

---

SENIOR SECURED AND SUPERPRIORITY  
DEBTOR-IN-POSSESSION CREDIT AGREEMENT,

Dated as of November 19, 2010,

among

HAINING MENGNU GROUP CO., LTD., as DIP Credit Provider,

and

JENNIFER CONVERTIBLES, INC. AND ALL AFFILIATED ENTITIES, as Obligor

---

# TABLE OF CONTENTS

Page

Exhibits and Schedules

Exhibit A     DIP Budget

SENIOR SECURED AND SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of November 19, 2010 among JENNIFER CONVERTIBLES, INC. AND ALL ITS AFFILIATED ENTITIES (collectively “**Jennifer**” or the “**Obligors**” or the “**Debtors,**”) and HAINING MENGNU GROUP CO., LTD. (“**Mengnu**” or the “**DIP Credit Provider**”). The parties shall be collectively referred to as **Parties** and individually as a **Party**.

#### RECITALS

WHEREAS, Debtors have commenced cases under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York on July 18, 2010 (primary case no. 10-13779 (ALG)) (collectively, the “**Case**” or the “**Chapter 11 Cases**”) and Debtors have retained possession of their respective assets and are authorized under the Bankruptcy Code to continue the operation of their businesses as debtors-in-possession;

WHEREAS, prior to the commencement of the Case, Mengnu was Jennifer’s primary supplier;

WHEREAS, as of the Petition Date, Mengnu had an unsecured claim against Jennifer in the approximate amount of \$17,517,044.54 (the “**Unsecured Claim**”);

WHEREAS, prior to the petition date, Jennifer approached Mengnu to explore the possibility of reducing some of the Debtors’ debt to Mengnu in exchange for equity in Jennifer. In connection therewith, Jennifer and Mengnu entered into the Plan Support Agreement;

WHEREAS, Mengnu provided Goods that Jennifer received within 20 days prior to the Petition Date, for which Mengnu has asserted a claim under section 503(b)(9) of the Bankruptcy Code in the amount of approximately \$2,638,284.09 million (the “**503(b)(9) Claim**”);

WHEREAS, during the pendency of the Case Mengnu has continued to provide Jennifer Goods and credit in accordance with the Bankruptcy Court’s orders, including orders (i) Granting Administrative Expense Status to Debtors’ Obligations to Haining Mengnu Group Co. Ltd. Arising from the Post-Petition Delivery of Goods, and Authorizing Debtors to Pay those Obligations Cash on Delivery with the Ordinary Course of Business, dated July 26, 2010 and (ii) Authorizing the Debtors to Enter into a Stipulation with Haining Mengnu Group Co. Ltd., dated August 31, 2010 (the “**August 31, 2010 Order**”), pursuant to which Mengnu received certain administrative expense claims under Bankruptcy Code section 503 (the “**Administrative Claims**”);

WHEREAS, pursuant to the August 31, 2010 Order, the Debtors are now purchasing purchase goods from Mengnu by providing 75% of the price of the goods cash in advance (the “**75% CIA Payment**”). The 75% CIA Payment is deposited into an escrow account either (i) at the time of shipment of goods from China or (ii) 25% on the placement of a new order and 50% on shipment of goods from China. The 75% CIA

Payments is payable to Mengnu upon the delivery of the goods to Jennifer ~~(the “Vested Mengnu Funds”)~~. The remaining 25% of the price of the goods is paid to Mengnu upon delivery of the goods to Jennifer (the “25% COD Payment” and together with the 75% CIA Payment, the “Jennifer Payments”). Mengnu has full right to the Jennifer Payments, and the Jennifer Payments are due and owing<sup>1</sup> upon delivery of goods to Jennifer in connection with such Jennifer Payments.

WHEREAS, the Debtors’ Credit Card Processor is withholding approximately \$3,000,000~~a~~ against Customer Deposits;

WHEREAS, the Debtors have requested \$3,000,000 in financing from Mengnu to allow the Debtors to continue to remain administratively solvent during the Case and continue to operate their businesses;

WHEREAS, the DIP Credit Provider may, each in its sole discretion, ~~may loan the Debtors some or all of the Vested Mengnu Funds~~ loan the Debtors (i) some or all of the then due and owing 75% CIA Payments, (ii) some or all of the then due and owing 25% COD Payments, and (iii) other additional monies as may be requested by Jennifer and agreed to by Mengnu (“i”, “ii”, and “iii” together, the “CIA General DIP Financing”);

WHEREAS, Mengnu has also agreed to provide the Debtors with debtor in possession financing in the form of arranging and backstopping letters of credit equaling \$3 million (collectively, the “LOC”) to be provided by a bank (the “LOC Bank”) to or for the benefit of the Credit Card Processor, which would allow the Debtors to use up to \$3 million of cash reserves otherwise held by the Credit Card Processor for the operation of their businesses (the “LOC DIP Financing”, and together with the CIA General DIP Financing, the “DIP Financing”). At all times, Jennifer shall remain the primary obligor under the LOC;

WHEREAS, the Debtors have agreed to affirm and reaffirm Mengnu’s 503(b)(9) Claim and priorities thereof and to (i) pay Mengnu the DIP Arranging Fee (ii) reimburse Mengnu for miscellaneous expenses associated with the LOC not to exceed an aggregate of \$20,000 (other than standard legal and advisory fees and the base fee that Mengnu shall be required to pay the LOC Bank under the LOC Backstop Agreement (the “Costs”)) (iii) pay Mengnu an amount equaling any monies drawn from the LOC by the Credit Card Processor for which Mengnu shall be obligated to the LOC Bank (a “Drawing”), (iv) pay Mengnu the LOC DIP Financing Fee, (v) pay Interest on certain amounts as specified herein, and (vi) repay CIA General DIP Financings;

WHEREAS, the Debtors have agreed to grant Mengnu a senior secured first and super priority lien on the Collateral as security in connection with the Obligations;

WHEREAS, the Parties have agreed that this Agreement shall terminate on the Termination Date, notwithstanding, all DIP Liens, rights and privileges provided to

---

<sup>1</sup> Nothing herein shall be construed to mean that the 75% CIA payments are not due owing at the time they are placed in the escrow account.

