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*Proposed Counsel to the Debtors*

**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)

(Motion for Joint Administration Pending)

**DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 363, 364 AND 503  
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003  
AND 6004 FOR ENTRY OF AN ORDER AUTHORIZING, BUT NOT  
REQUIRING, PAYMENT OF CERTAIN PREPETITION OBLIGATIONS TO  
CRITICAL AND FOREIGN VENDOR, HAINING MENGNU GROUP CO. LTD.**

Jennifer Convertibles, Inc. (“Jennifer Convertibles”) and its affiliated debtors, as debtors in possession (together, the “Debtors”), hereby move this Court (the “Motion”) for entry of an order pursuant to sections 105(a), 363, 364 and 503 of title 11 of the United States Code (the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 6003 and 6004, authorizing but not requiring them to pay certain prepetition claims of critical and foreign vendor Haining Mengnu Group Co. Ltd. (“Mengnu”) in accordance with the Critical

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<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).

Vendor Procedures (as defined below). In support of this Motion, the Debtors respectfully state as follows:

### **Background**

1. On July 18, 2010 (the “Petition Date”), each of the Debtors commenced with the Bankruptcy Court a voluntary case pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory creditors’ committee has been appointed in these chapter 11 cases.

2. Jennifer Convertibles, Inc. was organized as a Delaware corporation in 1986, and is currently the owner of (i) the largest group of sofaed specialty retail stores and leather specialty retail stores in the United States, with stores located throughout the Eastern seaboard, Midwest, West Coast and Southwest, and (ii) seven big box, full-line furniture stores operated under the Ashley Furniture HomeStore brand (the “Ashley Stores”) under a license from Ashley Furniture Industries, Inc.

3. In order to generate sales, the Debtors rely on aggressive pricing, the attractive image of its stores, extensive advertising and prompt delivery. Operations are classified into two operating segments organized by retail concept: Jennifer and Ashley. The Jennifer segment operates the sofaed specialty retail store concept. The Ashley segment is the big box, full line home furniture retail store concept. There are no inter-company sales between segments. The Ashley segment is highly profitable due to its unique sourcing model, whereby once most sales are executed, Ashley’s supplier manages the supply chain process. Under the Ashley sourcing model, the Debtors need for warehouse inventory is reduced, thereby limiting working capital needs and infrastructure requirements. The Debtors’ two operating segments enable the Debtors

to more effectively offer diverse home furnishings and accessories and expand to a broader consumer base.

4. As of the Petition Date, the Debtors' stores include 130 stores operated by the Jennifer segment. During fiscal 2007, the Debtors opened their first Ashley Store. As of the Petition Date, the Debtors operate seven Ashley Stores.

5. As of the Petition Date, the Debtors employ 497 people. There are 336 employees in the Jennifer segment, 114 employees in the Ashley segment and 47 corporate employees. None of the employees are represented by a collective bargaining unit.

6. For the fiscal year ended August 29, 2009, the Debtors' consolidated financial statements showed revenues from continuing operations of approximately \$94,177,000, compared with \$120,131,000 for the fiscal year ended August 30, 2008, and \$132,683,000 for the fiscal year ended August 25, 2007. For the thirty-nine weeks ended May 29, 2010, revenues from continuing operations were approximately \$70,036,000, with \$56,144,000 coming from the Jennifer segment stores, and \$13,892,000 from the Ashley segment stores.

7. Net sales from continuing operations were \$88,845,000 and \$113,073,000 for the fiscal years ended August 29, 2009 and August 30, 2008, respectively. Net sales from continuing operations decreased by 21.4%, or \$24,228,000 for the fiscal year ended August 29, 2009 compared to the fiscal year ended August 30, 2008. The decrease in net sales is attributable to a decline in overall demand within the furniture industry sector due to a poor housing market and an overall weak U.S. economy. Consolidated same store sales from continuing operations (sales at those stores open for the entire current and prior comparable periods) decreased 19.6% for the thirteen weeks ended May 29, 2010, compared to the same period ended May 30, 2009.

8. In the Jennifer segment, net sales from continuing operations were \$16,375,000 and \$16,987,000 for the thirteen-week periods ended May 29, 2010 and May 30, 2009, respectively. Net sales from continuing operations decreased by 3.6%, or \$612,000 for the thirteen-week period ended May 29, 2010 compared to the thirteen-week period ended May 30, 2009. The decrease is attributable to the decline in overall demand within the furniture industry sector due to the prevailing conditions of the U.S. economy, the current housing market, store closings, and delays in receipt of merchandise from the Debtors' Chinese supplier, all as discussed in greater detail in the other first day motions, filed concurrently herewith.

9. The factual background relating to the Debtors' commencement of these chapter 11 cases is set forth in additional detail in the Declaration of Rami Abada in Support of First Day Motions (the "Abada Declaration") filed contemporaneously with this Motion and incorporated herein by reference.

#### **Jurisdiction**

10. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

11. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363, 364 and 503 and Bankruptcy Rules 6003 and 6004.

#### **Relief Requested**

12. By this Motion, the Debtors seek entry of an order authorizing them to pay, in the exercise of their business judgment and in their sole discretion, certain prepetition claims of Mengnu (as more fully described below) to ensure the uninterrupted functioning of the Debtors'

business.<sup>2</sup> In addition, the Debtors seek to provide Mengnu with a security interest in the goods and product that Mengnu ships to the Debtor post-petition. In the ordinary course of business, the Debtors rely on Mengnu to supply goods, without which the Jennifer segment of the Debtors' business either could not operate or would operate at significantly reduced capacity. It is the Debtors' belief that, despite the protections of administrative priority status, Mengnu would terminate its provision of goods to the Debtors if the authority requested herein is not granted. Without the continued support of, and the goods to be provided by, Mengnu, the Debtors may not be able to continue their day-to-day operations of the Jennifer segment of the Debtors' business.

### **The Mengnu Relationship**

13. Founded in July, 1993, Mengnu, situated in Haining City of Zhejiang Province, the center of China's leather and home textiles industry, is a diversified manufacturer and supplier to furniture retailers throughout the world. Mengnu's business integrates sofa, sofa cover, leather and leather clothes manufacturing. Mengnu's products are popular in more than twenty provinces, cities and autonomous regions of China and are exported to more than twenty European and American countries and regions such as the Americas, Britain, France and Italy.

