

Cobb Place Shopping Center  
Cobb County, Kennesaw, GA

BASIC LEASE TERMS

LANDLORD:

(also referred to as the "SCI Entities"): SCI Cobb Place Fund, LLC a Delaware limited liability company as to an undivided 7.93117% interest, SCI Cobb Place Fund 1, LLC a Delaware limited liability company as to an undivided 8.079696% interest, SCI Cobb Place Fund 2, LLC a Delaware limited liability company as to an undivided 1.343654% interest, SCI Cobb Place Fund 3, LLC, a Delaware limited liability company, as to an undivided 2.436210% interest, SCI Cobb Place Fund 4, LLC, a Delaware limited liability company, as to an undivided 4.060350%, SCI Cobb Place Fund 5, LLC, a Delaware limited liability company, as to an undivided 1.923324% interest, SCI Cobb Place Fund 6, LLC, a Delaware limited liability company, as to an undivided 1.870001% interest, SCI Cobb Place Fund 7, LLC a Delaware limited liability company, as to an undivided 2.564431% interest, SCI Cobb Place Fund 8, LLC a Delaware limited liability company, as to an undivided 1.923324% interest, SCI Cobb Place Fund 9, LLC, a Delaware limited liability company, as to an undivided 2.336681% interest, SCI Cobb Place Fund 10, LLC, a Delaware limited liability company, as to an undivided 3.932128% interest, SCI Cobb Place Fund 11, LLC, a Delaware limited liability company, as to an undivided 11.646792% interest, SCI Cobb Place Fund 12, LLC, a Delaware limited liability company, as to an undivided 3.697055% interest, SCI Cobb Place Fund 13, LLC, a Delaware limited liability company, as to an undivided 3.932128% interest, SCI Cobb Place Fund 14, LLC, a Delaware limited liability company, as to an undivided 1.795102% interest, SCI Cobb Place Fund 15, LLC, a Delaware limited liability company, as to an undivided 1.556077% interest, SCI Cobb Place Fund 16, LLC, a Delaware limited liability company, as to an undivided .928166% interest, SCI Cobb Place Fund 17, LLC, a Delaware limited liability company, as to an undivided 2.350729% interest, SCI Cobb Place Fund 18, LLC, a Delaware limited liability company, as to an undivided 2.953490% interest, SCI Cobb Place Fund 19, LLC, a Delaware limited liability company, as to an undivided .961662% interest, SCI Cobb Place Fund 20, LLC, a Delaware limited liability company, as to an undivided 5.556268% interest, SCI Cobb Place Fund 21, LLC, a Delaware limited liability company, as to an undivided .961662% interest, SCI Cobb Place Fund 22, LLC, a Delaware limited liability company, as to an undivided 1.282216% interest, SCI Cobb Place Fund 23, LLC, a Delaware limited liability company, as to an undivided 4.747198% interest, SCI Cobb Place Fund 24, LLC, a Delaware limited liability company, as to an undivided 2.137026% interest, SCI Cobb Place Fund 25, LLC, a Delaware limited liability company, as to an undivided 2.884985% interest, SCI Cobb Place Fund 26, LLC, a Delaware limited liability company, as to an undivided 1.282216% interest, SCI Cobb Place Fund 27, LLC, a Delaware limited liability company, as to an undivided 1.341632% interest, SCI Cobb Place Fund 28, LLC, a Delaware limited liability company, as to an undivided 2.137026% interest, SCI Cobb Place Fund 29, LLC, a Delaware limited liability company, as to an undivided 1.068513% interest, SCI Cobb Place Fund 31, LLC, a Delaware limited liability company, as to an undivided 2.436210% interest, SCI Cobb Place Fund 32, LLC, a Delaware limited liability company, as to an undivided 1.495918% interest, SCI Cobb Place Fund 33, LLC, a Delaware limited liability company, as to an undivided .854810% interest, SCI Cobb Place Fund 34, LLC, a Delaware limited liability company, as to an undivided 1.453178% interest, SCI Cobb Place Fund 35, LLC, a Delaware limited liability company, as to an undivided 2.137026% interest, collectively as tenants in common.

TENANT: Jennifer Convertibles, Inc.

GUARANTOR: N/A

STORE NAME: Jennifer Convertibles and/or Jennifer-Leather

DEMISED PREMISES: Suite 494, 840 Ernest W. Barrett Parkway, NW, Kennesaw GA 30144

LENGTH OF LEASE TERM: Period of time commencing on the Lease Commencement Date and expiring 5 years commencing on the Rental Commencement Date. Tenant has an option to extend the Lease Term and an option to cancel this Lease, as more particularly set forth in Exhibit "E" Special Stipulations

RENTAL COMMENCEMENT DATE: 90 days after date Landlord delivers possession to Tenant, expected as April 1, 2006. If Landlord encounters delays in delivering possession of the Demised Premises to Tenant, this Lease will not be void or voidable, nor will Landlord be liable to Tenant for any loss or damage resulting from such delay; however, if possession is not delivered to Tenant within 90 days after this Lease has been fully signed and delivered by the parties, as extended on account of delays caused by Tenant, Tenant shall be entitled to cancel this Lease by notice given to Landlord no later 5 business days after expiration of such 90 day period.

Notwithstanding anything herein to the contrary, if the Rental Commencement Date occurs on a day other than the first day of a month, the first Lease Year shall commence on the first day of the month immediately following the Rental Commencement Date and Tenant shall pay Fixed Minimum Rent on a per diem basis for the number of days between the Rental Commencement Date and commencement of the First Lease Year.

LEASE COMMENCEMENT Upon date that Tenant or its agents or contractors first enter the Demised Premises to

-i-

1882144v2  
H:\JENNIFER\Kennesaw\sci cobb place jennifer convertibles lease-HK-31506.doc

Cobb Place Shopping Center  
Cobb County, Kennesaw, GA

DATE: perform any work or perform business.  
EXPIRATION DATE: 5 years after Rental Commencement Date.

FIXED MINIMUM  
RENT (including  
Fixed Minimum Rent  
for Extended Term if  
Tenant exercises  
option for same as  
provided in Exhibit  
"E");

	<u>LEASE YEARS</u>	<u>ANNUAL AMOUNT</u>	<u>MONTHLY INSTALLMENTS</u>
1	\$19.00	\$119,358.00	\$ 9,946.50
2	\$19.57	\$122,938.74	\$10,244.90
3	\$20.16	\$126,645.12	\$10,553.76
4	\$20.76	\$130,414.32	\$10,867.86
5	\$21.38	\$134,309.16	\$11,192.43
6	\$22.02	\$138,329.64	\$11,527.47
7	\$22.68	\$142,475.76	\$11,872.98
8	\$23.36	\$146,747.52	\$12,228.96
9	\$24.06	\$151,144.92	\$12,595.41
10	\$24.78	\$155,667.96	\$12,972.33

PREPAID RENT: first month of (i) Fixed Minimum Rent equal to \$9,946.50 and (ii) Tenant proportionate share of taxes, assessments and Shopping Center Operating Costs estimated at \$1,591.44 for a total of \$11,537.94.

T.I. ALLOWANCE: N/A.

PERCENTAGE RENT: N/A

SECURITY DEPOSIT: N/A

PERMITTED USE: Operation of a furniture store specializing in sofa beds, leather furniture, mattresses and accessories, sofas, furniture and home furnishings. Additionally Tenant may sell related and ancillary items provided the sale of such items does not conflict with exclusives or use restrictions applicable to the Shopping Center.

#### LEASE INDEX

#### ARTICLE

1. Demised Premises
2. Term of Lease
3. Rental Commencement Date
4. Fixed Minimum Rent
5. Percentage Rent
6. Termination by Landlord for Insufficient Rent
7. Gross Sales; Reporting and Payment of Percentage Rent
8. Additional Rent
9. Taxes
10. Late Charges and Survival
11. Utilities
12. Shopping Center Operating Costs
13. Financing
14. Control of Common Areas by Landlord
15. License to Common Areas
16. Assignment and Subletting
17. Security Deposit
18. Operation of Business
19. Use of Demised Premises
20. Tenant's Fixtures and Alterations
21. Tenant's Sign
22. Landlord's Construction Obligation
23. Laws, Waste and Nuisance
24. Repairs by Landlord
25. Repairs and Maintenance by Tenant
26. Mechanic's Liens
27. Indemnity
28. Insurance Required of Tenant
29. Insurance Required of Landlord
30. Waiver
31. Increase in Insurance Premiums
32. Destruction
33. Condemnation

Cobb Place Shopping Center  
Cobb County, Kennesaw, GA

34. Default & Remedies
35. Access to Demised Premises
36. Attornment
37. Quiet Enjoyment
38. Force Majeure
39. End of Term
40. Holding Over
41. No Waiver
42. Notices
43. Recording
44. Partial Invalidity
45. Broker's Commissions
46. Successors
47. Subordination
48. Rules and Regulations
49. Entire Agreement, Etc.
50. Limitation of Liability
51. Estoppel Certificate
52. Delivery of Estoppel Certificate and SNDA
53. Merchant's Association
54. Landlord and Tenant
55. [INTENTIONALLY OMITTED]
56. Submission of Lease
57. Restriction on Hazardous Substances
58. Requirements upon Completion
59. Security Interest

**EXHIBITS**

- |     |  |     |                                   |
|-----|--|-----|-----------------------------------|
| "A" | Drawing of the Shopping Center               | "F" | Legal Description                 |
| "B" | Landlord's Construction/Tenant's Work Letter | "G" | Disclosure Statement              |
| "C" | Requirements for Tenant's Sign               | "H" | (Intentionally Omitted)           |
| "D" | Rules and Regulations                        | "I" | Lease Commencement Date Agreement |
| "E" | Special Stipulations                         | "J" | Additional Rent Estimates         |

**SHOPPING CENTER LEASE AGREEMENT**

THIS SHOPPING CENTER LEASE AGREEMENT (hereinafter referred to as this "Lease") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between SCI ENTITIES (hereinafter collectively referred to as "Landlord"), whose address for the purposes hereof is c/o SCI Real Estate Investments, 11620 Wilshire Boulevard, Suite 300, Los Angeles, California 90025; Attn: Karen E. Kennedy, Vice President, and JENNIFER CONVERTIBLES, INC. (hereinafter referred to as "Tenant"), whose address for the purposes hereof is 419 Crossways Park Drive, Woodbury, NY 11797.

1. DEMISED PREMISES: In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, Landlord demises and leases to Tenant, and Tenant rents from Landlord, those certain premises (hereinafter referred to as the "Demised Premises") now erected or hereafter to be erected in the Cobb Place Shopping Center (hereinafter referred to as "Shopping Center"), in the City of Kennesaw, County of Cobb, Georgia, which Demised Premises consist of a store having a total gross leasable area of approximately 6,282 square feet, commonly known and numbered as 840 Ernest W. Barrett Parkway, NW, Suite 494, Kennesaw, Georgia 30144. The boundaries and location of the Demised Premises are depicted on the drawing of the Shopping Center, which is attached hereto and made a part hereof and marked Exhibit "A". Said Exhibit "A" sets forth the general layout of the Shopping Center and shall not be deemed to be a warranty, representation or agreement on the part of Landlord that said Shopping Center is or will be constructed or remain exactly as indicated on said drawing. Provided that reasonable access to the Demised Premises and the parking facilities in the Shopping Center are not materially and adversely reduced or impaired, Landlord may increase, reduce or change the number, dimensions or location of the walkways, buildings and parking areas from time to time contained in the Shopping Center in any manner whatsoever as Landlord shall deem proper, and Landlord reserves the right to make alterations or additions to, or to build additional stories on the building in which the Demised Premises are contained and to add or remove or modify buildings adjoining the same or elsewhere in the Shopping Center. Notwithstanding the foregoing, Landlord will not install new structures which unreasonably interfere with visibility of the Demised Premises unless pursuant to requirements of law; provided, however, Tenant's sole remedy for breach of this sentence shall be cancellation of this Lease by notifying Landlord of such cancellation within 10 days after the earlier to occur of the date that Landlord notifies Tenant of Landlord's intent to install such structure(s) or the date that such structure(s) are installed.

This Lease does not grant any legal rights to "light and air" outside the Demised Premises nor any particular view visible from the Demised Premises, nor any easements, licenses or other interest unless expressly contained in this Lease. It is expressly agreed that under this Lease Tenant shall be granted a usufruct only in the Demised Premises, and not a leasehold or other estate in land, and that Tenant's interest hereunder is not subject to levy, execution and sale and, except as otherwise expressly provided herein, is not assignable except with Landlord's prior written consent.

2. TERM OF LEASE: The term of this Lease (hereinafter referred to as the "Lease Term") shall commence on the "Rental Commencement Date" hereinafter described and, unless sooner terminated or extended as hereinafter provided, shall terminate on the last day of the fifth (5<sup>th</sup>) "lease year" (as that term is hereinafter defined).

3. RENTAL COMMENCEMENT DATE: Tenant agrees to open for business no later than the Rental Commencement Date, and, by opening for business, Tenant shall be deemed to have accepted the Demised Premises, to have acknowledged that the same are in the condition called for hereunder, and to have agreed that the obligations of the Landlord imposed under this Lease have been fully performed. On the Rental Commencement Date, or as soon thereafter as Landlord may request, Tenant shall execute a written instrument specifying and acknowledging the Rental Commencement Date and the expiration of the Lease Term.

4. FIXED MINIMUM RENT: Tenant agrees to pay to Landlord fixed minimum rent in the amounts and in the manner set forth below:

(a) The term "lease year", as used herein, means the first full twelve (12) calendar month period commencing on the Rental Commencement Date, and each successive twelve (12) calendar month period thereafter, and the first lease year shall also include any partial calendar month at the beginning of the Lease Term. Notwithstanding anything herein to the contrary, if the Rental Commencement Date occurs on a day other than the first day of a month, the first Lease Year shall commence on the first day of the month immediately following the Rental Commencement Date and Tenant shall pay Fixed Minimum Rent on a per diem basis for the number of days between the Rental Commencement Date and commencement of the First Lease Year.

