is not limited to, taxes, common area maintenance ("CAM"), and hold-over rent ("Hold-Over Rent") in the event the Debtor fails to vacate the Premises at the expiration of the original lease term. See Exhibit A.

5. Pursuant to the Lease Agreement, if the Tenant fails or refuses to vacate the Premises at the expiration of the original lease term, the Lease shall continue and be deemed a month-to-month tenancy terminable on thirty days' notice by either party. See Exhibit A, Art. XX, § 20.01. Moreover, the Tenant shall be obligated to pay all rent required by N.J.S.A. 2A:42-5, which statute provides for double rent to be paid by hold-over tenants.¹

6. Also pursuant to the Lease Agreement, the Landlord is entitled to reasonable attorneys fees resulting from the Landlord's exercise of its rights under the Lease Agreement. See Exhibit A, Art. XVIII, § 18.01(E).

7. The original lease term expired on February 28, 2010.

8. As of the expiration of the original lease term, the Tenant is obligated under the Lease Agreement to pay Fixed Rent and Additional Rent, which includes Hold-Over Rent, on a

¹ Article XXXI, § 31.04, entitled "Governing Law," states that the Lease Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey.

month-to-month basis for as long as the Debtor remains on the Premises (the "Hold-Over Period").

9. After the Petition Date, the Debtor continued to operate on the Premises as a hold-over tenant.

10. It was not until November of 2010 that the Debtor surrendered the Premises back to the Landlord.

11. Therefore, as of the date hereof, the Debtor is in arrears under the Lease for obligations arising post-petition during the Hold-Over Period in the amount of \$107,482.32. A summary compilation of the amount due is annexed hereto and made a part hereof as Exhibit B.

12. As early as January 12, 2011, the Landlord's counsel communicated by e-mail with counsel for the Debtor requesting that the Debtor comply with the provisions of the Bankruptcy Code and the Lease Agreement, and bring its post-petition arrears current. Despite the request, and a number of subsequent communications via email and telephone with Debtors' counsel, the post-petition arrears still remain unpaid.

RELIEF REQUESTED

13. The Landlord respectfully requests that this Court enter an order allowing the Landlord an administrative expense claim for the full amount of the rental obligation owed by the Debtor under the Lease Agreement, plus unliquidated attorney fees.

BASIS FOR RELIEF

14. Section 365(d)(3) of the Bankruptcy Code clearly mandates that the Debtor is obligated to make all post-petition payments that are due under the Lease and to make those payments in a timely manner. "The trustee shall timely perform all the obligations of the debtor...arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title." 11 U.S.C. § 365(d)(3).

15. The law is clear that the Debtor's obligation is to perform under the lease for all periods of time from the Petition Date until such time as the lease is rejected. See Urban Retail Properties v. Loews Cineplex Entertainment Corporation, 2002 WL 535479 (S.D.N.Y. 2002); BH S&B Holdings, LLC, 426 B.R. 478 (Bankr. S.D.N.Y. 2010).

16. Pursuant to § 365(d)(4), an unexpired nonresidential lease is deemed rejected, and shall be immediately surrendered to the lessor, if the lease is not assumed or rejected by the earlier of: (i) 120 days after the order for relief; or (ii) entry of an order confirming a plan. Prior to the advent of either of the automatic rejection dates referenced in § 365(d)(4), the Debtor vacated the premises.

17. Under New Jersey law, courts must ascribe contractual terms their "plain and ordinary meaning" and enforce unambiguous terms as written. Keiffer v. Best Buy, 14 A.3d 737, 743 (N.J. 2011).

18. Where a party agrees to pay a specified amount in the event of a breach, the test for enforceability is whether the agreement is "reasonable under the totality of the circumstances" Metlife Capital Fin. Corp. v. Washington Ave. Assoc. L.P., 732 A.2d 493, 499 (N.J. 1999); accord Wasserman's Inc. v. Township of Middletown, 645 A.2d 100, 106 (N.J. 1994).

19. Where no evidence of "fraud, duress or other unconscionable acts" is present, New Jersey courts will enforce that bargained-for clause against a commercially sophisticated party. Metlife, 732 A.2d at 502. The Debtor can advance no such argument considering the Hold-Over Rent provision is codified law in the State of New Jersey.

20. Because "a commercial landlord is generally required to provide ongoing services to the debtor (e.g., the use of its property, utilities, security, and other services) until the lease is assumed or rejected by the debtor, § 365(d)(3) essentially insures that each party will get the benefit of its bargain under the lease." (Urban Retail Properties v. Loews Cineplex Entertainment Corporation, 2002 WL 535479 at *15).

21. Further, courts have consistently held that landlords are entitled to administrative priority for debtor's unpaid postpetition, pre-rejection lease obligations under § 365(d)(3). See BH S&B Holdings, LLC, 426 B.R. 478 (Bankr. S.D.N.Y. 2010) (holding that claims for postpetition, pre-rejection obligations arising under a nonresidential lease are administrative expense claims under § 365(d)(3)); In re Ames Department Stores Inc., 306 B.R. 43, 69 (Bankr. S.D.N.Y. 2004) (section 365(d)(3) was enacted to fix the amount to be paid by debtor tenants pending assumption or rejection at the amount provided in the lease; to require payments to be made at the time required under the lease (and not after confirmation); and to remove the bankruptcy court's power to review the amount to be paid as administrative rent for reasonableness.").

22. In addition, "recovery of attorneys' fees...under § 365 is appropriate where the lease at issue provides for such recovery as an obligation of the debtor." Urban Retail Properties v. Loews Cineplex Entertainment Corporation, 2002 WL 535479 at *26 (noting that such attorneys' fees are afforded administrative priority status).

23. By failing to pay the Fixed Rent and Additional Rent due under the Lease Agreement during the administrative period, the Debtor has failed to comply with its obligations under § 365(d)(3) of the Bankruptcy Code and should be compelled to do so.

WHEREFORE, it is respectfully requested that the Court enter an order as requested by the Landlord pursuant to 11 U.S.C. § 365(d)(3) directing the Debtor's payment of post-petition administrative rent in the amount of \$107,482.32, plus unliquidated attorneys fees to Landlord.

Respectfully submitted,

WASSERMAN, JURISTA & STOLZ, P.C.
Attorneys for *Crosspointe Plaza, LLC*

/s/ STEVEN Z. JURISTA

Dated: November 8, 2011

STEVEN Z. JURISTA

ORIGINAL

Number 1 of
4 executed
counterparts.

THIS LEASE, dated the 14 day of January, 1995, between COLCHESTER ASSOCIATES, with offices at 4 Ethel Road, Suite 402A, Edison, New Jersey 08817 (hereinafter referred to as the "Landlord"); and EAST BRUNSWICK CONVERTIBLES, INC., a New Jersey Corporation, with offices at 285-291 Route 18 South, East Brunswick, New Jersey 08816 (hereinafter referred to as the "Tenant").

W I T N E S S E T H:

In consideration of the agreements contained in this Lease, and for other good and valuable consideration, Landlord and Tenant covenant and agree as follows:

ARTICLE I

Definitions:

For the purposes of this Lease, the following terms shall have the indicated meanings:

Section 1.01. "Additional Rent" shall mean any sums other than Fixed Rent which Tenant is required to pay to Landlord under this Lease.

Section 1.02. "Applicable Laws" shall mean all present and future laws, ordinances, resolutions, regulations and orders of all governmental entities at any time having jurisdiction over the Shopping Center.

Section 1.03. "Building" shall mean the structure in which the Demised Premises are located.

Section 1.04. "Commencement Date" shall be February 1, 1995.

Section 1.05 "Common Areas" shall mean all areas of the Shopping Center that are designated by Landlord from time to time for the general use and convenience of Tenant and other tenants of the Shopping Center and their respective authorized representatives and invitees. Common Areas include, without limitation, pedestrian walkways and patios, landscaped areas, sidewalks, service corridors, restrooms, stairways, decorative walls, plazas, throughways, loading areas, parking areas and roads.

Section 1.06. "Demised Premises" shall mean those premises as outlined or designated on the plan attached hereto as marked as Exhibit A, being a part of the Shopping Center, said Demised premises having approximately 4,368 square feet without basement (but shall in no event extend beyond the rear wall or window of the proposed store or beyond the actual store front thereof), which Demised Premises include Tenant's Share of the covered walkway.

Section 1.07. "Excusable Delay" shall mean that any time limits required to be met by either party hereunder, whether specifically made subject to Excusable Delay or not except those related to the payment of Fixed Rent, Percentage Rent, if any, or Additional Rent, shall, unless specifically stated to the contrary

elsewhere in this Lease, be automatically extended by the number of days by which any performance called for is delayed due to excusable Delay. Excusable Delay shall mean and include those situations beyond Landlord's control, including by way of example and not by way of limitation, acts of God; accidents, repairs, strikes, shortages of labor, supplies or materials; inclement weather or, where applicable, the passage of time while waiting for an adjustment of insurance proceeds.

Section 1.08. "Fixed Rent" shall mean the ~~guaranteed fixed rent during the Term of Eight Hundred Ninety Four Thousand One Hundred Six and 10/100 (\$894,106.10) Dollars~~, to accrue as follows:

Period	Annual	Monthly
2/1/95-1/31/98	\$ 78,624.00	\$6,552.00
2/1/98-1/31/01	86,486.40	7,207.20
2/1/01-1/31/04	95,135.04	7,927.92
2/1/04-2/28/05	104,657.28	8,721.44

all payable in the manner provided in Section 4.01.