14. Mengnu has been honored the titles of "China's Brand of Highest Market Competitiveness", "Top 50 China's Privately-owned Enterprises in Brand Competitiveness", "Top 50 China's Privately-owned Enterprises in Comprehensive Competitiveness", "Top 50 China's Privately-owned Enterprises in Human Resource Competitiveness", "China's Famous Trademark", "China's Name Brand Product", "National Inspection-free Product", "Key High-

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<sup>2</sup> Nothing in this Motion should be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' or any party-in-interest's right to dispute any such claim, or (c) an approval or assumption of any agreement, contract, program, policy or lease under Bankruptcy Code section 365 or otherwise. Furthermore, any payment made pursuant to the authority requested herein is not intended and should not be construed as an admission of the validity of any claim or waiver of the Debtors' right to dispute such claim subsequently, and the Debtors reserve all related rights.

tech Enterprise of National Torch Plan", "Top 500 Chinese Non-governmental Enterprises", "Top 100 Chinese Non-governmental Enterprises for Import and Export", and "National Glorious Star".

15. Prior to its relationship with Mengnu, the Debtors purchased merchandise for their Jennifer segment of the business from Caye Upholstery LLC ("Caye"). In January 2009, the Debtors began to transition its product sourcing from Caye to Mengnu. Since that time, Mengnu has been the sole source supplier of sofa beds, leather products and related products to the Jennifer segment of the Debtors' business.

16. The products manufactured for the Debtors by Mengnu are made according to specifications provided by the Debtors and requires Mengnu to tool its facilities to meet the Debtors' needs. Even assuming that the Debtors could procure a replacement supplier of products for their Jennifer segment that could meet the needs of the Debtors, the timing needed for such transition would severely, if not irreparably, impact the Debtors' going concern value and ability to reorganize.

#### **Basis For Relief Requested**

17. As discussed above, in order to be able to keep up with their customers' demands, the Debtors regularly, if not daily, transact business with Mengnu, who supply goods and services that are crucial to the Debtors' ongoing operations. Foreign suppliers often have guarded reactions to the U.S. bankruptcy process. For example, many of these entities are unfamiliar with the unique debtor in possession mechanism that is at the heart of chapter 11. A debtor seeking to explain this system and convince a foreign vendor to continue shipment postpetition often is greeted with a high degree of skepticism and mistrust.

18. In addition, if the claims of Mengnu are not paid as contemplated hereby, Mengnu would refuse to do business with the Debtors. The impact of such events on the Debtors' operations would be catastrophic.

19. Indeed, there is a significant risk that the nonpayment of a single invoice could cause Mengnu to completely sever its business relationship with the Debtors. Short of that, nonpayment of prepetition claims may cause Mengnu to utilize extreme caution and adopt a wait-and-see attitude in approaching the unfamiliar territory of chapter 11, resulting in costly delays in the shipment of additional goods. The Debtors can ill afford delays of this nature.

20. Payment of certain of Mengnu's prepetition claims in accordance with the procedures described below is also necessary because the Debtors rely on the sole source supply method - a method under which they purchase all of their requirements for particular merchandise from one supplier. Mengnu is a sole source supplier, who provides custom-designed merchandise, built to fit the Debtors' specific needs, which cannot be obtained from other sources or cannot be obtained from other sources in sufficient quantity or quality without significant delays. As such, if these goods are not obtained from Mengnu without interruption, the Debtors likely would not be able to fulfill their obligations to customers, which would in turn have a devastating impact on the Debtors' businesses, and indeed would likely be forced to shut down.

21. In return for payment of the prepetition claims of Mengnu in the ordinary course of business, unless otherwise waived by the Debtors in their sole discretion, the Debtors propose that Mengnu continue to provide goods and services to the Debtors pursuant to the Critical Vendor Procedures set forth below.

22. In addition, the Debtors request that Mengnu be entitled to a secured claim under Bankruptcy Code Section 364 in connection with goods shipped by Mengnu during the pendency of the case (the “Postpetition Goods”). In addition to the secured claim under Bankruptcy Code Section 364, as an additional measure to secure the purchase price of goods shipped to the Debtors postpetition, the Debtors request to grant a purchase money security interest to Mengnu and execute and deliver a Security Agreement in the form attached hereto as Exhibit C to provide Mengnu a first priority perfected purchase money security interest in all Postpetition Goods.

23. The Debtors further wish to provide Mengnu with an administrative expense claim under Bankruptcy Code section 503 to the extent Mengnu’s claim on account of the Postpetition Goods exceeds the amount of the Postpetition Goods or the proceeds therefrom upon which Mengnu could foreclose.

24. The Debtors also request that their banks honor, unless otherwise directed by the Debtors, any and all checks or electronic transfers used by the Debtors prepetition to pay any of the prepetition obligations owing to Mengnu that have not cleared the banking system prior to the Petition Date and any and all checks or electronic transfers used by the Debtors postpetition to pay any prepetition claims of the Critical Vendors.

#### **Proposed Critical Vendor Terms and Procedures**

25. In light of the severe consequences the Debtors would suffer if Mengnu refuses to provide postpetition goods, the Debtors propose that the Court approve and adopt the following procedures (the “Critical Vendor Procedures”):

- i. The amount of Mengnu’s estimated prepetition claim, accounting for any setoffs, other credits, and/or discounts thereto, which would be mutually determined in good faith by Mengnu and the Debtors (but which amount would be used only for the purposes of determining Mengnu’s claim under the Interim Critical Vendor Order and/or the Final Critical Vendor Order, as applicable, and would not be deemed a claim allowed by the Court for any other purpose in these cases, and the rights of all interested persons to

object to such claims would be fully preserved until further order of the Court);

