

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

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In re: : Chapter 11
: :
JENNIFER CONVERTIBLES INC., et al., : Case No. 10-13779 (ALG)
: :
: Jointly Administered
Debtors. : :
: :
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**INTERIM ORDER AUTHORIZING EMPLOYMENT AND
RETENTION OF KPMG CF REALTY LLC, AS SPECIAL REAL
ESTATE ADVISOR FOR THE DEBTORS *NUNC PRO TUNC TO THE PETITION DATE***

Upon consideration of the Application (the “Application”) of Jennifer Convertibles Inc., and certain of its affiliates and related entities, as debtors and debtors in possession (collectively, the “Debtors”), seeking entry of an order pursuant to Sections 327(a) and 328(a) of the United States Bankruptcy Code (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2014-1 and 2016-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), authorizing the employment and retention of KPMG CF Realty LLC (“KPMGCF”) as special real estate advisor for the Debtors nunc pro tunc to the Petition Date, on the terms and conditions set forth in the agreement between certain of the Debtors and KPMGCF (the “Engagement Letter”),² attached as Exhibit C to the Motion; and it appearing that the Court has jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this matter is core pursuant to 28 U.S.C. § 157(b)(2)(A) and (O); and it appearing that venue is proper in this District pursuant to 28 U.S.C. § 1408; and comments having been received from the United

² Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Engagement Letter.

States Trustee for the Southern District of New York (the “U.S. Trustee”); and KPMGCF and the U.S. Trustee having agreed to reserve the issue regarding the appropriate standard of review with respect to KPMGCF’s fees until the earlier of (a) _____, 2010, and (b) the date on which KPMGCF and the U.S. Trustee reach a consensual resolution of such issue; and the Court having determined that the relief sought in the Application is in the best interests of the Debtors, their estates and all parties in interest; KPMGCF is “disinterested” and eligible for retention pursuant to Sections 101(14) and 327(a) of the Bankruptcy Code, the terms of the Engagement Letter, the terms of the Engagement Letter are reasonable and appropriate; and upon the *Declaration of Matthew Bordwin in Support of the Debtors’ Application to Retain and Employ KPMG CF Realty LLC as Special Real Estate Advisor Nunc Pro Tunc to the Petition Date*; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Application is granted on an interim basis as set forth herein; and it is further

ORDERED that in accordance with Sections 327(a) and 328 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1, the Debtors are authorized to employ and retain KPMGCF in accordance with the terms and conditions set forth in the Engagement Letter as of the Petition Date; and it is further

ORDERED that KPMGCF is authorized to perform the services set forth in the Engagement Letter, including:

- a. organize the lease information for each Renegotiation Property in a manner that clearly displays the store and lease economics. KPMGCF and Company will jointly establish negotiating goals and parameters, such as rent reductions, lease term modifications, and other leasehold concessions;

- b. contact the landlord for each Renegotiation Property and seek to negotiate with the landlord for modifications in accordance with the parameters established by Company; and
- c. work with the landlords, the Company, and the Company's counsel to document all lease modification proposals;

and it is further

ORDERED that section 2.5 of the Engagement Letter shall be revised so that the \$5,000 Minimum Fee referenced shall be reduced to \$4,000 and that section 2.6 of the Engagement Letter shall be revised so that the \$3,500 Minimum Fee referenced shall be reduced to \$3,000; and it is further

ORDERED that the Debtors are authorized to compensate KPMGCF in accordance with the terms of the Engagement Letter and KPMGCF will not be required to file interim or final fee applications pursuant to Sections 330 and 331 of the Bankruptcy Code or keep time records in connection with its services performed under the Engagement Letter; and it is further

ORDERED that, notwithstanding the immediately preceding paragraph, upon conclusion of its engagement in these chapter 11 cases, KPMGCF shall be required to comply with the following procedures:

- a. The Debtors will request final allowance of the fees paid or to be paid to KPMGCF under the Engagement Letter (the "Fees") by filing a notice setting forth the total amount of fees paid or to be paid to KPMGCF with respect to each Renegotiation Property (the "Fee Notice") and serving the Fee Notice on the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Nazar Khodorovsky, Esq.; and (ii) counsel to the Official Committee of Unsecured Creditors appointed in the Debtors' cases (the "Creditors' Committee").
- b. The Fee Notice shall contain information regarding: (i) the amount of the fees paid or to be paid per Renegotiation Property, (ii) a brief explanation of the method by which the amount of the fee for each Renegotiation Property was determined, and (iii) incurred and received expenses as of the date of the Fee Notice.