Section 1.9. "Lease Year" shall mean 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 other date other than the first day of a calendar month, and shall terminate twelve (12) full calendar months thereafter.

Section 1.10. "Permitted Trade Name" shall mean Jennifer Convertibles.

Section 1.11. "Permitted Use" shall mean the use of the Demised Premises by Tenant for the following purposes only: sale of sofas, sofa beds, furniture, home furnishings and related items and ancillary items. The use of the premises shall include the exclusive right to sell leather sofas and convertible sofas.

Section 1.12. "Rent" shall mean and include Fixed Rent and Additional Rent.

Section 1.13. "Rent Commencement Date" shall mean February 1, 1995.

Section 1.14. "Security Deposit" shall mean the sum of _____ Dollars being deposited by Tenant with the Landlord pursuant to Article XXIX. Notwithstanding anything contained herein to the contrary, Tenant shall at all times maintain at least _____ months' rent as deposit for security with the Landlord.

Section 1.15. "Shopping Center" shall mean Cross Pointe Shopping Center located at 285-291 Route 18 South, East Brunswick, New Jersey.

Section 1.16. "State" shall mean the State of New Jersey.

Section 1.17. "Tenant's Share" shall mean and be equal to a fraction, the numerator of which is the square footage of the floor area of the Demised Premises and the denominator of which is the gross square footage of the floor area of all stores in the Shopping Center.

Section 1.18. "Term" shall mean Ten years One month.

ARTICLE II

Lease of Demised Premises

Section 2.01. Landlord agrees to lease the Demised Premises to Tenant, and Tenant agrees to rent the Demised Premises from Landlord, upon and subject to the conditions hereinafter contained.

ARTICLE III

Term

Section 3.01. The Term shall commence on the Commencement Date and shall expire on the last day of February, 2005 (herein the "Term Expiration Date").

Section 3.02. All of the obligations of Landlord are expressly conditioned upon the ability of Landlord to give possession of the Demised Premise to Tenant. Landlord shall have no liability whatsoever by reason of its inability to obtain possession of the Demised Premises or complete Landlord's Work, as hereinafter defined.

Section 3.03. If requested by either party to this Lease, the other party will execute and return within seven (7) days after presentation by the requesting party an agreement confirming the Commencement Date, the Rent Commencement Date and the date established for the expiration of the Term.

ARTICLE IV

Rent

Section 4.01. Tenant agrees to pay to Landlord the Fixed Rent, without notice or demand in monthly installments, in advance, on or before the first day of each and every successive calendar month during the Term hereof, except the first month's Fixed Rent shall be paid upon the execution of this Lease. The Fixed Rent shall commence on the Rent Commencement Date. The Fixed Rent for any period which is for less than a full month shall be a prorated portion of the Fixed Rent based on a thirty (30) day month.

Section 4.03. The Fixed Rent shall be paid to Landlord by Tenant, without deduction, counterclaim or setoff, and at such place as Landlord may from time to time designate in writing.

Section 4.04. If any payment of Rent is not received by Landlord within five (5) days of the date when due, Tenant shall pay to Landlord on demand as a late charge interest on the overdue Rent at the lesser of the maximum rate permitted by law or eighteen (18%) percent per annum from the due date. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

ARTICLE V

Tenant Reimbursements

Section 5.01. In addition to the Fixed Rent and commencing on the Commencement Date, Tenant shall pay to Landlord as Additional Rent Tenant's Share of the following taxes, insurance premiums and Common Area costs (hereinafter called "Reimbursements"):

(A) All Real property taxes and special assessments (the "Real Estate Taxes") levied or assessed against the Shopping Center. Tenant shall not be required to pay any taxes imposed upon the net income of Landlord or franchise taxes of Landlord, or any estate, succession, inheritance or transfer taxes imposed upon Landlord. If, at any time during the Term, any lawful governing authority levies or assesses against Landlord any tax, fee, or excise, however described, as a direct substitution in whole or in part for, or in addition to, or as the substantial equivalent of any Real Estate Taxes, then Tenant shall pay as provided herein Tenant's share of that tax, fee, or excise. Tenant shall pay before delinquency all taxes, assessments, license fees, and other charges that are levied or assessed against Tenant's personal property located on the Demised Premises. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments. If any taxes on Tenant's personal property are levied against Landlord or Landlord's property, or if the assessed value of the Shopping Center is increased by the inclusion of a value placed on Tenant's personal property or as a result of alterations, additions or improvements made to the Demised Premises by or for Tenant, Tenant, on demand, shall immediately pay to Landlord as Additional Rent the sum of taxes levied against Landlord, or the proportion of the taxes resulting from such increase in Landlord's assessment caused thereby. Landlord shall be entitled to, in good faith using its reasonable determination, ascertain the value of the tax increase attributable to Tenant's personal property or alterations, additions or improvements. Landlord covenants and agrees that it shall timely and fully pay the real estate taxes and assessments levied against the building, including the premises and all improvements therein. If Landlord shall obtain any abatement, refund or rebate in real estate taxes, Landlord shall promptly forward to Tenant its share of such abatement, refund or rebate (less Tenant's share of the reasonable costs and reasonable expenses of obtaining same). In the event that any additions to the Building or improvements (collectively the "New Construction") are constructed (for reasons other than to replace portions of the Building damaged or destroyed by a Casualty) after the assessment day for Real Estate Taxes for the first tax year ending the Lease Term, Tenant's share of the Real Estate Taxes shall be calculated to exclude the Real Estate Taxes and the square footage that are attributable to the New Construction. Landlord shall use its best effort to cause any New Construction to be separately assessed.

(B) All insurance premiums incurred by Landlord for policies of insurance maintained on or with respect to the Shopping Center, including but not limited to fire and extended coverage insurance, liability insurance, rent interruption insurance and any other insurance coverage if reasonably available at a commercially reasonable cost that Landlord deems reasonably necessary to be carried on or with respect to the Shopping Center. If the rate of any insurance carried by Landlord is increased as a result of Tenant's use of the Demised Premises, then Tenant shall pay to Landlord as Additional Rent, upon demand, the full amount of any such increase.

(C) All sums expended by Landlord for the maintenance and operation for the Common areas, and an allowance to Landlord for Landlord's supervision of maintenance and operation of the Common Areas in an amount equal to five (5%) percent of the total costs of maintaining and operating the Common Areas. Costs for maintenance and operation of the common areas shall include by way of example and not by way of limitation, the costs of the following: resurfacing, paving, repainting and restripping, roof repairs, exterminating, cleaning, sweeping, and other maintenance and repair services with respect to the Common Areas of the Shopping Center, or any part thereof; structural repairs (whether ordinary or extraordinary); policing and providing for security guards or security patrols; costs for local fire protection, purchasing and maintaining refuse receptacles and costs of trash removal; planting and relandscaping; snow removal; purchasing, constructing, maintaining or repairing car stops directional signs and other markers; lighting and other utilities; reasonable depreciation allowance on improvements, machinery, and equipment used in connection with the Common Areas; such fees as may be paid to any third party in connection with such maintenance and operation or the management of the shopping Center; and such other costs as the Landlord, in its sole discretion, shall deem necessary for the maintenance and operation of the Common areas.

Section 5.02. Landlord may submit to Tenant a statement of anticipated monthly Reimbursements for the period between the Commencement Date and the end of the first Lease Year and for each subsequent Lease Year or fraction thereof. If so, Tenant shall pay such Reimbursements on a pro rata monthly basis concurrent with the payment of the Fixed Rent. Tenant shall continue to make said monthly payments until notified by Landlord of a change thereof. Landlord shall furnish to Tenant a statement showing the total Reimbursements, Tenant's Share of total Reimbursements for the prior Lease Year, and the payments made by Tenant with respect to such Lease Year, within sixty (60) days after the end of each Lease Year. If Tenant's Share of Reimbursements for the Lease Year exceeds the payments made by Tenant, Tenant shall pay Landlord the deficiency within ten (10) days after receipt of the statement. If Tenant's payments made during the Lease Year exceed Tenant's Share of Reimbursements, Landlord shall credit the sum of such excess toward the monthly Reimbursements next coming due. The actual Reimbursements of the prior Lease Year may be used for the purpose of calculating the anticipated monthly Reimbursements for the then current Lease Year, subject to the right of Landlord to increase the monthly Reimbursements for anticipated increased costs.

ARTICLE VI

Utilities

Section 6.01. Tenant shall pay for all water, gas, heat, light, power, sewer charges, telephone installation and service charges, garbage and trash collection, sprinkler standby charges and for all other services and utilities supplied to the Demised Premises on and after the Commencement Date, together with any tax, excise or surcharge thereon. Within thirty (30) days after the expiration or termination of the Term of this Lease, Tenant shall provide Landlord with satisfactory evidence that all such utility charges have been paid through the last day of the Term. Tenant agrees to immediately apply for all applicable utilities to be separately metered and billed to Tenant. If any such services are not separately metered to and paid by Tenant, or if any such services are furnished and paid for by Landlord, Tenant shall pay

to Landlord as Additional Rent a reasonable proportion to be determined by Landlord of all charges jointly metered with other premises and all services which are furnished and paid for by Landlord. If Landlord is required to construct new or additional utility installations, including, without limitation, wiring, plumbing, conduits, and mains, resulting from Tenant's changed or increased requirements, Tenant shall on demand pay to Landlord, in advance of installation, the total cost of such installation.