- ii. The Debtors will agree that, commencing on the last business day of the calendar week in which the order of the court sought hereby is granted and on the last business day of each calendar week thereafter during the pendency of the Chapter 11 Cases, the Debtors will make payments to Mengnu in cash by wire transfer in weekly installments of \$400,000 (the “Critical Vendor Payments”).
- iii. On account of its critical vendor status, Mengnu will agree to continue to ship reasonable and projected amounts of goods ordered by the Debtors in accordance with an ordering, production and shipping schedule mutually agreed upon by the Debtors and Mengnu from time to time which shall be consistent with the past ordering, production and shipping practices followed by the parties provided that (i) the Debtors are not in default in their obligation to pay \$400,000 critical vendor payments referred to above, (ii) the Debtors maintain an aggregate cash balance of at least \$2.0 million at all times and (iii) no event of default under the Security Agreement (as defined below) shall have occurred and be continuing.
- iv. The Critical Vendor Payments shall be applied to pay outstanding amounts due from the Debtors to Mengnu on account of pre-petition indebtedness and shall be applied first to the earliest dated payables.
- v. During the chapter 11 cases, the Debtors shall purchase and pay for goods received by it during the chapter 11 cases on open terms, 90 days from receipt of goods.
- vi. Mengnu’s agrees that it will not separately seek payment for any reclamation claims or claims under under section 503(b)(9) of the Bankruptcy Code outside the terms of the Critical Vendor Orders unless Mengnu’s participation in the critical vendor program pursuant to the Critical Vendor Orders is terminated; provided however that such claims would, if thereafter raised by Mengnu, be treated as though they were raised within 20 days after the Petition Date.
- vii. The Debtors will sign an agreement providing to Mengnu a first priority, perfected security interest on all Post Petition Goods (the “Security Agreement”) and all proceeds thereof. A copy of the proposed Security Agreement is annexed hereto as Exhibit C. The Debtor shall be authorized to implement all of its obligations under the Security Agreement, all as set forth more fully in the Security Agreement.
- viii. If (i) Mengnu defaults in the performance of its agreement to supply goods to the Debtors as agreed pursuant to the Vendor Agreement (as defined below), the Debtors may, without further order of this Court, declare that

Mengnu is in breach of its Vendor Agreement with the Debtors or (ii) either Mengnu or Jennifer proposes a change to the ordering, production and shipment schedule agreed to by the parties and the parties, after discussions, cannot agree upon a change, then, in either such case, Jennifer may declare Mengnu's critical vendor status to be forthwith terminated and immediately cease making the Critical Vendor Payments.. To the extent that Mengnu fails to cure any such default or reach an alternative agreement with the Debtors, the Debtors may seek appropriate relief from the Court, including, without limitation, injunctive relief to compel performance pursuant to the Vendor Agreement. If Mengnu's critical vendor status is terminated as described above, Mengnu shall have no further obligation to ship in accordance with the production and shipping schedule agreed to by the parties and then in effect and any critical vendor payments previously made to Mengnu on account of its prepetition claim in excess of the aggregate purchase price of the goods actually delivered to the Debtors postpetition would be deemed to have been in payment of any then outstanding postpetition obligations owed to Mengnu (with the payments being applied to the oldest amounts unpaid) and not applied to pay any outstanding prepetition amounts owing to Mengnu.

- ix. A letter substantially in the form attached hereto as Exhibit A (or as may be modified pursuant to the Final Critical Vendor Order), along with a copy of the interim critical vendor order (the "Interim Critical Vendor order") and/or the final critical vendor order (the "Final Critical Vendor Order"), as applicable, granting the relief requested in this Motion would be sent to Mengnu. which letter would provide for Mengnu's acknowledgement, in the form annexed hereto as Exhibit B, that it has reviewed the terms and provisions of the Interim Critical Vendor Order and/or the Final Critical Vendor Order, as applicable, and consents to be bound thereby. Such a letter, once acknowledged by Mengnu, would constitute an agreement (the "Vendor Agreement") between the parties that governs their relationship during these cases unless earlier terminated as provided herein

#### **Applicable Authority**

26. There are several justifications for the relief requested in this Motion. First, Bankruptcy Code section 105(a) empowers a court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Code]. The purpose of section 105(a) is to ensure a bankruptcy court's power to take whatever action "is appropriate or necessary in aid of the exercise of [its] jurisdiction." *In re Casse*, 198 F.3d 327, 336 (2d Cir. 1999).

27. Numerous courts have used section 105 equitable powers and the “necessity of payment” doctrine to authorize payment of a debtor’s prepetition obligations where, as here, such payment is necessary to effectuate the “paramount purpose” of a chapter 11 reorganization. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *Ionosphere*, 98 B.R. at 176-7 (*citing NLRB v Bildisco & Bildisco*, 465 U.S. 513, 528 (1984)). This doctrine, first articulated by the United States Supreme Court in *Miltenberger v Logansport, C. & S.W.R. Co.*, 106 U.S. 286, 311-2 (1882) recognizes the existence of judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.

28. The “necessity of payment” doctrine authorizes the Debtors to pay the amounts it seeks authority to pay pursuant to this Motion because the goods and services provide by the Critical Vendors are necessary both to the Debtors’ operations and the successful operation of these chapter 11 cases.

29. Further, Bankruptcy Code section 363(b)(1) authorizes a debtor in possession to use property of the estate other than in the ordinary course of business after notice and a hearing, and Bankruptcy Code section 363(c) authorizes a debtor in possession to enter into transactions in the ordinary course of business without notice and a hearing. Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re FV Steel & Wire Co.*, Case No. 04-22421 (Bankr. E.D. Wis. Feb. 26, 2004) (authorizing the payment of prepetition claims under 363); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wages pursuant to 363); *In re UAL Corp.*, Case No. 02-48191 (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of prepetition claims under 363 as an out-of-ordinary-course transaction). To do so, “the debtor must articulate some

business justification, other than the appeasement of major creditors.” *Ionosphere*, 98 B.R. at 175. As discussed herein, the Debtors’ failure to pay Mengnu’s prepetition claims as described above could have a material adverse impact on their ability to operate in the ordinary course of business.