(b) Fixed minimum rent for any partial calendar month at the beginning of the Lease Term, or otherwise contained in the Lease Term, shall be prorated.

(c) Tenant shall pay the fixed minimum rent in monthly installments, in advance, on the Rental Commencement Date and on the first (1<sup>st</sup>) day of each calendar month thereafter contained in the Lease Term, at the address of Landlord set forth above or at such other address or to such other party as may be designated by Landlord, without any prior demand therefor and without any deduction or set-off whatsoever, provided, however, the Prepaid Rent set forth in the Basic Lease Terms shall be paid upon the execution of this Lease which Prepaid Rent Landlord agrees shall be applied to the fixed minimum rent, taxes and Shopping Center Operating Costs due Landlord from Tenant for the first full calendar month of the Lease Term pursuant to the terms of this Lease.

(d) The fixed minimum rent payable hereunder during the Lease Term (including any extension thereof provided for herein) is agreed to be as set forth in the Basic Lease Terms which Basic Lease Terms are incorporated herein by reference.

5. PERCENTAGE RENT: (INTENTIONALLY DELETED)
6. TERMINATION BY LANDLORD FOR INSUFFICIENT RENT: (INTENTIONALLY DELETED)
7. GROSS SALES REPORTING:

(a) The term "gross sales" is hereby defined to mean the dollar aggregate of all sales of Tenant and all licensees, concessionaires and tenants of Tenant, from all business conducted upon or from the Demised Premises by Tenant and all others, and whether such sales be evidenced by check, credit charge account, exchange or otherwise, and shall include, but not be limited to the amounts received from the sale of goods, wares and merchandise and for services performed on or at the Demised Premises, together with the amount of all orders taken or received at the Demised Premises or sales completed by delivery at the Demised Premises, whether such orders be filled from the Demised Premises or elsewhere, and whether such sales be made by means of mechanical or other vending devices in the Demised Premises. If any one or more departments or other divisions of Tenant's business shall be sublet by Tenant or conducted by any person, firm or corporation other than Tenant, then there shall be included in gross sales for the purpose of fixing the percentage rent payable hereunder all the gross sales of such departments or divisions, whether such sales be made at the Demised Premises or elsewhere, in the same manner and with the same effect as if the business or sales of such departments and divisions of Tenant's business had been conducted by Tenant itself. Gross sales shall not include sales of merchandise for which cash has been refunded or allowances made on merchandise claimed to be defective or unsatisfactory, to the extent of such refunds or allowances. There shall be deducted from gross sales the sales price of merchandise returned by customers for exchange, provided that the sales price of merchandise delivered to the customer in exchange shall be included in gross sales. Gross sales shall not include the exchange of merchandise with other stores of Tenant if such exchange is made for convenience and not for the purpose of consummating a sale which otherwise would have been included in gross sales. Gross sales shall not include the amount of any sales, use or gross receipts tax imposed by any federal, state, municipal, or governmental authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and paid by the Tenant to such governmental authority. No franchise or capital stock tax and no income or similar tax based upon income or profits as such shall be deducted from gross sales in any event whatever. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the calendar year during which such charge or sale shall be made, irrespective of the time when Tenant shall receive payment (whether full or partial) therefore. No deductions shall be allowed for uncollected or uncollectible installment or credit accounts.

(b) Tenant shall submit to Landlord on or before the fifteenth (15th) day following the end of each calendar quarter during the Lease Term a written statement signed by Tenant, and certified by it to be true, correct, and complete, showing in reasonably accurate detail the amount of gross sales for such month. Tenant shall submit to Landlord on or before the sixtieth (60<sup>th</sup>) day following the end of each calendar year during the Lease Term (and on or before the sixtieth (60<sup>th</sup>) day following the end of the Lease Term), a written statement signed by Tenant's certified public accountant and certified by it to be true, correct, and complete, showing in reasonably accurate detail satisfactory in scope to Landlord the amount of gross sales during the preceding calendar year (or other period to which such statement relates), which statement shall be duly certified by an independent and reputable certified public accountant, which accountant's certification shall be satisfactory in scope and substance to Landlord. The statements referred to herein shall be in such form and style and contain such details and breakdowns as Landlord may reasonably require.

(c) All reports required to be rendered by Tenant to Landlord shall be delivered to Landlord without any prior demand for the same.

(d) Tenant agrees to prepare and keep on the Demised Premises, for a period of not less than three (3) years following the end of each calendar year or part thereof contained in the Lease Term, adequate records for each such calendar year which shall show inventories and receipts of merchandise at the Demised Premises, and daily receipts from all sales and other transactions included within gross sales. Tenant further agrees to keep on the Demised Premises for at least three (3) years following the end of each such calendar year the gross income, sales, and occupation tax returns with respect to each such calendar year, and all pertinent original sales records. Pertinent original sales records shall include: cash register tapes, including tapes from temporary registers; serially numbered sales slips; the originals of all mail orders at and to the Demised Premises; the original records of all telephone orders at and to the Demised Premises; settlement report sheets of transactions with subtenants, concessionaires, and licensees; the original records showing that merchandise returned by customers was purchased at the Demised Premises by such customers; memorandum receipts or other records of merchandise taken out on approval; such other sales records, if any, which would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Tenant's sales; and the original sales records specified above for each and every subtenant, concessionaire, or licensee of Tenant. Landlord and Landlord's authorized representatives shall have the right to examine the aforesaid records of Tenant during regular business hours.

8. ADDITIONAL RENT: In addition to the foregoing fixed minimum rent and percentage rent, all other payments to be made by Tenant to Landlord shall be deemed to be and shall become additional rent hereunder whether or not the same be designated as such, and unless otherwise specified shall be due and payable, without any deduction or set-off whatsoever, on demand or together with the next succeeding installment of fixed minimum rent, whichever shall first occur, and Landlord shall have, without limitation, the same remedies for failure to pay any

such additional rent as for a non-payment of fixed minimum rent. All fixed minimum rent, percentage rent and all other payments to be made by Tenant to Landlord is hereinafter referred to as "Rent".

9. TAXES: With respect to all real property and ad valorem taxes, including but not limited to extraordinary and/or special assessments, which may be levied or assessed by any lawful authority against the land and buildings comprising the Shopping Center (the same being hereinafter collectively referred to as the "taxes and assessments"):

(a) Tenant agrees to pay to Landlord as additional rent its proportionate share (as hereinafter defined) of all such taxes and assessments for each calendar year or portion thereof during the Lease Term. Tenant's proportionate share shall be equal to that portion of such taxes and assessments that the number of square feet in the Demised Premises bears to the total number of leased and occupied floor area in the Shopping Center (the "Floor Area"). Excluded from the Floor Area shall be any tenant in the Shopping Center who pays for its own maintenance or pays for maintenance under a separate agreement. Should the State in which the Shopping Center is located or any political subdivision thereof or any governmental authority having jurisdiction over the Shopping Center impose a tax and/or assessment (other than an income or franchise tax) either upon or against the rentals payable by tenants in the Shopping Center to Landlord or upon or against the business of renting land or buildings, either by way of substitution for such taxes and assessments, or in addition thereto, such tax and/or assessment shall be included in computing the taxes and assessments against the Shopping Center for the purposes of this article.

(b) Tenant's proportionate share of all such taxes and assessments during the Lease Term shall be paid in monthly installments on the first day of each calendar month, in advance, in an amount estimated by Landlord; provided, that in the event Landlord is required under any security deed, mortgage or like instrument encumbering the Shopping Center to escrow real estate taxes, Landlord may, but shall not be obligated to, use the amount required to be so escrowed as a basis for its estimate of the monthly installments due from Tenant hereunder. Upon receipt of all tax bills and assessment bills attributable to any calendar year during the Lease Term, Landlord shall furnish Tenant with a written statement of the actual amount of Tenant's proportionate share of such taxes and assessments for such year. If the total amount paid by Tenant under this section for any calendar year during the Lease Term shall be less than the actual amount due from Tenant for such year, as shown on such statement, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, such deficiency to be paid within twenty (20) days after demand therefore by Landlord; and if the total amount paid by Tenant hereunder for any such calendar year shall exceed such actual amount due from Tenant for such calendar year, such excess shall be credited to the next due installment of fixed minimum rent by Landlord to Tenant. All amounts due hereunder shall be payable to Landlord at the place where the fixed minimum rent is payable. For the calendar years in which this Lease commences and terminates, the provisions of this section shall apply, and Tenant's liability for its proportionate share of such taxes and assessments for such years shall be subject to a pro rata adjustment based on the number of days of said calendar years during the Lease Term. A copy of a tax bill or assessment bill submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of such taxes and assessments assessed or levied against the property to which such bill relates. Prior to or at the commencement of the Lease Term and from time to time thereafter throughout the Lease Term, Landlord shall notify Tenant in writing of Landlord's estimate of Tenant's monthly installments due hereunder.

(c) Tenant shall also pay to the appropriate governmental authority, as and when due, any taxes imposed on the inventory, fixtures and equipment of Tenant, and shall not suffer or permit any tax lien or similar lien to attach thereto.

10. LATE CHARGES AND SURVIVAL: If Tenant shall fail to pay, as and when the same is due and payable, any fixed minimum rent, percentage rent, additional rent, or other sums due to Landlord hereunder, then Landlord may at its option charge and collect, and Tenant agrees to pay upon demand by Landlord, a late charge of 5% of the late payment, not as a penalty but in liquidation of the damages incurred by Landlord by reason of Landlord's administrative expenses incurred by such failure (actual damages being difficult or impossible to determine); and payment of such late charge on demand shall be a condition precedent to the remedying of any such failure by Tenant; provided, however, that no more than once in any twelve (12)-month period, Landlord agrees to waive its right to collect such late charge on such payment of Rent if such payment is made no later than the fifth (5th) business day after Landlord delivers to Tenant written notice of such late payment. In addition, all past due amounts shall accrue interest at a rate of one and one-half percent (1.5%) per month from the time such amount was originally due until the time such amount is paid in full. The provisions of this Lease with respect to any obligation of Tenant to pay any sums to Landlord or to perform any act after the expiration or other termination of this Lease shall survive the expiration or other termination of this Lease.

11. UTILITIES: Landlord shall not be liable in the event of any interruption in the supply of any utilities. Tenant agrees that it will not install any equipment which will exceed or overload the capacity of any utility facilities, and that if any equipment installed by Tenant shall require additional utility facilities, the same shall be installed by Tenant at Tenant's expense and only after receipt by Tenant of the Landlord's approval in writing of the plans and specifications therefore. Tenant shall pay, as and when due, all charges for the use or consumption of sanitary sewer, water, gas, electric, or other utility services, provided to the Demised Premises. Should any such utility service not be separately metered to the Demised Premises, then Tenant shall pay its proportionate share of the total charges billed to Landlord for such service, without any deduction or set-off whatsoever, upon demand of Landlord or together with the next succeeding installment of fixed minimum rent, whichever shall first occur. Tenant's proportionate share of such total charges shall be the amount determined by multiplying such total charges by a fraction, the numerator of which is the number of square feet in the Demised Premises, and the denominator of which is the total number of square feet of constructed floor area in the improvements to which the bill for such charges relates.

12. SHOPPING CENTER OPERATING COSTS: On and after the Rental Commencement Date, Tenant agrees to pay to Landlord, in monthly installments, in advance, Tenant's proportionate share of the annual "Shopping Center Operating Costs" (as that term is hereinafter defined), in addition to and together with each monthly installment of fixed minimum rent, as further additional rent, in the amounts and in the manner set forth below:

(a) The term "Common Areas" as used herein means those areas of the Shopping Center from time to time provided by Landlord for the common or joint use and benefit of all tenants of the Shopping Center, their employees, agents, customers and other invitees, including, without limitation, all parking areas, access roads, driveways, loading docks, stairs, sidewalks, signs advertising the Shopping Center, and landscaped areas.

(b) The term "Shopping Center Operating Costs" as used herein means the cost of the insurance on the Shopping Center required of Landlord hereunder, plus the total cost and expense incurred by Landlord in operating, managing, equipping, lighting, repairing, replacing and maintaining the Common Areas all of (including, without limitation, if and to the extent a part of the Common Areas, gardening and landscaping, storm drainage systems and other utility systems, sprinkler systems, fire protection and security alarm systems and equipment, traffic control equipment, heating and air-conditioning, the cost of public liability and property damage insurance, commercially reasonable management fees, repairs, line painting, lighting, sanitary control, removal of snow, trash, rubbish, garbage and other refuse, depreciation on or rentals of machinery and equipment used in such maintenance, the cost of personnel to implement such services, to direct parking and traffic flow, and to police the Common Areas), plus the total cost and expense incurred by Landlord in maintaining and repairing the buildings in the Shopping Center (including all repairs required of Landlord under SECTION 24 of this Lease, excepting and excluding, however, any expenses incurred by Landlord but reimbursed to Landlord by way of insurance coverage or contractor warranties and the like), plus fifteen (15%) percent of all of the foregoing costs to cover Landlord's administrative and overhead costs.

(c) Tenant's proportionate share of the annual Shopping Center Operating Costs shall be an amount determined by multiplying the actual annual Shopping Center Operating Costs by a fraction, the numerator of which is the number of square feet in the Demised Premises and the denominator of which is the Floor Area in the Shopping Center.

(d) The additional rent provided for in this Article shall be estimated in advance by Landlord and shall be computed on an annual basis, and such estimates shall be paid monthly in monthly installments in advance by Tenant together with the fixed minimum rent, without any deduction or set-off whatsoever. Such additional rent shall be held by Landlord for the payment of the Shopping Center Operating Costs. Tenant shall pay to Landlord within twenty (20) days after written demand the amount, if any, equal to the difference between Tenant's proportionate share of the actual Shopping Center Operating Costs and the estimated Shopping Center Operating Costs. The balance, if any, of such additional rent remaining after the payment of the actual Shopping Center Operating Costs shall be held by Landlord and applied to the next monthly payment of such additional rent. Tenant shall not be entitled to receive interest on any such additional rent.