Section 6.02. Under no circumstances shall Landlord be liable to Tenant on account of the failure, discontinuance, interruption or quality of the utilities or services furnished to the Demised Premises, regardless of whether such utilities or services are furnished by Landlord or by their parties, nor shall any of the foregoing excuse any payment or performance by Tenant, provided absence of gross negligence by Landlord, its agents, servants, guests, invitees, contractors, but not limited to same.

ARTICLE VII

Maintenance

Section 7.01. Tenant, at its sole expense, shall maintain, in good condition and repair, the Demised Premises and every part thereof (except those portions required to be maintained by Landlord as hereinafter provided) including by way of example and not by way of limitation, the maintenance, replacement and repair of all Tenant's personal property, Tenant's signs as permitted by the provisions of this Lease, storefronts, doors, window treatments, plate glass and show windows, door and window frames and moldings, heating, ventilation and air conditioning equipment, plumbing and pipes (including any damage to plumbing and pipes caused by the introduction of any foreign matter into the plumbing system by Tenant or Tenant's employees or customers), electrical wiring and conduits, and the roof to the extent of any installations for vents, skylights or other installations made by Tenant provided it is negligent. Tenant shall be liable for any damage to the building in which the Demised Premises are located and other buildings in the Shopping Center, resulting from the acts or omissions of Tenant or its representatives, employees or customers. Tenant shall maintain its store windows in a clean and neat condition and shall keep the sidewalks adjoining the Demised Premises free from ice, snow and rubbish.

Section 7.02. Landlord shall maintain in good condition the following with the cost for same to be deemed Reimbursements and the Tenant shall be responsible for Tenant's Share of such costs in accordance with Article V: the roof and structural parts of the building and other improvements in which the Demised Premises are located, which structural parts include the foundations, bearing and exterior walls (excluding glass and doors and the frames and molding thereof), and the electrical, plumbing and sewage systems lying outside the Demised Premises. Notwithstanding the foregoing, any damage to the roof or structure caused by (i) any negligent act or omission by Tenant, its agents, employees or invitees, (ii) any work done on the roof of the Demised Premises by Tenant, its agents or employees, or (iii) vandalism or theft by Tenant, its agents, employees or invitees shall be paid for in full by Tenant.

Section 7.03. If Landlord fails to perform any of its obligations under Section 7.02, Tenant shall give Landlord specific, written notice thereof, and Landlord shall have thirty (30) days thereafter to cure such failure; provided, however, that if such cure cannot reasonably be completed within such thirty (30) day period, then Landlord shall, subject to Excusable Delays, commence to cure same within thirty (30) days and diligently and in good faith continue to cure such failure to completion. The failure of Landlord to perform any such repairs shall not impose any liability on Landlord nor excuse any performance or payment by Tenant required by this Lease.

Section 7.04. Tenant shall engage, at its sole expense, a maintenance firm, to service the heating, ventilating and air conditioning system (the "HVAC") servicing the Demised Premises. Such maintenance firm shall service the HVAC on a quarterly basis, and such service shall include, without limitation, adjustment of all belts, and inspection, replacement and necessary servicing of all filters, condensers and chiller coils. 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 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 or partially unsuitable for their use as provided for in this Lease, 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.

ARTICLE VIII

Tenant's Insurance

Section 8.01. Tenant, at its sole expense, shall maintain liability insurance with liability limits for injury to persons of not less than One Million and 00/100 (\$1,000,000.00) Dollars per person and One Million and 00/100 (\$1,000,000.00) Dollars per occurrence, and for injury to property of not less than Five Hundred Thousand and 00/100 (\$500,000.00) Dollars per occurrence, insuring against all liability arising out of the use or occupancy of the Demised Premises. All such insurance shall insure performance by Tenant of the indemnity provisions of Article XV and shall name Landlord, Tenant and such other persons as Landlord shall designate as the insureds.

Section 8.02. Tenant covenants and represents, said representation being specifically designed to induce Landlord to execute this Lease, that Tenant's personal property and fixtures and any other items which Tenant may bring to the Premises which may be subject to any claim for damages or destruction due to Landlord's negligence shall be fully insured by a policy of insurance covering all risks with no deductible which policy shall specifically provide for a waiver of subrogation for Landlord and all Shopping Center tenants without regard to whether or not same shall cost any additional premium and notwithstanding anything to the contrary contained in this Lease. Should Tenant fail to maintain said all risk insurance with the required waiver of subrogation, or fail to maintain the liability insurance, naming Landlord as an additional named insured, then Tenant shall be in default hereunder and shall be deemed to have breached its covenants as set forth herein.

Section 8.03. All insurance required under this Lease shall be issued by insurance companies of recognized responsibility which are authorized to do business in the State. Tenant, prior to entering on the Demised Premises, shall deliver to Landlord each policy or a certificate evidencing such policy, together with evidence of payment of premiums for all policies of insurance required to be maintained by Tenant pursuant to the terms of this Lease. Within thirty (30) days prior to the anniversary date of each policy of insurance required to be maintained by Tenant pursuant to the terms of this Lease, Tenant shall deliver to Landlord evidence of renewal of such policies, together with evidence of payment of premiums for all such policies. Each policy shall be issued as a primary policy not

contributing with any not in excess of coverage of any insurance which Landlord may carry, and shall contain an endorsement requiring thirty (30) days' written notice from the insurance company to Landlord before cancellation or change in the coverage, scope or amount of any policy.

ARTICLE IX

Limitations on Use; Rules and Regulations; Trade Name

Section 9.01. Tenant shall use the Demised Premises for the Permitted Use only and shall not use or permit the Demised Premises to be used for any other purpose without the prior written consent of Landlord. Tenant acknowledges that Landlord may covenant with other tenants of the Shopping Center to restrict specific uses elsewhere in the Shopping Center, and Tenant agrees, upon written notice from Landlord, to thereafter immediately refrain from any use of the Demised Premises which is violative of such covenant(s). Any breach of this Article shall constitute an Event of Default.

Section 9.02. Tenant shall not use or permit the Demised Premises to be used in any manner that will constitute waste, nuisance, unlawful, immoral or objectionable activity, or unreasonable annoyance (including, without limitation the use of loudspeakers or sound or light apparatus that can be heard or seen outside the Demised Premises) to other tenants in the Shopping Center or which will cause an increase in rates or a cancellation of any insurance policy covering the Shopping Center. Tenant shall not use the Demised Premises for the preparation, manufacture or mixing of anything that might emit any odor or objectionable noises or lights into the Shopping Center. No secondhand store, auction, distress or fire sale, or bankruptcy or going-out-of-business sale may be conducted on the Demised Premises without Landlord's written consent. Tenant shall not do anything on the Demised Premises that will cause damage to the Shopping Center. No machinery, apparatus, or appliance shall be used on the Demised Premises that will in any manner injure, vibrate, or shake the Demised Premises or overload the electrical system. Any exclusive uses afforded to Tenant or restrictions made for the Tenant's benefit under this Lease shall not be applicable to the department store, if any, the food market, if any.

Section 9.03. Tenant shall continuously use the Demised Premises for the Permitted use and shall continuously merchandise its goods at and from the Demised Premises during such business hours and days as shall be designated from time to time by Landlord, but no less than eight (8) hours per day, six (6) days a week, holidays excluded. If the Demised Premises are destroyed or partially condemned, and this Lease remains in full force and effect, Tenant shall continue operation of its business at the Demised Premises to the extent reasonably practical from the standpoint of good business judgment during any period of reconstruction. Tenant shall carry and offer for sale at all times a full and complete stock of seasonable merchandise at competitive prices, and shall maintain adequate personnel for the efficient serving of its customers. Tenant shall not lower the quality of its merchandise or change the quality of its business without Landlord's consent. Tenant agrees that Landlord shall have the right to prohibit the continued use by Tenant of any method of business operation, advertising or interior display if, in Landlord's opinion, the continued use thereof would impair the reputation of the Shopping Center or is otherwise out of harmony with the general character thereof, and upon notice from Landlord, Tenant shall immediately refrain from or discontinue such activities. Tenant shall employ its best efforts to operate the business conducted on the Demised Premises in a manner that will produce the maximum volume of sales. Tenant shall use only such space in the Demised Premises for office, clerical, and other

nonselling purposes as is reasonably required for Tenant's business on the Demised Premises, such space not to exceed ten (10%) percent of the Demised Premises.

Section 9.04. Tenant shall comply with the rules and regulations hereinafter set forth in Exhibit B attached hereto and made a part hereof. Landlord shall have the right from time to time to establish amendments and additional rules in relation thereto. On delivery of a copy of such rules and regulations to Tenant, Tenant shall comply with the rules and regulations and any subsequent amendments thereto. Landlord shall make reasonable efforts to enforce the rules and regulations uniformly against all tenants in the Shopping Center, provided however, that Landlord shall not be responsible to Tenant for the nonperformance of any of said rules and regulations by any other tenant or occupancy of the Shopping Center or for any failure on the part of Landlord to enforce the same. 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, complied with by all Tenants, and shall not conflict with any provisions of this Lease.