Mengnu under this Agreement shall survive the termination of this Agreement until such time as all Obligations are paid in full;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1 DEFINITIONS

Section 1.01. *Defined Terms.* As used in this Agreement, the following terms shall have the meanings specified below:

[“25% COD Payment” shall have the meaning ascribed in the Recitals.](#)

“75% CIA Payment” shall have the meaning ascribed in the Recitals.

“August 31, 2010 Order” shall have the meaning ascribed in the Recitals.

“Agreement” shall mean this agreement.

“Affiliate” shall mean any company or entity that is owned by a Debtor or Obligor or shares common ownership with a Debtor or Obligor.

“Bankruptcy Code” shall mean the United States Bankruptcy Code, being Title 11 of the United States Code as enacted in 1978, 11 U.S.C. §§101 *et seq.*, as the same has heretofore been or may hereafter be amended, recodified, modified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the Southern District of New York.

“Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure, as the same may from time to time be in effect and applicable to the Chapter 11 Cases.

“Business Day” shall mean any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close.

“Carve-Out” shall have the meaning given to such term in the DIP Orders.

“Case” shall have the meaning ascribed in the Recitals.

[“General DIP Financing” shall have the meaning ascribed in the Recitals.](#)

“Chapter 11 Cases” shall have the meaning ascribed in the Recitals.

~~“CIA DIP Financing” shall have the meaning ascribed in the Recitals.~~

“**Closing Date**” shall mean the date on which the Agreement shall have been executed by the Parties.

“**Collateral**” shall mean all property and assets of the Obligors, of any nature whatsoever and wherever located, real or personal, tangible or intangible, now owned or hereafter acquired, whether tangible or intangible, including but not limited to cash, receivables, inventory, equipment, customer and vendor list and intellectual property.

“**Committee**” shall mean the official committee of unsecured creditors.

“**Credit Card Processor**” shall mean Merrick Bank.

“**Credit Card Processor Agreement**” shall have the meaning ascribed in Article 5.

“**Customer Deposits**” shall mean deposits that Jennifer’s customers have provided to Jennifer in connection with the purchase of goods via a credit card.

“**Debtors**” shall have the meaning ascribed in the Recitals.

“**Default**” shall mean any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would constitute an Event of Default.

“**DIP Arranging Fee**” shall have the meaning ascribed in Article 2.

“**DIP Budget**” shall mean the aggregate, without duplication, of all items that are set forth in the budget attached to the Order (a copy of which is attached hereto as Exhibit A), as modified or supplemented from time to time by additional budgets to which Obligor and the DIP Credit Provider mutually agree.

“**DIP Credit Documents**” shall mean this Agreement, the Perfection Documents (if any), the DIP Orders and each other document executed by a Party and delivered to the DIP Credit Provider in connection with this Agreement.

“**DIP Credit Provider**” shall have the meaning ascribed in the Recitals.

“**DIP Financing**” shall have the meaning ascribed in the Recitals.

“**DIP Liens**” shall mean the liens contemplated in this Agreement and approved in the DIP Orders.

“**DIP Orders**” shall mean collectively the Interim DIP Order and Final DIP Order.:-

“**DIP Superpriority Claims**” shall have the meaning ascribed to it in Section 2.04.

“**Dollars**” or “**\$**” shall mean lawful money of the United States of America.

“**Drawing**” shall have the meaning ascribed in the Recitals.

“**Event of Default**” shall have the meaning assigned to such term in Article 8 and shall include any additional “Event of Default” under the DIP Orders.

“**Effective Date**” shall mean the date on which a confirmed plan of reorganization in the Case shall become effective.

“**Final DIP Order**” shall mean the final order of the Bankruptcy Court approving the Agreement.

“**GAAP**” shall mean United States generally accepted accounting principles.

“**Goods**” shall mean goods, including inventory and product provided by Mengnu to Jennifer.

“**Governmental Authority**” shall mean any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

“**Indebtedness**” shall mean, without duplication, (a) all obligations for borrowed money or with respect to deposits or advances of any kind, (b) all obligations evidenced by bonds, debentures, notes or similar instruments, and (c) all obligations issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business).

“**Indemnified Person**” shall have the meaning assigned to such term in Section 10.04

“**Interest**” shall mean the interest referred to in Section 2.02.

“**Interim DIP Order**” shall mean the interim order of the Bankruptcy Court approving the Agreement.

“**Jennifer Payments**” shall have the meaning ascribed in the Recitals.

“**Investments**” shall have the meaning assigned to such term in Section 7.03.

“**Lien**” shall mean, with respect to any asset, any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, encumbrance, collateral assignment, charge or security interest in, on or on such asset.