13. FINANCING: (INTENTIONALLY DELETED)

14. CONTROL OF COMMON AREAS BY LANDLORD: All Common Areas shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right from time to time to establish, modify, and enforce rules and regulations with respect to all Common Areas. Landlord shall have the right to construct, maintain and operate lighting facilities in and on all Common Areas; to police the same; from time to time to change the area, level, location and arrangement of parking areas and other facilities located in the Common Areas; to restrict parking by tenants, their officers, agents, and employees; to employ parking attendants; to enforce parking charges (by operation of meters or otherwise), with appropriate provisions for free-parking ticket validating by tenants; to close all or any portion of the Common Areas to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; to close temporarily all or any portion of the parking areas or parking facilities; to discourage non-customer parking; and to do and perform such other acts in and to the Common Areas as, in the use of good business judgment, Landlord shall determine to be desirable for the convenience and use thereof by the tenants of the Shopping Center, but nothing herein contained shall be construed to limit the right of Landlord to operate and maintain the Common Areas in such manner, consistent with this Lease, as Landlord in its sole discretion shall determine from time to time. Regardless of any changes in the Common Areas, Tenant shall be entitled to the non-exclusive use of no less than three (3) parking spaces at no charge for its employees.

15. LICENSE TO COMMON AREAS: All Common Areas which Tenant may be permitted to use and occupy are to be non-exclusively used and occupied under a revocable license (which license shall not be revoked during the Term of this Lease for so long as Tenant is not in default beyond expiration of any applicable cure period), and if the Common Areas shall be diminished, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or abatement of rent, nor shall any such diminution of the Common Areas be deemed constructive or actual eviction.

16. ASSIGNMENT AND SUBLETTING: Tenant shall not voluntarily or involuntarily assign, mortgage, or pledge this Lease or any interest of Tenant therein, nor shall Tenant grant any license, franchise, or sublease with respect to all or any part of the Demised Premises, without the prior written consent of Landlord in each instance. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. The prohibition against assignment or subletting contained in this section shall be construed to include a prohibition against any such act by operation of law, legal process, receivership, bankruptcy or otherwise, and shall further be deemed to include, if Tenant is a corporate

entity, partnership, limited liability company or the like, any transfer of a controlling or majority interest of Tenant by sale, assignment, bequest, inheritance, operation of law, or other disposition. Should the Demised Premises be occupied by anyone holding under Tenant, Landlord may collect rent from such occupant and apply the net amount collected to the rent herein reserved, but no such acceptance of rent shall be deemed a waiver of the provisions of this section or a release of Tenant from the further performance by Tenant of the covenants of Tenant set forth in this section. Notwithstanding any assignment or subletting, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease. Without limitation on any other provision of this section, if at any time during the Lease Term any part or all of (i) if Tenant is a corporation; (ii) the general partnership interest of Tenant, or a majority of the limited partnership interests of Tenant, if Tenant is a general or limited partnership, or (iii) a majority interest of Tenant, if Tenant is a limited liability company, the corporate shares of Tenant shall be transferred by sale, assignment, bequest, inheritance, operation of law, or other disposition, such action shall be deemed an assignment of this Lease. As used herein, a controlling or majority interest shall be deemed transferred if such transfer results in a change in the present effective voting control of Tenant by the person or persons owning a majority of said interests in Tenant on the date of this Lease.

17. SECURITY DEPOSIT: (INTENTIONALLY DELETED)

18. OPERATION OF BUSINESS: Tenant shall operate all of the Demised Premises during the entire Lease Term for the Permitted Use with due diligence and efficiency, and during the regular customary days and hours for such type of business in the trade area in which the Shopping Center is located, so as to produce all of the gross sales which may be produced by such manner of operation, unless prevented from so doing by causes beyond the control of Tenant. Should Tenant fail to maintain reasonable inventories, or fail to remain open for business to the general public for at least forty (40) hours per week, or abandon the Demised Premises, or should Tenant for any reason not beyond the control of Tenant fail to operate its business in the Demised Premises for more than ten (10) consecutive days, such will irreparably damage Landlord and Landlord may, at its option at any time thereafter, by ten (10) days prior written notice to Tenant terminate this Lease, or declare Tenant in material default hereof, which will entitle Landlord to any and all rights and remedies provided in this Lease, at law or in equity.

19. USE OF DEMISED PREMISES: Tenant and all those holding under Tenant shall use the Demised Premises for and only for the permitted use set forth in the Basic Lease Terms, and for no other use or purpose whatsoever. Tenant acknowledges that this Lease is a Shopping Center Lease and that Landlord has selected the use of Tenant and the other tenants within the Shopping Center based on the synergy and Tenant mix of said tenants. Therefore, any change in use shall constitute a material default hereof, which will entitle Landlord to any and all rights and remedies provided in this Lease, at law or in equity. Tenant shall not sell, display or solicit in the Common Areas. Tenant shall not use or permit the use of any vending machines or public telephones on, at or about the Demised Premises without the prior written consent of Landlord.

20. TENANT'S FIXTURES AND ALTERATIONS: All fixtures installed by Tenant shall be new or completely reconditioned and "like-new". Tenant shall not create or permit to be created or to remain, and will discharge, any lien, encumbrance or charge upon fixtures, equipment, or personal property located within the Demised Premises. Tenant shall not make or cause to be made any alterations, additions or improvements, or install or cause to be installed any trade fixtures, exterior signs, floor covering, interior or exterior lighting, plumbing, fixtures, shades or awnings, or make any changes to the store front or roof of the Demised Premises, without first obtaining the prior written consent of Landlord in each instance. Tenant shall present to Landlord plans and specifications for any such work at the time such consent is sought. Tenant shall maintain any sign, fixture, or other installation or alteration, as Landlord may approve, in good condition and repair. All installations, alterations, decorations, additions and improvements made by Tenant shall remain the property of Tenant during the Lease Term or any extension or renewal thereof, but the same shall not be removed from the Demised Premises prior to the end of the Lease Term unless the prior written consent of Landlord be obtained. Within ten (10) days prior to the expiration of the Lease Term, Tenant may remove from the Demised Premises all its trade fixtures, and Tenant shall remove, to the extent required by Landlord, any other installations, alterations, or improvements, and Tenant shall repair any damage to the Demised Premises caused by the removal of any of the same. Any and all fixtures, installations, alterations or improvements remaining in the Demised Premises following such period allowed for the removal thereof shall at the option of Landlord become the property of Landlord; provided, however, that within a reasonable time following the expiration or termination of this Lease Landlord may by written notice require that Tenant at the sole cost and expense of Tenant remove any of Tenant's trade fixtures, installations, alterations and improvements. Should Tenant fail to remove such items, Landlord shall also have the right to remove such items and dispose of the same at Tenant's expense. Tenant shall reimburse Landlord on demand for such expense, together with an administrative charge of five percent (5%). The obligations of Tenant with respect to the removal of any of the foregoing shall survive the termination or expiration of this Lease.

21. TENANT'S SIGN: Tenant shall at its sole cost and expense install a sign on the exterior of the Demised Premises, and such sign shall conform to the requirements of Exhibit "C" attached hereto and by reference made a part hereof. Without the prior written consent of Landlord, Tenant shall not place or suffer to be placed or maintained on any exterior door, wall or window of the Demised Premises any other sign, awning or canopy or advertising matter or other thing of any kind, and will not place or maintain any exterior lighting, plumbing fixture, or protruding object or any decoration, lettering or advertising matter on the glass of any window or door of the Demised Premises. Tenant shall maintain the abovementioned required sign, and any other advertising matter or improvements allowed by Landlord to be placed on the exterior of the Demised Premises in good condition and repair at all times during the Lease Term.

22. LANDLORD'S CONSTRUCTION OBLIGATION: Landlord shall, without cost to Tenant, substantially complete Landlord's work described on Exhibit "B" attached hereto and by reference made a part hereof. Any work which is necessary or desirable for Tenant's occupancy of the Demised Premises and which is in

addition to the Landlord's work specifically described in the attached Exhibit "B" shall be performed by Tenant at its own cost and expense promptly after the Demised Premises are ready for occupancy; and shall be performed in strict accordance with SECTIONS 23, 26, 28 & 29 of this Lease governing the construction of any improvements in the Demised Premises. Any equipment, machinery, partitions, fixtures, floor covering or decorating (other than those items specifically described in said Exhibit "B") which the Landlord installs or constructs in the Demised Premises on behalf of Tenant shall be paid for by Tenant within fifteen (15) days after receipt of a bill from Landlord for the same. Except for Landlord's obligations set forth in this SECTION 22, Tenant agrees and acknowledges that it is accepting the Demised Premises in an AS-IS, WHERE-IS condition, and further agrees and acknowledges that Landlord has made no representations or warranties of any type or nature whatsoever, as concerns the condition of fitness for use of the Demised Premises, or any fixtures located therein or attached thereto, by Tenant.

23. **LAW, WASTE, AND NUISANCE:** Tenant shall at all times, at Tenant's sole cost and expense, comply with all governmental laws, ordinances, orders and regulations affecting the Demised Premises, whether now in force or hereafter in force; comply with and execute all rules, requirements and regulations of the Board of Fire Underwriters, Landlord's insurance companies, and other organizations establishing insurance rates; not suffer, permit or commit any waste or nuisance; not conduct any auction, distress, fire or bankruptcy sale; cause all refuse and debris to be removed from the Demised Premises and the Shopping Center at regular intervals, and at any time upon demand of Landlord; and not suffer, permit or cause any obnoxious odors in or about the Demised Premises. Without limitation on the matters set forth above in this section, Tenant shall keep and maintain the Demised Premises in a clean, sanitary and safe condition and in accordance with all directions, rules and regulations of the proper officials of the governmental agencies having jurisdiction, at the sole cost and expense of Tenant, and Tenant shall comply with all requirements of law by statute, ordinance or otherwise, affecting the Demised Premises and all appurtenances thereto. The laws of the state in which the Shopping Center is located shall govern the validity, performance and enforcement of this Lease.

24. **REPAIRS BY LANDLORD:** Within a reasonable period after receipt of written notice from Tenant of the need therefor, Landlord shall make necessary structural repairs to the exterior walls (excluding all windows, doors, door checks and closers, plate glass, store fronts, and signs and any frames surrounding the same) of the Demised Premises; necessary repairs to the roof, foundations and load bearing walls of the Demised Premises; necessary repairs to plumbing, pipes, and conduits located outside the Demised Premises or in the Common Areas; and necessary repairs to sidewalks, parking areas, and curbs. Landlord shall not be required to make any repairs where such repairs are made necessary by any act or omission or negligence of Tenant, any subtenant or concessionaire of Tenant, or their respective employees, agents, invitees, licensees, visitors or contractors, regardless of whether such repairs are Landlord's obligation under this SECTION 24 or not.

25. **REPAIRS AND MAINTENANCE BY TENANT:**

(a) All repairs to and maintenance of the Demised Premises not required to be made by Landlord shall be made by Tenant and, without limiting the generality of the foregoing, Tenant covenants and agrees to keep and maintain in good order, condition and repair throughout the term of the Lease the Demised Premises and every part thereof, including, without limitation, fixtures and equipment therein, the exterior and interior portions of all doors, windows and glass; plumbing and sewage facilities within the Demised Premises, including free flow of sewer lines therein; fixtures, heating, air-conditioning (including exterior mechanical equipment and electrical equipment); and interior walls, floors and ceilings, including compliance with applicable building codes relative to fire extinguishers. Any and all such repairs and maintenance shall be made and performed at Tenant's sole expense and using materials and labor of kind and quality equal to the original work. Tenant agrees to keep in force a standard maintenance agreement on all heating, ventilating, and air-conditioning equipment ("HVAC") and provide a copy of said maintenance agreement to the Landlord, which agreement shall require inspection and periodic maintenance of such HVAC equipment to be performed not less frequently than once every three (3) months. Tenant will surrender the Demised Premises at the expiration or earlier termination of this Lease in as good condition as when received, or in such better condition as the Demised Premises may be put during the term, excepting only deterioration caused by ordinary wear and tear or fire and other casualty resulting in termination of this Lease by Landlord as herein provided. Notwithstanding the foregoing, provided that Tenant keeps in place the maintenance agreement described in this paragraph and causes the HVAC equipment to be properly serviced and maintained, Landlord shall be responsible for any needed replacement of the HVAC equipment during the twelve (12) month period commencing on the date Landlord delivers possession of the Demised Premises.

(b) If (i) Tenant does not repair or maintain the Demised Premises promptly as required hereunder and to the reasonable satisfaction of Landlord, sole discretion, determines that emergency repairs for which Tenant is responsible maintenance of the Shopping Center or the Demised Premises are made in negligence of Tenant, its agents, employees, subtenants, assignees, concession or visitors, then in any of such events Landlord may make such repairs or liability to Tenant for any loss or damage that may accrue to Tenant's merchant Tenant's business by reason thereof, and Tenant shall pay to Landlord up reasonable cost thereof plus an administrative fee of five percent (5%).

(c) Before undertaking any alterations, additions, improvements, or repairs, Tenant shall obtain at its expense and provide Landlord with duplicate public liability insurance required to be carried by Tenant hereunder) insuring Tenant and Landlord on account of such proposed alterations, additions, improvements, or repairs the minimum limits herein set forth in the Article entitled "Insurance Required of

*TR Repairs  
incl HVAC  
&  
warranty of  
same*

26. MECHANIC'S LIENS: Should any mechanic's or other lien be filed against the Demised Premises or any part thereof by reason of Tenant's act or omission or because of a claim against Tenant, Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within fifteen (15) days after Tenant receives actual notice thereof. If Tenant fails to discharge such lien within said fifteen (15) day period, then Landlord shall have the right to discharge such lien on behalf of Tenant and Tenant shall pay Landlord, as additional rent, all amounts incurred by Landlord in discharging such lien. Tenant hereby indemnifies Landlord from and against all damages, costs and/or expenses incurred in connection with its failure to discharge such lien. Tenant shall provide Landlord with copies of contractor and material lien waivers.

