

EXHIBIT “D”

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**Hearing Date: January 25, 2011 at 11:00 a.m.
Objection Deadline: January 18, 2011 at 4:00 p.m.**

Counsel for the Debtors and Debtors in Possession

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

<p>In re:</p> <p>JENNIFER CONVERTIBLES, INC.,¹</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 10-13779 (ALG)</p> <p>(Jointly Administered)</p>
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**DEBTORS' MOTION FOR AUTHORITY TO (I) ENTER INTO AMENDED
NONRESIDENTIAL REAL PROPERTY LEASES PURSUANT TO 11 U.S.C. § 363 AND
(II) TO ASSUME AMENDED NONRESIDENTIAL REAL PROPERTY LEASES
PURSUANT TO 11 U.S.C. § 365, EFFECTIVE AS OF THE
EFFECTIVE DATE OF A CHAPTER 11 PLAN OF REORGANIZATION**

Jennifer Convertibles, Inc. ("Jennifer Convertibles") and its affiliated debtors, as debtors and debtors in possession (together, the "Debtors") hereby move this Court (the "Motion") for entry of an order pursuant to sections 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), for the entry of an order authorizing the Debtors to (i) enter into amended nonresidential real property leases (the "Amended Leases") and (ii) to assume the Amended

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

Leases, effective as of the effective date of the Debtors' chapter 11 plan of reorganization (the "Effective Date"). 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. An Official Committee of Unsecured Creditors was appointed in these chapter 11 cases on July 23, 2010.

2. On September 3, 2010, the Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs. On September 15, 2010, the meeting of creditors pursuant to section 341 of the Bankruptcy Code was held.

3. 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, and (ii) six big box, full-line furniture stores operated under the Ashley Furniture HomeStore brand (the "Ashley Stores") under a license from Ashley Furniture Industries, Inc. ("Ashley").

4. As of the Petition Date, the Debtors' stores included 130 stores operated by the Jennifer segment. During fiscal 2007, the Debtors opened their first Ashley Store. As of the Petition Date, the Debtors operated seven Ashley Stores. Since the Petition Date, the Debtors have closed approximately fifty (50) of their store locations, including one Ashley Store.

5. As of the date hereof, the Debtors employ 404 people: 248 people in the Jennifer segment (including warehouse personnel), 115 people in the Ashley segment, and 41 corporate employees.

6. On November 19, 2010, the Debtors filed their Disclosure Statement with Respect to the Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliated Debtors, and Joint Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliated Debtors.

7. On December 22, 2010, the Debtors filed their Amended Disclosure Statement with Respect to the Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliated Debtors (the "Amended Disclosure Statement") and their Amended Joint Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliated Debtors (the "Amended Plan"). Also on December 22, 2010, the Bankruptcy Court entered an order approving the Amended Disclosure Statement (Docket No. 397). Confirmation is scheduled for January 25, 2011. The factual background relating to the Debtors' commencement of these chapter 11 cases is set forth in additional detail in the Amended Disclosure Statement, incorporated herein by reference.

Jurisdiction

8. 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.

9. The statutory predicates for the relief requested herein are Bankruptcy Code sections 363 and 365.

Relief Requested

10. By this Motion, the Debtors request entry of an order pursuant to sections 363(b) and 365(a) of the Bankruptcy Code authorizing the Debtors to enter into those Amended Leases listed in Exhibit A attached hereto, and to assume the Amended Leases effective as of the Effective Date. The Debtors believe the relief sought herein is reasonable, represents an appropriate exercise of their sound business judgment, and is in the best interest of their estates and creditors. As discussed in greater detail herein, the Amended Leases are the products of arms-length negotiations by and between the Debtors and the various counterparties, thus assumption of the Amended Leases will significantly benefit the Debtors, their estates and creditors, without any harm or prejudice to the respective counterparties.

The Amended Leases

11. The Debtors are currently the owner of (i) the largest group of sofabed specialty retail stores and leather specialty retail stores in the United States, and (ii) six Ashley Stores, operated under a license from Ashley. As part of their operations, the Debtors estimate that, as of the Petition Date, they were party to approximately 140 unexpired leases (the "Leases").