“**LOC Backstop Agreement**” shall have the meaning ascribed in Article 5.

“**LOC Bank Agreement**” shall have the meaning ascribed in Article 5.

“**LOC DIP Financing**” shall have the meaning ascribed in the Recitals.

“**LOC DIP Financing Fee**” shall have the meaning ascribed in Article 2.

“**Material Adverse Effect**” shall mean a material impairment of the ability of any Obligor to perform any of its obligations under any DIP Loan Document to which it is or

will be a party, or a material impairment of the rights and remedies of, or benefits available to, the DIP Credit Provider with respect to the DIP Collateral, or under any DIP Loan Document, or with respect to the priority of such Liens.

“**Obligation**” shall have the meaning ascribed in Article 4 of this Agreement.

“**Obligor**” shall include any Affiliate of the Obligors.

“**Obligors**” shall have the meaning ascribed to them in the Preamble.

“**Perfection Documents**” shall mean, if any, security agreements, pledges, mortgages, consents and other instruments and documents executed and delivered with respect to securing the Collateral.

“**Permitted Investments**” shall mean:

(a) investments approved by Order of the Bankruptcy Court pursuant to a motion made by Debtors to waive the deposit guidelines provided by Bankruptcy Code section 345, which Order shall be in form and substance satisfactory to the Debtors;

(b) any investment permitted under Bankruptcy Code section 345;

(c) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

“**Permitted Priority Liens**” shall mean (a) any Lien created under the DIP Loan Documents, (b) Liens for unpaid taxes that are not yet delinquent, (c) the interest of lessors under operating leases, and (d) (i) carriers’ warehousemen’s suppliers or other like liens in the ordinary course of business that are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings, so long as such Liens attach only to Inventory; (ii) inchoate and unperfected workers’ mechanics’ or similar Liens arising in the ordinary course of business, so long as such Liens attach only to equipment, fixtures and/or real estate; (e) valid, perfected and enforceable and otherwise no avoidable Liens existing on the Petition Date; and (f) Liens agreed to by the DIP Credit Provider in writing from time to time.

“**Petition Date**” shall mean July 18, 2010.

“**Plan Sponsor**” shall mean Mengnu

“**Plan Support Agreement**” shall mean that certain plan support agreement, dated July 18, 2010 by and between Jennifer and Mengnu and annexed as Exhibit B to the *Declaration of Rami Abada Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York In Support of First-Day Motions* (D.I. # 3).

“**Postpetition**” means the time period beginning immediately after the filing of the Chapter 11 Cases.

“**Prepetition**” means the time period ending immediately prior to the filing of the Chapter 11 Cases.

“**Prepetition Indebtedness**” shall mean all Indebtedness of the Obligors outstanding on the Petition Date immediately prior to the filing of the Chapter 11 Cases.

“**Real Property**” shall mean all real property owned or leased from time to time by any Obligor.

“**Requirement of Law**” shall mean any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority.

“**Restricted Payment**” shall mean any payment outside the ordinary course of the Debtors’ business over \$25,000, without prior court approval or without prior written consent of the DIP Credit Provider.

“**Termination Date**” shall have the meaning ascribed in Article 9 of this Agreement.

“**Termination Event**” shall have the meaning ascribed in Article 9 of this Agreement.

“**UCC**” shall mean the Uniform Commercial Code.

“**USA Patriot Act**” shall mean The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

~~“**Vested Mengnu Funds**” shall have the meaning ascribed in the Recitals.~~

Section 1.02. *Terms Generally; Pro Forma Calculations.* The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” and words of similar import, shall not be limiting and shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The words “asset” and “property” shall be construed as having the same meaning and effect and to refer to any and all rights and interests in tangible and intangible assets and properties of any kind whatsoever, whether real, personal or mixed, including cash, securities, equity interests, accounts and contract rights. The words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement unless the context shall otherwise require.

ARTICLE 2  
THE CREDITS

Section 2.01. *Commitments.* Subject to the terms and conditions hereof, and relying upon the representations and warranties set forth herein, the DIP Credit Provider agrees (i) to provide the Debtors the ~~CIA~~General DIP Financing by lending the Debtors (a) some or all of the then total amount of ~~Vested Mengnu Funds as may be requested by the Debtors~~ due and owing 75% CIA Payments, in Mengnu's sole discretion, from time to time, (b) some or all of the then due and owing 25% COD Payments, in Mengnu's sole discretion, from time to time, and (c) other additional monies as may be requested by Jennifer and agreed to by Mengnu, in its sole discretion, from time to time and (ii) to provide the LOC DIP Financing by directly or indirectly guaranteeing or backstopping the LOC in favor of the Credit Card Processor in connection with the Debtors' obligations to the Credit Card Processor in any or no amount up to and including \$3,000,000 as Mengnu, in its sole discretion, may decide.

Section 2.02. *Interest.* Monies owed by the Debtors to the DIP Credit Provider in connection with (i) Costs, (ii) outstanding Drawings, (iii) the LOC DIP Financing Fee to the extent not paid on the date specified therefor herein, and (iv) outstanding amounts of the ~~CIA~~General DIP Financing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days calculated from and including the date of such obligation to but excluding the date of repayment thereof) at a fixed rate per annum equal to 7.5 percent.

