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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 FOR AN ORDER PURSUANT TO SECTIONS 105(a), 363(b) AND  
541 OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO PAY PREPETITION  
SALES TAXES, USE TAXES, ADMISSIONS TAXES, FRANCHISE TAXES AND  
OTHER GOVERNMENTAL ASSESSMENTS**

Jennifer Convertibles, Inc. (“Jennifer Convertibles”) and its affiliated debtors, as debtors in possession (together, the “Debtors”), file this Motion (the “Motion”) for entry of an order pursuant to sections 105(a), 363(b) and 541 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing, but not directing, the Debtors to remit and pay certain prepetition sales, use and franchise taxes and certain other governmental taxes (the “Taxes”) that

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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).

the Debtors, in their sole discretion, deem necessary, as and when they become due in the ordinary course of the Debtors' business, and (ii) authorizing financial institutions to receive, honor, process and pay all checks issued and electronic payment requests made relating to the foregoing. 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 sofabed 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 sofabed 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. Specifically, in the Ashley segment, net sales from continuing operations were \$5,106,000 and \$3,363,000 for the thirteen-week periods ended May 29, 2010 and May 30, 2009, respectively. Net sales from continuing operations increased by 51.8%, or \$1,743,000 for the thirteen-week period ended May 29, 2010 compared to the thirteen-week period ended May 30, 2009. The increase is largely attributable to four new Ashley locations open during the thirteen-week period ended May 29, 2010, that were not open during the same thirteen week period last year.

9. 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.

10. 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**

11. 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.

12. The statutory predicates for the relief requested herein are sections 105(a), 363 and 541 of the Bankruptcy Code, and Rules 6003 and 6004 of the Bankruptcy Rules.

## **Sales, Franchise, Property and Commercial Rent Taxes**

13. In connection with the Debtors' operations, the Debtors collect and remit a number of taxes<sup>2</sup> to various state and local taxing authorities (the "Taxing Authorities"), including those Taxing Authorities listed on Exhibit A annexed hereto (the "Taxing Authorities List").<sup>3</sup>

14. Sales Taxes. In the normal course of its business, the Debtors engage in sales of furniture and accessories, fabric and leather protection services and home delivery charges to their customers. In connection therewith, to the extent required under applicable state law, the Debtors collect an assortment of sales taxes (the "Sales Taxes") from their customers. The Debtors then remit the Sales Taxes to the relevant Taxing Authorities on the basis of the Sales Tax actually collected from customers during a specified period. Jurisdictions differ with regard to the frequency of payments, with payments ranging from monthly to quarterly to semi-

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<sup>2</sup> The Debtors remit taxes to taxing authorities in respect of federal, state, and local income taxes, social security, and Medicare that the Debtors withhold from employees' wages. Remittance of these taxes to the applicable taxing authorities is addressed in the Debtors' Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code for an Order (i) Authorizing Payment of Wages, Compensation, and Employee Benefits and (ii) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations, filed concurrently herewith.

<sup>3</sup> Although the Debtors believe the list of Taxing Authorities set forth in Exhibit A is substantially complete, the relief requested herein is to be applicable with respect to all Taxing Authorities and is not limited to those Taxing Authorities listed on Exhibit A. Further, the inclusion of any entity on the Taxing Authorities List is not an admission by the Debtors that such entity is entitled to the relief requested herein, and the Debtors reserve all rights with respect thereto.

annually. The majority of the Debtors' Sales Taxes are remitted on a monthly basis. The Debtors believe that, as of the Petition Date, approximately \$326,520 in Sales Taxes is due and owing for periods prior to and including such date.

15. Franchise Taxes. A domestic stock-for-profit corporation incorporated in the State of Delaware is required to pay annual franchise tax (the "Franchise Tax"). The assessment is based on the authorized shares of common stock. The minimum tax is \$75 with a maximum tax of \$180,000.00. Corporations owing \$5,000 or more make estimated payments with 40% due June 1st, 20% due by September 1st, 20% due by December 1st, and the remainder due March 1st. The Debtors' annual Franchise Tax assessment approximates \$15,800 for Jennifer Convertibles, Inc. and the minimum of \$75 for each Elegant Living Management, Ltd., Jennifer Management II Corporation, Jennifer Management III Ltd., Jennifer Management V Ltd., and Jennifer Purchasing Corporation. The Debtors believe that, as of the Petition Date, approximately \$0 in Franchise Taxes is due and owing for periods prior to and including such date.

