



occupies 100% of the building, it is obligated to pay 100% of the Real Estate Taxes and Operating Expenses.

2. On September 21, 2010, (the “Petition Date”), Urban Brands, Inc. and its affiliates, including ASNJ, (as used herein, collectively the “Debtors”), filed for bankruptcy protection pursuant to Chapter 11 of Title 11 of the United States Code. Accordingly, ASNJ owes “stub rent” for the period of time from the Petition Date through the end of the month of September 2010. See In re Goody’s Family Clothing Inc., 610 F.3d 812 (3<sup>rd</sup> Cir. 2010).

3. The Stub Rent owed by ASNJ to Landlord is in the following amount, as shown on the Statement of Unpaid Charges attached hereto as Exhibit A:

- i. Fixed Rent: \$29,970.96
- ii. Common Area Maintenance (Operating Expenses): \$334.11
- iii. Real Estate Taxes: \$7,029.56
- iv. Interest on late payment of 3<sup>rd</sup> quarter Real Estate Taxes: \$204.70
- v. Additional Charges: \$1,002.83

Total Stub Rent(i through v): \$38,542.16

4. Section 503(b)(1)(A) of the Bankruptcy Code provides that “[a]fter notice and a hearing, there shall be allowed, administrative expenses...including the actual, necessary costs of preserving the estate.” 11 U.S.C. §503(b)(1)(A). Here, a benefit to the estate certainly was (and continues to be) conferred on the estate by the post-petition use of the Demised Premises. Indeed, the Debtors’ main corporate offices are situated in and operated out of the Demised Premises and thus without the Demised Premises the Debtors could not have continued to operate post-petition. By keeping the Lease in effect post-petition, the Debtors were (and continue to be) able to maintain their business. See Goody’s, supra, 610 F.3d at 819 (the unpaid

“stub rent” is an actual and necessary cost of preserving the estate and thus entitled to administrative priority); In the Matter of Zagata Fabricators, Inc., 893 F.2d 624, 627 (3d Cir. 1990) (“There is no question, of course, that the payment of rent for the use and occupancy of real estate ordinarily counts as an ‘actual, necessary’ cost to which a landlord, as a creditor, is entitled”); In re DVI, Inc., 308 B.R. 703, 708 (Bankr. D.Del. 2004) (“a landlord is entitled to an administrative claim in the amount of the fair market value of the premises when a debtor occupies and uses them post-petition”); In re ZB Co., Inc., 302 B.R. 316, 319 (Bankr. D.Del. 2003) (same); In re HQ Global Holdings, Inc., 282 B.R. 169, 173 (Bankr. D.Del. 2002) (same).

5. Therefore, under well-settled precedent, Landlord is entitled to an administrative claim for the Stub Rent pursuant to 11 U.S.C. §503(b)(1)(A). As shown above, the dollar amount of Landlord’s Stub Rent claim is \$38,542.16. Landlord is entitled to an administrative claim in this amount because “there is a presumption that the lease rate is fair market value...” In re DVI, Inc., supra, 308 B.R. at 707-08; In re ZB Co., Inc., supra, 302 B.R. at 319 (same). Payment should be made at such time as all other administrative claims are paid.<sup>1</sup>

**[Remainder of page intentionally left blank]**

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<sup>1</sup> Of course, in the event that the Debtors elect to assume the Lease, then the Debtors will be required to immediately pay in full all pre-petition and post-petition obligations owed to date, including, without limitation, the Stub Rent. Section 365(b)(1) requires the Debtors to cure any and all defaults under the Lease upon assumption. In addition to payment in full of all defaults under the Lease, the Debtors must also provide adequate assurance of future performance under the Lease. 11 U.S.C. 365(b)(1)(C).

**CONCLUSION**

WHEREFORE, for the reasons set forth above, Landlord respectfully submits that it is entitled to an administrative claim for Stub Rent in the amount of \$38,542.16 pursuant to 11 U.S.C. §503(b)(1)(A), as well as such other and further relief as the court may deem just and proper.

Dated: November 8, 2010  
Wilmington, DE

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