Section 2.03. *LOC DIP Financing Fee.* The Debtors shall be obligated to pay the DIP Credit Provider a fee in connection with the LOC equaling 7.5% per annum applied to the face amount of the LOC (without regard to whether any Drawings have been made and computed on the basis of the actual number of days elapsed over a year of 360 days calculated from and including the date the LOC is issued to but excluding the date the LOC expires or is otherwise withdrawn or terminated) less the amount of Interest, if any, paid or payable in connection with Drawings.

Section 2.04. *DIP Arranging Fee.* The Debtors shall pay the DIP Credit Provider an upfront fee of 0.5% in connection with each DIP Financing.

Section 2.05. *Payment of Obligations.* The Debtors shall pay to Mengnu in good funds or, in the case of (iii), in the form of other consideration acceptable to Mengnu (i) a DIP Arranging Fee on each date of a ~~CIA~~LOC DIP Financing or General DIP Financing but only to the extent of the ~~CIA~~General DIP Financing or ~~CIA~~-LOC Financing provided on such date, (ii) an amount equal to each Drawing under the LOC not previously repaid by Jennifer on the earlier of (a) the Termination Date or (b) five (5) business days following the occurrence of a such Drawing, and (iii) all outstanding Obligations on the Termination Date.

Section 2.06. *Super Priority Nature of Obligations and DIP Credit Provider's Liens.* At all times during the Chapter 11 Cases:

(a) The ~~DIP Liens~~Debtors shall provide Mengnu with the DIP Liens over the Collateral, which, under Bankruptcy Code section 364(c)(2), shall have ~~the~~ priority and senior secured status as more fully set forth in the DIP Orders and shall be subject and junior only to the Permitted Priority Liens and the Carve Out.

(b) All Obligations shall constitute allowed administrative expense claims of the DIP Credit Provider in the Chapter 11 Cases with administrative priority under Sections 364(c)(1) of the Bankruptcy Code (the "**DIP Superpriority Claims**"). Subject to the Carve-Out to the extent set forth in the DIP Orders, such DIP Superpriority Claims shall have priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, and shall be payable from and have recourse to the Collateral, as set forth in the DIP Orders.

Except as set forth herein and in the DIP Orders, no other claim or Lien having a priority superior or pari passu to that granted to the Debtors by the DIP Orders shall be granted or approved while any Obligation under this Agreement remains outstanding. Except for the Carve-Out and subject to entry of the DIP Orders, no costs or expenses of administration shall be imposed against the Collateral under Section 506(c) of the Bankruptcy Code.

Section 2.07. *No Discharge; Survival of Claims.* The Obligors agree that (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization in the Chapter 11 Cases and (b) the DIP Superpriority Claim and the DIP Liens shall not be affected, altered or limited in any manner by the entry of an order confirming a plan of reorganization in any Chapter 11 Case.

Section 2.08. *Waiver of Priming Rights.* On the date hereof, and on behalf of themselves and their estates, and for so long as any Obligation shall be outstanding, without limiting any terms or conditions of the DIP Orders, the Obligors hereby irrevocably waive any right, (i) to grant or impose, or request that the Bankruptcy Court grant or impose, under Section 364 of the Bankruptcy Code or otherwise, Liens on or security interests in the Collateral that are of equal or greater priority than the DIP Liens, and/or (ii) to grant or impose, or request that the Bankruptcy Court grant or impose, under Section 364 of the Bankruptcy Code or otherwise, claims or expenses against any party, which are equal or superior to the DIP Superpriority Claims.

Section 2.09. *Payment of Obligations.* Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the DIP Orders, as the case may be, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, DIP Credit Provider shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder or under applicable law, in accordance with provisions of the DIP Orders, as applicable.

Section 2.10. *UCC Filings*. The Obligors shall not take any action to hinder or delay the immediate filing by the DIP Credit Provider of one or more UCC financing statements or continuation statements thereof as to the Collateral.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES

Each Obligor jointly and severally represents and warrants to the DIP Credit Provider that:

Section 3.01. *Organization; Powers*. The Obligors represent and warrant to Mengnu that (i) each Obligor is duly organized, validly existing, and is or will be in good standing under the laws of the jurisdiction of its formation, (ii) upon entry of the Interim DIP Order and Final DIP Order respectively, has the power and authority, and the legal right, to execute, deliver and perform its obligations under this Agreement, and each other agreement or instrument contemplated hereby or thereby to which it is or will be a party, including those set forth in Article 5 of this Agreement, to grant the DIP Liens and the Liens contemplated to be granted by it under the Perfection Documents (if any) (iii) this Agreement has been duly executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable in accordance with the terms hereof, and (iv) upon entry of the Interim DIP Order and Final DIP Order respectively, none of the execution and delivery of this Agreement or compliance with the terms and provisions hereof will violate, conflict with, or result in a breach of, its certificate of incorporation or bylaws or other constitutive document, any applicable law or regulation, any order, writ, injunction, or decree of any court or governmental authority or agency, or any agreement or instrument to which it is a party or by which it is bound or to which it is subject.

Section 3.02. Mengnu represents and warrants that (i) it is validly existing as a corporation in good standing under the laws of the People's Republic of China and has all the requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder and (ii) assuming this Agreement has been duly executed and constitutes the valid and legally binding obligation of Jennifer, this Agreement constitutes its valid and legally binding obligation.

Section 3.03. *Title to Properties*. Each Obligor has good and marketable title to, or valid leasehold interests in the Collateral. All such Collateral is free and clear of Liens, other than the Permitted Priority Liens.

