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ROSENZWEIG & WOLOSKY LLP**  
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**Hearing Date: December 21, 2010 at 11:00 am  
Objection Deadline: December 14, 2010 at 5:00 pm**

*Counsel to the Debtors and Debtors In Possession*

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

In re:

JENNIFER CONVERTIBLES, INC.,<sup>1</sup>  
  
Debtors.

Chapter 11

Case No. 10-13779 (ALG)

(Jointly Administered)

**NOTICE OF HEARING FOR ENTRY OF A FINAL ORDER  
AUTHORIZING THE DEBTORS TO ENTER INTO A DIP CREDIT AGREEMENT**

**PLEASE TAKE NOTICE**, that Jennifer Convertibles, Inc. (“Jennifer Convertibles”) and its affiliated debtors, as debtors in possession (together, the “Debtors”), by and through their undersigned counsel, hereby filed the *Debtor’s Emergency Motion For Entry Of An Order Authorizing The Debtors To Enter Into A DIP Credit Agreement* Dated November 19, 2010 (the “DIP Motion”). The Interim DIP Credit Agreement Order approved the DIP Motion on an interim basis and scheduled a hearing to consider entry of a final order (the “Final DIP Credit Agreement Order”) approving the DIP Motion for **December 21, 2010 at 11:00 am** before the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: (i) Jennifer Convertibles, Inc. (4646); (ii) Jennifer Convertibles Boylston MA, Inc. (7904); (iii) Jennifer Chicago Ltd. (0505); (iv) Elegant Living Management, Ltd. (5049); (v) Hartsdale Convertibles, Inc. (1681); (vi) Jennifer Management III Corp. (3552); (vii) Jennifer Purchasing Corp. (7319); (viii) Jennifer Management II Corp. (9177); (ix) Jennifer Management V Ltd. (9876); (x) Jennifer Convertibles Natick, Inc. (2227); (xi) Nicole Convertibles, Inc. (5985); (xii) Washington Heights Convertibles, Inc. (0783).

Honorable Allan L. Gropper, United States Bankruptcy Judge, at the United States Bankruptcy Court, One Bowling Green, New York, New York. A copy of the Interim DIP Credit Agreement Order is attached hereto as “Exhibit A”.

**PLEASE TAKE FURTHER NOTICE**, that any objections to the entry of the Final DIP Credit Agreement Order must be in writing, conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, and be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (General Order M-242 and the User’s Manual for the Electronic Case Filing System (“ECF”) can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), the official website for the Bankruptcy Court), by registered users of the Bankruptcy Court’s filing system and, by other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers of Judge Gropper) and shall be served in accordance with General Order M-242 so that they are received no later than **5:00 pm** (prevailing Eastern Time) on **December 14, 2010** upon: (a) counsel for Debtors, Olshan Grundman Frome Rosenzweig & Wolosky LLP, Park Avenue Tower, 65 East 55th Street, New York, New York 10022, Attention: Michael S. Fox, Esq. and Jordanna L. Nadritch, Esq.; (b) counsel for the Committee, Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178, Attention: James S. Carr, Esq. and Jason Adams, Esq.; (c) counsel for Mengnu, Neiger LLP , 317 Madison Avenue, 21<sup>st</sup> Floor, New York, New York 10017, Attention: Edward E. Neiger, Esq.; and (d) the Office of the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, NY 10004, Attention: Nazar Khodorovsky, Esq. Only those parties who have timely filed and served an objection to the entry of the Final DIP Credit Agreement Order may be heard at the hearing.

**PLEASE TAKE FURTHER NOTICE**, that copies of the DIP Motion and the Interim DIP Credit Agreement Order and exhibits related to each of the foregoing may be obtained at [www.bmcgroup.com/jenniferconvertibles](http://www.bmcgroup.com/jenniferconvertibles) or on the Bankruptcy Court's electronic case management system at <https://ecf.nysb.uscourts.gov>. As soon as practicable, the Debtors shall file with the Bankruptcy Court the proposed Final DIP Credit Agreement Order and related exhibits, which thereafter also may be obtained at [www.bmcgroup.com/jenniferconvertibles](http://www.bmcgroup.com/jenniferconvertibles) or on the Bankruptcy Court's electronic case management system at <https://ecf.nysb.uscourts.gov>.