27. INDEMNITY:

(a) Tenant shall indemnify Landlord and save it harmless from suits, actions, damages, liabilities, costs and expenses in connection with loss of life, bodily or personal injury or property damage (i) arising from or out of any occurrence in, upon, or about the Demised Premises or the occupancy or use by Tenant thereof or any part thereof, or (ii) occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees or concessionaires in, upon or about the Shopping Center. The foregoing indemnity shall not, however, excuse Landlord from liability to third parties resulting from the negligence of Landlord its agents and employees. Notwithstanding anything to the contrary in this paragraph, at Landlord's election, Tenant shall provide and pay for the cost of Landlord's defense in connection with any and all claims arising within or in any way connected with the Premises until such time as it is adjudicated that such claim(s) resulted from the negligence of Landlord, its agents or employees. In the event of such adjudication, Landlord shall have a percentage responsibility with respect to any judgments against Tenant resulting from such claims as well as costs incurred by Tenant in its defense of Landlord in connection with same. Landlord's percentage of responsibility shall be equal to the percentage of its comparative negligence as determined in a final court judgment; and

(b) Tenant shall store its property in and shall occupy the Demised Premises and all other portions of the Shopping Center at its own risk, and Tenant does hereby release Landlord, to the fullest extent permitted by law, from all claims of every kind resulting in loss of life, personal and bodily injury or property damage; and

(c) Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's merchandise, equipment, fixtures or other personal property of Tenant or to Tenant's business; and

(d) Landlord shall not be responsible or liable to Tenant or to those claiming by, through or under Tenant, for any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining premises; and

(e) Landlord shall not be responsible or liable for any defect, latent or otherwise, in any building in the Shopping Center or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused by or resulting from bursting or breakage or by or from leakage, steam or snow or ice, or running, backing up, seepage, or the overflow of water or sewerage in any part of the Demised Premises or for any injury or damage caused by or resulting from acts of God or the elements or for any injury or damage caused by or resulting from any defect or negligence in the occupancy, construction, operation or use of any building, machinery, apparatus or equipment in the Shopping Center or by or from any act or negligence of any occupant of the Shopping Center; and

(f) Tenant shall give prompt notice to Landlord in case of fire or accident in the Demised Premises or in the building of which the Demised Premises are a part or of defects therein or in any fixtures or equipment; and

(g) In case Landlord shall without fault on its part be made a party to any litigation commenced by or against Tenant, then Tenant shall protect, defend and hold Landlord harmless therefrom with counsel selected by Landlord and shall pay all costs, expenses and reasonable attorney's fees; and

(h) In the event of any litigation concerning this Lease, the prevailing party shall be entitled to recover from the losing party costs and reasonable attorneys fees through all appeals.

28. INSURANCE REQUIRED OF TENANT:

(a) Tenant shall obtain and maintain in full force during the term of the Lease the following insurance coverages with respect to the Demised Premises:

(i) Commercial Public Liability Insurance, with contractual liability endorsement, on an occurrence basis with minimum limits of liability of not less than Two Million Dollars (\$2,000,000.00) combined single limits for bodily injury, personal injury or death to any one person and One Million Dollars (\$1,000,000.00) for bodily injury, personal injury or death to more than one person, Host Liquor Law Liability, and if Tenant shall be operating a restaurant, tavern or other establishment which sells or dispenses any drink or beverage containing alcohol, Dram Shop Liability, and Five Hundred Thousand Dollars (\$500,000.00) for damage to property (notwithstanding the foregoing, Tenant may satisfy the foregoing liability insurance using Excess Liability coverage of \$10 million dollars provided that not less than \$1 million of such coverage is primary to the Shopping Center); and

(ii) Fire and Extended Coverage, Vandalism and Malicious Mischief Insurance in an amount adequate to cover the full replacement value of all personal property, decorations, leasehold improvements and betterments, and all other contents located or placed therein; and

(iii) (intentionally deleted); and

(iv) Workmen's Compensation Insurance covering all persons employed, directly or indirectly, in connection with any finish work or any repair or alteration, and covering all employees and agents of Tenant with respect to whom death or bodily injury claims could be asserted against Landlord or Tenant, as required by laws of the State where the Demised Premises are located or of the United States; and

(v) (intentionally deleted); and

(vi) All of the aforesaid insurance (except the Workmen's Compensation Insurance) shall be written in the name of and shall insure Landlord, and any designee(s) of Landlord, and Tenant, and shall be written by one or more responsible insurance companies satisfactory to Landlord and in form satisfactory to Landlord, with a "Best Insurance Guide Rating" of A+ and a financial rating of X. All such insurance may be carried under a blanket policy covering the Demised Premises and any other of Tenant's stores, provided that such blanket policies meet the requirements of this Article; all of such insurance shall contain endorsements providing that such insurance may not be canceled or amended with respect to Landlord or its designees or the Demised Premises except upon thirty (30) days' prior written notice to Landlord and any such designees by the insurance company; Tenant shall be solely responsible for payment of premiums and Landlord or its designees shall not be required to pay any premium for such insurance; in the event of payment of any loss covered by any such policy, Landlord or its designees shall be paid first by the insurance company for Landlord's loss; the minimum limits of the Comprehensive Public Liability Insurance shall in no way limit or diminish Tenant's liability hereunder; Tenant shall deliver to Landlord at least fifteen (15) days prior to the time such insurance is first required to be carried by Tenant, and thereafter at least fifteen (15) days prior to the expiration of each such policy, either a duplicate original or a certificate of insurance on all policies required to be procured by Tenant in compliance with its obligations hereunder, together with evidence satisfactory to Landlord of the payment of the premiums therefor; if Tenant fails to obtain and provide any and all of the aforesaid insurance, then Landlord may, but shall not be required to, purchase such insurance on behalf of Tenant and Tenant shall pay the cost of such insurance as additional rent with the next due installment of fixed minimum rent; and all liability insurance policies required to be obtained and maintained by Tenant hereunder shall contain endorsements deleting from such policies the "Care, Custody and Control", and the "Alterations and Extraordinary Repairs", and the "Contract Liability" exclusions and all other exclusions of similar import or effect.

29. **INSURANCE REQUIRED OF LANDLORD:** At all times during the term of the Lease, Landlord shall maintain in effect, with a responsible insurance company or companies, policies of insurance covering the building of which the Demised Premises constitute a part, providing protection to the extent of not less than eighty percent (80%) of the insurable value of said building against all casualties included under standard insurance industry practices within the classification "Fire and Extended Coverage, Vandalism and Malicious Mischief". Nothing in this Article shall prevent the taking out of policies of blanket insurance, which may cover real and/or personal property and improvements in addition to the building of which the Demised Premises constitute a part; provided, however, that in all other respects each such policy shall comply with the other provisions of this Article.

30. **WAIVER:** Landlord and Tenant hereby grant to each other on behalf of any insurer providing any insurance to either Landlord or Tenant a waiver of any right of subrogation any such insurer of one party may acquire against the other by virtue of payment of any loss under any such insurance. Such waivers shall stand mutually terminated as of the date either Landlord or Tenant ceases to be empowered to grant same.

31. **INCREASE IN INSURANCE PREMIUMS:** Tenant shall not stock, use or sell any article or do anything in or about the Demised Premises which may be prohibited by Landlord's insurance policies or any endorsements or forms attached thereto, or which will increase any insurance rates or premiums on the Demised Premises, the building of which they are a part or any other building in the Shopping Center. Tenant shall pay on demand any increase in premiums that may be charged on such insurance as is carried by Landlord resulting from Tenant's use and occupancy of the Demised Premises or the Shopping Center whether or not Landlord has consented to the same. If due to the (a) occupancy, or (b) abandonment, or (c) Tenant's failure to occupy and operate the Demised Premises as herein provided, any insurance shall be canceled by the insurance carrier or if the premiums for any such insurance shall be increased, then in any of such events Tenant shall indemnify and hold Landlord harmless from and against all such increases and shall pay on demand any increased cost of such insurance. Tenant also shall pay in any of such events any increased premium on any "loss of rents" insurance that may be carried by Landlord for its protection against loss through fire or casualty.

32. **DESTRUCTION:** If the Demised Premises shall be partially damaged by any casualty insurable under the Landlord's insurance policy, Landlord shall, upon receipt of the insurance proceeds, repair and restore the same and the Rent shall be abated proportionately as to that portion of the Demised Premises rendered untenable during the period of such repair and restoration; provided, however, that Landlord's obligations hereunder shall be limited to the insurance proceeds actually received by and made available to Landlord for such purpose and which

have not been required to be applied towards the reduction of any indebtedness secured by a mortgage covering the Shopping Center or any portion thereof. If the Demised Premises (a) are by reason of any casualty rendered wholly untenantable or (b) should be damaged as a result of a casualty, event or risk which is not covered by Landlord's insurance or (c) should be damaged in whole or in part during the last three (3) years of the Lease Term or of any renewal or extension hereof, or (d) the building of which they are a part (whether the Demised Premises are damaged or not) or the buildings which then comprise the Shopping Center should be damaged to the extent of fifty percent (50%) or more of the then monetary value thereof, or (e) if any or all of the buildings or common areas of the Shopping Center are damaged, whether or not the Demised Premises are damaged, to such an extent that the Shopping Center cannot in the sole judgment of Landlord be profitably operated as an integral unit, then and in any of such events, Landlord may elect either to repair the damage, whereupon the minimum rent shall be abated proportionately as to that portion of the Demised Premises rendered untenantable during the period of such repair and restoration, or to cancel this Lease by notice of cancellation delivered to Tenant within one hundred eighty (180) days after such event, whereupon this Lease shall expire and Tenant shall vacate and surrender the Demised Premises to Landlord. In the event Landlord elects to repair any damage insurable under Landlord's policies, any abatement of rent shall end five (5) days after notice by Landlord to Tenant that the Demised Premises have been repaired. If the damage is caused by the negligence of Tenant or its employees, agents, invitees, or concessionaires, there shall be no abatement of rent. Unless this Lease is terminated by Landlord, Tenant shall repair and re-fixture the interior of the Demised Premises in a manner and to a condition at least equal to that existing prior to the destruction or casualty and the proceeds of all insurance carried by Tenant on its property and improvements shall be held in trust by Tenant for such purpose. Tenant shall reopen the Demised Premises for business within thirty (30) days after notice that Landlord has repaired the Demised Premises.

Notwithstanding anything herein to the contrary, in the event Landlord does not complete its required restoration of the Premises within 270 days after the occurrence of the damage or destruction, Tenant shall be entitled to terminate this Lease by giving Landlord written notice of intent to terminate within ten (10) days after expiration of such 270 day period. However, if at any time Landlord believes it will be unable to complete restoration within such 270 day period, it shall be entitled to notify Tenant in writing of the Landlord's estimated time frame for completion of restoration and if Tenant fails to cancel this Lease by notice of cancellation given to Landlord within 10 days following Landlord's written notice, such 270 day period shall automatically be extended to the last day of Landlord's estimated time frame.

33. CONDEMNATION:

(a) If the whole of the Demised Premises shall be taken by eminent domain for any public or quasi-public use or purpose or by conveyance in lieu thereof, then this Lease and the term hereof shall cease and terminate as of the day that possession is taken.

(b) If only a part of the Demised Premises shall be taken as aforesaid, and such partial taking shall render that portion not so taken unsuitable for the business of Tenant, then this Lease and the term hereof shall cease and terminate as aforesaid. If such partial taking does not render the remainder of the Demised Premises unsuitable for the business of Tenant, then this Lease shall continue in effect except that the fixed minimum rent shall be reduced in the same proportion that the floor area of the Demised Premises taken bears to the original floor area demised, and Landlord shall, upon receipt of the award in condemnation, make all necessary repairs or alterations to the building in which the Demised Premises are located so as to constitute the portion of the building not taken as a complete architectural unit, but such work shall not exceed the scope of the work to be done by Landlord in originally constructing said building, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by and made available to Landlord for such purpose and not required to be applied towards the reduction of any indebtedness secured by a mortgage covering the Shopping Center or any portion thereof.

(c) If more than twenty percent (20%) of the floor area of the building in which the Demised Premises are located shall be taken as aforesaid, or if so many of the parking spaces in the shopping center are taken so as to violate any applicable zoning ordinance(s), Landlord may, by written notice to Tenant, terminate this Lease, such termination to be effective as aforesaid.

(d) If this Lease is terminated as set forth above, Landlord shall refund an equitable portion of any rent paid by Tenant in advance.

(e) Tenant shall not be entitled to and expressly waives all claim to any condemnation award or similar compensation for any taking, whether whole or partial, and whether for diminution in value of the leasehold or to the fee, although Tenant shall have the right, to the extent that the same shall not reduce Landlord's award, to claim from the condemnor, but not from Landlord, such compensation as may be recoverable by Tenant in its own right for damage to Tenant's business and fixtures.

34. DEFAULT AND REMEDIES:

(a) The occurrence of any one or more of the following events shall constitute a "Default" by Tenant and shall give rise to Landlord's remedies set forth in SUBSECTION 34(b) below: (i) if Tenant vacates or abandons the Demised Premises or fails to continuously operate its business in the Demised Premises in compliance with SECTION 18 hereof; (ii) failure to make when due any payment of Rent, unless such failure is cured within five (5) days after notice; (iii) failure to observe or perform any term or condition of this Lease other than the payment of Rent (or the other matters expressly described herein), unless such failure is cured within any period of time following notice expressly provided with respect thereto in other Articles hereof, or otherwise fifteen (15) days following notice (provided, if the nature of Tenant's failure is such that more time is reasonably required in order to

cure, Tenant shall not be in Default if Tenant commences to cure promptly within such period, diligently seeks and keeps Landlord reasonably advised of efforts to cure such failure to completion, and completes such cure within, thirty (30) days following Landlord's notice; (iv) failure to cure immediately upon notice thereof any condition which is hazardous, materially interferes with another tenant or the operation or leasing of the Shopping Center, or may cause the imposition of a fine, penalty or other remedy on Landlord or its agents or affiliates; (v) violating SECTION 16 respecting assignment and subletting; (vi) (A) making by Tenant or any guarantor of this Lease ("Guarantor") of any general assignment for the benefit of creditors, (B) filing by or for reorganization or arrangement under any law relating to bankruptcy or insolvency (unless, in the case of a petition filed against Tenant or such Guarantor, the same is dismissed within thirty (30) days), (C) appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located in the Demised Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days, (D) attachment, execution or other judicial seizure of substantially all of Tenant's assets located in the Demised Premises or of Tenant's interest in this Lease, (E) Tenant's or any Guarantor's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts, (F) Tenant's or any Guarantor's insolvency or failure, or admission of an inability, to pay debts as they mature; or (vii) a violation by Tenant or any affiliate of Tenant under any other lease with Landlord for other premises within the Shopping Center which is not cured within the time permitted for cure thereunder.