Section 3.04. *Litigation; Compliance with Laws*. Except for (i) adversary proceedings (if any) in the Chapter 11 Cases and (ii) proceedings set forth in the Debtors' statements of financial affairs filed with the Bankruptcy Court, there are no actions, suits or proceedings at law or in equity or by or before any Governmental Authority now pending or, to the knowledge of the Obligors, threatened against or affecting any Obligor to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 3.05. *Use of Proceeds.* The Obligors will use the proceeds of or resulting from the DIP Credit Agreement (a) in a manner consistent with the DIP Budget and (b) to fund the payments in connection with the Obligations not contemplated by the DIP Budget.

Section 3.06. *Tax Returns.* Each Obligor has timely filed all Federal, state, local and foreign tax returns or materials required to have been filed by it and all such tax returns are correct and complete in all material respects. Each Obligor has timely paid or timely caused to be paid all material taxes that were shown to be due on such tax returns, except Taxes that are being contested in good faith by appropriate proceedings and for which the Obligor, as applicable, shall have set aside on its books adequate reserves in accordance with GAAP.

Section 3.07. *No Material Misstatements.* No report, financial statement, exhibit, schedule or other written information furnished by or on behalf of any Obligor for use in connection the DIP Credit Agreement or in connection with the negotiation of the terms of the DIP Credit Agreement, contains or will contain any material misstatement of fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading; *provided* that to the extent any such report, financial statement, exhibit, schedule or other written information was based upon or constitutes a forecast or projection, each Obligor represents only that it acted in good faith and utilized reasonable assumptions (based upon accounting principles consistent with the historical audited financial statements of the Obligors, except where accounting principles are not applicable to information outside of a financial statement) and due care in the preparation of such information, report, financial statement, exhibit, schedule or other written information.

Section 3.08. *Insurance.* The Debtors have valid and existing insurance policies protecting the Collateral from damage and/or theft.. As of such date, such insurance is in full force and effect and all premiums have been duly paid. The Obligors have insurance in such amounts and covering such risks and liabilities as are in accordance with normal and prudent industry practice. None of the Obligors have received notice from any insurer (or agent thereof) that substantial capital improvements or other substantial expenditures will have to be made in order to continue such.

Section 3.09. *Security.* Subject to the terms of the DIP Orders, the DIP Orders are effective to create in favor of the DIP Credit Provider a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof and constitutes a fully perfected Lien on, and security interest in, all right, title and interest of the Debtors in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other person or entity (except for the Permitted Priority Liens and the Carve-Out). At all times during the Chapter 11 Cases, (i) once the Interim DIP Order is entered, all of the Obligations of the Obligors under the DIP Loan Documents in connection therewith shall be secured by the DIP Liens, in favor of the DIP Credit Provider, subject in priority only to Permitted Priority Liens and the Carve-Out and (ii) once the Final DIP Order is entered, all of the Obligations of the Obligors under the DIP Loan Documents in connection therewith shall be secured by the DIP Liens, in favor of the DIP Credit Provider, subject in priority only to Permitted Priority Liens and the Carve-Out.

Section 3.10. *Labor Matters.* As of the Closing Date, there are no strikes, lockouts or slowdowns against any Obligor threatened. The hours worked by and payments made to employees of any Obligor have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters. The consummation of the DIP Credit Agreement will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Obligor is bound.

Section 3.11. *Liens.* There are no Liens of any nature whatsoever on any of the Collateral other than Permitted Priority Liens.

Section 3.12. *Intellectual Property.* Each Obligor owns, is licensed or otherwise has the right to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by each of Obligor does not infringe upon the rights of any other person or entity, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.13. *Sanctioned Persons; USA Patriot Act.* To the knowledge of the Obligor, no Obligor, or director, officer, agent, employee or Affiliate of the Obligor is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Obligor will not directly or indirectly use the proceeds of the Obligations or otherwise make available such proceeds to any person or entity, for the purpose of financing the activities of any person or entity currently subject to any U.S. sanctions administered by OFAC. The Obligors are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) the USA Patriot Act and (c) other federal or state laws relating to “*know your customer*” and anti-money laundering rules and regulations. No part of the proceeds of the DIP Credit Agreement will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

#### ARTICLE 4 OBLIGATIONS

Section 4.01. *Scope.* The Obligations shall constitute all (i) DIP Arranging Fees, (ii) Costs, (iii), monies owed in connection with a Drawing or Drawings, (iv) LOC DIP Financing Fees, (v) Interest, where applicable, and (vi) borrowings in the form of ~~CIA~~[General](#) DIP Financings.

Section 4.02. *Joint and Several Liability.* Each Obligor shall be jointly and severally liable for the Obligations.

ARTICLE 5  
CONDITIONS PRECEDENT

Section 5.01. The obligations of the DIP Credit Provider hereunder in connection with the DIP Financing are subject to the satisfaction of the following conditions:

- (a) The representations and warranties set forth in this Agreement shall be true and correct in all material respects.
- (b) The DIP Credit Provider shall have received the DIP Budget reflecting a current cash need, which shall be in form and substance satisfactory to the DIP Credit Provider.
- (c) The Debtors shall have filed a plan of reorganization, in form and substance satisfactory to Mengnu, with the Bankruptcy Court.
- (d) The Creditors' Committee, through their counsel, shall have committed in writing to sending letters to the Debtors' unsecured creditors, in form and substance acceptable to Mengnu, advising the unsecured creditors to vote in favor of the plan of reorganization filed by the Debtors in form and substance acceptable to Mengnu.