Dated: New York, New York  
December 1, 2010

**OLSHAN GRUNDMAN FROME  
ROSENZWEIG & WOLOSKY LLP**

By: /s/ Jordanna Nadritch  
Michael S. Fox  
Jordanna L. Nadritch  
Park Avenue Tower  
65 East 55<sup>th</sup> Street  
New York, NY 10022  
*Counsel to the Debtors and Debtors In Possession*

**EXHIBIT A**

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

In re:

JENNIFER CONVERTIBLES, INC.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 10-13779 (ALG)

(Jointly Administered)

**INTERIM ORDER AUTHORIZING DEBTORS TO  
ENTER INTO A DIP CREDIT AGREEMENT**

Upon the motion, dated November 19, 2010 (the “Motion”) of Jennifer Convertibles, Inc. and its affiliated debtors, as debtors in possession (collectively, the “Debtors”), for the entry of an interim order (the “Interim Order”) authorizing the Debtors to, among other things:

- (a) obtain General DIP Financing<sup>2</sup> (as described in the DIP Agreement and as set forth below) pursuant to the terms and conditions summarized in the Motion and set forth in detail in that certain Senior Secured and Superpriority Debtor-in-Possession Credit Agreement, dated as of November 19, 2010 (the “DIP Agreement”), entered into by and among the Debtors and Haining Mengnu Group Co., Ltd. (“Mengnu”), a copy of which is attached as Exhibit A to the Motion;
- (b) provide to Mengnu collateral and protection in the form of superpriority administrative expenses and DIP Liens (as defined below) on the Collateral (as defined in the DIP Agreement) under sections 364(c)(1) and 364(c)(2) of the Bankruptcy Code;

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: (i) Jennifer Convertibles, Inc. (4646); (ii) Jennifer Convertibles Boylston MA, Inc. (7904); (iii) Jennifer Chicago Ltd. (0505); (iv) Elegant Living Management, Ltd. (5049); (v) Hartsdale Convertibles, Inc. (1681); (vi) Jennifer Management III Corp. (3552); (vii) Jennifer Purchasing Corp. (7319); (viii) Jennifer Management II Corp. (9177); (ix) Jennifer Management V Ltd. (9876); (x) Jennifer Convertibles Natick, Inc. (2227); (xi) Nicole Convertibles, Inc. (5985); (xii) Washington Heights Convertibles, Inc. (0783).

<sup>2</sup> Capitalized terms not defined in this Interim Order shall have the meanings ascribed to such terms in the Motion and/or the DIP Agreement.

- (c) use the proceeds arising from the General DIP Financing in a manner consistent with the terms and conditions of the DIP Agreement and this Interim Order;
- (d) vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order;
- (e) pay all amounts contemplated to be paid under the DIP Agreement relating to a general DIP Financing, including all fees and expenses set forth therein; and
- (f) waive any applicable stay of the effectiveness of this Interim Order and provide for the immediate effectiveness of this Interim Order.

The Court having considered the Motion, examined the exhibits attached thereto, and having completed a hearing (the “Hearing”) as provided for under section 364 of the Bankruptcy Code, Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”) and finding the Debtors provided adequate notice to all necessary parties and that no further notice is required for entry of this Interim Order:

**BASED UPON THE RECORD ESTABLISHED AT THE HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. **Petition Date.** Commencing on July 18, 2010 (the “Petition Date”) and continuing thereafter, the Debtors each filed voluntary petitions under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York. The Debtors have continued in the management and operation of their business and property as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors’ chapter 11 cases.

B. **Jurisdiction and Venue.** This Court has jurisdiction over these proceedings pursuant to sections 157(b) and 1334 of title 28 of the United States Code and over the persons and property affected hereby. This Court's consideration of the Motion constitutes a core proceeding under section 157(b)(2) of title 28 of the United States Code. Venue for these cases and the proceedings regarding the Motion is proper in this district under sections 1408 and 1409 of title 28 of the United States Code.

C. **Committee Formation.** On July 23, 2010 the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed an official committee of unsecured creditors in the Case (the "Creditors' Committee").