(b) If a Default occurs, Landlord shall have the rights and remedies hereinafter set forth to the extent permitted by law, which shall be distinct, separate and cumulative with and in addition to any other right or remedy allowed under any law or other provision of this Lease:

(i) Landlord may terminate this Lease and Tenant's right of possession, reenter and repossess the Demised Premises by detainer suit, summary proceedings or other lawful means, and recover from Tenant: (1) any unpaid Rent as of the termination date, (2) the amount by which: (A) any unpaid Rent which would have accrued after the termination date during the balance of the Term exceeds (B) the reasonable rental value of the Demised Premises under a lease substantially similar to this Lease, taking into account among other things the condition of the Demised Premises, market conditions and the period of time the Demised Premises may reasonably remain vacant before Landlord is able to re-lease the same to a suitable replacement tenant, and Costs of Reletting (as defined in SUBSECTION 34(f) below) that Landlord may incur in order to enter such replacement lease, or (3) any other amounts necessary to compensate Landlord for all damages proximately caused by Tenant's failure to perform its obligations under this Lease. For purposes of computing the amount of Rent herein that would have accrued after the termination date, Tenant's obligations for Taxes, Shopping Center Operating Costs and Percentage Rent shall be projected based upon the average rate of increase in such items from the Rental Commencement Date through the expiration of the Lease Term (or if such period shall be less than three years, then based on Landlord's reasonable estimates). The amounts computed in accordance with the foregoing subclauses (a) and (b) shall both be discounted in accordance with accepted financial practice at the rate of four percent (4%) per annum to the then present value. For the purposes of SECTION 34, it shall be deemed that Percentage Rent for any period after any such Default and entry by the Landlord would have been at a monthly rate thereafter equal to one twelfth ( $1/12^{th}$ ) of the average annual Percentage Rent which the Tenant was obligated to pay to the Landlord under this Lease either: (i) from the Rental Commencement Date to the date of such default; or (ii) during the last three (3) years prior to the date of such Default, whichever is the greater. The payment of the foregoing amounts shall be paid as agreed liquidated damages and not as a penalty; the parties agree that it is difficult or impossible to calculate the damages which Landlord will suffer as a result of Tenant's default, and this provision is intended to provide a reasonable estimate of such damages.

(ii) Landlord may terminate Tenant's right of possession, reenter and repossess the Demised Premises by detainer suit, summary proceedings or other lawful means, without terminating this Lease, and recover from Tenant: (1) any unpaid Rent as of the date possession is terminated, (2) any unpaid Rent which thereafter accrues during the Term from the date possession is terminated through the time of judgment (or which may have accrued from the time of any earlier judgment obtained by Landlord), less any consideration received from replacement tenants as further described and applied pursuant to SUBSECTION 34(f), below, and (3) any other amounts necessary to compensate Landlord for all damages proximately caused by Tenant's failure to perform its obligations under this Lease, including all Costs of Reletting (as defined in SUBSECTION 34(f) below). Tenant shall pay any such amounts to Landlord as the same accrue or after the same have accrued from time to time upon demand. At any time after terminating Tenant's right to possession as provided herein, Landlord may terminate this Lease as provided in clause (1) above by notice to Tenant, and Landlord may pursue such other remedies as may be available to Landlord under this Lease or applicable law.

(iii) Landlord shall have, and Tenant hereby grants to Landlord, a continuing security interest for all Rent and other sums of money becoming due hereunder from Tenant, upon all of the property now or hereafter owned by Tenant and now or hereafter located on the Demised Premises. In connection herewith, Landlord shall have, in addition to any other remedies, any and all of the remedies afforded to secured parties under the provisions of the Uniform Commercial Code, as codified in the State of Georgia (including, by way of example, rather than of limitation), the right to sell such property at public or private sale upon ten (10) days notice to Tenant without resort to judicial process. Tenant shall, on its receipt of a written request therefor from Landlord, execute such financing statements and other instruments as are necessary or desirable, in Landlord's judgment, to perfect such security interest.

(c) If this Lease or Tenant's right to possession is terminated, or Tenant abandons the Demised Premises, Landlord may: (i) enter and secure the Demised Premises, change the locks, install barricades,

remove any improvements, fixtures or other property of Tenant therein, perform any decorating, remodeling, repairs, alterations, improvements or additions and take such other actions as Landlord shall determine in Landlord's sole discretion to prevent damage or deterioration to the Demised Premises or prepare the same for reletting, and (ii) relet all or any portion of the Demised Premises (separately or as part of a larger space), for any rent, use or period of time (which may extend beyond the Term hereof), and upon any other terms as Landlord shall determine in Landlord's sole discretion, directly or as Tenant's agent (if permitted or required by applicable law). The consideration received from such reletting shall be applied pursuant to the terms of SUBSECTION 34(f) hereof, and if such consideration, as so applied, is not sufficient to cover all Rent and damages to which Landlord may be entitled hereunder, Tenant shall pay any deficiency to Landlord as the same accrues or after the same has accrued from time to time upon demand, subject to the other provisions hereof.

(d) Landlord shall at all times have the right without prior demand or notice except as required by applicable law to: (i) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease or restrain or enjoin a violation of any provision hereof, and Tenant hereby waives any right to require that Landlord post a bond or other security in connection therewith, and (ii) sue for and collect any unpaid Rent which has accrued. Notwithstanding anything to the contrary contained in this Lease, to the extent not expressly prohibited by applicable law, in the event of any Default by Tenant, Landlord may terminate this Lease or Tenant's right to possession and accelerate and declare all Rent reserved for the remainder of the Term to be immediately due and payable (in which event, Tenant's obligations for Taxes and Shopping Center Operating Costs that would have accrued thereafter shall be projected in the manner described in SUBSECTION 34(b) above); provided the Rent so accelerated shall be discounted in accordance with accepted financial practice at the rate of four percent (4%) per annum to the then present value, and Landlord shall, after receiving payment of the same from Tenant, be obligated to turn over to Tenant any actual net reletting proceeds (net of all Costs of Reletting) thereafter received during the remainder of the Term, up to the amount so received from Tenant pursuant to this provision.

(e) If Tenant is in Default of any obligation under this Lease (except that no notice and grace period shall be required in emergencies), Landlord shall have the right (but not the duty), to perform such obligation on behalf and for the account of Tenant. In such event, Tenant shall reimburse Landlord upon demand, as additional rent, for all expenses incurred by Landlord in performing such obligation together with an amount equal to five (5%) thereof for Landlord's overhead, and interest thereon at the Default Rate from the date such expenses were incurred. Landlord's performance of Tenant's obligations hereunder shall not be deemed a waiver or release of Tenant therefrom.

(f) No re-entry or repossession, repairs, changes, alterations and additions, reletting, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, nor shall the same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord to Tenant. The acceptance by Landlord of Rent hereunder shall not be construed to be a waiver of any breach by Tenant of any term, covenant or condition of this Lease. Landlord may bring suits for amounts owed by Tenant hereunder or any portions thereof, as the same accrue or after the same have accrued, and no suit or recovery of any portion due hereunder shall be deemed a waiver of Landlord's right to collect all amounts to which Landlord is entitled hereunder, nor shall the same serve as any defense to any subsequent suit brought for any amount not therefor reduced to judgment. Landlord may pursue one or more remedies against Tenant and need not make an election of remedies until findings of fact are made by a court of competent jurisdiction. All rent and other consideration paid by any replacement tenants shall be applied at Landlord's option: (i) first, to the Costs of Reletting, (ii) second, to the payment of all costs of enforcing this Lease against Tenant or any Guarantor, (iii) third, to the payment of all interest and service charges accruing hereunder, (iv) fourth, to the payment of Rent theretofore accrued, and (v) with the residue, if any, to be held by Landlord and applied to the payment of Rent and other obligations of Tenant as the same become due (and with any remaining residue to be retained by Landlord). "Costs of Reletting" shall include without limitation, all costs and expenses incurred by Landlord for any repairs or other matters described in SUBSECTION 34(c) above, brokerage commissions, advertising costs, attorneys' fees, any economic incentives given to enter leases with replacement tenants, and costs of collecting rent from replacement tenants. Landlord shall be under no obligation to observe or perform any provision of this Lease on its part to be observed or performed which accrues while Tenant is in Default hereunder. The times set forth herein for the curing of Defaults by Tenant are of the essence of this Lease. Tenant hereby irrevocably waives any right otherwise available under any law to redeem or reinstate this Lease, or Tenant's right to possession, after this Lease, or Tenant's right to possession, is terminated based on a Default by Tenant.

35. ACCESS TO DEMISED PREMISES: Landlord shall have the right to enter upon the Demised Premises in order to place, maintain and repair all utility equipment of any kind in, upon or under the Demised Premises, or to make repairs to the Demised Premises or any adjacent premises, as may be reasonably necessary for the servicing of the Demised Premises and other portions of the Shopping Center, and to take all material in, to and upon the Demised Premises that may be required therefore, without the same constituting an eviction of Tenant in whole or in part. During the two (2) months prior to the expiration of this Lease, Landlord may place upon the Demised Premises "For Lease" signs, which Tenant shall permit to remain thereon.

36. ATTORNMEN: Tenant shall, upon demand, in the event of the sale (including any foreclosure sale) or assignment of Landlord's interest in the Demised Premises, attorn to the purchaser or assignee and recognize such purchaser or assignee as Landlord under this Lease provided such purchaser or assignee has agreed that so long as Tenant is not in default under the Lease beyond any applicable cure period, Tenant's occupancy and rights under the Lease shall not be disturbed, and such agreement is in a writing in recordable form.

37. QUIET ENJOYMENT: Tenant, upon paying the rents reserved and observing and performing all of the terms and covenants on its part to be performed, shall peaceably and quietly enjoy the Demised Premises

subject, nevertheless, to the terms of this Lease and to any mortgage, ground lease or other agreement to which this Lease is subordinate.

38. **FORCE MAJEURE:** Except for the payment of Rent by Tenant, each party hereto shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond the control of such party, which shall include, without limitation, all labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire or other casualty, inability to obtain any material, services or financing or through acts of God.

39. **END OF TERM:** At the expiration of this Lease, Tenant shall surrender the Demised Premises in the same condition as they were in upon delivery of possession thereto under this Lease, natural wear and tear alone excepted, and shall deliver all keys and combinations to locks, safes and vaults to Landlord. If Tenant fails to remove any of its property from the Demised Premises upon the expiration or other termination of this Lease, such property shall be deemed abandoned and shall become the property of Landlord, or at the option of Landlord may be removed by Landlord at Tenant's expense, or placed in storage at Tenant's expense, or sold or otherwise disposed of, in which event the proceeds of such sale or other disposition shall belong to Landlord.

40. **HOLDING OVER:** Any holding over after the expiration of the Lease term or any extension or renewal thereof shall be construed to be a tenancy from month to month at a monthly fixed minimum rent equal to one hundred fifty percent (150%) of the monthly fixed minimum rent payable immediately preceding such expiration, and shall otherwise be on the terms herein specified so far as applicable. If Tenant fails to surrender the Demised Premises upon the termination of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall indemnify and hold Landlord harmless from and against loss or liability resulting from such failure, including, without limitation, any claims made by any succeeding tenant founded on such failure.

41. **NO WAIVER:** Failure of Landlord to insist upon the strict performance of any provision or to exercise any option or to enforce any rules and regulations shall not be construed as a waiver for the future of any of the same. The receipt by Landlord of rent with knowledge of the breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord.

42. **NOTICES:** Any notice, demand, request or other communication which may be or is required to be given under this Lease shall be delivered in person or sent by United States Certified or Registered Mail, postage prepaid, return receipt requested, or by overnight courier, and shall be addressed (a) if to Landlord, at the address as hereinabove given; and (b) if to Tenant, at the address as hereinabove given or at the Demised Premises if the address is not stated above. Either party may designate any substitute or additional address by written notice to the other. Notices sent pursuant to the terms of this SECTION 42 shall be deemed to be given on the date which such notice is mailed or delivered in person, and shall be deemed to be received on the date of actual receipt (or the date on which acceptance of delivery of such notice is refused) of such notice.

43. **RECORDING:** Tenant shall not record this Lease or a memorandum thereof without the written consent of Landlord. Upon the request of Landlord, Tenant shall join in the execution of a memorandum or so-called "short form" of this Lease for the purpose of recordation. Said memorandum or short form of this Lease shall describe the parties, the Demised Premises and the Lease Term, and shall incorporate this Lease by reference.

44. **PARTIAL INVALIDITY:** If any provision of this Lease or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

45. **BROKER'S COMMISSIONS:** Tenant represents and warrants that there are no claims or rights to claims for brokerage commissions or finder's fees or similar compensation in connection with this Lease which arise out of any act or agreement of Tenant, and Tenant agrees to indemnify Landlord against and hold it harmless from all liabilities arising from any such claim, including reasonable attorney's fees.

46. **SUCCESSORS:** Except as otherwise expressly provided, all provisions herein shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, executors, legal representatives, successors, successors-in-title, and assigns. Each provision to be performed by Tenant shall be construed to be both a covenant and a condition, and if more than one party shall constitute the Tenant, they shall all be bound, jointly and severally, by this Lease. In the event that the party identified as Landlord herein sells, assigns, or is otherwise divested of its interest in this Lease and the Demised Premises, such party shall thereupon be entirely relieved of all obligations hereunder.