Section 5.02. The obligations of the DIP Credit Provider hereunder in connection with the LOC DIP Financing are subject to the satisfaction of the following conditions:

- (a) The DIP Credit Provider shall have entered into an agreement with the LOC Bank that will provide the LOC (the "**LOC Backstop Agreement**").
- (b) The Credit Card Processor shall have entered into an agreement with the LOC Bank pursuant to which (i) the LOC Bank agrees to provide the LOC in favor of the Credit card Processor and (ii) the Credit Card Processor agrees that it will abide by the terms of the Credit Card Processor Agreement (the "**LOC Bank Agreement**").
- (c) The Debtors shall have entered into an agreement with the Credit Card Processor that is in substance and form acceptable to the DIP Credit Provider, and shall provide, among other things, that the Credit Card Processor may only withhold or reserve at any time a maximum amount equaling (i) 80% of Customer Deposits plus (ii) \$250,000 minus (iii) 3 million dollars (the "**Credit Card Processor Agreement**").

ARTICLE 6  
AFFIRMATIVE COVENANTS

Each Obligor covenants and agrees this Agreement shall remain in effect and until the Obligations have been repaid including interest, fees and all other expenses or amounts payable under this Agreement, and each Obligor shall:

Section 6.01. *Existence; Businesses and Properties.* (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except as occasioned by the Chapter 11 Cases.

(b) (i) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; (ii) maintain and operate such business in substantially the manner in which it is presently conducted and operated, except if the failure to do so could not reasonably be expected to have a Material Adverse Effect; (iii) except for obligations with respect to which the Bankruptcy Code prohibits any Obligor from complying, comply in all material respects with all applicable laws, rules, regulations and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted; and (iv) at all times maintain and preserve all property material to the conduct of such business and keep such property in good repair, working order and condition, ordinary wear and tear excepted, and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times.

Section 6.02. *Insurance.* Keep its insurable properties and assets adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks (and with such deductibles, retentions, and exclusions), including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by it; and maintain such other insurance as may be required by law; and maintain such other insurance as otherwise required by the DIP Orders or the Perfection Documents (if any) (and comply with all covenants in the Perfection Documents with respect thereto).

Section 6.03. *Obligations and Taxes.* Pay its Indebtedness and other Postpetition obligations which are not subject to the automatic stay, promptly and in accordance with their terms and pay and discharge promptly when due all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise that, if unpaid, might give rise to a Lien upon such properties or any part thereof.

Section 6.04. *Financial Statements, Reports, etc.* Furnish to the DIP Credit Provider:

(A) on the Closing Date, the DIP Budget; (B) an update DIP Budget on a monthly basis.

Section 6.05. *Litigation and Other Notices.* Furnish to the DIP Credit Provider prompt written notice of any of the following, but in any event no later than two (2) Business Days after knowledge of the existence of any of the following:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of, or any threat or notice of intention of any person or entity to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against any of Obligor or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect;

(c) any development (individually or in the aggregate with other developments) that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

Section 6.06. *Information Regarding Collateral.* Furnish to the DIP Credit Provider prompt written notice of any change (i) in any Obligor's corporate name, (ii) in the jurisdiction of organization or formation of any Obligor, (iii) in any Obligor's identity or corporate structure or (iv) in any Obligor's Federal Taxpayer Identification Number. The Obligors agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise and all other actions have been taken that are required in order for the DIP Credit provider to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral. The Obligors also agree to take all necessary steps to protect the Collateral and to promptly notify the DIP Credit Provider if any material portion of the Collateral is damaged or destroyed.

Section 6.07. *Use of Proceeds.* Use the proceeds of the DIP Credit Agreement in accordance with the purposes set forth in Section 3.05.

Section 6.08. *Further Assurances.* Execute promptly upon request by the DIP Credit Providers any and all further documents, financing statements, agreements and instruments, and take all further action (including filing Uniform Commercial Code and other financing statements) that may be required under applicable law, or that the DIP Credit Providers may reasonably request, in order to effectuate the transactions contemplated by the Agreement and in order to grant, preserve, protect and perfect the validity and first priority (subject to Permitted Priority Liens, if any) of the security interests created or intended to be created by the this Agreement and/or the Perfection Documents. Such security interests and Liens will be created under the Perfection Documents and other security agreements and other instruments and documents in form and substance satisfactory to the DIP Credit Provider and the Obligors shall deliver or cause to be delivered to the DIP Credit Provider all such instruments and documents (including legal opinions, title insurance policies and lien searches) as the DIP Credit Provider shall reasonably request to evidence compliance with this Section.

Section 6.09. *Certain Collateral Matters.* At all times, to the extent permitted by law, defend, preserve and protect the security interest and Lien in and on the Collateral and all rights of the DIP Credit Provider hereunder against all claims and demands of all persons whatsoever.

ARTICLE 7  
NEGATIVE COVENANTS

Each Obligor covenants and agrees with the DIP Credit Provider that, so long as this Agreement shall remain in effect and until the Obligations have been repaid, no Obligor will:

Section 7.01. *Indebtedness.* Incur, create, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness existing on the date hereof;
- (b) Indebtedness created hereunder and under the other DIP Loan Documents;
- (c) Indebtedness incurred by the Debtors in the ordinary course of their businesses and Debtors in the Chapter 11 Cases; and
- (d) other Indebtedness approved in writing by the DIP Credit Providers.

