

## **LEASE TERMINATION AGREEMENT**

THIS LEASE TERMINATION AGREEMENT (this "**Agreement**") is made as of this \_\_\_ day of August, 2011, by and between A/R Retail, LLC ("**Landlord**"), and Borders, Inc., as one of the debtors and debtors-in-possession ("**Tenant**").

### **W I T N E S S E T H :**

WHEREAS, Landlord's predecessor in interest and Tenant entered into a lease dated March 31, 2003 (as the same may have been amended from time to time, and together with any and all other leases or agreements affecting the Premises (as defined below), the "**Lease**"), covering approximately twenty six thousand (26,000) square feet of retail space (the "**Premises**") in the shopping center commonly known as The Shops at Columbus Circle, located in New York, New York (the "**Center**"), identified as Tenant's Store No. 10-592, on the terms and conditions set forth therein; and

WHEREAS, on February 16, 2011, Tenant and its affiliated debtor entities (the "**Debtors**") filed voluntary petitions for relief under Chapter 11 of Title 11 of the U.S. Code, 11 U.S.C. § 101 et seq., as amended (the "**Bankruptcy Code**"), jointly administered as Case No. 11-10614 (the "**Bankruptcy Cases**") in the U.S. Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"); and

WHEREAS, pursuant to the Bankruptcy Court's Order dated August 10, 2011, approving the Debtors' Motion For Order Pursuant To Sections 105, 363 And 365 Of The Bankruptcy Code And Rules 2002, 6004, 6006 And 9014 Of The Federal Rules Of Bankruptcy Procedure (I) Approving The Bidding And Auction Procedures For Sale Of Unexpired Nonresidential Real Property Leases, (II) Setting Lease Sale Hearing Dates And (III) Authorizing And Approving (A) Sale Of Certain Unexpired Nonresidential Real Property Leases Free And Clear Of All Interests, And (B) Assumption And Assignment Of Certain Unexpired Nonresidential Real Property Leases ("**Lease Sales Procedures Order**"), the Bankruptcy Court authorized and empowered the Tenant to implement certain real estate sales procedures relative to the Tenant's real estate interests, including, but not limited to, the Lease and the Premises, including by way of a lease termination agreement with a landlord and/or by auction; and

WHEREAS, the Landlord has submitted a bid and offer for the Lease and the Tenant's interests in the Premises, which offer the Tenant has determined to accept and consummate a lease termination agreement in accordance with the terms and provisions of the Lease Sales Procedures Order and this Agreement; and

WHEREAS, the agreement is contingent upon the entry of the Approval Order (as defined below) not later than August 10, 2011; and

WHEREAS, except as otherwise provided herein, and subject to the conditions set forth herein, the parties desire to terminate the Lease, effective as of the Termination Date (as defined below).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby covenant and agree as follows:

1. Lease Termination. Subject to the occurrence of a closing hereunder and the satisfaction of the other conditions contained in this Agreement, including, without limitation, the payment of the Cash Consideration to Tenant, the Lease shall terminate (the "**Termination Date**") five days after the later of: (a) the entry of the Approval Order (as defined below) by August 10, 2011, and the Approval Order becoming a final, non-appealable order terminating the Lease; (b) the termination of the on-going store closing sale at the Premises; and (c) the date that the Tenant delivers to Landlord all keys, access card, and/or alarm codes to the Premises and surrenders the Premises to the Landlord; provided, however, that in no event shall the Termination Date occur after September 19, 2011, (it being agreed that Tenant shall not be liable for any fixed rent, additional rent or any other charges pursuant to the Lease or otherwise attributable to the period from 9/14 through 9/19 so long as the premises have been properly vacated by the Tenant and its agents in the manner set forth in Paragraph 3(a) and any such charges for such period shall be limited to damages arising from Tenant's failure to do so). Notwithstanding the above, in no event shall the Tenant or Debtors have any legal or equitable right to remain in possession, custody, or control of the Premises from and after September 15, 2011, and the Lease is deemed rejected pursuant to 11 U.S.C. § 365(d)(4)(B) as of September 14, 2011. In connection therewith, and to the extent necessary to secure possession and control of the Premises, beginning September 15, 2011, the Landlord shall have relief from the automatic stay imposed by 11 U.S.C. § 362, and may issue, file, serve, or record any and all notices as may be desirable or necessary under applicable New York or other nonbankruptcy law in conjunction with the exercise of its rights and remedies as to the Premises, including but not limited to, its rights take any and all actions necessary to secure possession of the Premises and secure and/or dispose of any remaining furniture fixtures and equipment, including but not limited to, any self help remedies allowed by law. As of the Termination Date, Tenant surrender the Premises to Landlord and shall give, grant and surrender unto Landlord all of Tenant's right, title and interest in and to the Premises, including, without limitation, all of the Tenant's right, title and interest in, to and under the Lease, and Landlord hereby accepts such surrender. Each of the parties hereto acknowledges performance of all obligations of the other party under this Lease or otherwise in connection with the Premises through and including the date of this Termination Date, and agree that, from and after the Termination Date, the Lease and all rights and obligations of the parties thereunder, shall be deemed to have expired and terminated as fully and completely and with the same force and effect as if such date were the expiry date set forth in the Lease, and that the Lease is hereby agreed to be null and void and of no further force and effect as of that date. Except as set forth herein, any and all rights and obligations of the parties which may have arisen in connection with the Premises shall be deemed to have expired and terminated as of the Termination Date.
2. Cash Consideration. As consideration for this Agreement, Landlord shall pay to Tenant One Million Two Hundred Fifty Thousand Dollars and 00/100 (\$1,250,000.00) in cash (the "**Cash Consideration**"), on the Termination Date by wire transfer in accordance with the wire instructions set forth on Exhibit A attached hereto.