47. **SUBORDINATION:** This Lease is and shall be subject and subordinate to any mortgage, deed of trust, deed to secure debt or ground lease currently existing or hereafter created against the shopping center, subject to the right of the holder of any of the aforementioned interests to treat this Lease as superior to any such interest. Upon request of the Landlord, Tenant will execute an instrument evidencing the subordination of this Lease, and its rights hereunder, to any mortgage (it being agreed that the term "mortgage" as used in this Lease shall be deemed to include a ground lease, security deed, deed of trust, or similar instrument) or the lien resulting from any other method of financing, now or hereafter in force against all or any part of the Shopping Center of which the Demised Premises are a part, and to all advances made or hereafter to be made upon the security thereof; provided, however,

that Tenant shall not, without the prior written consent of the holder of any first-in-priority mortgage, subordinate this Lease to any other mortgage.

48. RULES AND REGULATIONS: The rules and regulations, if any, appended to this Lease as Exhibit "D" are hereby made a part of this Lease, and Tenant agrees to comply with and observe same. Tenant's failure to keep and observe said rules and regulations shall constitute a breach of the terms of this Lease in the same manner as if the same were contained herein as covenants. Landlord reserves the right from time to time to reasonably amend or supplement said rules and regulations applicable to the Demised Premises and the Shopping Center. Notice of such additional rules and regulations, and amendments and supplements, if any, shall be given to Tenant, and Tenant agrees thereupon to comply with and observe all such rules and regulations, and amendments thereto and supplements thereof, provided the same shall apply uniformly to all tenants of the Shopping Center.

49. ENTIRE AGREEMENT, ETC.: This Lease and the exhibits, riders, and/or addenda, if any, attached, set forth the entire agreement between the parties. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed. If any provision contained in an exhibit, rider or addenda is inconsistent with any other provision of this Lease, the provision contained in said exhibit, rider or addenda shall supersede said other provision. It is hereby agreed that this Lease contains no restrictive covenants or exclusives in favor of Tenant. Should the Tenant at any time during the Lease Term claim rights under a restrictive covenant or exclusive, the Tenant herewith specifically waives any such claim with respect to any other Tenant of the Shopping Center which then occupies twenty percent (20%) or more of the leasable space in the Shopping Center. Any captions, numbers or index appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any article, section or paragraph, nor in any way to affect this Lease.

50. LIMITATION OF LIABILITY: ANYTHING IN THIS LEASE TO THE CONTRARY NOTWITHSTANDING, TENANT AGREES THAT IT SHALL LOOK SOLELY TO THE ESTATE AND PROPERTY OF THE LANDLORD IN THE LAND AND BUILDINGS COMPRISING THE SHOPPING CENTER OF WHICH THE DEMISED PREMISES ARE A PART FOR THE COLLECTION OF ANY JUDGMENT (OR OTHER JUDICIAL PROCESS) ARISING OUT OF ANY DEFAULT OR BREACH BY LANDLORD WITH RESPECT TO ANY OF THE TERMS, COVENANTS AND CONDITIONS OF THIS LEASE TO BE OBSERVED AND/OR PERFORMED BY LANDLORD, AND THAT NO OTHER ASSETS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER PROCESS FOR THE SATISFACTION OF TENANT'S REMEDIES. FURTHERMORE, LANDLORD (OR ANY SUCCESSOR(S) OR ASSIGN(S) OF LANDLORD) SHALL BE OBLIGATED UNDER THE TERMS OF THIS LEASE ONLY FOR THAT PERIOD OF TIME DURING WHICH LANDLORD, OR SUCH SUCCESSOR OR ASSIGN, OWNED THE SHOPPING CENTER.

51. ESTOPPEL CERTIFICATE: Tenant shall upon request by Landlord, execute and deliver to Landlord or any designee of Landlord a written declaration in recordable form: (a) ratifying this Lease; (b) expressing the commencement and termination dates thereof; (c) certifying that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be stated); (d) certifying that all conditions under this Lease to be performed by Landlord have been satisfied (except such conditions as shall be stated); (e) certifying that there are no defenses or offsets against the enforcement of this Lease by the Landlord (or stating those claimed by Tenant); (f) certifying the amount of advance rental, if any (or none if such is the case), paid by Tenant; (g) certifying the date to which rental has been paid; and (h) certifying the amount of any security deposit held by Landlord, and (i) certifying to such other matters concerning the Lease or the Demised Premises as Landlord may request. Such declaration shall be executed and delivered by Tenant from time to time as may be requested by Landlord. Landlord's mortgagees and/or purchasers shall be entitled to rely upon the same.

52. DELIVERY OF ESTOPPEL CERTIFICATE AND SNDA: The Tenant, upon request of any party in interest, shall execute promptly such instruments as shall reasonably be required to carry out the intent of the above Articles entitled "Attornment" and "Subordination" and "Estoppel Certificate", as and when the same shall be requested by the Landlord. If fifteen (15) days after receipt by Tenant of a written request by Landlord to execute any such Estoppel Certificate or twenty (20) days after receipt by Tenant of a written request by Landlord to execute any such Attornment, Subordination and/or Non-Disturbance Agreement the Tenant shall have failed to have executed and delivered the same, such failure shall at the option of Landlord constitute a default by Tenant hereunder, and the Landlord may, at its option, terminate this Lease without incurring any liability on account thereof, and the Lease term hereby granted is expressly limited accordingly.

53. MERCHANT'S ASSOCIATION: Upon demand by Landlord, Tenant will become a member of, participate fully in, and remain in good standing in an association of merchants composed primarily of tenants in the Shopping Center (herein referred to as the "Association"), and agrees to abide by the regulations of such Association, as soon as the Association is formed. The objects of such Association shall be to encourage its members to deal fairly and courteously with their customers, to follow good business practices, to assist the business of the tenants by sales promotions and center-wide advertising, and in particular, to promote the interests of members of the Association. Tenant agrees to pay dues to the Association in the manner and amount as set forth by a majority vote of the members of the Association.

54. LANDLORD AND TENANT: The relationship established by this Lease is that of landlord and tenant, and the tenancy hereby created is a usufruct and not an estate for years. None of the language or terminology of this Lease shall be construed to create any other form of relationship between Landlord and Tenant.

55. [INTENTIONALLY OMITTED]

56. SUBMISSION OF LEASE: The submission of this Lease for examination does not constitute an option for the Demised Premises, and this Lease shall become effective only when fully executed counterparts of this Lease have been delivered to both Landlord and Tenant.

57. RESTRICTION ON HAZARDOUS SUBSTANCES:

(a) Neither Tenant nor any employee, licensee, contractor or invitee, shall keep within, on or around the Demised Premises for use, disposal, treatment, generation, storage or sale any Hazardous Substances, as hereinafter defined. As used herein, "Hazardous Substances" means (a) any "hazardous substance", "hazardous waste" or "hazardous material" defined as such in (or for purposes of) any environmental law; (b) petroleum, including any fraction thereof, and any petroleum product; (c) any other substance, regardless of physical form, that is subject to any law or common law doctrine regulating or imposing obligations, liability or standards of conduct concerning the protection of human health, plant life, animal life, natural resources or property.

(b) Tenant shall be solely responsible for and shall defend, indemnify and hold Landlord and any successors-in-interest to Landlord, including any lender of Landlord, and their respective agents and employees, harmless from all claims, costs, damages, liabilities, including attorneys' fees and costs, arising out of or in connection with Tenant's breach of its obligations contained in this paragraph or arising out of or in connection with any removal, cleanup or restoration deemed reasonably necessary by any governmental entity or Landlord in order to remove, clean up or restore any portion of the Shopping Center as the result of Hazardous Substances used, disposed, treated, generated, stored or sold by Tenant or its agents, employees, contractors, licensees or concessionaires. Tenant's obligations under this paragraph shall survive expiration and termination of the Lease, to the extent the same is the result of Tenant's occupancy of the Demised Premises. The parties agree that any obligation shall terminate if not raised by Landlord within one (1) year after the Tenant vacating the Premises.

(c) Upon ten (10) days prior written request from Landlord, Tenant shall execute, acknowledge and deliver to Landlord a written statement, in form satisfactory to Landlord, certifying that there are no hazardous substances on the Demised Premises, that Tenant has not disposed of any oil, grease or hazardous substance at the Demised Premises and that any such substances used, processed or generated at the Demised Premises have been disposed of properly.

58. REQUIREMENTS UPON COMPLETION: Upon the completion of Tenant's Work, but in no event later than thirty (30) days after completion of the Demised Premises, Tenant shall deliver to Landlord and/or comply with the following: (1) Tenant's affidavit stating that Tenant's Work has been substantially completed in compliance with Tenant's approved work drawings (plans) and specifications, and which affidavit shall include a reasonably itemized general breakdown of Tenant's final and total construction costs together with proof, reasonably satisfactory to Landlord, of payment thereof; (2) An affidavit of the General Contractor or Contractors performing Tenant's Work stating that Tenant's Work has been fully completed in compliance with Tenant's approved working drawings (plans) and specifications and that all subcontractors, laborers and material suppliers, who supplied labor and/or material for Tenant's Work (whose names and address shall be recited in the affidavit) have been paid in full and that all liens therefore that have been filed have been discharged of record or waived; (3) A complete notarized release and waiver of lien with respect to the Demised Premises, executed by each of Tenant's general contractor, subcontractors, or material suppliers supplying labor and/or materials for Tenant's work or in lieu thereof, an attorney's certification (prepared by an attorney licensed to practice law in the state where the shopping center is located), that the lien period for the Tenant's Work performed by Tenant in the Demised Premises has expired and no liens in connection therewith have been filed; (4) Tenant's written acceptance of the Demised Premises stating that Landlord has completed all of the Landlord's Work required to be performed by Landlord pursuant to the terms of this Lease and that Tenant reserves no claims, offsets or back-charges or stating those claimed; (5) All certificates and approvals with respect to Tenant's Work that may be required by any governmental authorities as a condition for the issuance of a Certificate of Occupancy for the Demised Premises; (6) Copies of approved manufacturer's literature or catalogue relating to equipment and machinery installed by Tenant within the Demised Premises (including heating, ventilation and air conditioning equipment).

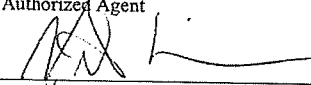
59. SECURITY INTEREST: Tenant hereby grants to Landlord, as additional security for the performance by Tenant of all terms, covenants and conditions of this Lease, a security interest in all of Tenant's personal property, equipment and fixtures which may be located at the Demised Premises from time to time which Tenant has not leased and is owned by others. Upon request by Landlord, Tenant shall within five (5) days, execute and deliver to Landlord any financing statements evidencing such security interest, and any corrections, modifications, amendments or continuations of such financing statements, as may be requested by Landlord from time to time.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease under seal as of the day and year first above written.

LANDLORD:

SCI ENTITIES

By: Continental Real Estate Companies  
Its: Duly Authorized Agent

BY:   
NAME: Nicholas L. Miller

  
Witness

ITS: Asset Manager

TENANT:

JENNIFER CONVERTIBLES, INC.

BY: [Signature]  
NAME: EDWARD B. SEIDNER  
ITS: EXECUTIVE VICE PRESIDENT

[Signature: Janet Drusba]  
Witness

[Signature: Bonnie Phillips]  
Witness

EXHIBIT "A"

DRAWING OF THE SHOPPING CENTER

EXHIBIT "B"

CRITERIA FOR STANDARD FINISH BY LANDLORD / TENANT WORK LETTER

LANDLORD'S WORK

Landlord shall remove existing carpeting and tile, prepare floor for installation of new carpet, remove existing interior walls, sheetrock rear wall and replace damaged ceiling tiles. Remaining walls will be repaired, sheetrocked (if necessary) sanded, ready for paint. Additionally, Landlord will warranty existing HVAC equipment for twelve (12) month period beginning on Lease Commencement Date, provided that Tenant causes the HVAC equipment to be properly maintained by a HVAC contractor approved in writing by Landlord, which approval shall not be unreasonably withheld. Landlord shall also provide railing along the newly exposed raised section consistent with existing railing and provide steps to the elevated slab. Landlord shall also remove all 2 x 4 fluorescent lighting, the existing ramp (unless required by ADA code), and install frameless double entry doors.

TENANT'S WORK

1. All work on Demised Premises other than Landlord's Work as herein above defined shall be Tenant's Work. Tenant shall secure all necessary licenses and permits prior to commencement of Tenant's Work.
2. Tenant's Work includes, but is not limited to, the following:
  - (a) Providing and installing all additional electrical fixtures, equipment, and outlets;
  - (b) Providing all telephone conduit and wire, and paying service charges for telephone lines within Demised Premises;
  - (c) Providing and installing all additional plumbing facilities and/or additional capacity if needed. Tenant shall provide and install the meter and related equipment and maintain same in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter as and when bills are rendered, and on default in making such payment, Landlord may pay, at its sole option, such charges and collect same from Tenant as additional rent;
  - (d) Tenant shall pay all deposits and charges associated with the initial subscription and meter fees for service from any utility company. Service from any such utility company is not the responsibility of Landlord, but rather that of Tenant and the utility company involved;
  - (e) Providing all additional interior partitions, coves, ceilings, and doors;
  - (f) Providing and installing all painting, decorating and show window platforms and backgrounds; and
  - (g) Floor Covering.
3. Work attached to the structure and/or the roof such as additional electrical, plumbing, heating, ventilating and air conditioning systems, and any items of Tenant's Work, which in Landlord's sole discretion, affect the structural integrity of the building in which Demised Premises are located, including all roof penetrations, or roof work of any kind, and any work which affects Landlord's roof warranty, guarantee or bond, shall, at Landlord's option, be:
  - (a) Awarded by Tenant to a licensed Contractor written approval of whom has been given by Landlord, or its architect; or
  - (b) Awarded to Landlord's Contractor and administrated by Landlord. In the event Landlord elects to have Landlord's contractor perform such work, Landlord shall obtain a bid for such work from Landlord's Contractor and shall charge Tenant the actual cost of such work as charged by Landlord's Contractor, plus an administration fee to Landlord, not to exceed fifteen percent (15%) of the actual cost of said Work. The cost of any Tenant's Work performed by Landlord's Contractor pursuant to this subparagraph shall be paid for by Tenant prior to the commencement of the work, upon demand by Landlord.