16. Property Taxes. The Debtors are subject to business personal property taxes imposed by certain municipalities (the "Property Taxes"). The Property Taxes are assessed on the Debtors' business personal property within certain jurisdictions based on the value of such property. Jurisdictions differ in regard to the manner in which the tax is calculated and the due dates of related tax filings. The Debtor is subject to business personal property taxes in various jurisdictions as dictated by store locations. The Debtors believe that, as of the Petition Date, approximately \$5,917 in Property Taxes is due and owing for periods prior to and including such date.

17. The Debtors are subject to a commercial rent tax (the “Commercial Rent Tax”) imposed by the City of New York, New York, on certain property leased within the borough of Manhattan south of the center line of 96th Street. The Commercial Rent Tax is based on gross rent paid. The Debtors must file an annual return on or before June 20th covering the preceding year, from June 1st to May 31st and must also file quarterly returns. The Debtors believe that as of the Petition Date, approximately \$7,000 in Commercial Rent Tax is due and owing for periods prior to and including such date.

#### **Method of Payment**

18. As stated above, in connection with the normal operation of their business, the Debtors incur and pay Sales Taxes, Franchise Taxes, Property Taxes and Commercial Rent Tax (collectively, the “Taxes”). The Debtors pay the Taxes to the Taxing Authorities on a periodic basis with funds drawn by checks or by wire transfers depending on the particular Taxing Authority.

#### **Relief Requested**

19. By this Motion, the Debtors seek authorization to pay, in their sole discretion, any of the Taxes (including any penalties and interest thereon), that have arisen prior to the Petition Date, including all Taxes subsequently determined upon audit, or otherwise, to be owed for periods prior to the Petition Date, and to continue paying such Taxes in the ordinary course of business. As discussed above, the Taxing Authorities List is annexed to this Motion as Exhibit A. Although the Debtors believe the Taxing Authorities List is substantially complete, the Debtors request that the relief sought herein apply with equal force to all Taxing Authorities and not be limited to those Taxing Authorities listed.

20. In addition, prior to the Petition Date, certain Taxing Authorities were sent checks or received wires in respect of Taxes that may not yet have cleared the Debtors' banks or other financial institutions (together, the "Banks"). To the extent any check or wire has not yet cleared the Banks, the Debtors further request that the Court authorize the Banks to receive, process, honor, and pay such checks or wires if and to the extent the Debtors request same. Consistent with the foregoing, to the extent the Taxing Authorities have not otherwise received payment for all prepetition Taxes owed, the Debtors seek authorization to issue replacement checks or provide for other means of payment to the Taxing Authorities, to the extent necessary to pay all outstanding prepetition Taxes.

21. Finally, the Debtors request authority to pay prepetition Taxes that are currently under review or that may be subject to review in the future, but for which no formal assessment has been made. The Debtors reserve all rights to contest such amounts. Through the Motion, the Debtors seek authority to negotiate, compromise and pay any Taxes subsequently determined to be owed for prepetition periods. Any amounts that are actually due, but have not yet been paid to the Taxing Authorities because of this case, represent a small fraction of the Debtors' total assets. Further, some, if not all, of the Taxing Authorities may cause the Debtors to be audited if the Taxes are not paid immediately or may attempt to take action against the Debtors' officers and directors. Such audits will unnecessarily divert the Debtors' attention away from their efforts in these chapter 11 cases. If the Debtors do not pay such amounts in a timely manner, the Taxing Authorities may attempt to suspend the Debtors' operations, file liens, and seek to lift the stay or pursue other remedies that will harm the estates.