30. In addition, Bankruptcy Code section 364(c)(2) authorizes a debtor in possession to obtain credit and incur debt secured by a lien on property of the estate that is not otherwise subject to a lien. 11 U.S.C. § 364(c)(2). *In re General Growth Properties, Inc.*, 423 B.R. 716, 726 (S.D.N.Y. 2010) (bankruptcy court may authorize incurrence of debt on a secured basis under 364(c)(2)). Finally, Bankruptcy Code section 503 states, in pertinent part: “After notice and a hearing, there shall be allowed administrative expenses . . . including — the actual, necessary costs and expenses of preserving the estate” 11 U.S.C. § 503(b)(1)(A). The Debtors submit that to the extent a lien on the Postpetition Goods or the proceeds therefrom upon which Mengnu could foreclose is less than the amount of money owed to Mengnu on account of delivery of Postpetition Goods, Mengnu is entitled to an administrative expense claims under Bankruptcy Code Section 503.

31. The Critical Vendor Procedures proposed herein are the product of extensive, good-faith negotiations among the Debtors and Mengnu. During the course of these negotiations, Mengnu stated that it would not commit and was not willing to continue shipping goods to the Debtors on unsecured, administrative expense or super-priority terms. Accordingly, the Debtors seek approval of the proposed Critical Vendor Procedures which include the granting of first-priority, perfected purchase money security interests in goods to be sold to the Debtors post-petition and the proceeds thereof. *In re Payless Cashways, Inc.*, 268 B.R. 543 (Bankr. W.D. Mo. 2001) (in order to obtain postpetition credit from suppliers whose continued

shipments were critical to continued operation of its business, debtor would be permitted, prior to confirmation of plan, to pay all or portion of those suppliers' prepetition claims, and to grant suppliers postpetition administrative expense claim for any new purchases).

32. Finally, Mengnu is a "sole source" provider of products used in the Jennifer segment of the Debtors' business or, at the very least, is a seller of goods that cannot easily be replaced. The Debtors believe that the uninterrupted supply of goods and services from the Mengnu is imperative to the ongoing operations and viability of their business. Pursuant to the Critical Vendor Procedures, the Debtors only seek to pay the claims of Mengnu because, in the Debtors' view, nonpayment would likely lead to the interruption of the delivery of goods and services, seriously disrupting the Debtors' operations. To that end, the Critical Vendor Procedures proposed herein are crafted to minimize the number and amount of prepetition claims that would be paid and to maximize the value that the Debtors gain from such payments.

33. Bankruptcy courts routinely grant authorization for chapter 11 debtors to pay claims owing to critical vendors, both foreign and domestic. *See, e.g., In re Steve and Barry's Manhattan, LLC*, Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. Jul. 10 & 29, 2008); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. Apr. 14, May 2 & 15, 2008); *In re Interep Nat'l Radio Sales, Inc.*, Case No. 08-11079 (RDD) (Bankr. S.D.N.Y. Apr. 22, 2008); *In re Wellman, Inc.*, Case No. 08-10595 (SMB) (Bankr. S.D.N.Y. Feb. 25 & 26, and Apr. 10, 2008); *In re Fortunoff Fine Jewelry and Silverware, LLC*, Case No. 08-10353 (JMP) (Bankr. S.D.N.Y. February 5, 2008); *In re Dana Corporation*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 7 & 29, 2006); *In re Musicland Holding Corp.*, Case No. 06-10064 (SMB) (Bankr. S.D.N.Y. Jan. 17 & 27 and Feb. 1, 2006); *In re Delphi Corporation*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 13, 2005 and Mar. 8, 2006); *In re Delta Air Lines, Inc.*,

Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005); *In re WorldCom, Inc.*, Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. July 22, 2002 and Aug. 13 & 16, 2002).

34. Any refusal by Mengnu to work with the Debtors postpetition would likely impair the Debtors' value as a going-concern. The Debtors' sales could be severely disrupted if Mengnu refused to provide goods or services on a timely basis and on acceptable terms. Accordingly, the Debtors submit that the relief requested in this Motion is in their best interests and the best interests of their estates, their creditors, and other parties-in-interest, and that paying Mengnu according to the Critical Vendor Procedures is a sound and prudent exercise of their business judgment.

**The Debtors Satisfy Bankruptcy Rules 6003 and 6004**

35. Pursuant to Bankruptcy Rule 6003(b), "a motion to pay all or part of a claim that arose before the filing of the petition" shall not be granted by the Court within 20 days of the Petition Date "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm . . . ." Fed. R. Bankr. P. 6003(b). For the reasons described more fully above, the Debtors submit that the requirements of Rule 6003 have been met and that the relief requested in this Motion is necessary to avoid immediate and irreparable harm. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h), to the extent these rules are applicable.

**Notice**

36. No trustee, examiner or statutory creditors' committee has been appointed in these chapter 11 cases. Notice of this Motion has been provided to: (i) Office of the United States Trustee for the Southern District of New York; (ii) those creditors holding the thirty (30) largest unsecured claims against the Debtors' estate (on a consolidated basis); (iii) counsel to Mengnu;

(iv) the SEC; (v) the IRS; (vi) all taxing authorities in relevant jurisdictions; (vii) all attorneys general in relevant jurisdictions; and (viii) any other party directly affected by this Motion. The Debtors submit that such notice is sufficient under the circumstances.

**No Previous Request**

37. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York  
July 19, 2010

OLSHAN GRUNDMAN FROME  
ROSENZWEIG & WOLOSKY LLP

By: /s Michael S. Fox  
Michael S. Fox  
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*Proposed Attorneys for the Debtors and  
Debtors in Possession*

**EXHIBIT A**

**Mengnu Letter**

**[JENNIFER CONVERTIBLES LETTERHEAD]**

\_\_\_\_\_, 2010

TO: Haining Mengnu Group Co. Ltd.  
1061 Longxling Road  
Economic Development Zone  
Haining Zhejiang 314400  
China

Dear Mr. Morris Zou:

As you are aware, Jennifer Convertibles, Inc. and its affiliated debtors (collectively, the “Company” or the “Debtors”)<sup>1</sup> filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Case” and the “Bankruptcy Court,” respectively) on July \_\_, 2010 (the “Petition Date”). The Company requested the Bankruptcy Court’s authority to make certain payments of certain prepetition balances owed to Mengnu in recognition of the importance of its relationship with Mengnu. On \_\_\_\_\_, 2010, the Bankruptcy Court entered an order (the “Order”) authorizing the Company, under certain conditions, to pay (the “Critical Vendor Payments”) a portion of Mengnu’s prepetition claims. A copy of the Order is enclosed.