3. Remaining Lease Obligations. From the date of this Agreement through the Termination Date, Tenant agrees that (i) it will continue to perform all of its covenants and obligations, including to pay all rent and related lease charges, under the Lease; (ii) it will remain current on its obligations under the Lease with respect to maintenance of insurance and payment of utilities; (iii) it shall not cause any material damage to the Premises in connection with the conduct of the store closing sale or removal of Tenant's trade fixtures; and (iv) it shall not cause mechanics liens to be asserted against the Premises (collectively, the “**Remaining Lease Obligations**”). On the Termination Date, Tenant shall: (a) deliver the Premises as required in the Bankruptcy Court order dated March 16, 2011 [Docket No. 399](and specifically referencing ¶¶ 4 through 7), concerning the condition of premises upon lease rejection by the debtors (including Tenant), it being agreed that any furniture, fixtures, equipment or other personal property that remains in or on the Premises following the Termination Date shall be deemed abandoned by Tenant pursuant to the procedures, rights and remedies set forth in the Bankruptcy Court order dated July 21, 2011 [Docket No. 1377] (and specifically referencing ¶¶ 24 through 26); and (b) reasonably cooperate with Landlord to transfer utilities into the name of Landlord. Tenant and Landlord agree that Tenant shall not be obligated to pay any further rent, additional rent, CAM, real estate taxes or other amounts accruing under the Lease from and after the Termination Date, and except as otherwise provided for in this Agreement, the Tenant shall be relieved of all obligations under the Lease pursuant to Section 365(k) of the Bankruptcy Code from and after the Termination Date.
4. Closing. The Closing of the transactions contemplated under this Agreement (the “**Closing**”) shall be deemed to have occurred upon the payment of the Cash Consideration, time being of the essence. The Closing shall be held at the offices of Katten Muchin Rosenman LLP, 575 Madison, New York, New York 10022, or at such other time and place as may be mutually agreeable to the Landlord and the Tenant. At the Closing, all of the transactions provided for herein, shall be consummated on a substantially concurrent basis. The payment of the Cash Consideration on the Termination Date shall be evidence that all of Tenant's obligations under the Lease and hereunder, including, without limitation, the Remaining Lease Obligations, have been fully satisfied or waived by Landlord other than those obligations established hereunder which expressly survive the Closing.
5. Tenant Release.
  - (a) Except as otherwise set forth herein, as of the Termination Date, Landlord hereby releases and discharges Tenant and its affiliates (and Tenant's and its affiliates' bankruptcy estates), agents, directors, officers, representatives, attorneys, advisors, employees, successors and assigns, of and from all manner of actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, claims (including but not limited to, all claims accruing before, on or after the filing of the Bankruptcy Cases through the Termination Date) and demands whatsoever, in law or in equity, which Landlord ever had, now has or hereafter can, shall or may have against Tenant or its successors or

assigns for, upon or by reason of any matter, cause or thing whatsoever relating to or arising out of the Lease, this Agreement or the Premises, including but not limited to, any and all lease rejection claims (whether under Section 502 of the Bankruptcy Code or otherwise). Notwithstanding the above, Landlord does not waive or release Tenant from the following: (i) any obligations arising under this Agreement that expressly survive the Termination Date; (ii) any indemnification obligations arising from third party claims asserted with respect to or arising from Tenant's use and occupancy of the Premises prior to the Termination Date for which Tenant had a duty to indemnify Landlord pursuant to the Lease, with respect to which Tenant was required to maintain insurance coverage pursuant to the Lease, and which expressly survive the expiration or termination of the Lease; and (iii) from exercising any discovery rights Landlord has against the Tenant in connection with any civil litigation or arbitration proceedings involving a third party .

- (b) Subject to the exclusions contained in clauses (i), (ii) and (iii) of Section 5(a) above, Landlord's release under this Paragraph 5 expressly includes any claim for unpaid rent (including but not limited to annual or base rent, percentage rent (if applicable), and additional rent) and charges under the Lease accrued or billed prior to February 16, 2011, any claims for unpaid post-petition reconciliation or adjustment charges for real estate taxes, common area maintenance or deferred maintenance charges, and any other charges due up to and including the Termination Date that may come due after the Termination Date, and charges not previously paid for any time after February 16, 2011 (other than the Remaining Lease Obligations), and any claim by Landlord for lease termination and rejection damages under Bankruptcy Code section 502(b)(6).
- (c) This paragraph 5 shall survive the Closing.