### **Basis for Relief**

22. Numerous grounds exist to authorize the payment of the prepetition Taxes, which payments are critical to the Debtors' continued and uninterrupted operations. The grounds include the following: (i) amounts collected on account of certain Taxes are not property of the estate under Bankruptcy Code section 541(d); (ii) portions of the tax may be entitled to priority status pursuant to Bankruptcy Code section 507(a)(8); (iii) governmental entities may sue the Debtors' directors and officers, which will distract them from the Debtors' reorganization efforts; and (iv) Bankruptcy Code sections 105(a) and 363 permit the Court to grant the relief sought.

23. Section 363. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). 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 continuation of customer programs and 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 the Taxes could have a material adverse impact on their ability to operate in the ordinary course of business.

24. Section 105. Moreover, pursuant to section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.” 11 U.S.C. § 105(a). Numerous courts have used section 105 equitable powers under 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.

25. Section 507. In addition, section 507(a)(8) of the Bankruptcy Code provides priority status to taxes measured by income or gross receipts, excise taxes and other types of taxes. Most, if not all, of the Taxes herein are afforded priority status under section 507(a)(8) of the Bankruptcy Code. As priority claims, the Taxes must be paid in full before any general unsecured obligations of the Debtors may be satisfied. The Debtors believe that sufficient assets exist to pay all prepetition Taxes in full under any plan of reorganization that may ultimately be proposed and confirmed by this Court. Accordingly, the Debtors submit that the proposed relief will only affect the timing of the payment of the prepetition Taxes and will not prejudice the rights of any general unsecured creditor or other party in interest.

26. Preventing Debtor Liability. Further, the Debtors seek to pay prepetition Taxes in order to, among other things, discourage any Taxing Authorities from taking actions that may interfere with the Debtors’ continued, uninterrupted operations and successful reorganization.

Nonpayment of these obligations may cause the Taxing Authorities to take precipitous action, including, but not limited to, filing liens, preventing the Debtors from conducting business in the applicable jurisdictions, pursuing payment of certain of the Taxes from the Debtors' directors, officers, and other employees, and seeking to lift the automatic stay, all of which would disrupt the Debtors' day-to-day operations and could potentially impose significant costs on the Debtors' estates.

27. Many federal and state statutes hold officers and directors of collecting entities personally liable or criminally responsible for certain taxes owed by those entities. *See, e.g.*, N.Y. TAX LAW §§ 1131 & 1133 (McKinney 2007) (providing for personal liability for officers and directors for corporation's failure to collect or remit sales taxes); *see also* 26 U.S.C. § 6672(a) (2005) (making "responsible persons" liable for any payments which were willfully not made on federal trust fund taxes).

28. To the extent that certain of the Taxes remain unpaid by the Debtors, the Debtors' officers, directors, and other employees may be subject to lawsuits or criminal prosecution during the pendency of these chapter 11 cases. The threat of a lawsuit or criminal prosecution, and any ensuing liability, would distract the Debtors and their personnel from important tasks, to the detriment of all parties in interest. The dedicated and active participation of the Debtors' directors, officers, and other employees is not only integral to the Debtors' continued, uninterrupted operations, but also essential to the orderly administration of these chapter 11 cases. Accordingly, the Debtors submit that the proposed relief is in the best interests of the Debtors' estates,

29. Section 541. Finally, most, if not all, of the Taxes are collected by the Debtors on behalf of the applicable Taxing Authority and are held in trust by the Debtors for the benefit of

the Taxing Authorities. As such, these funds do not constitute property of the Debtors' estates pursuant to section 541 of the Bankruptcy Code. *See, e.g., Begier v. IRS*, 496 U.S. 53, 59-61 (1990) (withholding taxes are property held by debtors in trust for another and, as such, are not property of debtors' estates); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3d Cir. 1994) (withheld taxes were subject to a trust); *Al Copeland Enters., Inc. v. Texas*, 991 F.2d 233, 235 (5th Cir. 1993) (debtors' prepetition collection of sales taxes and interest thereon held subject to trust and not property of estate); *Tex. Comptroller of Pub Accts. v. Megafoods Stores, Inc.*, 163 F.3d 1063, 1067-68 (9th Cir. 1988) (under Texas law, state sales taxes collected created statutory trust fund, if traceable, and were not property of the estate); *Shank v Wash. State Dep't of Revenue (In re Shank)*, 792 F.2d 829, 830 (9th Cir. 1986) (sales taxes required by state law to be collected by sellers from their customers are "trust fund" taxes); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 433 (2d Cir. 1985) (sales taxes are "trust fund" taxes); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (excise and withholding taxes are "trust fund" taxes); *In re Tap, Inc.*, 52 B.R. 271, 272 (Bankr. D. Mass. 1985) (withholding taxes are "trust fund" taxes); *see generally In re Columbia Gas Sys.*, 997 F.2d 1039, 1060 (3d Cir. 1993) (indicating that even if a statute does not establish an express trust, a constructive trust may be found). Accordingly, because payment of the sales and use taxes contemplated herein does not implicate property of the estate, such payments will not otherwise be available to the Debtors' estates or their creditors.