D. **Notice.** The Hearing was held in accordance with Bankruptcy Rule 4001 and Local Rule 4001-2. Notice of the Hearing and the relief requested in the Motion was informally provided by the Debtors on November 19, 2010, whether by telecopy, email, overnight courier or hand delivery, to parties in interest, including: (a) counsel for Mengnu, 317 Madison Avenue, 21<sup>st</sup> Floor, New York, New York 10017, Att: Edward E. Neiger; (b) counsel for the Committee, Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178, Att: James S. Carr, Esq. and Jason Adams, Esq.; (c) the Office of the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, NY 10004, Att: Nazar Khodorovsky, Esq., (d) all parties appearing in these chapter 11 cases who have requested notice, (e) the Securities and Exchange Commission, and (f) the Internal Revenue Service (collectively, the "Noticed Parties").

E. **Need for Postpetition Financing.** Entry of this Interim Order is necessary to prevent substantial harm to the Debtors' estates that would otherwise result if the Debtors fail to obtain the financing contemplated herein to preserve the Debtors' assets and continue their operations, and, by the power vested in the Court pursuant to sections 105(a) and 364(c) of the

Bankruptcy Code, and is hereby approved. The Debtors will suffer substantial harm unless this Court immediately authorizes the Debtors to obtain General DIP Financing from Mengnu in accordance with the terms of the DIP Agreement, and any other documents, instruments, or agreements related thereto or delivered or executed in connection therewith (together, the “DIP Documents”).

F. **No Comparable Credit Available on More Favorable Terms.** The Debtors have made reasonable efforts, under the circumstances, to locate financing of the type contemplated by this Interim Order, and the Court expressly finds that the Debtors are unable to obtain, in the ordinary course of business or otherwise, financing of the type contemplated herein on an unsecured basis. Specifically, the Debtors have been unable to obtain unsecured credit allowable under sections 364(a), 364(b), 364(c)(1) and 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit, allowable only under Bankruptcy Code sections 364(c)(2) and 364(c)(3), on more favorable terms and conditions than those provided in the DIP Documents and this Interim Order.

G. **Mengnu’s Requirements.** Mengnu is willing to provide the General DIP Financing to the Debtors only on the terms and conditions and with the protections provided herein and in the DIP Documents and is relying on such terms, conditions, and protections in agreeing to lend money and provide financial accommodations to the Debtors hereunder.

H. **Good Faith.** The terms and conditions of the DIP Documents have been negotiated in good faith and at arms’ length by all parties involved and reflect the Debtors’ exercise of prudent business judgment, and Mengnu and the Debtors have offered sufficient proof thereof. Accordingly, the Court expressly finds that the terms of the DIP Documents have been extended in good faith and that any credit extended, loans to be made, or other financial



accommodations granted to the Debtors pursuant to the DIP Documents shall, in each case, be deemed to be extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code.

I. **Immediate Entry of the Interim Order.** The Debtors have requested that this Interim Order become immediately effective and enforceable upon entry, notwithstanding any provisions that may apply in Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure. The Debtors have demonstrated good cause for the entry of this Interim Order and for this Interim Order to become immediately effective and enforceable upon entry. Among other things, entry of this Interim Order and the immediate effectiveness and enforceability of this Interim Order upon entry will minimize the disruption of the Debtors' business operations and permit the Debtors to satisfy their operating expenses, will increase the possibilities for confirmation of a successful chapter 11 plan for the Debtors, and is in the best interests of the Debtors, their creditors, and the Debtors' bankruptcy estates. The terms of the General DIP Financing and other financial accommodations authorized hereby are fair and reasonable under the circumstances and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

**ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

1. **Motion Granted.** The Motion is granted in accordance with the terms and conditions set forth in this Interim Order and the DIP Documents. The only objection to the Motion was filed by Ashley Homestores, Ltd. and Ashley Furniture Industries and such objection has been adjourned on consent to the Final Hearing.

2. **Approval of Entry into DIP Documents.** The Debtors shall be and hereby are authorized to borrow money and seek General DIP Financing on an interim basis in accordance with the DIP Agreement and the terms and conditions contained in this Interim Order in an

amount up to \$1.8 million for purposes of this Interim Order. A copy of the DIP Agreement is attached to this Interim Order as **Exhibit A**.