Section 7.02. *Liens.* Create, incur, assume or permit to exist any Lien on any property or assets now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except for the Permitted Priority Liens, subject to the priorities provided in the DIP Orders:

The prohibition provided for in this section specifically includes, without limitation, any effort by any of Obligor, any Committee, or any other party-in-interest in any Chapter 11 Case to create any Liens that prime, or are *pari passu* to, any claims, Liens or interests of the DIP Credit Provider.

Section 7.03. *Investments, Obligations and Advances.* Purchase, hold or acquire any equity interests, evidences of indebtedness or other securities of, make or permit to exist any obligations or advances or capital contributions to, or make or permit to exist any investment or any other interest in, any other person or entity (all of the foregoing, “**Investments**”), except for the following:

- (a) Permitted Investments;
- (b) extensions of trade credit in the ordinary course of business; and
- (c) other Investments approved in writing by the DIP Credit Providers.

Without limiting the generality of the foregoing and for purposes of clarification notwithstanding any implication to the contrary contained in this Agreement, in no event shall proceeds of the DIP Credit Agreement be used for a purpose other than the purposes contemplated herein in accordance with the DIP Budget and for reasonable business purposes. .

Section 7.04. *Restricted Payments; Restrictive Agreements.* (a) Declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so; except that the Obligors may make Restricted Payments that are Investments permitted under Section 7.03 or Indebtedness permitted under Section 7.01.

(b) make any payment on account of, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value any Prepetition Indebtedness, except, as required to cure assumed leases or executory contracts

Section 7.05. *Capital Expenditures.* Permit the aggregate amount of capital expenditures made by the Obligors in any calendar month to exceed the amount permitted therefor (if any) in the DIP Budget.

Section 7.06. *Prepayments of Other Indebtedness.* Except pursuant to a confirmed reorganization plan or except as specifically permitted hereunder, without the express prior written consent of the DIP Credit Provider or pursuant to an order of the Bankruptcy Court after notice and hearing, make any payment or transfer with respect to any Lien or Indebtedness incurred or arising prior to the filing of the Chapter 11 Cases that is subject to the automatic stay provisions of the Bankruptcy.

Section 7.07. *Chapter 11 Claims.* Incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is pari passu with or senior to the claims of the DIP Credit Provider against any Obligor, except as set forth in the DIP Orders, as applicable.

Section 7.08. *Budget Compliance.* Fail to materially comply with the DIP Budget.

Section 7.09. *Cash Management.* Fail, at all times, to maintain cash management arrangements satisfactory to the DIP Credit Provider.

## ARTICLE 8 EVENTS OF DEFAULT

Section 8.01. *Events Of Default.* Each of the following shall constitute an Event of Default:

(a) any breach of a representation, warranty, affirmative or negative covenant contained in this Agreement;

(b) failure of any Obligor to timely make payments on any Obligation, as set forth in Section 2.05.

(c) any DIP Lien purported to be created pursuant to the DIP Orders or under any Perfection Document shall cease to be, or shall be asserted by Obligor not to be, a valid, perfected and first priority lien (except as otherwise permitted in this Agreement);

- (d) there shall have occurred any of the following in any Chapter 11 Case:
- (i) the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto, in each case, by any Obligor in the Case, or the entry of any order by the Bankruptcy Court in any Chapter 11 Case: (a) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement or (b) that requests or seeks authority for or that approves or provides authority to take any other action or actions adverse to the DIP Credit provider or its rights and remedies hereunder or their interest in the Collateral;
  - (ii) the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by any Obligor which does not provide for the repayment of all Obligations under this Agreement in full in cash on the Effective Date of such plan or as otherwise agreed to by the DIP Credit Provider;
  - (iii) the entry of an order amending, supplementing, staying, vacating or otherwise modifying this Agreement, the DIP Loan Documents, the Interim DIP Order or the Final DIP Order without the prior written consent of the DIP Credit Provider;
  - (iv) the appointment of an interim or permanent trustee in any Chapter 11 Case or the appointment of a receiver or an examiner under section 1104 of the Bankruptcy Code in any Chapter 11 Case to operate or manage the financial affairs, the business, or reorganization of the Debtors or with the power to conduct an investigation of (or compel discovery from) the Debtors;
  - (v) the dismissal of any Chapter 11 Case, or the conversion of any Chapter 11 Case from one under chapter 11 to one under chapter 7 of the Bankruptcy Code or if any Obligor shall file a motion or other pleading seeking the dismissal of any Chapter 11 Case under section 1112 of the Bankruptcy Code or otherwise;
  - (vi) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code to allow any creditor to execute upon or enforce a Lien on any Collateral;
  - (vii) the failure of any Obligor to perform any of its obligations under the DIP Orders, the Agreement, or the DIP Loan Documents;
  - (viii) the remittance, use or application of the proceeds of Collateral other than in accordance with this Agreement or in a manner not acceptable to the DIP Credit Provider;
  - (ix) the entry of an order in any of the Chapter 11 Cases granting any other super priority administrative claim or Lien equal or superior to that granted to the DIP Credit Provider, without the consent in writing of the DIP Credit Provider;
  - (x) the appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Obligor;