30. Relief similar to that requested in this Motion has been granted in other chapter 11 cases in this District. *See, e.g., In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 6, 2006) (order authorizing payment of prepetition sales, use and franchises taxes and business license fees); *In re Musicland Holding Corp.*, Case No. 06-10064 (SMB) (Bankr.

S.D.N.Y. Jan. 18, 2006) (order authorizing payment of prepetition sales and use taxes); *In re Calpine Corp.*, Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. Dec. 27, 2005) (orders authorizing payment of (i) prepetition property taxes and (ii) prepetition sales, use and franchise taxes); *In re Delphi Corp.*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 14, 2005) (order authorizing payment of prepetition sales, use, trust fund and other taxes); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005) (order authorizing payment of prepetition sales and use taxes, employment taxes and other similar taxes); *In re Tower Automotive, Inc.*, Case No. 05-10578 (ALG) (Bankr. S.D.N.Y. Feb. 3, 2005) (order authorizing payment of prepetition sales, use and franchise taxes); *In re Footstar, Inc.*, Case No. 04-22350 (ASH) (Bankr. S.D.N.Y. Apr. 7, 2004) (order authorizing the debtors to pay prepetition taxes).

31. Nothing in this Motion should be construed as impairing the Debtors' right to contest the amount of any Taxes that may be owed to any Taxing Authority, and the Debtors expressly reserve all of their rights with respect thereto.

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

32. Pursuant to Bankruptcy Rule 6003, "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 herein, 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 the Debtors and their estates. To implement the foregoing successfully and insure the Debtors' operations are not disrupted, the Debtors seek a waiver of the notice requirement 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**

33. 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 Haining Mengnu Group Co. Ltd.; (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**

34. 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, attached hereto as Exhibit B 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  
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*Proposed Attorneys for the Debtors and  
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## EXHIBIT A