EXHIBIT "C"

REQUIREMENTS FOR TENANT'S SIGN

A. General:

1. These sign standards are intended to encourage and develop creative and diversified signage for the Shopping Center, providing not only effective store identification, but also good design practice. Any deviations in these standards must be approved in writing by Landlord. The approval by Landlord of any sign plans submitted to Landlord shall not constitute the assumption of any liability on the part of Landlord for their accuracy or conformity with any building or signage code or other governmental or regulatory requirements, and Tenant shall be solely responsible for such plans and obtaining all permits and approvals from all appropriate governmental and regulatory bodies.
2. In the event Tenant installs or permits any sign to be installed which has not been approved by Landlord, then Landlord shall have the right to require Tenant to remove said sign and install a sign approved by Landlord. In the event Tenant refuses to remove any non-conforming sign, Landlord shall have the right to cause said sign to be removed, at Tenant's expense, which expense shall include not only the costs associated with removing said sign, but also the costs of any repairs made by the installation or removal of such non-conforming sign. Tenant's failure to reimburse Landlord for such costs within five (5) days after Landlord has submitted an itemization of such costs shall constitute a default under this Lease and Landlord shall have all rights and remedies as set forth in this Lease for a default by Tenant.

B. Exterior Storefront Signage:

1. Only signs that have individual letters interiorly illuminated with 12 mm neon (LED system of equal or lesser intensity) with a maximum of 150 lumens per foot will be permitted. Signs with exposed neon tubing or exposed lamps, any exposed sign illumination or illuminated sign cabinets, modules or "box" signs, signs of the flashing, rotating, moving, blinking or animated type are not permitted.
2. The design and location of all signs must be approved in writing by Landlord and shall be subject to Landlord's sole discretion as to design, size and location. Tenant shall submit sign working drawings to Landlord and no sign shall be installed until Landlord's written approval has been obtained by Tenant. The working drawings must indicate the following:
3. The type and size of all lettering:
  - (a) The location of the sign in relation to the store façade;
  - (b) Section through the sign to show its construction;
  - (c) Colors, finishes and types of all materials;
  - (d) Wattage, amperage and light intensity; and
  - (e) Method of installation.
4. Wordings of large-scale signs shall be limited to Tenant's store or trade name only.
5. Tenant's sign shall be located above the storefront of the Demised Premises and within the limits of the area designated by Landlord as the "sign band". Tenant's sign shall be centered vertically within said sign band and horizontally within the lineal front footage of the Demised Premises. Tenant's sign shall be limited to a maximum width of seventy-five (75%) of the lineal front footage of the Demised Premises. The letters of Tenant's sign shall have a maximum height of eight percent (80%) of the sign band and a minimum height of fifty percent (50%) of the sign band.
6. No exposed ballast boxes, conductors or electrical transformers will be permitted except as required by code or by Landlord.
7. Sign company names or stamps will be concealed if permitted by code.
8. Only one (1) sign for each Tenant will be permitted unless otherwise approved by Landlord in writing.
9. Electrical connection for signs will be the responsibility of Tenant.
10. No roof-mounted signs will be permitted.
11. Signs and identifying marks shall have no part extending higher than sign band
12. All signs shall be installed on raceways of such size as approved by Landlord. All raceways shall be painted to match the building façade color. Sign returns and trim shall be painted to match the sign faces.
13. All bolts, fastenings, clips, conduits, etc. shall be non-corrosive stainless steel, chromium plated or hot dipped galvanized iron or equal.
14. all penetrations of any building structure required for sign installation shall be neatly sealed and continuously maintained in watertight condition. Tenant shall be responsible for the removal of its sign at the end of the Lease Term and shall patch and repair the entire work area and if necessary paint any "ghosted" areas caused by the removal of said sign.

C. Rear Entry Signage:

1. Tenant shall display its name and address on the rear entry door to the Demised Premises. Rear entry signs shall be uppercase, three-inch (3") Helvetica medium type-style letters and/or numerals centered. Materials shall be white Scotchal Vinyl or equal. Rear entry signage shall be centered

horizontally with top of the signage at six feet (6') from the finished floor of the Demised Premises.

D. Window Graphics and Storefront Window Signs:

1. Printed signs on storefront or show windows are prohibited, except that Tenant may display on either the storefront entry door or the adjoining widow, but not both, in area not to exceed 10"x10" the following:
  - (a) Honored credit card decals (maximum of three [3]);
  - (b) Tenant's name and/or logo; and
  - (c) Three (3) lines of copy which shall be limited to product or service description, business hours and address.

Said signage if placed on the storefront entry door shall be centered horizontally with top of the signage at four feet nine inches (4'-9") from the finished floor of the Demised Premises, and if placed on the adjoining window shall be placed at four feet nine inches (4'-9") from the finished floor of the Demised Premises and at nine inches (9") from the storefront entry door frame.

E. Other:

1. The following types of signs are strictly prohibited within the Shopping Center:
  - (a) Paper, cloth or cardboard signs, stickers, banners or flags;
  - (b) Painted signs on the exterior surface of any wall of the Demised Premises;
  - (c) Movable or transportable signs, painted wall signs and printed or painted storefront or window signs;
  - (d) Any sign on a vehicle parked within the Common Areas for a duration of time which indicates its use is for the purpose of advertising for Tenant or a particular service or product; and
  - (e) Neon window signs.

EXHIBIT "D"

RULES AND REGULATIONS

Tenant agrees as follows:

1. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances designated for such purposes by Landlord.
2. The delivery or shipping of merchandise, supplies, and fixtures to and from the Demised Premises shall be subject to such rules and regulations as in the judgment of Landlord are necessary for the proper operation of the Demised Premises or Shopping Center.
3. All garbage and refuse shall be kept in the kind of container specified or supplied by Landlord, and shall be placed outside of the Demised Premises prepared for collection in the manner and at the times and places specified by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's cost. Tenant shall pay the cost of removal of any of Tenant's refuse or rubbish.
4. No radio or television or other similar device shall be installed without first obtaining in each instance Landlord's consent in writing. No aerial shall be erected on the roof or exterior walls of the Demised Premises or on the grounds, without first obtaining in each instance the written consent of Landlord. Any radio or television or aerial so installed without such written consent shall be subject to removal without notice at any time.
5. No loud speakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Demised Premises without the prior written consent of Landlord.
6. If the Demised Premises are at any time equipped with heating facilities separate from those in the remainder of the Shopping Center, Tenant shall keep the Demised Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.
7. The exterior areas immediately adjoining the Demised Premises shall be kept clean and free from snow, ice, dirt and rubbish by Tenant to the satisfaction of Landlord, and Tenant shall not place or permit any obstructions or merchandise in such areas.
8. Tenant and Tenant's employees shall park their cars only in those parking areas designated for that purpose by Landlord. Tenant shall furnish Landlord with State automobile license numbers assigned to Tenant's car or cars, and cars of Tenant's employees, within five (5) days after taking possession of the Demised Premises and shall thereafter notify Landlord of any changes within five (5) days after such changes occur. In the event that Tenant or its employees fail to park their cars in designated parking areas as aforesaid, then Landlord at its option shall charge Tenant Ten Dollars (\$10.00) per day per car parked in any area other than those designated, as and for liquidated damages.
9. The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant.
10. Tenant shall use at Tenant's cost such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require.
11. Tenant shall not burn any trash or garbage of any kind in or about the Demised Premises, the Shopping Center, or within one mile of the outside property lines of the Shopping Center.
12. Tenant shall not make noises, causes disturbances, or create odors, which may be offensive to other tenants of the Shopping Center or their officers, employees, agents, servants, customers or invitees.
13. Tenant will use Landlord's roofer for all penetrations to the roof or parapet wall.

EXHIBIT "E"

SPECIAL STIPULATIONS

1. OPTION TO EXTEND. Tenant shall have the option, exercisable by written notice to Landlord, by certified mail, return receipt requested, given not later than six months prior to the expiration of the initial Lease Term, to extend the Lease for one further term(s) of 5 years on the same terms and conditions as provided in the Lease, except that: (a) Landlord shall have no obligation to make any improvements to the Demised Premises; (b) Fixed Minimum Rent shall be as stated in Basic Lease Terms; and (c) there shall be no option to further extend the Lease Term. Notwithstanding the foregoing, this Option to Extend the Lease shall be deemed null and void if one or more of the following has occurred: (i) Tenant has been late in the payment of rent on three (3) or more occasions within any twelve (12) month period. For this purpose, a payment shall be deemed to be late if it is received by Landlord after the second day of the month in which such rent is due; (ii) Tenant is in default in the performance of any of its obligations under the Lease beyond the expiration of the applicable cure period; (iii) Tenant has failed to give written notice by certified mail, return receipt requested, to Landlord six (6) months prior to the expiration of the initial term; or (iv) Jennifer Convertibles, Inc. is not operating its business in the entire Premises. The rights under this paragraph are only applicable to the original named Tenant in this Lease, and shall not pass to any other entity or person upon an assignment of this Lease or sublet of the Demised Premises or other transfer of this Lease.

2. OPTION TO CANCEL. Tenant shall have the option ("Cancellation Option") to cancel this Lease at any time after the expiration of the third Lease Year ("Termination Date"); provided, however, that no exercise of the Cancellation Option shall be valid unless all the following terms and conditions set forth below are met or satisfied: (i) Tenant shall give written notice to Landlord at least six (6) months prior to the Termination Date (the "Cancellation Notice"); (ii) Tenant is current in all of its rent obligations and shall not be in default of this Lease beyond any applicable notice and grace period as of the Termination Date or date Landlord receives the Cancellation Notice; (iii) no later than the Termination Date, Tenant must surrender possession of the Demised Premises in the condition required upon expiration of the Lease Term. The rights under this paragraph are only applicable to the original named Tenant in this Lease, and shall not pass to any other entity or person upon an assignment of this Lease or sublet of the Demised Premises or other transfer of this Lease.

R1. Character of Shopping Center Tenant has entered into this Lease in reliance upon the representation by Landlord that no part of the Shopping Center shall be used as a school (other than training of employees incidental to retail use), dance hall, massage parlor, 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 consists of obscene pornography as defined by applicable community standards), however, the foregoing shall not limit Landlord's right to lease space to a national or regional video store such as Blockbuster.

R2. Access to Building - Landlord covenants and agrees, and this Lease is conditioned upon there being at all times during the Lease Term (i) reasonable access between the public ways and the sidewalk on the one hand and the Premises on the other hand and (ii) no additional buildings, structures, obstructions, barriers and the like being constructed upon, attached or placed adjacent to the Building and/or the Premises which unreasonably affect the access to the Building and/or the Premises. In the event that Landlord finds it necessary to temporarily remove or block Tenant's building signage in connection with repairs or remodeling, Landlord shall install reasonable temporary signage during the pendency of such repairs or remodeling. In addition, Landlord covenants and agrees that it will not reduce the space nor the dimension of the Demised Premises. In the event Landlord shall fail to honor such covenant, Tenant shall be entitled to an abatement of rent until such time as the Landlord has remedied.

R3. Delivery of Possession - Delivery of possession of the Building and the Premises to Tenant shall in no event be deemed to have occurred until actual and exclusive physical possession of the Building and the Premises shall have been delivered to Tenant in a broom-clean condition, free and clear of all prior tenants and/or occupants, and with the construction and condition of the Building and the Premises being such as to allow the issuance of a building permit for work to be performed by Tenant, which work includes correction of any existing violations of building codes and other applicable laws.

R4. Real Estate Taxes:

(a) 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 permanent leasehold improvements therein.

(b) If Landlord shall obtain any abatement, refund or rebate in Real Estate Taxes, Landlord shall apply such abatement, refund or rebate (less the reasonable cost and reasonable expense of obtaining them) in reduction of Real Estate Taxes for the year in which Landlord received such abatement, refund or rebate.

R5. Alterations - Tenant shall have the right, without consent of Landlord, to make non-structural repairs and alterations inside the Premises provided disbursements do not exceed \$50,000.00 per annum for the first lease year and \$25,000.00 per annum per lease year thereafter.

R6. Hazardous Materials - Landlord represents that to the best of Landlord's knowledge, the Premises, on the commencement date of this Lease, will contain no Hazardous Materials.

R7. Rules and Regulations - All rules and regulations that Landlord may make shall be reasonable, and shall not conflict with any provisions of this Lease.

R8. Ownership - Landlord warrants and represents that it is the sole owner of the fee simple interest in the entire Building; and Landlord further warrants and represents that there are no restrictive agreements or leases that prevent or restrict the use of the Premises for the business Tenant is permitted by the Lease to conduct or otherwise conflict with any of the provisions of this Lease.

R9. Maintenance

(a) Landlord agrees to transfer or enforce for the benefit of Tenant the unexpired portions, if any, of any warranties relating to the HVAC system exclusively serving the Premises.

(b) 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 surface of exterior walls as well as structural integrity of such walls, roof, structural portions, gutters, downspouts, if any, and underground utility lines of the Premises and the Building, and all utility lines serving the Premises. The foregoing shall not, however, excuse Tenant from responsibility for damage to utility lines resulting from misuse inside the Premises.

R10. Interior Signs - Tenant shall be entitled to place, maintain, and Landlord shall allow to be permitted, placed and maintained appropriate dignified displays of customary type on the interior of the window area of the Premises, or elsewhere inside the premises so as to be visible to the public as may be allowed by law. Tenant shall be permitted a "relocating sign" inside the Premises during the last sixty (60) days of the Lease. All of such signs shall be professionally prepared and maintained in "like new" condition, and no more than 25% of the surface of the storefront window shall be covered by said signs.

R11. Assignment, Subletting, etc. -

(a) 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.

(b) Notwithstanding the above, no consent shall be required for, and Tenant shall have the right to make, any assignment, transfer or subletting of the Premises, or any part thereof (i) to any entity that is and remains throughout the Term of the Lease a parent, subsidiary or affiliated company of Tenant, (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. Notwithstanding the foregoing, the Tenant shall not be relieved of any liability under the Lease.