- (xi) the obtaining of additional financing or the granting of Liens not expressly permitted hereunder;
- (xii) any attempt to reduce, set off or subordinate the Obligations or the Liens securing such Obligations to any other Indebtedness;
- (xiii) the reversal, vacation or stay of the effectiveness of either the DIP Orders;
- (xiv) the sale of some or all of the Debtors' assets, including a Court approved sale for an amount in excess of (i) \$25,000 for any single asset and (ii) \$100,000 in the aggregate for all such sales;
- (xv) the cessation of Liens or super-priority claims granted with respect to this Agreement to be valid, perfected and enforceable in all respects;
- (xvi) a change in the condition of the assets of any Obligor shall have occurred that would reasonably be expected to have a Material Adverse Effect on the DIP Credit Provider's interest in the Collateral;
- (xvii) failure to begin solicitation on a plan of reorganization in form and substance acceptable to ~~the~~ Mengnu by ~~January 10, 2010~~ [December 24, 2010](#);
- (xviii) failure to confirm a plan of reorganization in form and substance acceptable to Mengnu prior to ~~February 14,~~ [January 31,](#) 2011; or
- (xix) the Debtor's withdrawal of its plan of reorganization or any indication by the Bankruptcy Court or otherwise that the plan of reorganization will not be confirmed.

## ARTICLE 9 TERMINATION

Section 9.01. The following shall constitute a Termination Event:

- (a) The occurrence of an Event of Default that cannot be cured;
- (b) The occurrence of an Event of Default that can be cured but has not been cured within 10 Business Days of the Event of Default; or
- (c) The failure of the Court to enter the Final DIP Order within 30 days of the Closing Date.

Section 9.02. A Termination Event shall terminate the Agreement, subject to the provisions contained in this Agreement but shall not affect the Debtors' Obligations hereunder or any of the DIP Credit Provider's rights hereunder.

Section 9.03. *Termination Date*. Shall mean the earliest of (i) the date of the occurrence of a Termination Event (ii) February 28, 2011, or (iii) the Effective Date.

ARTICLE 10  
MISCELLANEOUS

Section 10.01. *Notices; Electronic Communications.* Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

(a) If to the Debtors, at:

Jennifer Convertibles, Inc.  
417 Crossways Park Drive  
Woodbury, NY 11797  
Attn: Harley Greenfield  
Rami Abada

-and-

Olshan Grundman Frome Rosenzweig & Wolosky LLP  
Park Avenue Tower  
65 East 55<sup>th</sup> Street  
New York, New York 10022-1106  
Attn: Michael Fox, Esq.  
Jordanna Nadritch, Esq.

If to Mengnu:

James Jiang

c/o King & Wood, LLC

444 Madison Avenue, 42nd Floor  
New York, NY 10022

-and-

Neiger LLP  
317 Madison Avenue, 21<sup>st</sup> Floor  
New York, NY 10017  
Attn: Edward E. Neiger, Esq.

Section 10.02. *Survival of Agreement.* All (i) covenants, agreements, representations and warranties made by the Parties in the Agreement and in the certificates or other documents delivered in connection therewith (i) Obligations arising under this Agreement, and (ii) all rights provided to the DIP Credit Providers, shall survive notwithstanding an Event of Default or a Termination Event or the termination of this Agreement.

Section 10.03. *Binding Effect.* This Agreement shall become effective when it shall have been executed by each of the Parties, except that the obligations of the Parties under Article 2 of this Agreement shall not become effective until the entry of the Interim DIP Order.

Section 10.04. *Successors and Assigns.* (a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Obligor or the DIP Credit Provider that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

(b) The DIP Credit Provider may without the consent of the Obligor sell or assign all or any portion of its rights under this Agreement.

(c) No Obligor shall assign or delegate any of its rights or duties hereunder without the prior written consent of the DIP Credit Provider, and any attempted assignment without such consent shall be null and void.

(d) Each Obligor jointly and severally agrees to indemnify the DIP Credit Provider (each such person being called an “**Indemnified Person**”) against, and to hold each Indemnified Person harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnified Person arising out of, in any way connected with costs incurred in connection with enforcing their rights under this Agreement.

(e) To the extent permitted by applicable law, no Obligor shall assert, and hereby waives, any claim against any Indemnified Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby.

Section 10.05. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the state of New York, without regard to any conflicts of law provisions which would require the application of the law of any other jurisdiction. By its execution and delivery of this Agreement, each of the parties hereby irrevocably and unconditionally agrees for itself that any legal action, suit, or proceeding against it with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit, or proceeding, shall be brought in the Bankruptcy Court, and, by execution and delivery of this Agreement, each of the parties hereby irrevocably accepts and submits itself to the exclusive jurisdiction of such court, generally and unconditionally, with respect to any such action, suit, or proceeding and agrees that service of process in connection therewith shall be effective if made by first class mail and shall not contest the form of manner of such service. The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of or in connection with this Agreement and that the parties shall not seek to enforce this Agreement in any other court.

Section 10.06. *Waivers; Amendment.* (a) No failure or delay of the DIP Credit Provider in exercising any power or right hereunder or under any other DIP Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the DIP Credit Provider hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by an Obligor shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Obligors and the DIP Credit Provider.

Section 10.07. *Entire Agreement.* This Agreement constitutes the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement.

Section 10.08. *Severability.* In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 10.09. *Counterparts.* This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective on the Closing Date. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 10.10. *Headings.* Article and Section headings and the Table of Contents used herein are for convenience of reference only and are not part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**JENNIFER CONVERTIBLES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**HAINING MENGNU GROUP**

By: \_\_\_\_\_  
Name:  
Title:

Exhibit A  
DIP BUDGET