12. Throughout these chapter 11 cases, the Debtors have been diligently crafting a comprehensive reorganization strategy in an effort to maximize the value of their estates for the benefit of their creditors. In furtherance of this effort, the Debtors, in conjunction with KPMG CF Realty LLC ("KPMG"), the Debtors' special real estate advisors, have engaged in arms-length negotiations with the many counterparties to the various Leases, in order to modify the terms of the Leases for their go forward store locations. This process has resulted in Amended

Leases for approximately sixty (60) of the Debtors' store locations, each of which is listed on Exhibit A, attached hereto.²

13. The Debtors have worked diligently and engaged in substantial negotiations with their key supplier, Haining Mengnu Group Co. Ltd. ("Mengnu"), as well as the Official Committee of Unsecured Creditors (the "Committee"), resulting in the filing of the Debtors' Amended Plan on December 22, 2010. In accordance with the Debtors' Amended Plan, the Debtors are seeking to assume the Amended Leases effective as of the Effective Date.

14. Pursuant to the *Debtors Motion For An Order Extending The Time Within Which The Debtors Must Assume Or Reject Unexpired Leases Of Nonresidential Real Property*, dated October 18, 2010 (docket no. 292), the Debtors have requested an extension of time to assume or reject the Leases through and including February 13, 2011. The Debtors anticipate that the Debtors' Amended Plan will be confirmed on January 25, 2011.

15. The Debtors propose that they should be able to enter into and assume the Amended Leases, effective upon the Effective Date, because doing so will benefit the Debtors, their estates and creditors, without any harm or prejudice to the respective Lease counterparties. Specifically, the Amended Leases (i) significantly reduce prepetition amounts owed by the Debtors; (ii) reduce rental obligations for the go-forward reorganized Debtors; and (iii) reduce overhead expenses. The Debtors have continued to pay monthly rent under the Leases, and will continue to do so until the terms of the Amended Leases, and thus the revised rental obligations, become effective. For all of these reasons, the Debtors are requesting authority of this Court to (i) enter into the Amended Leases and (ii) to assume the Amended Leases effective as of the Effective Date.

² Approximately twenty-five of the Amended Leases have been agreed to in form and substance, but remain unsigned pending approval by this Court.

Basis for Relief Requested

A. The Debtors' Entry into the Amended Leases Have a Sound Business Purpose as Required by Section 363 of the Bankruptcy Code

16. The Debtors believe that entering into the Amended Leases may not be outside the ordinary course of the Debtors' business, nonetheless, the standard is met. Pursuant to section 363(b)(1) of the Bankruptcy Code, a debtor, after notice and a hearing, may use, sell or lease property, other than in the ordinary course of business. A debtor must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. See In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him a good business reason to grant the application"); see also In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

17. Once a debtor articulates a valid business justification, "[t]he business judgment rule is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1990). Courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence. Id.

18. Here, more than ample business justification exists. As set forth above, the Debtors and KPMG engaged in numerous arms-length negotiations with the Lease counterparties. The terms of the resultant Amended Leases provide numerous tangible and significant benefits to the Debtors, specifically, ongoing rental obligations are decreased, certain prepetition arrearages have been waived and/or amortized, and in a large number of the Amended Leases, "kick-outs" were agreed to, significantly reducing costs for the reorganized

Debtors. Thus, the Debtors respectfully request that entry into the Amended Leases should be approved.

B. Assumption of the Amended Leases Satisfies the Business Judgment Test of Section 365 of the Bankruptcy Code

19. Section 365(a) of the Bankruptcy Code provides that a debtor “subject to the court’s approval, may assume or reject any executory contract or unexpired lease.” 11 U.S.C. § 365(a). Courts routinely approve motions to assume or reject executory contracts or unexpired leases upon a showing that the debtor’s decision to take such action will benefit the debtor’s estate and is an exercise of sound business judgment. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993) (stating that section 365 of the Bankruptcy Code “permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the debtor and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject”); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts under section 365 is that of “business judgment”); In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996) (“A bankruptcy court reviewing a trustee a decision to assume or reject an executory contract should apply its business judgment to determine if it would be beneficial or burdensome to the estate to assume it.”). Courts generally will not second-guess a debtor’s business judgment concerning the assumption, assumption and assignment, or rejection of an executory contract or unexpired lease. See In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) (“[A] court will ordinarily defer to the business judgment of the debtor’s management”).