**3. Terms of the General DIP Financing.** The Debtors are hereby authorized (i) to consummate the transactions contemplated by the DIP Agreement and the exhibits thereto in connection with the General DIP Financing by borrowing (a) some or all of the then total amount of due and owing 75% CIA Payments as may be requested by the Debtors and agreed to by Mengnu, in its sole discretion, from time to time and (b) some or all of the then total amount of due and owing 25% COD Payments, as may be requested by the Debtors and agreed to by Mengnu, in its 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; (ii) to incur any and all Obligations in connection with the General DIP Financing thereunder, including, but not limited to an upfront DIP Arranging Fee of 0.5% in connection with each General DIP Financing, incurred on the date of each General DIP Financing. Outstanding amounts owed in connection with a General DIP Financing (including the DIP Arranging Fee) 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.

**4. Enforceable Obligations.** The Debtors shall pay, accrue and perform all Obligations (as described in the DIP Agreement), covenants and agreements in connection with the General DIP Financing subject to and in accordance with the terms of the DIP Agreement.

**5. Protection of Mengnu.** From and after the Petition Date, the Debtors shall use the proceeds of the extensions of credit under the DIP Documents only for the purposes specifically set forth in the DIP Documents and this Interim Order.

**6. Postpetition Liens.** Upon entry of this Interim Order, Mengnu is hereby granted valid, perfected, enforceable, and non-avoidable security interests, liens, and mortgages (the “DIP Liens”) in the Collateral; provided, however, in no event shall the Collateral (or any component thereof) include or be deemed to include: (i) the Debtors’ claims and causes of action under chapter 5 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law and the proceeds thereof, whether received by judgment, settlement or otherwise; or (ii) any contracts, instruments, licenses, license agreements or other documents (or any rights thereunder) including, without limitation, the Ashley Homestores Ltd.’s Trademark Usage Agreements, to the extent (and only to the extent) that the grant of a security interest would (A) constitute a violation of a restriction in favor of a third party on such grant, (B) give any other party to such contract, instrument, license, license agreement or other document the right to terminate its obligations thereunder, or (C) violate any law; provided, that the limitation set forth in this clause (ii) shall not affect, limit, restrict or impair the grant by the Debtors of a security interest pursuant to the DIP Documents in any such right, to the extent that an otherwise applicable prohibition or restriction on such grant is rendered ineffective by any applicable law, including the Uniform Commercial Code (the “UCC”) or the Bankruptcy Code. The DIP Liens shall be granted on the following basis:

(a) **Senior Lien Priority.** Subject to the Carve-Out (as defined below) and Permitted Priority Liens, pursuant to section 364(c)(2) of the Bankruptcy Code, Mengnu is granted valid, perfected, enforceable, and non-avoidable first priority security interests, liens, and mortgages on all of the Debtors’ now existing or hereafter acquired Collateral not subject to a valid, perfected, enforceable, and non-avoidable security interest, lien, or mortgage as of the date hereof or subject to valid liens in existence as of the date hereof that are perfected subsequent to

the date hereof as permitted by section 546(b) of the Bankruptcy Code, in each case, only to the extent that such valid, perfected, enforceable, and non-avoidable security interests, liens, or mortgages are senior in priority to the DIP Liens.

(b) **General Priority of DIP Liens.** Subject to the provisions above, and subject to the provisions of the Carve-Out (as defined below) and Permitted Priority Liens, the DIP Liens shall, be at all times senior to the rights of the Debtors, their estates, and all of their creditors, and shall at all times be senior to the rights of any successor trustee, examiner, or responsible person in these or any subsequent proceedings under the Bankruptcy Code.

(c) **Perfection of Post-Petition Liens.** Mengnu shall not be required to file financing statements, mortgages, notices of liens, or other documents in any jurisdiction or take any other action in order to validate, perfect, or establish the priority of the DIP Liens granted to them in connection with a General DIP Financing by this Interim Order or the DIP Documents. The DIP Liens granted in connection with a General DIP Financing in this Interim Order and in the DIP Documents to secure repayment of any of the Obligations are deemed perfected hereby and no further notice, filing or other act shall be required to effect such perfection. If Mengnu shall, in its sole discretion, choose to file (in accordance with the terms and conditions set forth in the DIP Documents) financing statements, mortgages, or other documents or otherwise confirm perfection of such security interests, liens, and mortgages, Mengnu is authorized (to the extent not prohibited by the DIP Documents) to effect such filings and recordings and all such financing statements, mortgages, or similar documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order. A photocopy of this Interim Order may, in the discretion of Mengnu, be filed with or recorded in filing or recording offices in

addition to or in lieu of such financing statements, notices of lien or similar instruments, and all filing offices are directed hereby to accept such copy of this Order for filing and recording.

