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

In re:

JENNIFER CONVERTIBLES, INC., et al.,

Debtors.

Chapter 11

Case No. 10-13779 (ALG)

Jointly Administered

**FIFTH INTERIM STIPULATION REGARDING
CHARGEBACK RESERVE ACCOUNT**

This Fifth Interim Stipulation (“Fifth Stipulation”), dated the 23th day of September, 2010, is between and among Merrick Bank Corporation (“Merrick”); Renaissance Associates (“Renaissance” and, collectively with Merrick, the “Bank”); and Jennifer Convertibles Inc. (“Jennifer”). (All parties to this Fifth Stipulation are collectively referred to hereinafter as the “Parties”).

RECITALS

A. On or about January 13, 2010, the Parties signed a “Merchant Application and Agreement” (“Agreement”), which Agreement amended a prior agreement between the Parties, pursuant to which Bank has agreed to process Visa and MasterCard transactions initiated by customers utilizing credit cards at Jennifer locations (i.e., receive from a cardholder’s issuing bank, through the Visa/MasterCard interchange systems, payments for goods purchased at Jennifer locations with Visa/MasterCard cards (“Sales Receipts”) and remit such Sales Receipts on a daily basis, less applicable fees and other costs, to Jennifer).

B. Without the Bank’s performance under the Agreement, or the agreement of another bank to provide such services, Jennifer would be unable to accept Visa or MasterCard as a means for payment for its goods.

C. Jennifer’s ordinary course of business is to charge consumers a minimum of 50% of the purchase price for its goods at the time of sale for the Jennifer segment, and, in the case of sales of the Ashley segment goods, 100% of the purchase price at such time (the aggregate of all such down payments made with a Visa or MasterCard card at any given time the “Visa/MasterCard Deposits”) and the remaining balance, with respect to Jennifer segment sales, upon delivery of the purchased item some time later.

D. Pursuant to the rules of Visa and MasterCard, if product in respect of which a Visa/MasterCard Deposit has been made is not delivered, the cardholder may cancel the order (i.e., “chargeback”) and the Bank is obligated to return the Visa/MasterCard Deposit to the consumer. Likewise, if a cardholder determines not to accept delivered goods (defective, wrong item, etc.) the cardholder may chargeback and the Bank is obligated to return the purchase price to the consumer.

E. On July 18, 2010 (the “Petition Date”), Jennifer and affiliated debtors commenced voluntary cases pursuant to Chapter 11 of Title 11 of the United States Code and the cases (consolidated under Bankr. Case No. 10-13779) were assigned to the Honorable Allan L. Gropper, United States Bankruptcy Judge (the “Court”).

F. On August 4, 2010, the Court approved the Revised Interim Stipulation and Order Regarding Chargeback Reserve Account (the “First Stipulation”)¹, pursuant to which the Bank remitted to Jennifer \$1,000,000 then being held in the Interim Reserve. Thereafter, on August 23, 2010 the Parties entered the Second Interim Stipulation Regarding Chargeback Reserve Account (the “Second Stipulation”), pursuant to which the Bank remitted to Jennifer \$350,000 then being held in the Interim Reserve. Thereafter, on September 1, 2010 the Parties entered into the Third Interim Stipulation Regarding Chargeback Reserve Account (the “Third Stipulation”), pursuant to which the Parties agreed to maintain the status quo. Thereafter, on September 17, 2010 the Parties entered into the Fourth Interim Stipulation Regarding Chargeback Reserve Account (the “Fourth Stipulation”), pursuant to which the Parties agreed to establish a ratio of 80% between the funds held in the Interim Reserve and the amount of Visa/Mastercard Deposits (the “80% Metric”).

G. As of September 22, 2010, the Bank held \$3,204,749 in the Interim Reserve and the Visa/Mastercard Deposits, as per the most recent data reported to Bank by Jennifer, totaled \$3,820,984.

H. Jennifer and the Bank have agreed that Bank has or will remit to Jennifer \$147,962 from the Interim Reserve (leaving a remaining balance in the Interim Reserve of \$3,056,787 after said remittance) in order to maintain the 80% Metric and, based upon data

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the First Stipulation [Dkt No. 128]

reported to Bank by Jennifer on October 8, 2010, the Interim Reserve balance will be adjusted by a contemporaneous cash transfer between the parties.