As authorized by the Bankruptcy Court, the Company and Mengnu each agree to be bound by and comply with the Critical Vendor Terms, as defined in the Order.

The estimated balance of the prepetition trade claim (net of any setoffs, credits or discounts) (the “Trade Claim”) that the Company owes you is \$\_\_\_\_\_. The amount of the Trade Claim shall be used only for the purposes of determining Mengnu’s claim under the Interim Critical Vendor Order and/or the Final Critical Vendor Order, as applicable, and will not be deemed a claim allowed by the Bankruptcy Court for any other purpose in these cases, and the rights of Mengnu to submit a proof of claims in excess of such amount and of the right of all interested persons to object to such claims would be fully preserved until further order of the Bankruptcy Court.

Payment of your Trade Claim in the manner set forth in the Order may only occur upon execution of this letter and accompanying acknowledgement by a duly authorized representative of your company and the return of this letter to the Company. Your execution of this letter

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<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).

agreement and accompanying acknowledgement and return of the same to the Company constitutes an agreement by you and the Company to be bound by the terms of the Order.

The Company and you also hereby agree that any dispute with respect to this letter agreement and the Order shall be determined by the Bankruptcy Court.

If you have any questions about this Agreement or our financial restructuring, do not hesitate to call \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

Jennifer Convertibles, Inc., et al.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Agreed and Accepted by:

Haining Mengnu Group Co. Ltd.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2010

**EXHIBIT B**

**Acknowledgment**

**ACKNOWLEDGMENT**

Haining Mengnu Group Co. Ltd. hereby acknowledge receipt of your letter dated , 2010, and relating to Critical Vendor Terms and Procedures and agree that shipment of the goods to Jennifer Convertibles, Inc. from and after the date hereof will be in accordance with the Critical Vendor Terms as defined in the Order (as defined therein)

In witness whereof, we have duly executed this Acknowledgement effective as of the date specified below. .

Haining Mengnu Group Co. Ltd.

By: \_\_\_\_\_

Printed Name:

Title:

Date: \_\_\_\_\_, 2010

**EXHIBIT C**

**PURCHASE MONEY SECURITY INTEREST**

**SECURITY AGREEMENT**

Security Agreement ("Agreement") dated July \_\_, 2010 ("Effective Date"), from Jennifer Convertibles, Inc. a Delaware corporation, with its principal place of business 417 Crossways Drive, Woodbury New York, N.Y. 11797 ("Debtor") to Haining Mengnu Group Co. Ltd., with its principal place of business at 101 Longxing Road, Economic Development Zone, Haining Zhejiang, 31440 ("Secured Party").

WHEREAS, Debtor is the owner and licensor of retail stores selling sofas and other furniture and accessories as part of its "Jennifer" line of furniture and other items;

WHEREAS, goods sold in the Debtor's Jennifer stores are primarily manufactured by Secured Party.

WHEREAS, Debtor may, from time to time, desires to purchase goods from Secured Party on a secured account basis.

WHEREAS, Secured Party may from time to time hereafter sell goods ordered by Debtor from Secured Party provided that Debtor grants Secured Party a security interest in the Collateral, as hereinafter defined

WHEREAS, on the date hereof (the "Petition Date"), the Debtor commenced a voluntary case ("Chapter 11 Case") pursuant to chapter 11 of title 11 of the United States Bankruptcy Code ("Bankruptcy Code");

NOW, THEREFORE, in consideration of the premises, the Debtor agrees with the Secured Party as follows:

**SECTION 1. DEFINITIONS**

With respect to this Agreement, the following definitions apply:

"Collateral" means all goods purchased by Debtor from the Secured Party and received by Debtor, or in which Debtor acquires any interest, on or after the Effective Date, and all proceeds thereof. For the avoidance of doubt, Collateral

includes all inventory of the Debtor acquired by the Debtor from the Secured Party on or after the Effective Date, and all proceeds thereof.

"Debtor Receivables" means all monies in which Secured Party is granted a security interest pursuant to this Agreement including, without limitation, all monies constituting payments on accounts arising from the sale or other disposition of Collateral.

Financing Statements" has the meaning specified in Section 2 hereof.

"Obligations" means (I) all amounts owing or to become owing by Debtor to the Secured party on account of purchases of goods by the Debtor from the Secured Party and which are received by the Debtor, or in which the Debtor acquires any interest, on or after the Petition Date, including, without limitation, amounts owing on account of the purchase price of such goods, freight charges and costs of storage in transit, demurrage, administrative charges, sales taxes and customs duties, insurance, and other similar obligations payable by the Debtor in connection with the acquisition of such goods or any interest therein, (ii) the repayment of any other amounts that Secured Party may advance or spend for the maintenance or preservation of the Collateral, (iii) expenses of collection and enforcement including reasonable attorney's fees (to the extent permitted by applicable law) and (iv) any interest due or to become due on any amounts referred to in clause (i), (ii) or (iii) immediately preceding.

"Uniform Commercial Code" means the Uniform Commercial Code of the State of New York as in effect on the Effective Date.

Terms used herein which are defined in the Uniform Commercial Code which are not otherwise defined herein have the meanings assigned to them in the Uniform Commercial Code.

## **SECTION 2. DEBTOR'S GRANT OF SECURITY INTEREST, REPRESENTATIONS, WARRANTIES, AND AGREEMENTS**

Debtor hereby grants to Secured Party a security interest in the Collateral to secure full payment of of all Obligations when due. Such security interest is intended to be a continuing purchase money security interest, and Debtor agrees that the Collateral secures any value given by Secured Party to enable Debtor to acquire rights in the Collateral which is in fact so used. Debtor agrees that it shall execute and deliver to Secured Party all financing statements, including UCC-1 statements, requested by Secured Party and any continuation statements or other documents requested by Secured Party to enable Secured Party to further perfect and continue the perfection of its security interest in the Collateral. Debtor authorizes Secured Party to sign financing statements or other such documents in the name of and on behalf of