**7. Limitations on the Use of Proceeds.** The Debtors are authorized to use the proceeds of the General DIP Financing solely for purposes authorized by the DIP Agreement and solely in accordance with the DIP Budget (provided that such amounts shall be deemed to be in accordance with the DIP Budget if they are within 10% of the DIP Budget) attached to the DIP Agreement as Exhibit A. No proceeds of loans or other financial accommodations made by Mengnu hereunder may be used to compensate services rendered or expenses incurred in connection with, directly or indirectly, (i) the modification, stay, or amendment of this Interim Order without the consent of Mengnu or (ii) a violation, breach, or default of this Interim Order or any of the DIP Documents, including, without limitation, any claim or action the purpose of which is to seek or the result of which would be to obtain any relief (a) invalidating, setting aside, avoiding, or subordinating, in whole or in part, any of the Obligations or the DIP Liens in the Collateral or (b) preventing, hindering, or otherwise delaying, whether directly or indirectly, Mengnu's assertion, enforcement, or realization upon any Collateral as permitted by this Interim Order or such documents.

**8. Carve-Out:** The DIP Liens shall be subject to the following carve out (the "Carve-Out") : (i) any unpaid fees due to the U.S. Trustee pursuant to section 1930 of title 28 of the United States Code or otherwise, including interest on U.S. Trustee quarterly fees pursuant to 31 U.S.C. § 3717, (ii) any fees due to the Clerk of the Court of the United States Bankruptcy Court for the Southern District of New York; (iii) reasonable post-conversion fees and expenses of a chapter 7 trustee; (iv) the reimbursement of reasonable expenses allowed by the Bankruptcy Court incurred by Committee members in the performance of their duties; and (v) all unpaid fees

and expenses of the professionals of the Debtors and the Creditors Committee (a) incurred prior to a termination of the DIP Agreement only to the extent set forth in the DIP Budget, and (b) in an aggregate amount not to exceed \$250,000 incurred after the termination of the DIP Agreement (except as otherwise set forth in a plan of reorganization in for and substance acceptable to Mengnu). The Carve-Out monies cannot be used to initiate causes of action against Mengnu.

**9. Enforcement of Remedies.** Upon a Termination Event<sup>3</sup> (as defined in the DIP Agreement), and after seven (7) days written notice to the Debtors (with a copy delivered simultaneously to counsel to the Creditors' Committee and the U.S. Trustee), Mengnu shall have the right to take any and all actions to foreclose on the Collateral. Upon such enforcement by Mengnu, the Debtors shall cooperate with Mengnu in the disposition of the Collateral and shall not otherwise interfere or actively encourage others to interfere with Mengnu's enforcement of its rights. Notwithstanding the termination of the DIP Agreement, any and all rights, privileges, DIP Liens and Obligations created pursuant to this Interim Order shall survive and that the Debtors, their successors or assigns, including a chapter 7 trustee appointed in these cases, may not take any action or make any omission that will (i) deprive Mengnu of such rights, privileges, or DIP Liens or (ii) release the Debtors their successors or assigns, including a chapter 7 trustee from the Obligations in connection with a General DIP Financing.

**10. Reliance by Mengnu; Modification.** The Debtors shall not seek to modify, vacate, or amend this Interim Order without the written consent of Mengnu. If any or all of the provisions of this Interim Order are hereafter modified, vacated, or stayed by subsequent order of

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<sup>3</sup> A Termination Event includes, among other things, an Event of Default, which includes, among other things, 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.

this or any other Court, such stay, modification, or vacation shall not affect the validity of any debt to Mengnu incurred pursuant to this Interim Order or the DIP Documents prior to the later of (i) the effective date of such stay, modification, or vacation and (ii) receipt of written notice thereof by counsel to Mengnu at the addresses set forth DIP Agreement (the “Effective Time”), or otherwise affect the validity and enforceability of any DIP Lien or priority authorized hereby. Notwithstanding any such stay, modification, or vacation, any advances of funds made pursuant to this Interim Order by Mengnu to or for the benefit of the Debtors prior to the Effective Time shall be governed in all respects by the original provisions of this Interim Order.