20. The “business judgment” test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the

debtor's estate. See, e.g., Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores, Inc.), 194 B.R. 555, n. 1 (Bankr. S.D.N.Y. 1996) ("In reviewing a debtor's decision to assume or reject an executory contract, the court must examine the contract and circumstances and apply its best 'business judgment' to determine if the assumption or rejection would be beneficial or burdensome to the estate."). Further, nothing prevents the parties to a contract from agreeing to postpetition modifications to the contract prior to its assumption. See, City of Covington v. Convington Landing Ltd. P'ship, 71 F.3d 1221, 1227 (6th Cir. 1995) ("Nothing in the Code suggests that the debtor may not modify its contracts when all parties to the contract consent.").

21. The proposed deadline for the Debtors to notice a landlord as to whether the Debtors intend to assume or reject the Leases is January 13, 2011. If the Debtors take no action by such deadline, the Leases will be assumed by operation of the Amended Plan. At this final stage of these chapter 11 cases, the Debtors anticipate that the consensual chapter 11 Amended Plan will be confirmed. Assumption of the Amended Leases effective as of the Effective Date is necessary for the Debtors to conduct their post-Effective Date operations.

22. Without the court's approval to assume the Amended Leases, the Debtors will lose a number of benefits as set forth above. Under these circumstances, the Debtors respectfully submit that the assumption of the Amended Leases, effective as of the Effective Date, is in the best interests of the estates and the Debtors' creditors, and accordingly should be approved.

23. The terms of the Amended Leases have been shared with both counsel to the Committee and counsel to Mengnu. Neither party has any objections at this point.

Notice

24. No trustee or examiner 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) counsel to the Official Committee of Unsecured Creditors; (iii) the SEC; (iv) all counterparties to the Leases listed in Exhibit A; and (v) any other party who has filed a notice of appearance in these cases. The Debtors submit that such notice is sufficient under the circumstances.

No Previous Request

25. 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
December 23, 2010

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EXHIBIT A

List of Amended Leases

<u>Store Code</u>	<u>Landlord Name</u>	<u>Store Location</u>
AAC	Woodbury Office Seven	417 Crossways Park Drive, Woodbury, NY
AEL	88-12 Queens Boulevard, LLC	88-12 Queens Boulevard, Elmhurst, NY
AKP	Ayres Associates	2233 Flatbush Avenue, Brooklyn, NY
BAR	Robert J. Sabbagh, George A. Wardi and Henry J. Wardi	8515-8517 Fourth Avenue, Brooklyn, NY
BP	M&K Post Road Associates, LLC	1770-1776 Boston Post Road, Milford, CT
CB	MJD Investment Company	1000 East Imperial Highway, Suite A-3, Brea, CA
CCB*	280 Metro L.P.	280 Metro Center, Colma, CA
CCC	William A. Benbassat	5901-03 Sepulveda Boulevard, Culver City, CA
CD	Enea Properties Company, LLC	6698 Amador Plaza Road, Dublin, CA
CFH*	P.O.B. Apollo Fremont, L.P.	39133 Fremont Hub, Suite 341, Fremont, CA
CG*	Lexington Partners	114 North Brand Boulevard, Glendale, CA
CHB	GGF Huntington, LLC	16672 "B" Beach Boulevard, Huntington Beach, CA
CLH*	Laguna Hills Investment Company	24315 Avenida de la Carlotta, Laguna Hills, CA
CLT	Midland Pacific LLC	18477 Ventura Boulevard, Tarzana, CA
CPA	Irwin Sherry	80 North Lake, Pasadena, CA
CRP	Man Je Kim	5673 Redwood Drive, Rohnert Park, CA
CS	Ostrich, Inc.	3550 Stevens Creek Boulevard, Suite 130, San Jose, CA
CSA	Tommy Kennedy	729 Fourth Street, San Rafael, CA
CT*	KIR Torrance LP c/o Kimco Realty Corporation	19510 Hawthorne Boulevard, Torrance, CA
CTO	Barbara C. Escallier, Jeffrey V. Escallier, and Goodman Family Partners	125 North Moorpark Road, Thousand Oaks, CA
CTU	The Irvine Company LLC	2836 El Camino Real, Tustin, CA
CVN	1900-1902 Van Ness LLC	1900 Van Ness Avenue, San Francisco, CA
CWH	Klein-Miller Investment Co.	8751 Beverly Boulevard, Los Angeles, CA
FCL	Sherwood 110 Corp.	1161 and 1681A Broad Hollow Road and Sherwood Avenue, Farmingdale, NY
FR	Pond Road Associates, LLC	4345 Highway 9, Freehold, NJ
GEO*	Nam Won Paek	1634 Wisconsin Avenue, N.W., Washington, DC
HC	Pine Top Associates	Archway Shopping Center, Scarsdale, NY
HNJ*	Holmdel Towne Center LLC	Holmdel Towne Shopping Center, Holmdel, NJ
HR	Samuel Lotstein Realty Company, LLC	1141 High Ridge Road, Stamford, CT
JGC*	Ayelet Management LLC	2400 Grand Concourse, Bronx, NY
JLF	Sherwood 110 Corp.	1161 and 1681A Broad Hollow Road and Sherwood Avenue, Farmingdale, NY
JLV	Toys "R" Delaware-Inc.	West Sunrise Highway, Valley Stream, NY
JLY*	B.T.M.I., Ltd.	2345 Central Avenue, Yonkers, NY
JP	NTH 255W, LLC	255 Route 4 West, Paramus, NJ
JSO	Stratis Corporation, Inc.	936-940 US Highway 22, Somerville, NJ
JUC	Glenn A. Herrigel and Marianne S. Herrigel	2550 Route 22, Union, NJ
MCO	Dobbin Corner, LLC	6478 Dobbin Center Way, Columbia, MD