Debtor and to file or cause such financing statements and other documents to be filed in the appropriate filing office or offices for the filing of such financing statements or other documents to perfect a security interest in the Collateral. Debtor hereby authorizes Secured Party to file an amendment to any financing statement or other document if the debtor changes its name in a manner such that such financing statement or other document becomes seriously misleading. Debtor has heretofore executed and delivered to Secured Party one or more financing statements (the "Financing Statements") for filing in the office of the Secretary of State of Delaware. Debtor represents and warrants to Secured Party that, (i) its exact legal name is as set forth in the first paragraph of this Agreement, (ii) that it is an existing corporation duly incorporated in the State of Delaware and (iii) Secured Party has a perfected purchase money security interest in the Collateral having first priority for the payment in full amount of all Obligations now or hereafter arising when due. Until all Obligations have been paid in full, unless Secured Party shall give its express prior written consent, Debtor (i) will preserve its corporate existence and will not, in one transaction or a series of related transactions, merge into or consolidate with any other entity, or sell all or substantially all its assets, (ii) will not sell, assign, exchange, lend, or otherwise transfer any Collateral or interest therein other than its ordinary course of business and (iii) will not create or suffer to exist any security interest in or lien on any of the Collateral or any interest therein other than carriers', warehousemen's and similar liens arising in the ordinary course of business and which secure obligations that are not delinquent.

Debtor represents that there is no legal, administrative, or other proceeding pending or threatened against Debtor which relates to the Collateral, the grant of a security interest hereunder, or continued corporate existence, nor does the Debtor know of any basis for the assertion of any such claim. Debtor shall, at its own expense, take any and all actions necessary or desirable to preserve, protect, and defend the security interest of Secured Party in the Collateral and the perfection and priority thereof against any and all adverse claims including appearing in and defending all actions and proceedings which purport to affect any of the foregoing all at the expense of Debtor.

Debtor agrees to pay all Obligations pursuant to the terms and conditions imposed by Secured Party as indicated on Secured Party's invoices or other statements of account given to Debtor and, in any event, upon the sale or other disposition by Debtor of any item of Inventory purchased by Debtor from Security Party unless otherwise expressly agreed to by Secured Party in writing. Any invoices or other statements of account furnished by Secured Party shall be conclusively presumed to be evidence of such prior agreement unless objected to within five (5) business days after receipt thereof by Debtor. Debtor agrees that Secured Party may

use and apply any or all Debtor Receivables toward the payment of all Obligations which are due and unpaid, in whole or in part.

Debtor will keep the Collateral in good order and repair and will pay all taxes, assessments, or charges which may be levied or assessed against the same before they become delinquent. In the event of its failure to comply with the foregoing, any amounts expended by Secured Party as it, in its reasonable discretion, may deem necessary to repair the Collateral or to pay any and all taxes, assessments, and charges to be discharged, shall be considered an Obligation which is secured by this Agreement.

Debtor, at its own expense, shall keep the Collateral insured against all insurable risks for full replacement value payment to Secured Party with the exception of Collateral located in Debtor's showrooms and stores. Such insurance shall not be permitted to lapse without the insurer giving to the Secured Party fifteen (15) days' prior written notice. Should the Debtor fail to procure or provide evidence of said insurance, Secured Party may procure same and the cost thereof, shall be considered an Obligation.

Debtor shall keep complete and accurate records of its business, including those pertaining to its inventory and the Collateral, which shall be available for inspection by the Secured Party at all reasonable times. Debtor shall furnish to Secured Party such information regarding its business and financial condition as may be requested. Secured Party may enter the premises of Debtor to perform reasonable inventory inspections and audits of books and records during regular business hours. Debtor will promptly notify Secured Party immediately in writing of any changes in its places of business and/or the removal of Collateral from any of its places of business.

Debtor shall notify Secured Party in writing within five (5) business days of the occurrence of (i) an Event of Default or of the occurrence of an event which with notice or lapse of time, or both, would constitute an Event of Default (as defined below), or (ii) any event which adversely affects the value of the Collateral, the ability of Debtor or Secured Party to dispose of the Collateral, or the rights and remedies of Secured Party in relation thereto.

### **Section 3. EVENTS OF DEFAULT**

The occurrence of any of the following shall constitute an Event of Default hereunder: (i) any breach or failure by Debtor to pay when due or observe or perform any of its Obligations or any other obligations in this Agreement; (ii) any information furnished or provided by Debtor or any of its officer, directors, agents or employees concerning Debtor's business or its financial condition or the Collateral to Secured Party shall have been false or misleading when furnished or provided; (iii) the initiation

of steps by any third party to obtain a levy, writ of attachment or garnishment upon any or all of the Collateral; (iv) the admission by Debtor, or any guarantor of any Obligation, of its inability to pay its post-petition debts as they mature; (v) the cessation of Debtor, or any guarantor of any Obligation, as a going concern; or (vi) the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

#### **SECTION 4. REMEDIES UPON DEFAULT**

Upon the occurrence of any Event of Default, Secured Party shall have and may pursue all of the rights and remedies of a secured party as provided in the Uniform Commercial Code or otherwise available to it at law or in equity to collect, enforce or satisfy any Obligations then owing, whether by acceleration or otherwise. Without limiting the foregoing, Secured Party shall have the right to pursue any of the following remedies separately, successively or simultaneously: (i) take possession of all or any of the Collateral if not in its possession without demand or legal process wherever found, and for that purpose Secured Party may enter the premises of Debtor to obtain possession of the Collateral without obtaining any court order; (ii) with or without taking possession, sell, lease or otherwise dispose of the Collateral at public or private sale in accordance with the Uniform Commercial Code (iii) deduct from the proceeds of sale of Collateral all unpaid Obligations, court costs, other expenses such as moving, storage, and repair of the Collateral, any reasonable expenses incurred for the preservation or renovation of the Collateral for purposes of sale as Secured Party may be entitled to under the Uniform Commercial Code; or (iv) terminate any agreement or commitment of Secured Party to supply goods to the Debtor or for the granting of credit to Debtor. Upon Secured Party's demand, Debtor will assemble and make the Collateral available to Secured Party as it may direct. No delay or omission by Secured Party to exercise any right or remedy upon any Event of Default shall impair any right or remedy or waive any default or operate as acquiescence to the Event of Default or affect any subsequent default or Event of Default of the same or a different nature. Secured Party shall give Debtor such notice of any private or public sale as may be required by the Uniform Commercial Code. Secured Party has no obligation to clean up or otherwise prepare the Collateral for Sale. Secured Party shall be free to sell or otherwise dispose of any of the Collateral, notwithstanding that the Collateral may bear or enjoy or be subject to trademarks, servicemarks, patents or other intellectual property protection (the "IP") owned or licensed by the Debtor or its subsidiaries, and Secured Party shall not be liable to the Debtor or any other person by reason of its sale or other disposition of Collateral bearing or enjoying IP. Debtor has no obligation to attempt to satisfy the Obligations by collecting them from any other party and Secured Party may release, modify or waive any collateral provided by any other person to secure any of the Obligations, all without affecting Secured Party's rights or remedies against Debtor. Debtor waives to the extent permitted by applicable law any right it may have to require Secured Party to pursue any third person for any of