**11. Good Faith.** The Court has considered and determined the matters addressed in this Interim Order pursuant to its power under section 364(c) of the Bankruptcy Code to authorize the Debtors to obtain credit and other financial accommodations on the terms agreed to by and between the Debtors and Mengnu and as set forth in this Interim Order and the other DIP Documents, and thus, each of the terms and conditions of the DIP Documents, as part of an authorization under such section, is subject to the protections contained in section 364(e) of the Bankruptcy Code.

**12. Miscellaneous.**

**(a) Section 364 Waiver.** In consideration of the financing and other accommodations made available pursuant to the DIP Documents, the Debtors irrevocably waive any right to: (i) grant or impose, or request that the Court grant or impose, under section 364 of the Bankruptcy Code or otherwise, liens, security interests, or mortgages on any property, equal or superior to the priority of the DIP Liens, except as provided under the DIP Documents. Such waiver shall be binding upon any successor trustee, examiner, or responsible person in these or any subsequent proceedings under the Bankruptcy Code.

(b) **Modification of the Automatic Stay.** The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified as to Mengnu to the extent necessary to permit Mengnu to implement the provisions of this Interim Order and the DIP Documents, thereby permitting Mengnu, after termination and notice, inter alia, (i) to receive and apply collections, payments, or proceeds of Collateral, (ii) to file any financing statements or other instruments and documents, if any, evidencing its security interests in and liens and mortgages on the Collateral, in each case, to the extent permitted by, and in accordance with, the DIP Documents; (iii) to charge any fees and interest accruing under the DIP Documents, and (iv) to take any or all of the actions permitted by the DIP Documents and this Interim Order upon an Event of Default, provided, however, that Mengnu shall comply with the notice requirements of Rule 4001-2 of the Local Rules of Bankruptcy Procedure for the Southern District of New York.

(c) **Prohibition of Alterations to Mengnu's Rights Under the DIP Documents.** The DIP Liens and rights, remedies, and benefits granted to Mengnu pursuant to this Interim Order and the DIP Documents shall not be modified, altered, or impaired in any manner by any plan of reorganization or order of confirmation for any of the Debtors, or by any other financings of, extensions of credit to, or incurring of debt by any of the Debtors, whether pursuant to sections 363 or 364 of the Bankruptcy Code, or otherwise, or by any other order of this Court. In connection therewith, no order confirming any plan in any of the Debtors' chapter 11 cases shall be entered unless such order and such plan provides for the final payment in full in cash or other consideration acceptable, in its sole discretion, to Mengnu of all Obligations then outstanding under the DIP Documents on or before the effective date of such plan, unless otherwise agreed to in writing by Mengnu. The DIP Documents are, to the extent applicable, hereby assumed, and none of such agreements may be rejected, abrogated, or disaffirmed in



these or any subsequent proceedings under the Bankruptcy Code, including the conversion of any of these cases.

(d) **Amendment.** The Debtors and Mengnu may amend or waive any provision of the DIP Documents without the need for further approval from this Court provided that: (i) the DIP Documents, as so modified, are not materially different from the DIP Documents approved in this Interim Order; (ii) notice of all amendments to the DIP Documents are filed with the Court; and (iii) notice of all amendments to the DIP Documents (other than those that are ministerial or technical and do not adversely affect the Debtors) is provided five (5) Business Days in advance to counsel to the Creditors' Committee (the "Amendment Notice Period"), all parties requesting notice in these cases, the Noticed Parties, and the U.S. Trustee; provided, however, that if the Creditors' Committee or U.S. Trustee notifies the Debtors and Mengnu that it objects to such an amendment within the Amendment Notice Period, such amendment shall not become effective absent entry of an Order of the Court authorizing such amendment unless such objection is resolved or withdrawn.

(e) **No Third Party Beneficiary.** No party not referenced in this Interim Order is intended to be or shall be deemed to be a third party beneficiary of the provisions of this Interim Order or any of the DIP Documents.