Section 9.05. Tenant shall operate the Demised Premises under the Permitted Trade Name and no other, so long as same shall not be held to be in violation of any applicable law.

ARTICLE X

Compliance With Applicable Law

Section 10.01. Tenant shall not use the Demised Premises, or permit anything to be done in or about the Demised Premises, which will in any way conflict with any applicable law. Tenant shall, at its sole expense, promptly comply with all applicable laws, including environmental laws, relating to or affecting the condition, use or occupancy of the Demised Premises.

Section 10.02. Tenant agrees that for the purpose of complying with the governmental requirement that water fountains be installed in the Demised Premises, it shall, at its sole cost and expense, cause to be installed and maintained at all times throughout the Term of this Lease, as it may be extended or renewed, a portable water cooler or similar apparatus providing a source of potable water for the Tenant and its employees, agents, servants and invitees.

ARTICLE XI

Tenant's Work

Section 11.01. Tenant agrees to accept the Demised Premises in an "AS IS" condition as of the Commencement Date without any representations or warranties on the part of Landlord. Except as otherwise specifically provided in this Lease, Landlord has not made any representations or warranties of any kind to Tenant. No representations or warranties of any kind made by anyone, including without limitation any real estate broker or agent, shall be binding upon Landlord unless expressly set forth in this Lease. All work done which is required to be performed to permit Tenant's occupancy and use of the Demised Premises for the Permitted Use shall be performed by Tenant, at its sole expense, and Landlord shall not be required to perform or to bear any of the expenses for such work. All of such work shall be performed in a diligent manner and shall be completed prior to the Rent Commencement Date. Landlord agrees to clean and paint the Premises prior to the Commencement Date.

Section 11.02. Tenant shall not make any improvements, changes, additions or alterations (hereinafter called "Tenant's Work") to the Demised Premises without Landlord's prior written consent. The term "Tenant's Work" as hereinafter used shall mean

the work to be performed by Tenant as provided in Section 11.01 as well as any and all proposed improvements, changes, additions or alternations. Tenant shall have the right, without consent of Landlord, to make non-structural repairs and alterations provided disbursements do not exceed Fifty-Thousand and 00/100 (\$50,000.00) Dollars per annum for the first lease year and Twenty-Five Thousand and 00/100 (\$25,000.00) Dollars per annum per lease year thereafter.

Section 11.03. Tenant shall submit to Landlord for its written approval any and all plans for the proposed Tenant's Work. Any Tenant's Work shall be done in a good and workmanlike manner in keeping with all Applicable Laws and shall in no way harm the structure of the Demised Premises or interfere with the operations of the Shopping center or the Landlord's work therein. Any Tenant's Work shall be performed by such contractors as shall be approved by Landlord. Landlord shall have the absolute right to disapprove, or to revoke the approval of, any such contractors on account of labor union related concerns. In no event shall Landlord have any responsibility or liability with regard to any Tenant's Work.

Section 11.04. Any Tenant's Work made shall remain on and be surrendered with the Demised Premises on expiration or termination of the Term, except that Landlord can elect within thirty (30) days before expiration of the Term, or within ten (10) days after termination of the Term, to require Tenant to remove all or any portion of the Tenant's Work made to the Demised Premises. If Landlord so elects, Tenant, at its cost, shall restore the Demised Premises to the condition designated by Landlord in its election prior to the last day of the Term or within thirty (30) days after notice of election is given, whichever is later.

Section 11.05. Tenant. Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate of Landlord in the Shopping Center, or any part thereof. All Tenant's Work, repairs, materials and labor shall be done at Tenant's sole expense, and Tenant shall be solely and wholly responsible to contractors, laborers and materialmen furnishing labor and material. All such laborers and materialmen and contractors are hereby charged with notice that they must look solely and wholly to Tenant for the payment of any bills for work done and materials furnished. Landlord reserves the right, before approving any Tenant's Work, to require Tenant to furnish it a good and sufficient bond to secure Tenant's liability for payment for Tenant's Work.

Section 11.06. Tenant shall procure and maintain an adequate workmen's compensation insurance policy and such additional insurance policies as Landlord shall request to insure against losses, damages or claims arising out of or from Tenant's Work. Prior to the commencement of such Tenant's Work, Tenant shall deliver to Landlord each policy, or a certificate evidencing such policy, together with evidence of payment of premiums for all policies of insurance required to be maintained by Tenant pursuant to this Section 11.06.

ARTICLE XII

Landlord's Entry of Demised Premises

Section 12.01. Landlord and its authorized representatives shall have the right to enter the Demised Premises at all reasonable times for any purpose whatsoever, including, without limitation, to post "for rent" or "for Lease" signs during the last six (6) months of the Term provided said signs are not displayed on display windows or doors.

Section 12.02. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss or business, nuisance, or other damage arising out of Landlord's entry on the Demised Premises as allowed in this Article XIII. Tenant shall not be entitled to any abatement or reduction of rent if Landlord exercises any rights reserved in this Article, and no such exercise of Landlord's rights hereunder shall be deemed an eviction or disturbance of Tenant's use and possession of the Demised Premises. Landlord shall use its best efforts to conduct its activities on the Demised Premises as allowed in this Section in a manner that will not cause unreasonable inconvenience, annoyance, or disturbance to Tenant. Landlord reserves the right to run pipes, lines, feeders or other systems throughout the Demised Premises, subject to the provisions of this Section 12.02. 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.

ARTICLE XIII

Assignment and Subletting

Section 13.01. Tenant shall have the right to make any assignment, transfer or subletting of the Premises, or any part thereof, upon the consent of Landlord which consent shall not be unreasonably withheld, conditioned, delayed or charged for to any other entity or person.

Section 13.02. Notwithstanding Section 13.01, 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. Upon any assignment in accordance with the foregoing, the Tenant named herein shall be relieved of any further liability hereunder.

Section 13.03. Tenant shall have the absolute right 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, as long as Tenant remains fully liable for full performance of all its obligations under this Lease.

ARTICLE XIV

Indemnification of Landlord

Section 14.01. In addition to any and all other obligations of Tenant to indemnify and save Landlord harmless as set forth in this Lease, Tenant will indemnify and save harmless Landlord against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, any and all architects' and attorneys' fees, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurring during the Term of this Lease:

(A) Any work or thing done in, on or about the Demised Premises, or any part thereof, by or at the direction of Tenant; or

(B) Any negligence on the part of Tenant, or any of its agents, contractors, servants, employees, licensees or invitees; or

(C) Any injuries to persons or property occurring on or about the Demised Premises; or

(D) Any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with.

Section 14.02. The provisions of this Article XV, and of any and all other provisions in this Lease requiring Tenant to indemnify and save Landlord harmless, shall survive the termination of this Lease.

ARTICLE XV

Fire and Casualty

Section 15.01. If the Demised Premises are damaged by fire or other insured casualty, then subject to provisions of Section 15.02, this Lease shall remain in full force and effect and subject to the adequacy and availability of insurance proceeds, Landlord shall promptly repair such damage at its expense (subject to Excusable Delay). In that event, there shall be a proportionate abatement of rent for so much of the Demised Premises as may be untenable during the period of repair or restoration.

Section 15.02. If in the opinion of Landlord, the Demised Premises are damaged by fire or other casualty to such an extent that the damage cannot be repaired or restored within one hundred twenty (120) days from the date of such occurrence or such damage is due to any act or failure to act on the part of Tenant, its agents, servants or employees, then Landlord shall have the option to terminate this Lease by written notice given within thirty (30) days after such occurrence. If twenty-five (25%) percent or more of the building or buildings of which the Demised Premises form a part are damaged by fire or other casualty, then Landlord shall have the option to terminate this Lease by written notice given within thirty (30) days after such occurrence, even though the Demised Premises have not been damaged or rendered untenable, and there shall be an adjustment of rent to said date of termination. If the above options are not exercised by Landlord, then this Lease shall continue in full force and effect. In addition, there shall be no obligation upon the part of Landlord to repair or rebuild during the last three (3) lease years of the Term of this Lease unless Tenant shall, within fifteen (15) days after such occurrence, exercise any option to extend the Term of this Lease that may be afforded to Tenant under the terms hereof.

Section 15.03. Landlord's obligation to repair or rebuild pursuant to this Article XV shall be limited to a basic building and the replacement of any interior work which may have originally been installed at Landlord's cost, excluding Tenant work. Except as herein provided, there shall be no obligation to repair or rebuild in the case of fire or other casualty.

Section 15.04. If the Demised Premises or any portion of the Shopping Center are damaged by fire or other casualty due to any act or failure to act on the part of Tenants, its agents, servants or employees, then, in addition to the option to terminate this lease, Landlord shall have and retain any and all rights which it may then have in law or equity against Tenant on account of such damage.

Section 15.05. Within thirty (30) days following the completion of the Landlord's Work, Tenant shall complete its work on the Demised Premises and restock its goods and merchandise promptly thereafter.

ARTICLE XVI

Condemnation

Section 16.01. If ten (10%) percent or more of the Demised Premises or fifteen (15%) percent or more of the Shopping Center shall be acquired or condemned by right of eminent domain for any public or quasi public use or purpose, then Landlord at its election may terminate this Lease by giving notice to Tenant of its election, and in such event, rentals shall be apportioned and adjusted as of the date of termination.

