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Hearing Date: To Be Set If Required
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*Attorneys for Ashley Homestores, Ltd. and
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11
: :
JENNIFER CONVERTIBLES, INC. : Case No. 10-13779 (ALG)
: :
Debtors. : (Jointly Administered)
: :
----- X

**OBJECTION OF ASHLEY HOMESTORES, LTD. TO
NOTICE OF FILING OF AMENDED CURE SCHEDULE FOR ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATING TO
THE AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF
JENNIFER CONVERTIBLES, INC. AND ITS AFFILIATED DEBTORS**

Ashley HomeStores, Ltd. ("AHL") hereby respectfully submits this Objection to the purported cure amount set forth in the Notice of Filing of Amended Cure Schedule For Assumed Contracts and Unexpired Leases Relating to the Amended Joint Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliate Debtors [Docket No. 436] (the

"Cure Notice") filed by Jennifer Convertibles, Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"). In support of this Objection, AHL respectfully represents as follows:

1. As of the commencement of these chapter 11 cases, AHL and debtor Hartsdale Convertibles, Inc. ("Hartsdale") were parties to seven separate Trademark Usage Agreements (the "TUAs"), each of which governs Hartsdale's use of certain Ashley trademarks (the "Trademarks") at a specific store location (collectively, the "HomeStores"). The TUAs contain terms and conditions regarding Hartsdale's use of the Trademarks.¹ Hartsdale is seeking to assume six of the TUAs in accordance with the Debtors' chapter 11 plan (the "Plan").

2. In the Cure Notice, the Debtors contend that \$940,012.32 is the consolidated cure amount payable for the TUAs that are proposed to be assumed in connection with the Plan. AHL objects to the purported cure amount set forth in the Cure Notice on the following grounds:

- Pre-petition Purchases Related To Hartsdale Segment: As of the commencement of the Debtors' chapter 11 cases, they owed \$980,366.96 to AHL's affiliate, Ashley Furniture Industries, Inc. ("AFI"), for purchases of product related to the Hartsdale segment of the Debtors' businesses. Section 27(G) of the TUAs provides that it is a default if Hartsdale fails to pay when due all amounts due to AFI.
- Pre-petition Purchases Related To Jennifer Segment: As of the commencement of the Debtors' chapter 11 cases, they owed \$282,529 to AFI for purchases of product related to the Jennifer segment of the Debtors' businesses. The Plan

¹ A representative copy of the TUAs was attached as Exhibit B to the Objection of Ashley HomeStores, Ltd. and Ashley Furniture Industries, Inc. to Confirmation of Debtors' "Amended Joint Chapter 11 Plan of Reorganization for Jennifer Convertibles, Inc. and its Affiliate Debtors" [Docket No. 470].

substantively consolidates all of the Debtors for purposes of making distributions. See Plan at 19 (§ 2.01). Accordingly, all of the Debtors are consolidated for purposes of paying cure amounts in accordance with the Plan and the Debtors must cure all amounts owing to AFI in order assume the TUAs.

- Attorneys' Fees: Since the commencement of the Debtors' chapter 11 cases, AHL has incurred approximately \$135,000 in attorneys' fees and costs in connection with the enforcement of its rights under the TUAs in these proceedings. The TUAs require Hartsdale to indemnify AHL for these amounts. See TUA §§ 28 and 36.
- Post-petition Purchases: Since the commencement of the Debtors' chapter 11 cases, they have purchased product from AFI on a weekly payment basis. Accordingly, as of the effective date of any TUA assumption, the Debtors may owe AFI for up to one week's worth of product purchases (assuming that prior weeks' purchases were paid timely). The failure of the Debtors to reference any outstanding post-petition product purchases in the Cure Notice does not obviate the Debtors' need to pay these amounts (whether as part of the cure amount or as an administrative expense under section 503 of the Bankruptcy Code).

3. By this Objection, AHL and AFI do not waive or withdraw, but expressly reserve and re-assert, their objections to the assumption of the TUAs and to confirmation of the Plan. See Docket Nos. 412 and 470.

WHEREFORE, pursuant to section 11.02 of the Plan and section 365(b) of the Bankruptcy Code, Ashley respectfully requests that the Court: (i) sustain this Objection; (ii) require that the Debtors pay a cure amount of not less than \$1,397,895.96 (plus any unpaid

amount for post-petition product purchases) in connection with any assumption of the TUAs in accordance with the Plan; and (iii) grant such other and further relief as the Court deems to be just and proper.

Dated: February 2, 2011
Santa Monica, California

GREENBERG TRAURIG, LLP

By: /s/ Nathan A. Schultz

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*Attorneys for Ashley Homestores, Ltd. and
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CERTIFICATE OF SERVICE

I, Nathan A. Schultz, certify that on February 2, 2011, a true copy of the **Objection of Ashley HomeStores, Ltd. to Notice of Filing of Amended Cure Schedule for Assumed Executory Contracts and Unexpired Leases Relating to the Amended Joint Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and its Affiliated Debtors** was served by *electronic delivery* upon (i) Olshan Grundman Frome Rosenzweig & Wolosky LLP, Park Avenue Tower, 65 East 55th Street, New York, New York 10022, Attn.: Michael S. Fox, Esq., Jordanna L. Nadritch, Esq., Jayme M. Bethel, Esq., Emails: mfox@olshanlaw.com, jnadritch@olshanlaw.com, jbethel@olshanlaw.com; and (ii) Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10017, Attn.: James S. Carr, Esq., Email: jcarr@kelleydrye.com.

By: /s/ Nathan A. Schultz

Nathan A. Schultz (Admitted Pro Hac Vice)