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

-----X		
In re:	:	Chapter 11
	:	
JENNIFER CONVERTIBLES, INC., <u>et al.</u>	:	Case No. 10-13779 (ALG)
	:	
Debtors.	:	(Joint Administration Pending)
-----X		

**OBJECTION OF KIMCO REALTY CORPORATION TO THE DEBTORS'
MOTION PURSUANT TO BANKRUPTCY CODE SECTION 365(a) FOR
ENTRY OF AN ORDER AUTHORIZING REJECTION OF CERTAIN
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

Kimco Realty Corporation ("Kimco"), by its undersigned counsel, hereby objects to the *Debtors' Motion Pursuant to Bankruptcy Code Section 365(a) for Entry of an Order Authorizing Rejection of Certain Unexpired Leases of Nonresidential Real Property* (the "Rejection Motion"), and respectfully states as follows:

Background

1. On July 18, 2010 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"). The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. Kimco and its affiliates are the landlords to several leases with the Debtors for non-residential real properties, including the lease (the “Kimco Lease”) for certain premises located at 13329 Worth Avenue in Woodbridge, Virginia (the “Woodbridge Location”).

3. On July 19, 2008, the Debtors filed the Rejection Motion, seeking to reject certain of their unexpired leases of non-residential real property, including the Kimco Lease, effective *nunc pro tunc* to the Petition Date.

4. The Kimco Landlords hereby object to the relief sought in the Rejection Motion.

Objection -- The Debtors’ Rejection Motion Must Be Denied

5. The Debtors improperly seek to reject the Kimco Lease effective *nunc pro tunc* to the Petition Date. *Nunc pro tunc* rejection is an extraordinary relief that should not be granted lightly. In this case, neither factual nor legal justifications exist for rejection of the Kimco Lease *nunc pro tunc* to the Petition Date.

6. In their Rejection Motion, the Debtors concede that they are “in the process of vacating these locations and will be in a position to return the properties vacant to the respective landlords by no later than July 31, 2010.” See Rejection Motion ¶ 13. In fact, the Debtors are currently in possession of and conducting business at the Woodbridge Location as of the date hereof, and will likely continue to do so until July 31, 2010. Rejection of the Kimco Lease *nunc pro tunc* to the Petition Date is grossly inequitable because the Debtors would be deriving a benefit at the expense of Kimco, who is effectively forced to provide rent free occupancy through the end of the month.

7. Moreover, there is simply no legal basis whatsoever for such relief. To the contrary, this Court has held in the Stone Barn case that a debtor is required to timely perform its obligations under Section 365(d)(3) of the Bankruptcy Code, including paying rent for the

interim period between the petition date and the end of that month (also commonly known as “stub rent”) on a prorated basis. See In re Stone Barn Manhattan LLC, 398 B.R. 359, 368 (Bankr. S.D.N.Y. 2008); see also 11 U.S.C. § 365(d)(3). The Debtors are effectively trying to circumvent Stone Barn and their obligations under Section 365(d)(3) to pay post-petition rent to Kimco for up to 14 days while continuing to conduct store closing sales at the Woodbridge Location.

8. In sum, the circumstances here do not warrant granting rejection of the Kimco Lease effective *nunc pro tunc* to the Petition Date.

WHEREFORE, for the foregoing reasons, Kimco respectfully requests that the Court (i) deny the relief sought in the Rejection Motion, (ii) require the Debtors to pay stub rent on a per diem basis for the Debtors’ post-petition use and occupancy of the Woodbridge Location, and (iii) grant such other and further relief as the Court deems just and proper.

Dated: July 21, 2010
New York, New York

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