Section 16.02. If the Term of this Lease shall not be terminated as aforesaid, then the Term of this Lease shall continue in full force and effect, and subject to the adequacy and availability of condemnation proceeds, Landlord shall within a reasonable time after possession is physically taken (subject to Excusable Delays) repair or rebuild what may remain of the Demised Premises for the occupancy of Tenant; and a just proportion of the Fixed Rent shall be abated, according to the nature and extent of the injury to the Demised Premises, until what may remain of the Demised Premises shall be repaired and rebuilt as aforesaid; and thereafter a just proportion of the Fixed Rent shall be abated, according to the nature and extent of the part of Demised Premises acquired or condemned, for the balance of the term of this Lease.

Section 16.03. Except as expressly provided in Section 16.04, all rights to damages or awards accruing on account of any such taking or condemnation or by reason of any act of any public or quasi public authority for which damages are payable shall belong entirely to Landlord and Tenant shall make no claim thereto. Tenant agrees to execute such instruments as may be required by Landlord, to join with Landlord in any petition for the recovery of damages, of requested by Landlord, and to turn over to Landlord any such damages or awards that may be recovered in any such proceeding. If Tenant shall fail to execute such instruments as may be required by Landlord, or to undertake such other steps as may be requested as herein stated, then and in any such event, Landlord shall be deemed the duly authorized irrevocable agent, coupled with an interest, and attorney-in-fact of Tenant to execute such instruments and undertake such steps on behalf of Tenant.

Section 16.04. Any damages payable for trade fixtures installed by Tenant at its own cost and expense and which are not part of the realty and for relocation expenses shall belong entirely to Tenant and Landlord shall make no claim thereto.

ARTICLE XVII

Events of Default

The occurrence of any of the following events shall constitute events of default ("Events of Default") by Tenant:

Section 17.01. Failure to pay Rent or any other payment required to be made by Tenant under the terms of this Lease, when due, and the continuation of such failure for a period five (5) days after the payment shall be due;

Section 17.02. Abandonment and vacating of the Demises Premises [failure to occupy and operate the Demised Premises for ten (10) business days or more shall be deemed an abandonment and vacating];

Section 17.03. The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant (other than the failure to pay Rent or make other payments as set forth in Section 17.01), where such failure shall continue for a period of fifteen (15) days after written notice to Tenant;

Section 17.04. The making by Tenant of any general assignment or arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days; or unless Landlord has received adequate assurance of future performance as then required under the federal bankruptcy law in connection with shopping center leases; or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Demised Premises or of Tenant's interest in this Lease, 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 Demised Premises or of Tenant's interest in this Lease, where such seizure is not discharged in thirty (30) days;

Section 17.05. The default by Tenant or any affiliate of Tenant with respect to any other lease or agreement between it and Landlord or any affiliate of Landlord;

Section 17.06. This Lease or any interest therein by operation of law devolves upon or passes to any person or persons other than Tenant;

Section 17.07. The assignment or subletting of all or any portion of this Lease or the Demised Premises in violation of Article XIII;

Section 17.08. The failure of Tenant to move into any take possession of the Demised Premises and open for business within thirty (30) days after the Commencement Date; or

Section 17.09. Any representation or warranty made by Tenant in connection with this Lease shall prove to have been false in any material respect.

ARTICLE XIII

Landlord's Remedies

Section 18.01. If an Event of Default shall occur, Landlord may exercise one or more of the following remedies, all of which shall be cumulative and in addition to any remedies available under applicable law:

(A) Without any further notice or demand, terminate this Lease, and Tenant will forthwith quit and surrender the Demised Premises, but Tenant shall remain liable and hereinafter provided;

(B) Re-enter and resume possession of the Demised Premises and remove all persons and property by summary dispossession proceedings, by appropriate proceedings, by force or otherwise without being liable for any damages therefor, and no re-entry shall be deemed an acceptance of a surrender of this Lease;

(C) Proceed to collect any Rent from Tenant then due by one or more proceedings;

(D) Exercise any remedy available at law or in equity to enforce the provisions of this Lease, to recover any damages for a breach of this Lease or to prevent any breach or threatened breach of this Lease; and/or

(E) Recover from Tenant on demand an amount equal to all expenses, including reasonable attorneys fees incurred by landlord as a result of an Event of Default or the exercise of its rights and remedies; all reasonable costs and charges for the care of the demised Premises while vacant, and all charges and expenses incurred by Landlord in connection with the reletting of the Demised Premises, including broker's commissions, advertising expenses, and the costs of repairing or remodeling the Demised Premises.

Section 18.02. If this Lease shall be terminated, as provided in this Article XVIII:

(A) Landlord may relet the whole or any part of the Demised Premises for a period equal to, or greater or less than the remainder of the then Term of this Lease, at such rental and upon such terms and concessions as Landlord shall deem reasonable, to any person which it may deem suitable and satisfactory and for any use and purpose which it may deem appropriate. In no event shall Landlord be liable in any respect for failure to relet the Demised Premises, or in the event of such reletting, for failure to collect the rent thereunder. Any sums or other consideration received by Landlord on a reletting in excess of the rent reserved in this Lease shall belong to Landlord.

(B) If this Lease shall be terminated and whether or not the Demised Premises shall be relet, Landlord shall be entitled to recover from Tenant an amount equal to all rent and other charges required to be paid by Tenant under this Lease, less the net rent, if any, collected by Landlord on reletting the Demised Premises. Such amount shall be due and payable by Tenant to Landlord on the several days on which such Rent and other charges would have become due and payable had this Lease not been terminated, and Tenant shall pay to Landlord the amount of any deficiency then existing. The net rent collected by Landlord on reletting shall be computed by deducting from the gross rents collected the expenses, costs and charges referred to in Subsection 18.01(E). Without any previous notice or demand, separate actions may be instituted by Landlord against Tenant from time to time to recover any damages which at the commencement of any such action shall have become due and payable to Landlord under any provisions hereof without waiting until the end of the original Term of this Lease, and neither the institution of suit or suits, nor the entering of judgment therein shall bar Landlord from bringing a subsequent suit for damages of any kind. It is expressly agreed that the forbearance on the part of Landlord in the institution of any suit or entry of judgment for any part of the Rent shall in no way serve as a defense against nor prejudice a subsequent action for such Rent. Tenant hereby expressly waives Tenant's right to claim a merger of such subsequent action in any previous suit or in the judgment entered herein. Furthermore, it is expressly agreed that claims for Rent may be regarded by Landlord, if it so elects, as separate claims capable of being assigned.

(C) Landlord, at its election, which shall be exercised by the service of a written notice on Tenant, may collect from Tenant and Tenant shall pay in lieu of the sums becoming due after the service of such notice under the provisions of this

Subsection 18.02(C) an amount equal to the difference between the Rent required to be paid by Tenant under this Lease (from the date of the service of such notice to and including the date of the expiration of the Term of this Lease which had been in force immediately prior to any termination effected under this Section) and the then fair and reasonable rental value of the Demised Premises for the same period, discounted to present value at the rate of six (6%) percent per year. In determining the rental value of the Demised Premises, the rental realized by any reletting shall be deemed conclusive evidence thereof.

Section 18.03. Tenant hereby expressly waives any rights of redemption granted by any laws in the event of any eviction or dispossession, any notices which may be required prior to the commencement of any proceeding for possession of the Demised Premises.

Section 18.04. The Landlord and the Tenant waive trial by jury in any action, proceeding or counterclaim brought by either the Landlord or the Tenant against the other on any matters whatsoever arising out of or in any way connected with this Lease, the Tenant's use or occupancy of the Demises Premises, and/or any claim of injury or damage.

Section 18.05. If Tenant shall fail to pay or perform any of its obligations when due, then Landlord, in addition to any of its rights and remedies under this Lease and without waiving its rights or remedies with regard thereto, may cure such failure on the part of Tenant. Any sums expended by Landlord to effect any such cure shall be payable by Tenant to Landlord on Demand, as Additional Rent.

ARTICLE XIX

Surrender of Demises Premises

Section 19.01. On expiration or termination of the Term, Tenant shall surrender to Landlord the Demised Premises, in broom clean condition, and all Tenant's improvements and alterations in good, clean, orderly, and undamaged condition (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant, destruction of the Demises Premises covered by Article XV and alterations that Tenant has the right to remove or is obligated to remove under the provisions of Article XI). Tenant shall remove all its personal property and shall deliver to Landlord all keys to the Demised Premises within the above stated time. Tenant shall immediately perform all restoration made necessary by the removal of any alterations or Tenant's personal property. Tenant shall be liable to Landlord for any reasonable cost incurred by Landlord to repair any damages to the Demised Premises caused by Tenant.

Section 19.02. Landlord can elect to retain or dispose of in any manner any alterations or Tenant's personal property that Tenant does not remove from the Demises Premises on expiration or termination of the Term as allowed or required by this Lease by giving at least ten (10) days' notice to Tenant. Title to any such alterations or Tenant's personal property that Landlord elects to retain or dispose of on expiration of the ten (10) day period shall vest in Landlord. Tenant waives all claims against Landlord in any damage to Tenant resulting from Landlord's retention or disposition of any such alterations or Tenant's personal property. Tenant shall be liable to Landlord for Landlord's cost for storing, removing and disposing of any alterations or Tenant's personal property.

