

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

In re:

JENNIFER CONVERTIBLES, INC.,¹

Debtors.

Chapter 11

Case No. 10-13779 (ALG)

(Jointly Administered)

**FINAL 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”) and final order (the “Final Order”) authorizing the Debtors to, among other things:

- (a) obtain from Haining Mengnu Group Co., Ltd. (“Mengnu”) (i) some or all of the then total amount of due and owing 75% CIA Payments;² (ii) some or all of the then total amount of due and owing 25% COD Payments, and (iii) other additional monies as may be requested by the Debtors (the “General DIP Financing”);
- (b) obtain financing from Mengnu in the form of receiving up to \$3 million of cash reserves otherwise held by the Credit Card Processor after Mengnu arranges for and backstops

¹ 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).

² Capitalized terms not defined in this Final Order shall have the meanings ascribed to such terms in the Motion and/or the Senior Secured and Superpriority Debtor-in-Possession Credit Agreement, dated as of November 19, 2010, as amended and filed with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on November 29, 2010, entered into by and among the Debtors and Mengnu (the “DIP Agreement”).

letters of credit in an amount equaling up to \$3 million in favor of the Debtor's Credit Card Processor (the "LOC DIP Financing," and, together with the General DIP Financing," the "DIP Financing");

- (c) provide to Mengnu collateral and protection in the form of superpriority administrative expense claims 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;
- (d) use the proceeds arising from the DIP Financing in a manner consistent with the terms and conditions of the DIP Agreement and the Interim and Final Orders;
- (e) 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 Agreement, and any other documents, instruments, or agreements related thereto or delivered or executed in connection therewith (together, the "DIP Documents") and the Interim and Final Orders;
- (f) pay all amounts contemplated to be paid under the DIP Agreement relating to the DIP Financing, including all fees and expenses set forth therein; and
- (g) waive any applicable stay of the effectiveness of the Final Order and provide for the immediate effectiveness of the Final Order.

The Court having considered the Motion, examined the exhibits attached thereto, and having completed a hearing for the Interim Order (the "Interim 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 having granted the Interim Order on December 1, 2010, and scheduling a hearing on the Final Order (the "Final Hearing," and together with the

“Interim Hearing,” the “Hearings”) for December 21, 2010, at 11:00 a.m. (EST), and finding the Debtors provided adequate notice to all necessary parties and that no further notice is required for entry of this Final Order:

BASED UPON THE RECORD ESTABLISHED AT THE HEARINGS, 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 Bankruptcy Court. 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 of Interim Hearing.** The Interim Hearing was held in accordance with Bankruptcy Rule 4001 and Local Rule 4001-2. Notice of the Interim 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, 21st 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. **Entry of Interim Order.** The Bankruptcy Court entered the Interim Order on December 1, 2010. Pursuant to the Interim Order, the Debtors were authorized to obtain General DIP Financing in an amount not to exceed \$1.8 million. The Debtors did not request authority to obtain the LOC DIP Financing in the Interim Order. The Interim Order scheduled the Final Hearing for December 21, 2010 at 11:00 a.m. (EST).

F. **Notice of Final Hearing.** The Interim Order directed that the Debtors provide notice of the Final Hearing by December 3, 2010. Notice of the date of the Final Hearing was provided by the Debtors as required under the Interim Order on December 1, 2010, whether by telecopy, email, overnight courier or hand delivery, to parties in interest, including the Noticed Parties. The Final Hearing was held in accordance with Bankruptcy Rule 4001 and Local Rule 4001-2.

G. **Objections.** On November 29, 2010, Ashley HomeStores, Ltd. and Ashley Furniture Industries, Inc. (collectively, “Ashley”) filed a Preliminary Objection to Debtors’ Emergency Motion for Entry of an Order Authorizing the Debtors to Enter into a DIP Credit Agreement. Ashley reserved their right to object until the Final Hearing and on December 14,

2010, Ashley filed a Reservation of Rights with respect to, among other things, the Final Hearing on the DIP Credit Agreement.

H. **Need for Postpetition Financing.** Entry of this Final 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 Bankruptcy 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 Bankruptcy Court authorizes the Debtors to obtain DIP Financing from Mengnu in accordance with the terms of the DIP Documents.

I. **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 Final Order, and the Bankruptcy 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 Final Order.

J. **Mengnu's Requirements.** Mengnu, in its sole discretion, will provide the 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.

K. **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 Bankruptcy 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.

L. **Immediate Entry of the Final Order.** The Debtors have requested that this Final 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 Final Order and for this Final Order to become immediately effective and enforceable upon entry. Among other things, entry of this Final Order and the immediate effectiveness and enforceability of this Final 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 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 Final Order and the DIP Documents. Any objections and reservations of rights included therein, to the extent not withdrawn with prejudice, settled, or resolved are hereby overruled on the merits.