MGC*	Cipriano Square Plaza Corporation	Cipriano Square Plaza, D-2 and E-1, Greenbelt, MD
MNJ*	BPGI TIC, LLC, BPG LTD TIC, LLC, EAST GATE EGS TIC, LLC, EGS INV TIC, LLC, Bergen PA TIC, LLC and Marlborough TIC, LLC	Store 17 - East Gate Square, Mt. Laurel Township, Moorestown, NJ
MP	Greenspring Associates Limited Partnership	Reisterown Road, Owings Mills, MD
PSL	416-424 Realty Corp.	416-424 Fifth Avenue, Brooklyn, NY
RFS*	Abill Realty Corp.	205 Route 46 - Unit C, Totowa, NJ
RS*	Westport Retail, LLC	1803-1807 Post Road East, Westport, CT
SAB	905 WPR, LLC	905 Story Avenue, Bronx, NY
TAC	111 Realty Company	111 Third Avenue, New York, NY
TTS	26 West 23 rd Street Realty LLC	26 West 23 rd Street, New York, NY
UAY	Bay Plaza West, LLC	Bartow Avenue, Bronx, New York
UEH	Beller and Beller	375 County Road 39 (f/k/a 375 North Highway), Southampton, NY
UJC	College Avenue, Inc.	85 East Route 59, Nanuet, NY
UJN*	Jacob Pearlstein, LLC	190-10 Northern Boulevard, Flushing, NY
ULC*	J.W. Mays, Inc.	229 Livingston Street, Brooklyn, NY
UMA	Annapolis Harbour Center Associates, LLC	Annapolis Harbour Center, A-5, Anne Roundel County, MD
UPA	C.J. Realty, L.P.	325 North Broadway, Jericho, NY
UPK*	Acadia Cortlandt LLC	Route 6, Cortlandt (Mohegan Lake), NY
USC	Carol Last and Daniel Goldman d/b/a Woodrose Realty Co.	30-52 Steinway Street, Astoria, NY
WFN	Frank O. Algier	1839 South Road, Wappingers Falls, NY
WNJ*	Twelve Sixty Three - M, L.L.C.	Ridge Road and Route 522, South Brunswick, NJ
WSF	AMB-SGP CIF-I, LLC	2960 Alvarado Street, Units C-D, San Leandro, CA

* Modification agreements agreed to in-principle and awaiting execution.

EXHIBIT B

Proposed Order