ARTICLE XX

Holding Over

Section 20.01. If Tenant, with Landlord's express written consent, remains in possession of the Demises Premises after expiration or termination of the Term, or after the date in any notice given by Landlord to Tenant terminating this Lease, such possession by Tenant shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. During any such month-to-month tenancy, Tenant shall pay all Rent required by N.J.S.A. 2A:42-5.

Section 20.02. If Tenant, without Landlord's express written consent, remains in possession of the Demises Premises after expiration or termination of the Term, or after the date in any notice given by Landlord to Tenant terminating this Lease, Tenant shall pay to Landlord Rent as required by N.J.S.A. 2A:42-6 for the time Tenant retains possession of the Demised Premises or any part thereof after termination of the Term by lapse or otherwise.

ARTICLE XXI

Merchants' Association

Section 21.01. It is understood and agreed by and between the parties hereto that in light of the nature of the entire Shopping Center of which the Demises Premises is a part, it would be desirable and advantageous to both of the parties from the standpoint of increasing sales and otherwise to promote and generally advertise the Shopping Center and its component parts. To that end, the Tenant recognizes the effective nature of a Shopping Center merchants' association (the "Association"). Tenant will immediately become and remain a member in good standing of any association which presently exists or which may hereafter be organized in regard to Shopping Center and shall abide by any rules or regulations promulgated by such Association, including but not limited to a pro-rata contribution by Tenant to the cost of advertising undertaken by the Association. Any advertising undertaken by Tenant or the Association shall include the name of the Shopping Center.

Section 21.02. Membership shall include Tenant's obligation to pay dues and assessments as determined by the association to cover the expense of all advertising and other activities and operation engaged in by the association for the mutual benefit of its members. Default by Tenant in the payment of association dues and assessments shall constitute an Event of Default under the terms of this Lease in the same manner as a default in payment of Rent.

ARTICLE XXII

Common Areas

Section 22.01. During the Term of this Lease and any extension thereof, Tenant and its authorized representatives and invitees shall have the nonexclusive right to use the Common Areas, with others who are entitled to use the Common Areas, subject to Landlord's rights as hereinafter provided. Notwithstanding the aforesaid, Tenant shall not create any disturbance in the Common Areas nor shall Tenant create any noise from loudspeakers or otherwise, or permit any noise to be emanated from the Demise Premises nor shall Tenant distribute any leaflets, advertisements or other materials in the Common Areas.

Section 22.02. Landlord shall have the right to designate specific parking spaces and loading facilities for use

by Tenant and its employees. Where there is a rear entrance, all loading and unloading of goods shall be made at the rear entrance. Upon Landlord's demand, Tenant shall submit to Landlord a list of the license plate numbers of all motor vehicles owned or operated by Tenant and its employees.

Section 22.03. Landlord shall maintain the Common Areas in good condition. Landlord shall have, at any time, the right to establish reasonable rules and regulations as to the Common Areas, close any of the Common Areas, either permanently or temporarily, make changes to the Common Areas in any regard and for any purpose and to hire any person or business to manage and operate the Common Area on such terms as Landlord shall determine, all in accordance with good shopping center practices.

ARTICLE XXIII

Signs

Section 23.01. Landlord shall have the right to establish policies and standards for the size, location, quality, number, color and type of signs which Tenant may install in or upon the Demised Premises. Tenant shall comply with all of such policies and standards as they may be changed from time to time and shall install such signs as may be required by Landlord. No signs shall be installed by Tenant in or upon the Demised Premises, in windows or visible through windows, until after Landlord has approved the construction (including all connections), drawings and specifications pertaining to the 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 of the Lease term.

Section 23.02. Tenant shall pay for all signs, their installation, maintenance and removal. Tenant, at Tenant's sole cost and expense, shall obtain all necessary permits and approvals from the local governmental agency having jurisdiction thereof. All work must be of good quality, Landlord shall have the right to reject any work judged below standard. All signs shall be constructed and installed by contractors qualified to fabricate and install commercial signs. Tenant shall maintain signs in a neat and attractive condition. The signs and supports shall be kept painted to maintain attractive condition and to prevent rust, rot or deterioration.

ARTICLE XXIV

Subordination; Tenant's Estoppel Certificate

Section 24.01. This Lease is and shall be subordinate to any mortgage, encumbrance or ground lease now or hereafter imposed upon or affecting the Shopping Center, or any part thereof. Such subordinate is effective without any further act of Tenant. Tenant shall from time to time on request from Landlord execute and deliver any documents or instruments that may be required by a lender or ground lessor to effectuate any subordination. If Tenant fails to execute and deliver any such documents or instruments, Tenant irrevocably constitutes and appoints Landlord as Tenant's attorney in fact, coupled with an interest, to execute and deliver any such documents or instruments.

Section 24.02. Within ten (10) days after notice from Landlord, Tenant shall execute and deliver to Landlord a statement in writing certifying such matters as requested by Landlord,

including that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications, the amount of Fixed Rent, the dates to which the Rent has been paid in advance, and the amount of any security deposit or prepaid rent.

ARTICLE XXV

Nature of Landlord's Liability

Section 25.01. It is specifically understood and agreed by Tenant that there shall be absolutely no personal liability on the part of Landlord or on the part of the partners of Landlord, or, if Landlord or any successor in interest shall be an individual, joint venture, tenancy in common, firm or partnership, general or limited, or a trust or a corporation, there shall be no personal liability on such individual or the members of the firm, partnership, joint venture, tenancy in common or the trustee or beneficiaries under any such trust, in each case with respect to any of the terms of this Lease. Tenant shall look solely to the equity, if any, of Landlord in the Demised Premises for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord of any of the terms of this Lease to be performed by Landlord. The foregoing exculpation of personal liability shall be absolute and without any exception whatsoever.

Section 25.02. If Landlord sells or transfers all or any portion of the Shopping Center, Landlord, on consummation of the sale or transfer, shall be released from any liability thereafter accruing under this Lease.

Section 25.03. Landlord shall not be liable for failure to furnish any services when such failure is due to Excusable Delay. Landlord shall not be liable, under any circumstances, including, but not limited to, that arising from the negligence of Landlord, its agents, servants or invitees, or from defects, errors or omissions in the construction or design of the Demised Premises and/or the Building including the structural and nonstructural portions thereof, for loss of or injury to Tenant or to property, however occurring, through or in connection with or incidental to the furnishing of, or failure to furnish, any of the aforesaid services or for any interruption to Tenant's business however occurring.

Section 25.04. This Lease and the obligations of tenant to pay all Rent and perform all of its obligations shall in no way be impaired, affected or excused because Landlord is unable to fulfill its obligations or unable to or delayed in supplying any service or performing any obligations, including without limitation any repairs or work to be done by Landlord.

Section 25.05. It is expressly agreed that nothing in this Lease shall be construed as creating a partnership or joint venture between Landlord and Tenant, or between Landlord or any other party, or cause Landlord to be responsible for any debts or obligations of Tenant.

ARTICLE XXVI

Waiver

Section 26.01. No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent Rent shall not constitute a waiver of any default. No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Demised Premises, shall constitute an acceptance of the surrender of the Demised Premises by Tenant before the expiration of the Term. Only a written notice from Landlord to

Tenant shall constitute acceptance of the surrender of the Demised Premises and accomplish a termination of the Lease. Landlord's consent to or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

ARTICLE XXVII

Quiet Enjoyment

Section 27701. Landlord covenants that if, and so long as, Tenant pays the Fixed Rent and any Additional Rent as herein provided, and performs the covenants thereof, Landlord shall do nothing to affect Tenant's right to peaceably and quietly have, hold and enjoy the Premises for the Term herein mentioned, subject to the provisions of this Lease.

ARTICLE XXVIII

Security Deposit

Section 28.01. As security for the faithful performance by Tenant of all of the terms of this Lease, Tenant will concurrently with the execution and delivery of this Lease, deposit with Landlord the Security Deposit, which shall be returned to Tenant, without interest, thirty (30) days after the day set forth for the expiration of the Term herein (notwithstanding the fact that this Lease may be sooner terminated), provided, however, that Tenant has fully and faithfully carried out all of the terms of this Lease. Tenant's acceptance of the return of the Security Deposit shall constitute an absolute release by Tenant of Landlord for and from any and all claims of any kind arising out of this Lease. Landlord shall have the right to apply any part of the Security Deposit to cure any default of Tenant, and if Landlord does so, Tenant shall upon demand deposit with Landlord the amount so applied so that Landlord shall have the full Security Deposit on hand at all times during the Term of this Lease.

Section 28.02. In the event of a sale of the Shopping Center or lease of the land on which it stands, Landlord shall have the right to transfer the Security Deposit to the vendee or lessee and the Landlord shall be considered released by the Tenant from all liability for the return of the Security Deposit and the Tenant shall look solely to the new Landlord for the return of the Security Deposit and it is agreed that this shall apply to every transfer or assignment made of the Security Deposit to a new Landlord. The Security Deposit shall not be mortgaged, assigned or encumbered by Tenant. Any mortgagee of Landlord shall be relieved and released from any obligation to return the Security Deposit in the event such mortgagee comes into possession of the Demised Premises and/or the Shopping Center by reason of foreclosure of its mortgage or any proceeding in lieu thereof.