### Taxing Authorities List

<u>ENTITY</u>	<u>TYPE OF TAX and (JURISDICTION)</u>	<u>PAYEE</u>
Elegant Living Management, Ltd.	Sales Tax (CT)	Commissioner of Revenue Services
Elegant Living Management, Ltd.	Sales Tax (MD)	Maryland Comptroller of Treasurer
Elegant Living Management, Ltd.	Sales Tax (NJ)	New Jersey Sales Tax
Elegant Living Management, Ltd.	Sales Tax (NY)	NYS Sales Tax
Elegant Living Management, Ltd.	Sales Tax (VA)	VA Department of Taxation
Jennifer Convertibles Inc.	Sales Tax (CA)	CA State Board of Equalization
Jennifer Convertibles Inc.	Sales Tax (CT)	Commissioner of Revenue Services
Jennifer Convertibles Inc.	Sales Tax (DC)	DC Treasurer
Jennifer Convertibles Inc.	Sales Tax (FL)	Florida Department of Revenue
Jennifer Convertibles Inc.	Sales Tax (IL)	Illinois Department of Revenue
Jennifer Convertibles Inc.	Sales Tax (MD)	Maryland Comptroller of Treasurer
Jennifer Convertibles Inc.	Sales Tax (MA)	Massachusetts Department of Revenue
Jennifer Convertibles Inc.	Sales Tax (NV)	Nevada Dept of Taxation
Jennifer Convertibles Inc.	Sales Tax (NJ)	New Jersey Sales Tax
Jennifer Convertibles Inc.	Sales Tax (NY)	NYS Sales Tax
Jennifer Convertibles Inc.	Sales Tax (NC)	NC Department of Revenue
Jennifer Convertibles Inc.	Sales Tax (PA)	PA Department of Revenue
Jennifer Convertibles Inc.	Sales Tax (VA)	VA Department of Taxation
Jennifer Management II Corp.	Sales Tax (MI)	State of Michigan
Jennifer Management III Ltd.	Sales Tax (CA)	CA State Board of Equalization
Jennifer Management III Ltd.	Sales Tax (GA)	Georgia Department of Revenue
Jennifer Management III Ltd.	Sales Tax (MD)	Maryland Comptroller of Treasurer
Jennifer Management III Ltd.	Sales Tax (PA)	PA Department of Revenue
Jennifer Management V Ltd.	Sales Tax (CA)	CA State Board of Equalization
Jennifer Management V Ltd.	Sales Tax (FL)	Florida Department of Revenue
Jennifer Management V Ltd.	Sales Tax (NJ)	New Jersey Sales Tax
Jennifer Management V Ltd.	Sales Tax (NV)	Nevada Dept of Taxation
Nicole Convertibles Inc.	Sales Tax (NY, NJ)	NYS Sales Tax
Elegant Living Management, Ltd.	Commercial Rent Tax (NYC)	NYC Dept of Finance
Jennifer Convertibles Inc.	Franchise Tax (DE)	Delaware Secretary of State
Elegant Living Management, Ltd	Franchise Tax (DE)	Delaware Secretary of State
Jennifer Management II, Corp	Franchise Tax (DE)	Delaware Secretary of State
Jennifer Management III, Ltd	Franchise Tax (DE)	Delaware Secretary of State
Jennifer Management V, Ltd.	Franchise Tax (DE)	Delaware Secretary of State
Jennifer Purchasing Corp	Franchise Tax (DE)	Delaware Secretary of State



**EXHIBIT B**

**Proposed 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)

**ORDER PURSUANT TO SECTIONS 105(a) 363(b), AND 541 OF THE  
BANKRUPTCY CODE AUTHORIZING DEBTORS TO PAY  
PREPETITION SALES TAXES, USE TAXES, ADMISSIONS TAXES AND  
OTHER GOVERNMENTAL ASSESSMENTS**

Upon the motion, dated July 19, 2010 (the “Motion”) <sup>2</sup> of Jennifer Convertibles, Inc. (“Jennifer Convertibles”) and its affiliated debtors, as debtors in possession (collectively, “Debtors”), for an order pursuant to sections 105(a), 363(b) and 541 of the Bankruptcy Code, authorizing the Debtors to pay prepetition Taxes, 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

<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.

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 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 authorized and empowered, but not directed, pursuant to sections 105(a), 363(b), and 541 of the Bankruptcy Code, to pay all prepetition Taxes due and owing, and to continue paying such Taxes in the ordinary course of business, including, but not limited to, those listed on Exhibit A annexed hereto consistent with the practices and policies in effect as of the commencement of the Debtors' chapter 11 cases, including, without limitation, through the issuance of postpetition checks.
3. The Banks and all other applicable banks or financial institutions are authorized, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor and pay all checks drawn on or direct deposit and funds transfer instructions relating to the Debtors' accounts and any other transfers that are related to the Taxes and the costs and expenses incident thereto; provided, however, that sufficient funds are available in the accounts to make such payments; and provided further that any such bank or financial institution may rely on the representations of the Debtors regarding which checks that were drawn or instructions that were issued by the Debtors before the Petition Date should be honored postpetition pursuant to an Order of this Court and that any such bank or financial institution shall not have any liability to any party for relying on the representations of the Debtors as provided herein.

4. Bankruptcy Rule 6003(b) has been satisfied.
5. The requirements of Bankruptcy Rule 6004(a) are waived,
6. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.
7. The Debtors are authorized to take all steps necessary to carry out this Order.
8. This Court retains jurisdiction to interpret and enforce this Order,

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

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UNITED STATES BANKRUPTCY JUDGE