- c. The U.S. Trustee and the Creditors' Committee will have fourteen (14) days after the filing of the Fee Notice to file an objection to any portion of the fees and serve the objection on the Debtors and KPMGCF. Any objection to the Fee Notice shall set forth: (i) the amount of the fees to which the party is objecting, (ii) the Renegotiation Property the fees related to, and (iii) the reasons for the objection.
- d. If no party timely files and serves an objection to the Fee Notice, the Debtors shall be authorized to pay any fees that remain unpaid to KPMGCF in accordance with the Engagement Letter without further notice or authorization from the Court.
- e. If any party files a timely objection to the Fee Notice and KPMGCF, and the objecting party or parties are unable to resolve the objection, the Debtors or KPMGCF may schedule a hearing for the Court to determine the objection.

ORDERED that KPMG shall provide to the U.S. Trustee an accounting of all expenses reimbursed by the Debtors pursuant to the Engagement Letter that were not included in the Fee Notice and the U.S. Trustee will have fourteen (14) days after provision thereof to file an objection to any portion of the expenses and serve the objection on the Debtors and KPMGCF. If the Debtors, KPMGCF, and the objecting party or parties are unable to resolve the objection, the Debtors or KPMGCF may schedule a hearing for the Court to determine the objection; and it is further

ORDERED that KPMGCF's fees and expenses provided for in the Engagement Letter shall be treated as administrative expense claims; and it is further

ORDERED that during the pendency of these cases, paragraph 4 of Schedule I to the Engagement Letter, regarding limitation of liability, is deleted; and it is further

ORDERED that, notwithstanding paragraph 11(e) of the Engagement Letter, upon the conversion of the Debtors' cases to cases under chapter 7 of the Bankruptcy Code, the Engagement Letter shall be terminated, unless the Debtors' chapter 7 trustee elects to continue to employ KPMGCF pursuant to the terms of the Engagement Letter; and it is further

ORDERED that all requests of KPMGCF for payment of indemnity pursuant to the Engagement Letter shall be made by means of an application (interim or final as the case may be) and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based on the circumstances of the litigation or settlement in respect of which indemnity is sought, provided, however, that in no event shall KPMGCF be indemnified in the case of its own bad-faith, self dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct; and it is further

ORDERED that in no event shall KPMGCF be indemnified if the Debtors or a representative of the estate, asserts a claim for, and a court determines by final order that such claim arose out of, KPMGCF's own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct; and it is further

ORDERED that in the event KPMGCF seeks reimbursement for attorneys' fees from the Debtors pursuant to the indemnity provisions in the Engagement Letter, the invoices and supporting time records from such attorneys shall be included in KPMGCF's own applications for approval of indemnity payments (both interim and final) and such invoices and time records shall be subject to the United States Trustee's guidelines for compensation and reimbursement of expenses and the approval of the Bankruptcy Court under the standards of Sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under Section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy Section 330(a)(3)(C) of the Bankruptcy Code; and it is further

ORDERED that the Debtors are authorized, empowered and directed to take all actions necessary to implement the relief granted pursuant to this Order; and it is further

ORDERED that to the extent the terms of this Order differs from the Engagement Letter, the terms of this Order shall govern; and it is further

ORDERED that the issue regarding the appropriate standard of review with respect to KPMGCF's fees is hereby reserved until the earlier of: (a) _____, 2010, and (b) the date on which KPMGCF and the U.S. Trustee reach a consensual resolution of such issue.

ORDERED that during the pendency of these cases, this Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation of this Order and neither the Debtors nor KPMGCF shall be required to seek authorization from any other jurisdiction with respect to the relief granted by this Order.

Dated: New York, New York
_____, 2010

THE HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE