

**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)

**DECLARATION OF SUSAN BENTON IN SUPPORT OF MOTION
OF WINFIELD GROUP TO CONFIRM THAT NO STAY
IS IN EFFECT OR, ALTERNATIVELY,
FOR NUNC PRO TUNC RELIEF FROM AUTOMATIC STAY**

I, Susan Benton, being fully sworn, hereby declare that the following is true to the best of knowledge, information and belief:

1. I am the Official Spokesperson for SARM Enterprises, a Partner in Winfield Group (“**Movant**”). I am authorized to make and submit this Declaration in support of the *Motion of Winfield Group to Confirm That No Stay is in Effect or, Alternatively, for Nunc Pro Tunc Relief from the Automatic Stay* filed contemporaneously herewith.

2. I have personal knowledge of the matters contained in this Declaration except as to those matters alleged upon information and belief and as to those matters I believe them to be true. If called upon as a witness, I could and would competently testify as follows.

3. In my capacity as Official Spokesperson of SARM Enterprises, I have access to, and I am familiar with, the books and records kept on behalf of Movant. These books and records have been generated, recorded and compiled in the ordinary course of business of SARM Enterprises on behalf of Movant. Further, these documents were prepared at the time, or near the time, that the information was received or the events and transactions actually took place. It is the standard

operating procedure to preserve these documents in a place of safekeeping on its business premises. I have personal access to these books and records and their continued safekeeping is maintained under my direction and supervision.

4. On information and belief, on July 18, 2010, the above-named Debtor filed a petition for relief under chapter 11 of title 11, of the United States Code.

5. Debtor Jennifer Convertibles, Inc., a Delaware corporation d/b/a Jennifer Convertibles (the "**Debtor**"), is currently a holdover, month-to-month tenant of Movant herein at the Blossom Hill Shopping Center and specifically occupying the premises known as 944-B Blossom Hill Road, San Jose, California (the "**Subject Premises**").

6. On or about March 1, 2004, Movant leased to the Debtor the Subject Premises pursuant to a written Shopping Center Lease for a term of five (5) years (the "Lease"). There is no security deposit under the Lease. A true and correct copy of the Lease is attached hereto as Exhibit A and is incorporated herein by reference. The Lease term commenced on July 1, 2004.

7. Pursuant to the terms of the Lease, the Debtor was initially required to pay to Movant the sum of \$8,750.00 per month as and for the minimum monthly rental of the Subject Premises, said sum being due and payable on the first day of each calendar month. A schedule for increases in the minimum monthly rental for the life of the Lease (in each case, the "**Minimum Monthly Rental**") is contained in the Lease as follows:

Year	Dates	Minimum Monthly Rent
1	7-1-2004 to 6-30-2005	\$8,750.00
2	7-1-2005 to 6-30-2006	\$8,946.88

Year	Dates	Minimum Monthly Rent
3	7-1-2006 to 6-30-2007	\$9,148.18
4	7-1-2007 to 6-30-2008	\$9,354.01
5	7-1-2008 to 6-30-2009	\$9,564.48

8. In addition to the Minimum Monthly Rent, the Debtor is obligated to pay its proportionate share of real estate taxes and common area charges which are considered additional rent under the Lease. (See ¶8.1 and ¶11.4 of Lease.)

9. The Lease expired by its own terms on June 30, 2009. There have been no extensions or renewals of the Lease since its expiration on June 30, 2009. However, since the expiration of the Lease, the Movant and Debtor have been operating on a month-to-month basis pursuant to applicable California law.

10. During the month-to-month tenancy, the Debtor has failed to pay to Movant the sum of \$33,046.60 representing the following payments when would have been due (i.e., on the first of each calendar month or within the first 10 days of the month - or "grace period" under the Lease) in order to continue the month-to-month tenancy in which the parties engaged prior the Debtor's bankruptcy:

Date	Description	Amount Due
Pre-Petition Arrears:		
6-1-10 to 6-30-10	Minimum rent	\$9,564.48
6-1-10 to 6-30-10	CAM	\$1,330.00
7-1-10 to 7-17-10	Minimum rent (pro rated)	\$5,419.87

Date	Description	Amount Due
	17 days @ \$318.82 per day	
7-1-10 to 7-17-10	CAM (pro rated) 17 days @ \$44.33 per day	\$753.67
	Subtotal	\$17,068.02
Post-Petition Arrears:		
7-18-10 to 7-31-10	Minimum rent (pro rated) 14 days @ \$318.82 per day	\$4,463.48
7-18-10 to 7-31-10	CAM (pro rated) 14 days @ \$44.33 per day	\$620.62
8-1-10 to 8-31-10	Minimum rent	\$9,564.48
8-1-10 to 8-31-10	CAM	\$1,330.00
	Subtotal	\$15,978.58
	Total Arrears	\$33,046.60

11. On the date of the filing of this Declaration, I was notified that funds were received from the Debtor by direct deposit in the sum of \$10,894.48 and designated by the Debtor for August 2010 rents. However, such funds were not received on the first of the month (or within the 10-day grace period) as required under the terms of the Lease (which terms apply to any month-to-month tenancy created in accordance with applicable California law).

12. On July 26, 2010, without prior notice or knowledge of the filing of this bankruptcy case, Movant caused to be served upon the Debtor a notice of default informing the Debtor that it had five days to quit the Subject Premises or pay the delinquent rent of \$21,788.96 which included rent through July 31, 2010 (the “**Five Day Notice**”). A true and correct copy of

the Five Day Notice is attached hereto as Exhibit B and is incorporated herein by reference.

13. Also on July 26, 2010, without prior notice or knowledge of the filing of this bankruptcy case, Movant caused to be served upon the Debtor a notice of termination of tenancy therein informing the Debtor its tenancy would be terminated thirty days after service or August 31, 2010, whichever is later (the “**Thirty Day Notice**”). A true and correct copy of the Thirty Day Notice is attached hereto as Exhibit C and is incorporated herein by reference.

14. Movant has been advised by its counsel that the Sheriff of Santa Clara County will not enforce a writ of possession of real property when informed that the tenant therein has filed a voluntary petition for bankruptcy relief.

15. So long as the Debtor continues to hold over in possession of the Subject Premises, Movant is unable to enter into a lease with a replacement tenant. Movant is therefore at risk of suffering further economic setbacks so long as the Debtor holds over in possession of the Subject Premises, especially in light of the lawful termination of the current month-to-month arrangement between the parties. I also respectfully assert that Movant will suffer irreparable harm if it is not permitted to immediately act to recover possession in accordance with California law and the lawful Thirty Day Notice.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 23, 2010
at Seattle, Washington

/s/ Susan Benton
By: Susan Benton
Title: Official Spokesperson for
SARM Enterprises, a Partner
in Winfield Group.