

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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REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSES

905 WPR LLC c/o Metrovest Equities LLC (“905 WPR”), creditor and party-in-interest in the above-captioned case chapter 11 cases of Jennifer Convertibles, Inc. *et al.* (the “Debtors”), by and through its undersigned counsel, hereby submits its request for payment of administrative expenses. In support of its request, 905 WPR states as follows:

BACKGROUND

1. 905 WPR is a limited liability company that manages commercial properties throughout Tri-State area.
2. 905 WPR’s primary place of business is located at 4 Beacon Way, Suite 16, Jersey City, New Jersey 07304.
3. 905 WPR and the Debtor, Jennifer Convertibles, Inc., entered into a real estate lease agreement (the “Lease”) in May 2001 whereby the Debtors rented a commercial space located at 419 Crossways Park Drive, Woodbury New York 11797 (the “Store”) for a ten year term. A copy of the Lease is annexed as Exhibit “A”.
4. On July 18, 2010 (the “Filing Date”) the Debtors filed a chapter 11 case under Title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court, Southern District of New York.

5. Pursuant to the terms of the Lease, the monthly rental obligation for July 2010 was \$11,004.78 (“July Rent”). The pro-rata post-petition portion of the July Rent from July 18, 2010 (the “Filing Date”) to July 31, 2010 was \$4,914.37. To date, 905 WPR has not received the post-petition portion of the July rent amounting to \$4,914.37, which 905 WPR asserts is an administrative claim against the estate.

6. In addition, the Debtors have failed to pay the real estate taxes that became due on September 1, 2010 in the amount of \$8,147.55. 905 WPR asserts that the taxes owed are also an administrative expense as they became due and owing after the Filing Date.

905 WPR’S CLAIM

7. The Debtors remained in possession of the Store well after the Filing Date, despite the fact that it had not paid either the pre or post petition portion of the July Rent and the real estate taxes that became due as of September 1, 2010. 905 WPR acknowledges that the Debtor has paid the rental obligations for August and September. Nevertheless, 905 WPR is entitled to an administrative claim for the post-petition portion of the July Rent in the amount of \$4,914.37 and the real estate taxes owed in the amount of \$8,147.55 totaling \$12,939.06 (collectively, the “Debtor’s Obligation”)

CLAIMS ARE ENTITLED TO ADMINISTRATIVE EXPENSE PRIORITY

8. Bankruptcy Code §503(b)(1)(A) provides for administrative expense status for “the actual, necessary costs and expenses of preserving the estate”. 11 U.S.C. §503(b)(1)(A).

9. Courts have held that “a claim will be afforded priority under § 503 if the debt both (1) arises from a transaction with the debtor-in-possession and (2) is beneficial to the debtor-in-possession in the operation of the business.” *In re Jartran Inc.*, 732 F.2d 584, 587 (7th Cir. 1984) (internal quotation marks omitted)(citation omitted); *Reading Co. v. Brown*, 391 U.S.

471, 483 (1968) (the Supreme Court that the “actual and necessary costs” include “cost ordinary incident to operation of a business”).

10. Clearly, the Debtor’s Obligation constitutes an ordinary costs incidental to operation of the business. The Debtors received the benefit of remaining in the Store after the Filing Date, which is allowing it to operate after the Filing Date. Accordingly, Debtors should be obligated to pay the necessary costs in connection to such operation of the business.

11. Because of the benefit 905 WPR provided to the Debtors’ estates, 905 WPR asserts its rights to an administrative expense claim for the Debtor’s unpaid Obligations.

WHEREFORE, 905 WPR respectfully requests an Order of the Court granting 905 WPR an allowed administrative expense claim in the amount of \$12,939.06 and granting such other and further relief as is just and proper.

Dated: Wantagh, New York
September 21, 2010

LAMONICA HERBST & MANISCALCO, LLP
Attorneys for 905 WPR

By: s/ Salvatore LaMonica
Salvatore LaMonica
A Member of the Firm
3305 Jerusalem Avenue, Suite 201
Wantagh, New York 11793
Ph. 516.826.6500