(f) **Action by Mengnu.** Any action authorized to be taken on behalf of Mengnu or by Mengnu pursuant the terms of any of the DIP Documents shall be deemed to be the action of Mengnu under this Interim Order.

(g) **Interim Order Controlling.** To the extent any terms of this Interim Order are inconsistent with the terms set forth in the DIP Documents, the terms of this Interim Order shall control.

(h) **Survival of DIP Liens.** The DIP Agreement and all DIP Liens and other rights and privileges created hereby or pursuant to this Interim Order or shall be binding upon the Debtors and any trustee, other estate representative or any successor in interest of each Obligor or any subsequent case commenced under chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. The DIP Liens created by this Interim Order shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any Chapter 11 Cases or any other bankruptcy case of any Obligor to a case under chapter 7 of the Bankruptcy Code or in the event of dismissal of any Chapter 11 Cases or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason. No Obligor may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or without the prior express written consent of Mengnu. Any such purported assignment, transfer, hypothecation or other conveyance by any Obligor without the prior express written consent of Mengnu shall be void.

**13. Immediate Effectiveness.** Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be valid and fully effective immediately upon its entry, and, upon such entry, shall be binding upon and inure to the benefit of Mengnu, the Debtors, their estates, and their respective successors and assigns (including, without limitation, any trustee, examiner, or responsible person hereinafter appointed as a representative of any of the estates in these or any subsequent proceedings under the Bankruptcy Code), and the terms and provisions of this Interim Order as well as the liens, security interests, and mortgages and other terms of the DIP Documents shall continue in these proceedings and any superseding proceedings under the

Bankruptcy Code, and such liens, security interests, and mortgages shall maintain their priority as provided by this Interim Order, until satisfied and discharged.

**14. Final Hearing.** The Final Hearing for the approval of a final DIP order (the “Final Order”) pursuant to Fed. R. Bankr. P. 4001(c)(2) is scheduled for **December 21, 2010, at 11:00 a.m.**, in the United States Bankruptcy Court for the Southern District of New York, 1 Bowling Green, New York, New York 10004, Courtroom 523. Notice of the Final Hearing shall be provided by Debtors via regular first class U.S. Mail to all appropriate parties on or before **December 3, 2010, at 5:00 p.m.** Any objection to the entry at or immediately following the Final Hearing of a final order approving the relief requested in the Motion shall be served on (a) counsel for Debtors, Olshan Grundman Frome Rosenzweig & Wolosky LLP, Park Avenue Tower, 65 East 55th Street, New York, New York 10022, Attention: Michael S. Fox, Esq. and Jordanna L. Nadritch, Esq.; (b) counsel for the Committee, Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178, Attention: James S. Carr, Esq. and Jason Adams, Esq.; and (c) the Office of the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, NY 10004, Attention: Nazar Khodorovsky, Esq., and filed with the Court so as to be received by the foregoing parties by **December 14, 2010, at 5:00 p.m.**

**15. Notice.** The Debtors shall, within three (3) Business Days, serve by mail a copy of this Interim Order on the Notice Parties and any other persons which the Debtors know are entitled to notice under Bankruptcy Rule 4001(c).

Dated: December 1, 2010  
New York, New York

/s/ Allan L. Gropper  
HONORABLE ALLAN L. GROPPER  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A - DIP AGREEMENT**

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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

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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 Payment is payable to Mengnu upon the delivery of the goods to Jennifer. 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 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 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 “**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 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 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 Mengnu under this Agreement shall survive the termination of this Agreement until such time as all Obligations are paid in full;

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<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.



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.

“**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)).

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 General DIP Financing by lending the Debtors (a)

some or all of the then total amount of 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 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 LOC DIP Financing or General DIP Financing but only to the extent of the General DIP Financing or 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 Debtors shall provide Mengnu with the DIP Liens over the Collateral, which, under Bankruptcy Code section 364(c)(2), shall have 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 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; or
- (xvii) the Debtor's withdrawal of its plan of reorganization or any indication by the Bankruptcy Court or otherwise that the plan of reorganization, in form and substance acceptable to Mengnu, will not be confirmed by February 14, 2011.

## 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 Obligors 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