R12. Notice from One Party to the Other - Any notice from Landlord to Tenant shall be sent by certified mail, return receipt requested. All such notices shall be addressed or delivered, if to:

To Tenant:

Jennifer Convertibles, Inc.  
Attn: Edward B. Seidner  
419 Crossways Park Drive  
Woodbury, New York 11797

With A Copy To:

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

R13. 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." The foregoing shall be inapplicable to Tenant's monetary obligations under the Lease.

R14. Subordination and Rights of Mortgage - The subordination of the Lease as provided for in Section 47 thereof is conditioned on Tenant receiving from the holder of each encumbrance described therein a typical commercial lender's standard form of non-disturbance agreement whereby the holder covenants and agrees that provided Tenant is not in default of the Lease beyond the applicable cure period, the Lease and Tenant's right of possession of the Premises will not be terminated or disturbed by the foreclosure of such encumbrance (or transfer in lieu of foreclosure) or by any subsequent transfers of the Shopping Center.

R15. Consent - Where pursuant to the terms of this Lease, or in connection with the administration of the Lease, the consent, approval, judgment, satisfaction or similar exercise of discretion of or by one party shall be required, requested or appropriate, such party covenants and agrees that its consent, approval, judgment, satisfaction or similar exercise of discretion shall not be unreasonably withheld, delayed or conditioned, and shall not be charged for.

R16. Government Requirements -

(a) 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 expressly stated in the Lease or this Exhibit to be the obligation of Landlord. 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 hazardous substances in or about the Premises or the Building except for those substances placed there by Tenant or any contractor, employee or agent of 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 but as part of Shopping Center Operating Costs, 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 Common Areas, and of any and all of its or their departments, bureaus and officials, except when such observance or compliance is required by reason of 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, as related solely to Common Areas, 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.

R17. Actions of Landlord - Whenever Landlord shall enter, or perform any work in or about the Premises, such entry shall be made, and such work shall be performed, without unreasonable interference with the conduct of Tenant's business (however, the foregoing shall not be construed to require Landlord to conduct repairs during non-business hours). If such repairs and replacements the Building or the Premises render the Premises wholly or partially untenantable, there shall be an equitable abatement of Minimum Annual Rent, Percentage Rent and all other additional rent commencing with the 5<sup>th</sup> business day of such untenantability until such time as such repairs and replacements have been completed.

R18. 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.

R19. Powers of Attorney - Any and all powers of attorney granted by Tenant to Landlord pursuant to any provision(s) of said Lease are hereby deleted therefrom.

R20. Plate Glass - Tenant is permitted to self-insure plate glass.

R21. Payment for Services - In no event shall Tenant be required to pay with respect to any utility service or any other 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.

R22. Warranties -

(a) Landlord agrees that as of the Commencement Date of this Lease, there shall be no signs on, on top of, or a part of the Premises, and that the space designated by Landlord for Tenant's sign shall be ready for the installation of Tenant's sign.

R23. 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.

R24. Common Area Charges - (a) It shall not include (i) expenses for any capital improvements made to Land or Building, (except that capital expenses for improvements which result in savings of labor or other costs shall be included at the cost or such improvements amortized over the useful life of the improvements); (ii) expenses for repairs or other work occasioned by fire, windstorm or other insured casualty; (iii) expenses incurred in leasing or procuring new Tenants (i.e. lease commissions, Tenant inducements, advertising expenses and expenses of renovating space for new Tenant); (iv) legal expenses in enforcing the terms of any lease; (v) interest or amortization payments on any mortgage or mortgages and/or capital improvements; (vi) reserve funds; (vii) administrative expenses of Landlord in excess of fifteen (15%) percent; (viii) expenses in connection with maintaining and operating any garage operated by Landlord incident to the operation of the shopping center; (ix) removal of hazardous material; (x) earthquake insurance--unless such coverage is reasonably available at a commercially reasonable cost; and (xi) direct settlement payments by Landlord in personal injury or property claims.

(b) 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.

(d) Tenant dispute of Shopping Center Operating Costs - Any statement rendered by Landlord to Tenant for Tenant's share of Shopping Center Operating Costs shall be deemed accepted by Tenant unless, within 180 days 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 the location Landlord keeps its records of Shopping Center Operating Costs, audit and review the books of Landlord kept in connection with Shopping Center Operating Costs, and Tenant shall complete such audit within 30 days after providing Landlord with the Notice of Dispute. Tenant's review and audit of Landlord's records shall only be performed by a certified public account who

is not paid on a contingent basis. All information obtained through Tenant's audit shall be held in strict confidence and shall not be revealed to anyone except in connection with litigation between Landlord and Tenant regarding Shopping Center Operating Costs. Landlord shall have all rights allowed by law or equity if Tenant or any of its officers, agents or employees and/or its auditor violate the terms of this paragraph, including, without limitation, the right to terminate this Lease or the right to terminate Tenant's right to audit in the future pursuant to this paragraph. Prior to having access to Landlord's books and records, Tenant's accountant shall certify in writing to Landlord that (i) it is not being paid on a contingent basis and (ii) it shall keep information gained through such audit confidential other than disclosure of same to Tenant.

Execution - Landlord shall have fifteen (15) business 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. During such fifteen (15) business day period, Tenant's offer to lease as evidenced by its signing of the Lease shall be irrevocable.

EXHIBIT "F"

LEGAL DESCRIPTION

PARCEL A:

All that tract or parcel of land lying and being in Land Lots 649 and 720 of the 16th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

Begin at an iron pin found on the Eastern right-of-way line of Barrett Lakes Boulevard (having a 70 foot right-of-way) a distance of 850.40 feet, as measured Southerly, from the point formed by the intersection of said Eastern right-of-way line of Barrett Lakes Boulevard with the Southern right-of-way line of Cobb Place Boulevard (having a 120 foot right-of-way); thence leaving said Eastern right-of-way line of Barrett Lakes Boulevard, run South 89 degrees 00 minutes 00 seconds East a distance of 180.00 feet to an iron pin found; thence in a generally Northeasterly direction along the arc of a curve to the right a distance of 524.76 feet to an iron pin found (said curve having a chord distance of 476.97 feet on a bearing of North 43 degrees 57 minutes 07 seconds East and a radius of 350.00 feet); thence North 01 degrees 00 minutes 00 seconds East a distance of 130.00 feet to a point; thence South 89 degrees 00 minutes 00 seconds East a distance of 435.00 feet to a point on the centerline of Cobb Place Parkway (having a variable width right-of-way); run thence South 01 degrees 00 minutes 00 seconds West along the centerline of Cobb Place Parkway a distance of 1,105.00 feet to a point; run thence North 89 degrees 00 minutes 00 seconds West a distance of 25.00 feet to a point on the Western right-of-way line of Cobb Place Parkway; run thence along said Western right of way line of Cobb Place Parkway the following courses and distances: in a generally Southwesterly direction along the arc of a curve to the right a distance of 99.29 feet to a point (said curve having a chord distance of 97.21 feet on a bearing of South 21 degrees 22 minutes 30 seconds West and a radius of 139.600 feet); South 41 degrees 45 minutes 00 seconds West a distance of 213.30 feet to a point; and in a generally Southwesterly direction along the arc of a curve to the left a distance of 26.86 feet to an iron pin place (said curve having a chord distance of 26.83 feet on a bearing of South 37 degrees 24 minutes 48 seconds West and a radius of 177.405 feet); thence leaving said Western right-of-way line of Cobb Place Parkway, run North 01 degrees 00 minutes 00 seconds East a distance of 155.20 feet to a point; thence North 89 degrees 00 minutes 00 seconds West a distance of 75.00 feet to a point; thence South 01 degrees 00 minutes 00 seconds West a distance of 150.00 feet to a point; thence North 89 degrees 00 minutes 00 seconds West a distance of 315.00 feet to a point; thence North 01 degrees 00 minutes 00 seconds East a distance of 30.00 feet to a point; thence North 89 degrees 00 minutes 00 seconds West a distance of 190.00 feet to a point; thence North 01 degrees 00 minutes 00 seconds East a distance of 50.00 feet to a point; thence North 89 degrees 00 minutes 00 seconds West a distance of 150.94 feet to a point on the Eastern right-of-way line of Barrett Lakes Boulevard; run thence in a generally Northerly direction along said Eastern right-of-way line of Barrett Lakes Boulevard the following courses and distances: North 00 degrees 04 minutes 49 seconds West a distance of 118.02 feet to a point; in a generally Northeasterly direction along the arc of a curve to the right a distance of 489.48 feet to a point (said curve having a chord distance of 489.44 feet on a bearing of North 01 degrees 18 minutes 19 seconds East and a radius of 10,119.630 feet); and in a generally Northeasterly direction along the arc of a curve to the left a distance of 207.63 feet to an iron pin found (said arc having a chord distance of 207.61 feet and a bearing North 02 degrees 15 minutes 33 seconds East and a radius of 13,768.572 feet); said iron pin found being the point of beginning.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

All that tract or parcel of land lying and being in Land Lot 649 of the 16th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

To find the true point of beginning, begin at a point which marks the Southerly right-of-way line of Cobb Place Boulevard (one hundred twenty (120') foot right-of-way with the centerline of Cobb Place Parkway; thence leaving the Southerly right-of-way line of Cobb Place Boulevard and traveling along the centerline of said Cobb Place Parkway in a Southerly direction a distance of 984.73 feet to a point on said centerline; thence leaving said centerline and traveling North 89 degrees 00 minutes 00 seconds West a distance of 35.00 feet to a point, and which point is the true point of beginning; from the true point of beginning thus established travel South 01 degree 00 minutes 00 seconds West a distance of 147.69 feet to a point; thence traveling North 89 degrees 00 minutes 00 seconds West a distance of 244.00 feet to a point; thence traveling North 01 degree 00 minutes 00 seconds East a distance 147.69 feet to a point; thence traveling South 89 degrees 00 minutes 00 seconds East a distance of 244.00 feet to a point, and which point is the true point of beginning. Said tract containing 0.827 of an acre.

EXHIBIT "G"

DISCLOSURE STATEMENT

The Shopping Center Group, LLC ("BROKER")

Tenant/Subtenant/Buyer

JENNIFER CONVERTIBLES, INC.  
Name

Landlord/Sublandlord/Seller

SCI ENTITIES  
Name

For Transaction involving property located at

Cobb Place Shopping Center  
City of Kennesaw, County of Cobb, State of Georgia  
(hereinafter "Property").

Pursuant to Regulation 520-1-.08 of the Georgia Real Estate Commission's Regulations and Georgia's Brokerage Relationships in Real Estate Transactions Act (BRRETA), O.C.G.A. Section 10-6A-1 et seq., Broker makes the following disclosures:

1. In the above transaction, Broker represents:

- (a) X The Tenant/Subtenant/Buyer only;  
(b)        The Landlord/Sublandlord/Seller only;  
(c)        The Tenant/Subtenant/Buyer and Landlord/Sublandlord/Seller jointly and such dual agency is expressly consented to by the parties by their execution of a Dual Agency Disclosure and Consent Agreement; or  
(d)        Neither Tenant/Subtenant/Buyer, nor Landlord/Sublandlord/Seller, but rather Broker is acting as a transactional broker for both parties pursuant to BRRETA.

2. In the above transaction, Broker shall receive its compensation from:

- (a) X The Tenant/Subtenant/Buyer only;  
(b)        The Landlord/Sublandlord/Seller only; or  
(c)        Both Tenant/Subtenant/Buyer and Landlord/Sublandlord/Seller and such payment is expressly consented to by the parties by their signing below

The parties named below acknowledge and consent to the above-described relationships and source of Broker's compensation.

This document may be executed in counterparts; and if so, each shall constitute an original. Receipt of a facsimile signature shall be deemed a receipt of an original of this document.

Landlord/Sublandlord/Seller

Tenant/Subtenant/Buyer

SCI ENTITIES

By: Continental Real Estate Companies  
Its: Duly Authorized Agent

By: [Signature]  
Name: NICHOLAS L. LAMBERT  
Title: ASSET MANAGER  
Date: 4.7.06

By: [Signature]  
Name: Edward B. Jensen  
Title: Executive VP  
Date: April 4, 2006

-26-

1882144v2  
H:\JENNIFER\Kennesaw\sci cobb place jennifer convertibles lease-HK-31506.doc

-26-

1882144v2  
H:\JENNIFER\Kennesaw\sci cobb place jennifer convertibles lease-HK-31506.doc

EXHIBIT "H"

INTENTIONALLY OMITTED

EXHIBIT "I"

LEASE COMMENCEMENT DATE AGREEMENT

This Lease Commencement Date Agreement ("Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ (hereinafter referred to as "Landlord"), and \_\_\_\_\_ (hereinafter referred to as "Tenant").

Whereas, Landlord and Tenant entered into a certain Lease Agreement dated \_\_\_\_\_, 20\_\_\_\_, (hereinafter referred to as the "Lease"), for Premises therein more particularly described as \_\_\_\_\_,

Now, Therefore, Landlord and Tenant mutually acknowledge and agree as follows:

1. Initially capitalized terms herein shall have the same meaning ascribed thereto in the Lease.
2. The Demised Premises demised in the Lease contain \_\_\_\_\_ Square feet.
3. The Commencement Date of the Term of the above referenced Lease is \_\_\_\_\_, and the Lease Term ends on \_\_\_\_\_.
4. Tenant is in full possession of, and has accepted, the Demised Premises and the Lease is in full force and effect. Tenant agrees and acknowledges to Landlord as of the date hereof that Landlord has fulfilled the terms and conditions of the Lease.
5. Minimum Rental is due for the above referenced Lease beginning \_\_\_\_\_.

In Witness Hereof, the parties hereto have signed and sealed this Agreement, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

LANDLORD:

TENANT:

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT "J"

ADDITIONAL RENT ESTIMATES

Estimated charges for those items set forth in SECTIONS 9A and 12B:

COMMON AREA MAINTENANCE (CAM), PROPERTY TAXES, and INSURANCE

Currently estimated at \$3.04 per square foot.

It is understood that those charges are estimated only and are subject to change concurrent with actual costs.

# 3267514\_v5