- 6. Landlord Release. Except as set forth herein, as of the Termination Date, Tenant hereby releases and discharges Landlord and its affiliates, agents, directors, officers, representatives, attorneys, advisors, employees, successors and assigns, of and from all manner of actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, claims and demands whatsoever, in law or in equity, which Tenant ever had, now has or hereafter can, shall or may have against Landlord or its successors or assigns for, upon or by reason of any matter, cause or thing whatsoever, including the pursuit of any avoidance actions under Sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code against the Landlord, solely relating to or arising out of the Lease, this Agreement or the Premises. Notwithstanding the above, Tenant does not waive or release Landlord from the following: (i) any obligations arising under this Agreement; (ii) any indemnifications obligations arising from third party claims asserted with respect to or arising from Landlord's obligations prior to the Termination Date for which Landlord had a duty to indemnify Tenant pursuant to the Lease, with respect to which Landlord was required to maintain insurance coverage pursuant to the Lease, and which expressly survive the expiration or termination of the Lease; and (iii) from exercising any discovery rights Tenant has against the Landlord in connection with any

civil litigation or arbitration proceedings involving a third party. This paragraph 6 shall survive the Closing.

7. Successors and Assigns. This Agreement and each of its provisions are binding upon and shall inure to the benefit of Tenant's successors and assigns including a trustee, if any, subsequently appointed under Chapter 7 or 11 of the Bankruptcy Code.
8. Bankruptcy Court Approval. This Agreement is subject to the Bankruptcy Court's entry of a non-contingent order approving the Agreement (the "**Approval Order**") not later than August 10, 2011. Upon full execution of this Agreement, the Tenant and Debtors shall remove the Lease from the list of leases available for auction and sale, and the Tenant will promptly seek Bankruptcy Court approval of the sale of the Lease to Landlord pursuant to the Lease Sales Procedures Order. In the event the Approval Order is not entered by August 10, 2011, the Landlord may declare this Agreement null and void, at its option, and Landlord shall have no obligation to pay the Cash Consideration.
9. Authority. The parties hereto each warrant and represent that it has the right and authority to enter into this Agreement, subject with respect to Tenant, to the approval of the Bankruptcy Court.
10. Entire Agreement. This Agreement, and any agreement and/or instruments delivered in connection herewith, contains the entire agreement between the parties hereto and, except as otherwise specifically set forth herein, supersedes all prior agreements and undertaking between the parties hereto or any of them or any of their affiliates relating to the subject matter hereof.
11. Counterparts. This Agreement may be executed in any number of counterparts, by original or facsimile or electronic signature, each of which when executed and delivered shall be deemed an original, and such counterparts together shall constitute one instrument.
12. Conflict With Lease. In the event of a conflict between the terms of the Lease and the terms of this Agreement, the terms of this Agreement shall control.
13. Further Assurances. Landlord and Tenant hereby agree to execute such further documents or instruments as may be necessary or appropriate to carry out the intention of this Agreement.
14. Brokers. Each party represents and warrants that, except for DJM Realty, LLC (whose fee or commission shall be paid by Tenant pursuant to separate Agreement), it dealt with no broker or brokers in connection with the negotiation, execution and delivery of this Agreement. Each party shall, and does hereby, indemnify, defend and save the other parties harmless from and against any losses, damages, penalties, claims or demands of whatsoever nature arising from a breach of its foregoing representation including, without limitation, reasonable attorneys' fees and expenses. The foregoing indemnity shall survive the termination of this Agreement.

15. Retention of Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction, and the parties hereto submit to such jurisdiction, to determine or resolve any and all objections or disputes arising out of or relating to this Agreement or the Lease.
16. Acceptance of Bid. Debtors accept this bid as the highest and best offer for the disposition of the Lease for the Premises, and neither the Debtors nor the Committee shall solicit, or accept, support or endorse any further bids from any other party, including any bids at the hearing to approve the Agreement, and the Debtors shall not enter into any other agreement regarding the termination, assignment, assumption or other disposition of the Premises or the Lease; provided however that no term or provision of this Agreement shall prevent, amend, alter or reduce the Debtors' abilities to exercise their fiduciary duties under applicable law as reasonably determined by the Debtors' directors or members, as applicable, and upon advice of counsel. It is Debtors' business judgment that this Agreement presents the best opportunity for the Debtors' bankruptcy estate, based upon (i) the information available to Debtors in entering into this Agreement and (ii) Debtors' understanding that the Lease is not going to be offered or made available to other parties after execution of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date and year first written above.

LANDLORD

A/R Retail, LLC,  
a Delaware limited liability company

By: ML

Its: Executive V.P.

TENANT

Borders, Inc., a Colorado corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM AND CONTENT:

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

LOWENSTEIN SANDLER, PC

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