the Obligations. Secured Party may comply with any applicable legal requirements in connection with the sale or other disposition of Collateral and such compliance will not be considered to affect adversely the commercial reasonableness of any sale or other disposition of Collateral. Secured Party may sell the Collateral without any warranties and may specifically disclaim any warranties to the extent permitted by law and this procedure shall not be considered to affect adversely the commercial reasonableness of any sale or other disposition of Collateral. If Secured Party sells any of the Collateral on credit, Debtor will be credited only with payments actually made by the purchaser and received by the Secured Party and applied to the satisfaction of Obligations. In the event Secured Party purchases any of the Collateral being sold, Secured Party may pay for the Collateral by crediting some or all of the Obligations to the extent permitted by applicable law. Secured Party shall have an obligation to marshal any assets in favor of Debtor or against or in payment of any of the Obligations or any other obligation owed to Secured Party by Debtor or any other person.

**SECTION 5. LIABILITY AND INDEMNIFICATION**

Secured Party shall not be liable to Debtor for any act or omission, including, without limitation, any act by or negligence of Secured Party or any of its officers, directors, controlling persons, employees, agents or attorneys unless such conduct by Secured Party shall be finally proven in a court of competent jurisdiction to constitute an act in bad faith or gross negligence.

**SECTION 6. AMENDMENTS, WAIVER**

No amendment or waiver of any provision of this Agreement, nor consent to any departure by Debtor herefrom, shall be effective unless the same shall be in writing and signed by Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

**GENERAL**

The titles of the Articles herein are intended for convenience only and shall not be construed to alter either party's obligations or rights as otherwise set forth herein. This Agreement, including all documents incorporated by reference, expresses the entire understanding of the parties and cancels and supersedes any previous agreements, understandings, or representations between the parties related to the subject matter hereof. The invalidity or unenforceability of any provision of this Agreement pursuant to any applicable law shall not affect the validity or enforceability of the remaining provisions hereof. It is understood and agreed that Secured Party shall have the right at all times to enforce the covenants and provisions of this Agreement in strict accordance with the terms hereof, notwithstanding any conduct or practice on the part of Secured Party in refraining from so doing at any time or times;

further, that the failure of Secured Party at any time or times to enforce its rights under this Agreement strictly in accordance with the same shall not result in an alteration or waiver of any of the specific terms and provisions of this Agreement or be construed as having modified the same. Debtor and Secured Party hereby waive any and all rights to trial by jury in any action brought to enforce this Agreement or any amendment thereto or any action brought to enforce payment of any Obligations owing Secured Party. The rights and obligations under this Agreement may not be assigned by Debtor to any other party without the express prior written consent of Secured Party and any attempted assignment in violation of this provision shall be void. Secured Party may assign its rights and interests under this Agreement and if an assignment is made by Secured Party, Debtor shall render performance under this Agreement to the assignee; provided, however, that Secured Party may not assign its rights and interests under this Agreement so long as the Plan Support Agreement dated July 18, 2010 between Debtor and Secured Party shall not have been terminated. Debtor waives and agrees it will not assert against any assignee any claims, defenses or set-offs which Debtor could assert against Secured Party except defenses which pursuant to applicable law cannot be waived. Any notices required by this Agreement shall be deemed to be delivered when a record has been (a) deposited in any United States postal box if postage is prepaid and properly addressed to the intended recipient, (b) received by telecopy or through the internet or other means of electronic communication and (c) when personally delivered. This Agreement shall be governed by and construed in accordance with the laws of the State of New York except to the extent that the Uniform Commercial Code requires the application of the law of another state. Debtor agrees to execute any further documents and to take any further actions reasonably requested by Secured Party to evidence or perfect the security interest granted or intended to be granted hereby, to maintain the first priority of the security interests, or to effectuate the rights and remedies granted to the Secured Party hereby.

**Confidential**

In

IN WITNESS WHEREOF, this Agreement has been duly executed by and on behalf of Debtor this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

JENNIFER CONVERTIBLES. INC. (DEBTOR)

By: \_\_\_\_\_

Title:

**EXHIBIT D**

**Proposed Interim Order**

**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)

(Motion for Joint Administration Pending)

**INTERIM ORDER PURSUANT TO SECTIONS 105(a), 363, 364 AND 503 OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULES 6003 AND 6004 AUTHORIZING,  
BUT NOT REQUIRING, PAYMENT OF CERTAIN PREPETITION OBLIGATIONS TO  
CRITICAL AND FOREIGN VENDOR, HAINING MENGNU GROUP CO., LTD.**

Upon the motion, dated July 19, 2010 (the “Motion”)<sup>2</sup> of Jennifer Convertibles, Inc. and its affiliated debtors, as debtors in possession (collectively, the “Debtors”), for an order authorizing them to pay certain prepetition obligations to Mengnu, all as more fully set forth in the Motion; and upon consideration of the Declaration of Rami Abada in Support of the Debtors’ Chapter 11 Petitions and Request for First Day Relief; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the

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<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> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. The Debtors are hereby authorized but not required, in their discretion and in the ordinary course of business, to pay the prepetition claims of Mengnu in accordance with the Critical Vendor Procedures set forth below.
3. The Debtors are authorized to undertake appropriate efforts to induce Mengnu to enter into an agreement with the Debtors pursuant to the term set forth in the Motion and Exhibit A and Exhibit B to the Motion. This Order is intended to authorize, but shall not require the Debtors to enter into such agreement only when the Debtors determine, in the exercise of their reasonable business judgment, that it is appropriate to do so.
4. In return for payment of the prepetition claims of Mengnu in the ordinary course of business, unless otherwise waived by the Debtors in their sole discretion, the Debtors propose that Mengnu continue to provide goods and services to the Debtors pursuant to the Critical Vendor Procedures set forth below.
5. Mengnu shall receive a secured claim under Bankruptcy Code section 364 on account of the Postpetition Goods and the proceeds thereof. In addition, in accordance with section 364(c)(2) of the Bankruptcy Code, as additional security for the Purchase Price of Purchased Goods, Mengnu shall be granted valid, perfected, first-priority purchase money security interests in and liens (each, a "Lien") on Purchased Goods to the extent of the Purchase Price related to the applicable Purchased Goods and the proceeds thereof, deemed effective and perfected as of the date of the Debtors' receipt of the respective Purchased Goods.