Section 28.03. In the event of the insolvency of Tenant, or other proceeding described in Section 18.04 or in the event of the entry of a judgment in bankruptcy in any court against Tenant which is not discharged within thirty (30) days after entry, or in the event a petition is filed by or against Tenant under any chapter of the bankruptcy laws of the State of New Jersey or the United States of America, then in such event, Landlord may require the Tenant to deposit security in an amount which in Landlord's sole judgment would be sufficient to adequately assure Tenant's performance of all of its obligations under this Lease including all payments subsequently accruing. Failure of Tenant to deposit the security required by this Section within ten (10) days after Landlord's written demand shall constitute a material breach of this Lease by Tenant.

ARTICLE XXIX

Waiver of Subrogation

Section 29.01. In the event of any loss or damage to the Shopping Center, the Building, the Demised Premises and/or any contents (herein "property damage"), each party waives all claims against the other for any such loss or damage and each party shall look only to any insurance which it has obtained to protect against such loss (or in the case of Tenant, waives all claims against any tenant of the Shopping Center that has similarly waived claims against such Tenant) and each party shall obtain, for each policy of such insurance, provisions waiving any claims against the other party (and against any other tenant(s) in the Shopping Center that has waived subrogation against the Tenant) for loss or damage within the scope of such insurance.

ARTICLE XXX

Other Locations

Section 30.01. During the Term of this Lease, neither Tenant nor any party affiliated with Tenant shall directly or indirectly engage in any business similar to or in competition with any business conducted by Tenant in the Demised Premises within a radius of FIVE (5) MILES from the outside boundary of the Shopping Center.

ARTICLE XXXI

Miscellaneous

Section 31.01. Time of Essence. Time is of the essence of each provision of this Lease and for the performance of any obligation hereunder.

Section 31.02. Binding on Successors. Subject to the provisions hereof with respect to assignment and subletting, this Lease shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, assigns, subtenants and successors in interest.

Section 31.03. Commissions. Tenant represents to Landlord, knowing that Landlord shall rely upon same, that Tenant has not dealt with any real estate broker, finder or other person (other than The Lincoln Agency) in connection with this Lease, the Shopping Center or the Demised Premises and no such real estate broker is entitled to a commission as a result of this Lease. Tenant shall hold Landlord harmless from all damages, including attorneys' fees incurred, resulting from any claims that may be asserted against Landlord by any broker, finder or other person (other than The Lincoln Agency) with whom Tenant has or purportedly has dealt.

Section 31.04. Governing Law. This Lease shall be construed and interpreted in accordance with the laws of the State of New Jersey.

Section 31.05. Entire Agreement. This Lease contains the entire agreement of the parties and cannot be amended or modified except by a written agreement. Neither Landlord nor anyone acting on its behalf has made any statement, promise or agreement which in any way modifies, varies, alters, enlarges or invalidates the provisions of this Lease, or the obligations of Landlord or Tenant hereunder.

Section 31.06. Captions. The captions of this Lease shall have no effect on its interpretation.

Section 31.07. Severability. The unenforceability, invalidity or illegality of any provisions of this Lease shall not render the other provisions unenforceable, invalid or illegal.

Section 31.08. Section References. All references to Articles shall refer to articles of this Lease.

Section 31.09. Authority of Corporate Tenant. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that (i) he is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with the bylaws and pursuant to a duly enacted resolution of said corporation, (ii) the execution and delivery of this Lease will not, with or without the passage of time, violate any other agreement, lease or mortgage by which the corporation is bound or by which the corporation's property is encumbered, and (iv) the Tenant is not a subsidiary or affiliate of any other corporation, or, if it is a subsidiary or affiliate, the Tenant's parent, or its affiliates, has executed and delivered to Landlord simultaneously herewith an absolute guaranty of Tenant's obligations hereunder.

Section 31.10. Tenant's Financial Condition. Tenant represents and warrants that all financial statements and other information submitted by, or on behalf of, Tenant to Landlord in connection with this Lease are true and complete in all material respects.

Section 31.11. Execution of Lease. Landlord shall have seven (7) days from receipt of Tenant's executed copies of the Lease in which to execute and return this Lease to Tenant or the Lease shall be considered null and void and Landlord shall return any and all monies, if any, advanced by Tenant to Landlord in connection with this Lease.

Section 31.12. Shopping Center Exclusives. Tenant acknowledges that as of the date hereof, Landlord has granted the following exclusives which Tenant agrees not to violate:

1. Soccer Supply Plus: Sale of sporting goods.

ARTICLE XXXII

ECRA Compliance

Section 32.01. Tenant acknowledges the existence of the Environmental Clean Up Responsibility Act of 1983 ("ECRA"). Tenant represents to Landlord that Tenant's Standard Industrial Classification (SIC) Number as used on Tenant's Federal Tax Return will not subject the Premises to ECRA applicability. Any ECRA shall require Landlord's written consent. Any such proposed change shall be noticed in writing to Landlord sixty (60) days prior to the proposed change. Landlord, at its sole option, may deny consent.

Tenant agrees to execute such documents as Landlord reasonably deems necessary and to make such applications as Landlord reasonably requires to assure compliance with ECRA. Tenant shall bear all costs and expenses incurred by Landlord associated with any required ECRA compliance resulting from Tenant's use of the Premises including but not limited to state agency fees, engineering fees, clean-up costs, filing fees and suretyship expenses. As used in this Lease, ECRA compliance shall include applications for determinations of nonapplicability by the appropriate governmental authority. The foregoing undertaking shall survive the termination or sooner expiration of the lease and surrender of the Premises and shall also survive sale, or lease or assignment of the Premises by Landlord. Tenant agrees to indemnify and hold Landlord harmless from the violation of ECRA occasioned by Tenant's use of the Premises.

IN WITNESS WHEREOF, the parties hereto execute this Lease
on the date set forth above.

COLCHESTER ASSOCIATES,
Landlord

BY: 

ROBERT TRIMARCHI, Partner

EAST BRUNSWICK CONVERTIBLES, INC.
Tenant

By: 

EDWARD H. SEIDNER, Vice President

WP+#7/lp

Rider attached to Lease dated: January , 1995

Landlord: COLCHESTER ASSOCIATES

Tenant: EAST BRUNSWICK CONVERTIBLES, INC.

Relating to property known as: Colchester Shopping Center
285-291 Route 18 South
East Brunswick, New Jersey

Consisting of provisions numbered:

33 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.

34 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, meeting hall, school or other place of public assembly, 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).

35 Commencement of Term and Rent Commencement Date - (a) The commencement date set forth in the body of the lease shall be adjusted to coincide with the completion of the facility by the Landlord of the work to be performed by the Landlord in the event Landlord cannot deliver possession of the demised premises to the Tenant, then the commencement date shall be adjusted to reflect a date coincidental with the Landlord's ability to deliver possession of the demised premises to the Tenant. The termination date of the lease shall be similarly adjusted and any anniversary dates for rental increases or for renewals by the Tenant shall be adjusted to reflect the new 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.

(b) (i) Notwithstanding anything in this Lease to the contrary, all payments under this Lease shall not commence or begin to accrue until thirty (30) days after delivery to Tenant of the Premises in the condition called for under this Lease and ten (10) days written notice to Tenant thereof, and (ii) notwithstanding anything to the contrary contained herein, in no event will Landlord deliver the premises to Tenant between December 1, 1994 and January 3, 1995 unless Tenant otherwise agrees in writing.

36 Access to Building - Landlord covenants and agrees, and this Lease is conditioned upon there being at all times during the Lease Term (i) 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, structures, obstructions, barriers and the like constructed upon, attached or placed adjacent to the Building and/or the Premises, which in any event shall not 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.

37 Failure to Give Possession - Notwithstanding anything in this Lease to the contrary including any Force Majeure clause, if Landlord is unable to give Tenant possession of the Premises as required hereunder by February 1, 1994, Tenant shall have the option of terminating this Lease within thirty (30) days thereof by notice to Landlord.

38 Total or Partial Destruction - Purposely Omitted.

39 Condemnation - Purposely Omitted

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

41 Right to Cure Defaults - (a) With regard to any monetary default, Tenant shall have the right to cure said default within seven (7) business days after notice and Landlord will not impose late fee penalties nor any interest on said amount.

(b) With regard to nonmonetary default, Tenant shall have a right to commence to cure said default or perform within thirty (30) days after notice.

42 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.

43 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: Colchester Associate
4 Ethel Road, Suite 402A
Edison, New Jersey 08817

With A Copy To: David M. Hutt, Esq.
Hutt & Berkow
459 Amboy Avenue
P.O. Box 648
Woodbridge, New Jersey 07095

To Tenant: East Brunswick Convertibles, Inc.
c/o Jennifer Warehouse
245 Rogers Avenue
Inwood, New York 11696-11076

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

44 Recording - Each party agrees not to record this Lease, but each party hereto agrees on request by the other, to execute a Notice or Short Form of this Lease in recordable form in accordance with applicable statutes, and reasonably satisfactory to Landlord's and Tenant's attorneys. In no event shall such document set forth the rental or other charges payable by Tenant under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

45 Force Majeure - Except as otherwise specifically provided herein, in any case where either party hereto is required

to do any act, delays caused by or resulting from acts of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of labor, materials or equipment, government regulations, or other causes beyond such party's reasonable control shall not be counted in determining the time during which work shall be completed, whether such time be designated by a fixed date, a fixed time or "a reasonable time."