I. Jennifer will benefit by entering this Fifth Stipulation by (i) allowing it time to negotiate with the Bank toward modifying the Agreement to (x) extend the term beyond its current termination date and (y) provide a formula regarding the amount of the Chargeback Reserve Account to which the Bank will be entitled on any given day, which formula will provide certainty to Jennifer as to cash flow and (ii) maintaining the 80% Metric upon its execution by Merrick, Renaissance, Jennifer and the Official Committee of Unsecured Creditors (the "Execution").

J. All parties reserve their rights.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby stipulated and agreed by and between the Parties hereto as follows:

1. The term of this Fifth Stipulation shall be an extension of the First Stipulation, the Second Stipulation, the Third Stipulation and the Fourth Stipulation in accordance with paragraph 12 of said stipulations and shall relate back to the expiration of the Fourth Stipulation, which by its terms expired on Thursday, September 23, 2010, and shall extend through and including Friday, October 8, 2010, provided however, either Bank or Jennifer may move for relief from this Fifth Stipulation upon good cause shown, including but not limited to the change in the ratio of Visa/MasterCard Deposits to the balance of the outstanding Chargeback Reserve Account and the need for adequate protection. During the term of this Fifth Stipulation, Jennifer

will not move for relief from this Fifth Stipulation in order to request the return of all or any further part of the Interim Reserve.

2. During the period of the Fifth Stipulation, Bank shall remit to Jennifer \$147,962 in order to maintain the 80% Metric; provided however, that during the Fifth Stipulation and upon its expiration, Jennifer agrees to permit Merrick to withhold an amount by which the Interim Reserve is less than the 80% Metric and Bank agrees to remit to Jennifer amounts in the Interim Reserve exceeding the 80% Metric, if any, based on the data in the weekly Visa/Mastercard Deposit report provided by Jennifer to Merrick pursuant to paragraph 8 below.

3. [Intentionally blank].

4. Bank shall hold the Interim Reserve and shall be entitled to recoup chargebacks in accordance with the terms of the Agreement, including but not limited to recoupments of such losses from the Interim Reserve, regardless of whether the transaction date as referenced in the chargeback is post - petition (“Post Petition Recoupment”) or pre-petition (“Pre-Petition Recoupment”) (collectively, the “Post-Petition Recoupments and the Pre-Petition Recoupments are defined as “Recoupment”).

5. Notwithstanding termination of this Fifth Stipulation, the Bank shall be authorized to take Post Petition Recoupments against the Interim Reserve.

6. The Bank will submit an accounting of such Recoupments to Jennifer on a weekly basis, and Jennifer reserves its right to challenge any such Recoupment, to the extent that such Recoupment does not comport with the ordinary course of business between the Parties.

7. To the extent any person or entity, receives a post-Petition Date lien over Jennifer’s estate property, either by Court approval or otherwise, any such lien shall be

subordinate to Merrick's rights, if any, to the funds in the Chargeback Reserve Account (including the Interim Reserve) as set forth in the Agreement.

8. Jennifer will provide the weekly Visa/MasterCard Deposit report to Merrick, on a post-Petition Date basis. Jennifer also will provide, identical to the prepetition practice, the following separate reports to Merrick on September 30 and October 7: (1) Jennifer's Cash Flow Projections (weekly); (2) Merrick Exposure Presentation (weekly); (3) Jennifer Segment Exposure Document (weekly); (4) Ashley Segment Exposure Document (weekly); (5) Financial Statements (monthly); (6) Ashley Inventory Report (weekly); (7) Jennifer General Stock Inventory Report (weekly); (8) Jennifer Store Warehouse Report (weekly). Merrick reserves the right to move to compel additional reporting as needed, and Jennifer reserves the right to object to any such motion.

9. Any Recoupment taken in accordance with paragraph 4 prior to termination of this Fifth Stipulation, which is not otherwise challenged pursuant to paragraph 6, shall be deemed authorized, and not subject to challenge, notwithstanding the termination of this Fifth Stipulation. Paragraphs 2, 5, 6 and 7 shall survive termination of this Fifth Stipulation regardless of whether the Agreement is rejected (and in the case of such rejection, paragraphs 5 and 6 remain limited by the temporal terms of the Agreement). With the exception of the foregoing, upon the termination of this Fifth Stipulation for any reason, none of its provisions shall survive.

10. All other terms and conditions of the Agreement remain unchanged.

11. This Fifth Stipulation shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns.

12. The Parties may mutually consent (such consent to be in writing) to extend the term of this Fifth Stipulation.

13. The signatories to this Fifth Stipulation represent and acknowledge that they have the requisite authority to execute this Fifth Stipulation.

14. This Agreement may be executed by facsimile and in counterparts, each facsimile being deemed an original and constituting one original document.

Dated: September 23, 2010

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