2. **Approval of Entry into DIP Documents.** The Debtors shall be and hereby are authorized to borrow money and obtain DIP Financing in accordance with the DIP Agreement and the terms and conditions contained in this Final Order.

3. **Terms of the DIP Financing.** The Debtors are hereby authorized to do the following:

(i) consummate the transactions contemplated by the DIP Documents 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) consummate the transactions contemplated by the DIP Documents in connection with the LOC DIP Financing by receiving up to \$3 million of cash reserves currently held by the Credit Card Processor which will be released to the Debtors upon Mengnu backstopping and guaranteeing letters of credit in an amount equaling up to \$3 million in favor of the Credit Card Processor;

(iii) 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 DIP Financing, incurred on the date of each DIP Financing; and

(iv) incur any and all Obligations in connection with the LOC DIP Financing thereunder, including, but not limited to (a) reimbursing 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), (b) paying 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, and (c) paying Mengnu the LOC DIP Financing Fee.

Interest on outstanding amounts owed to Mengnu under the DIP Agreement shall bear interest, where applicable, at a fixed rate per annum equal to 7.5 percent, all as more fully set forth in the DIP Agreement.

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 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 Final Order.

6. Postpetition Liens. Upon entry of this Final 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. 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 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 of entry of the Interim Order or subject to valid liens in existence as of the date of entry of the Interim Order that are perfected subsequent to the date of entry of the Interim Order 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 DIP Financing by this Final Order or the DIP Documents. The DIP Liens granted in connection with a DIP Financing in this Final 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 Final Order. A photocopy of this Final 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 Final Order for filing and recording.

7. **Superpriority Claims.** For all Obligations under the DIP Documents, Mengnu shall be granted, pursuant to section 364(c)(1) of the Bankruptcy Code, subject to the Carve-Out,

an allowed administrative claim with 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 (the “**DIP Superpriority Claims**”), and shall be payable from and have recourse to the Collateral, as set forth in the Final Order.

8. Limitations on the Use of Proceeds. The Debtors are authorized to use the proceeds of the DIP Financing solely for purposes authorized by the DIP Agreement and solely in accordance with the Amended DIP Budget (provided that such amounts shall be deemed to be in accordance with the Amended DIP Budget if they are within 10% of the Amended DIP Budget), a copy of which is attached hereto 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 Final Order without the consent of Mengnu or (ii) a violation, breach, or default of this Final 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 Final Order or such documents.

9. Carve-Out: The DIP Liens and DIP Superpriority Claims 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 Bankruptcy

Court; (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 Amended 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 form and substance acceptable to Mengnu). The Carve-Out monies cannot be used to initiate causes of action against Mengnu.

10. Section 506(c) Waiver. Except for the Carve-Out, no costs or expenses of administration incurred after the date hereof shall be imposed against the Collateral under section 506(c) of the Bankruptcy Code.

11. Enforcement of Remedies. Upon a Termination Event³ (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, DIP Superpriority Claims and Obligations created pursuant to this Final Order shall survive, and 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

³ 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.

rights, privileges, DIP Superpriority Claims or DIP Liens or (ii) release the Debtors, their successors or assigns, including a chapter 7 trustee, from the Obligations in connection with a DIP Financing.

12. Reliance by Mengnu; Modification. The Debtors shall not seek to modify, vacate, or amend this Final Order without the written consent of Mengnu. If any or all of the provisions of this Final Order are hereafter modified, vacated, or stayed by subsequent order of this or any other Court, such stay, modification, or vacation shall not affect the validity of any debt to Mengnu incurred pursuant to this Final 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 in the 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 Final 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 Final Order.

13. Good Faith. The Bankruptcy Court has considered and determined the matters addressed in this Final 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 Final 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.

14. 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 Bankruptcy 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 Final 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 Final 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, DIP Superpriority Claims and rights, remedies, and benefits granted to Mengnu pursuant to this Final 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 Bankruptcy 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 Bankruptcy Court provided that: (i) the DIP Documents, as so modified, are not materially different from the DIP Documents approved in this Final Order; (ii) notice of all amendments to the DIP Documents are filed with the Bankruptcy 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 Bankruptcy Court authorizing such amendment unless such objection is resolved or withdrawn.

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

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

15. 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 Final 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 Final 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 Final Order, until satisfied and discharged.

16. Jurisdiction. The Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or relating to this Final Order.

Dated: _____, 2010
New York, New York

HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

DIP Budget