46 Subordination and Rights of Mortgages - Tenant agrees at the request of Landlord to subordinate this Lease to any institutional first mortgage or deed of trust placed or to be placed upon the Premises by Landlord, provided that the holder of such mortgage enters into an agreement with Tenant in recordable form, binding upon the successors and assigns of the parties thereto, by the terms of which such 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.

47 (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. Notwithstanding anything to the contrary in this Lease, Landlord shall be responsible for complying, and the cost of complying, with any and all governmental regulation of environmental matters relating to substances in or about the Premises or the Building except for those substances placed there by Tenant. 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 State of America, the State, county, and any other municipal, governmental or lawful authority whatsoever affecting the Premises, and of any and all of its or their departments, bureaus and officials, except when such observance or compliance is required by reason of 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.

(c) Americans with Disabilities Act of 1990 - Notwithstanding anything to the contrary contained in the Lease, Landlord shall comply with the Americans with Disabilities Act of 1990 (ADA), and any amendments to the ADA, as well as all other applicable Laws regarding access to, employment of and service to individuals covered by the ADA. Tenant's compliance will be limited to the interior design and interior alterations of the Premises.

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

49 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.

50 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.

51 Powers of Attorney - Any and all powers of attorney or other such rights granted by Tenant to Landlord, and any penalties, liquidated damages or other such obligations upon Tenant as a result of a breach by Tenant of any provision(s) of said Lease.

52 Plate Glass - Tenant is permitted to self-insure plate glass, provided upon damage, repair and/or replacement Tenant promptly will do same at its sole cost and expense.

53 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.

54 Warranties - (a) Landlord represents and warrants that the bathrooms, HVAC system, plumbing system and electrical system will be in good working order at date of delivery of the premises and that the roof will be free of leaks and the sidewalk free of repair and that the Landlord has not received any notices of any violations of the applicable building code. In addition, Landlord will prevent any noise or odors emanating from any other Tenant entering into the demised premises.

(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 12 months commencing from the rent commencement date of the lease, Landlord will pay for all costs of repairs and replacements of the air conditioning equipment, provided Tenant has properly maintained the subject equipment; thereafter Tenant will pay all costs of operation, maintenance and repairs of the air conditioning equipment.

55 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.

56 Common Area Costs - (a) Notwithstanding anything to the contrary contained herein, 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 of 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) reserve funds; (vii) the cost of preparing Landlord's income tax returns; (viii) removal of hazardous material; (ix) earthquake insurance--unless such coverage is reasonably available at a commercially reasonable cost; and (x) direct settlement payments by Landlord in personal injury or property claims.

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

(c) The Landlord confirms that the costs for common area maintenance, taxes and insurance for the first lease year shall be approximately as follows:

CAM	\$ TO BE SUPPLIED
Insurance	\$
Real Estate Taxes	\$
	\$ 21,927.36

(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.

(e) Tenant dispute of Common Area Charges - Any statement rendered by Landlord to Tenant for Tenant's share of Landlord's Common Area Charges shall be deemed accepted by Tenant unless, within one (1) years 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 Common Area Charges. 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 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.

57 Execution - Landlord shall have seven (7) days from receipt of Tenant's executed copies of the Lease in which to execute and return this Lease to Tenant or this Lease shall be considered null and void and Landlord shall return any and all monies, if any, advanced by Tenant to Landlord in connection with this Lease.

COLCHESTER ASSOCIATES

By: 

EAST BRUNSWICK CONVERTIBLES, INC.

By: 

EDWARD B. SEIDNER, Vice President

Date: 12/20/94
h:\home\wpdoc\jennifer\ebruns.rdr

LETTER OF POSSESSION

PURSUANT TO AGREEMENT dated January , 1995 between:

Landlord: COLCHESTER ASSOCIATES

Tenant: EAST BRUNSWICK CONVERTIBLES, INC.

WHEREAS, the parties hereto entered into a lease of the premises at the Colchester Shopping Center, 285-291 Route 18 South, East Brunswick, New Jersey;

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 199 .

2) Tenant is to commence rental payments on , 199 as provided for in the Lease. The termination of said lease shall be , 20 .

COLCHESTER ASSOCIATES

By: _____

EAST BRUNSWICK CONVERTIBLES, INC.

By: _____

Dated: _____

B:\HOME\WPD0C\JENNIFER\EBRUNS.RDR

08/09/2006 14:45 FAX 732 885 8381

EDGEWOOD PROP. INC. E

@004


retail unit shall be determined by a measurement acceptable to both Landlord and Tenants, and the fixed rent amount will be increased accordingly.

5. Landlord has replaced the existing heating and air conditioning system ("HVAC System"), and Tenants shall contribute the sum of ONE THOUSAND FIVE HUNDRED (\$1,500.00) DOLLARS toward the installation and replacement of the new HVAC System upon the execution of this Addendum.

6. Tenants shall bear all responsibility for the maintenance, upkeep and service to the new HVAC System as of the date of its installation.

7. All other terms and conditions of the two separate leases dated February 14, 1995 for the businesses commonly known as Jennifer Leather and Jennifer Convertibles shall remain in full force and effect, to the extent that they do not conflict with this Addendum. In the event of such a conflict of terms, this Addendum shall govern and supercede the Leases.

DATED:


Cross Pointe Plaza, LLC, Landlord Managing Member

DATED:


Jennifer Convertibles, Inc., Tenant

Jennifer Convertibles- Crosspointe Plaza

	<u>BILLED</u>	<u>PAID</u>	<u>BALANCE DUE</u>
7/18/2010 Cam	1,216.19 -		1,216.19
7/18/2010 Tax	1,521.23 -		1,521.23
7/18/2010 Rent	7,049.68 -		7,049.68
7/18/2010 H/O Cam	1,216.19 -		1,216.19
7/18/2010 H/O Tax	1,521.23 -		1,521.23
7/19/2010 H/O Rent	7,049.68 -		7,049.68
7/15/2010 late fee (on July)	674.67 -		674.67
8/1/2010 Cam	2,693.00	-2,528.32	164.68 CK#74929
8/1/2010 Tax	3,368.44	-3,259.28	109.16 CK#74929
8/1/2010 Rent	15,610.00	-15,610.00	0.00 CK#74929
8/1/2010 H/O Cam	2,693.00 -		2,693.00
8/1/2010 H/O Tax	3,368.44 -		3,368.44
8/1/2010 H/O Rent	15,610.00 -		15,610.00
9/1/2010 Cam	2,693.00	-2,528.32	164.68 ck#75523
9/1/2010 Tax	3,368.44	-3,259.28	109.16 ck#75523
9/1/2010 Rent	15,610.00	-15,610.00	0.00 ck#75523
9/1/2010 H/O Cam	2,693.00 -		2,693.00
9/1/2010 H/O Tax	3,368.44 -		3,368.44
9/1/2010 H/O Rent	15,610.00 -		15,610.00
10/1/2010 Cam	2,693.00	-2,693.00	0.00 ck#76041
10/1/2010 Tax	3,368.44	-3,368.44	0.00 ck#76041
10/1/2010 Rent	15,610.00	-15,610.00	0.00 ck#76041
10/1/2010 H/O Cam	2,693.00 -		2,693.00
10/1/2010 H/O Tax	3,368.44 -		3,368.44
10/1/2010 H/O Rent	15,610.00 -		15,610.00
11/1/2010 Cam	2,693.00	-2,693.00	0.00 ck#76888
11/1/2010 Tax	3,368.44	-3,368.44	0.00 ck#76888
11/1/2010 Rent	15,610.00	-15,610.00	0.00 ck#76888
11/1/2010 H/O Cam	2,693.00 -		2,693.00
11/1/2010 H/O Tax	3,368.44 -		3,368.44
11/1/2010 H/O Rent	15,610.00 -		15,610.00
\$	193,620.40	\$ (86,138.08)	\$ 107,482.32 Through 11/30/10

Checks received post petition:

74929	8/11/2010	\$ 21,397.60
75523	9/7/2010	\$ 21,397.60
76041	10/6/2010	\$ 21,671.44
76888	7/5/2110	\$ 21,671.44
		<u>\$ 86,138.08</u>

WASSERMAN, JURISTA & STOLZ, P.C.

225 Millburn Avenue, Suite 207

P.O. Box 1029

Millburn, New Jersey 07041

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
JENNIFER CONVERTIBLES, INC. <i>et al.</i> ,	:	Case No.: 10-13779 (ALG)
	:	
	:	Jointly Administered
Debtors.	:	
	:	

ORDER APPROVING MOTION FOR PAYMENT OF ADMINISTRATIVE CLAIM

Upon the motion of CROSSPOINTE PLAZA, LLC, for the allowance and payment of an administrative expense claim (the "Motion"); and the Court finding that adequate notice thereof has been provided pursuant to the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court; and it appearing that no other or further notice need be provided; and after due deliberation thereon and sufficient cause appearing therefor, it is hereby

ORDERED that CROSSPOINTE PLAZA, LLC, shall have an allowed administrative expense priority claim pursuant to 11 U.S.C. § 503(b)(9) in the amount of \$107,482.32, (the "Allowed Claim"); and it is further

ORDERED that the above-captioned debtors and debtors in possession are hereby directed to immediately pay the Allowed Claim plus attorneys fees of \$ _____ to CROSSPOINTE PLAZA, LLC; and it is further

ORDERED that this Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this order.

Dated: November ____, 2011

The Honorable Allan L. Gropper
United States Bankruptcy Judge