6. To the extent a lien on the Postpetition Goods or the proceeds therefrom upon which Mengnu could foreclose is less than the amount of money owed to Mengnu on account of delivery of Postpetition Goods, Mengnu is entitled to an administrative expense claims under Bankruptcy Code Section 503.

7. Mengnu and the Debtor shall be authorized to and shall abide by the following Critical Vendor Procedures:

- i. The amount of Mengnu's estimated prepetition claim, accounting for any setoffs, other credits, and/or discounts thereto, which would be mutually determined in good faith by Mengnu and the Debtors (but which amount would be used only for the purposes of determining Mengnu's claim under the Interim Critical Vendor Order and/or the Final Critical Vendor Order, as applicable, and would not be deemed a claim allowed by the Court for any other purpose in these cases, and the rights of all interested persons to object to such claims would be fully preserved until further order of the Court);
- ii. The Debtors will agree that, commencing on the last business day of the calendar week in which the order of the court sought hereby is granted and on the last business day of each calendar week thereafter during the pendency of the Chapter 11 Cases, the Debtors will make payments to Mengnu in cash by wire transfer in weekly installments of \$400,000 (the "Critical Vendor Payments").
- iii. On account of its critical vendor status, Mengnu will agree to continue to ship reasonable and projected amounts of goods ordered by the Debtors in accordance with an ordering, production and shipping schedule mutually agreed upon by the Debtors and Mengnu from time to time which shall be consistent with the past ordering, production and shipping practices followed by the parties provided that (i) the Debtors are not in default in their obligation to pay \$400,000 critical vendor payments referred to above, (ii) the Debtors maintain an aggregate cash balance of at least \$2.0 million at all times and (iii) no event of default under the Security Agreement (as defined below) shall have occurred and be continuing.
- iv. The Critical Vendor Payments shall be applied to pay outstanding amounts due from the Debtors to Mengnu on account of pre-petition indebtedness and shall be applied first to the earliest dated payables.

- v. During the chapter 11 cases, the Debtors shall purchase and pay for goods received by it during the chapter 11 cases on open terms, 90 days from receipt of goods.
- vi. Mengnu's agrees that it will not separately seek payment for any reclamation claims or claims under section 503(b)(9) of the Bankruptcy Code outside the terms of the Critical Vendor Orders unless Mengnu's participation in the critical vendor program pursuant to the Critical Vendor Orders is terminated; provided however that such claims would, if thereafter raised by Mengnu, be treated as though they were raised within 20 days after the Petition Date.
- vii. The Debtors will sign an agreement providing to Mengnu a first priority, perfected security interest on all Post Petition Goods (the "Security Agreement") and all proceeds thereof. A copy of the proposed Security Agreement is annexed hereto as Exhibit C. The Debtor shall be authorized to implement all of its obligations under the Security Agreement, all as set forth more fully in the Security Agreement.
- viii. If (i) Mengnu defaults in the performance of its agreement to supply goods to the Debtors as agreed pursuant to the Vendor Agreement (as defined below), the Debtors may, without further order of this Court, declare that Mengnu is in breach of its Vendor Agreement with the Debtors or (ii) either Mengnu or Jennifer proposes a change to the ordering, production and shipment schedule agreed to by the parties and the parties, after discussions, cannot agree upon a change, then, in either such case, Jennifer may declare Mengnu's critical vendor status to be forthwith terminated and immediately cease making the Critical Vendor Payments.. To the extent that Mengnu fails to cure any such default or reach an alternative agreement with the Debtors, the Debtors may seek appropriate relief from the Court, including, without limitation, injunctive relief to compel performance pursuant to the Vendor Agreement. If Mengnu's critical vendor status is terminated as described above, Mengnu shall have no further obligation to ship in accordance with the production and shipping schedule agreed to by the parties and then in effect and any critical vendor payments previously made to Mengnu on account of its prepetition claim in excess of the aggregate purchase price of the goods actually delivered to the Debtors postpetition would be deemed to have been in payment of any then outstanding postpetition obligations owed to Mengnu (with the payments being applied to the oldest amounts unpaid) and not applied to pay any outstanding prepetition amounts owing to Mengnu.
- ix. A letter substantially in the form attached hereto as Exhibit A (or as may be modified pursuant to the Final Critical Vendor Order), along with a copy of the interim critical vendor order (te "Interim Critical Vendor order") and/or the final critical vendor order (the "Final Critical Vendor

Order”), as applicable, granting the relief requested in this Motion would be sent to Mengnu. which letter would provide for Mengnu’s acknowledgement, in the form annexed hereto as Exhibit B, that it has reviewed the terms and provisions of the Interim Critical Vendor Order and/or the Final Critical Vendor Order, as applicable, and consents to be bound thereby. Such a letter, once acknowledged by Mengnu, would constitute an agreement (the “Vendor Agreement”) between the parties that governs their relationship during these cases unless earlier terminated as provided herein

8. All applicable banks and other financial institutions are hereby authorized and required to receive, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Order whether presented prior to or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order.

9. The requirements of Bankruptcy Rules 6003 and 6004 are deemed satisfied or waived, and notwithstanding the possible applicability of Bankruptcy Rules 6003 and 6004, the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

10. The Debtors are authorized to take all steps necessary to carry out this Order.

11. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: July \_\_, 2010  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE