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**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 (b), AND 503(b) OF THE  
BANKRUPTCY CODE FOR (I) AUTHORIZATION TO (A) CONTINUE THEIR  
LIABILITY, PROPERTY AND OTHER INSURANCE PROGRAMS, (B) PAY ALL  
OBLIGATIONS IN RESPECT THEREOF, AND (II) FOR AUTHORIZATION FOR  
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND  
TRANSFERS RELATED TO SUCH OBLIGATIONS**

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 503(b) of the Bankruptcy Code (i) authorizing the Debtors to (a) continue their liability, property and other insurance programs, (b) pay all obligations in respect thereof, and (ii) authorizing financial institutions to receive, honor, process

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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).

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 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. 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(b) and 503(b) of the Bankruptcy Code, and Rules 6003 and 6004 of the Bankruptcy Rules.

### **Relief Requested**

13. By this Motion, the Debtors request entry of an order pursuant to sections 105(a), 363 (b), and 503(b) of the Bankruptcy Code (i) authorizing the Debtors to (a) continue their liability, property and other insurance programs (collectively, the “Insurance Programs”), (b) pay all obligations in respect thereof (the “Insurance Obligations”).

14. Furthermore, as part of their cash management system, the Debtors maintain disbursement accounts at certain banks and other financial institutions (the “Banks”). The Debtors draw upon funds in their disbursement accounts to satisfy their obligations arising from the Insurance Programs. The Debtors request that the Court authorize the Banks to receive, honor, process, and pay any and all checks drawn, or electronic fund transfers requested or to be requested, on the disbursement accounts to the extent that such checks or electronic fund transfers relate to any Insurance Obligations.

### **The Debtors’ Insurance Programs and Related Obligations**

15. In connection with the operation of their businesses, the Debtors maintain Insurance Programs which provide the Debtors with insurance coverage for claims relating to, among other things, automobile losses and liability, directors’ and officers’ liability, property liability, fiduciary liability, and general liability through several different insurance carriers (the “Insurance Carriers”), including but not limited to, the Insurance Programs and Insurance

Carriers identified in Exhibit A hereto. Continuation of these policies is essential to the ongoing operation of not only the Debtors' businesses, but also the businesses of the non-debtor entities.

16. The Debtors are required to pay premiums under the Insurance Programs based upon fixed rates established by the applicable Insurance Carriers (the "Insurance Premiums"). The annual premiums for these policies aggregate approximately \$682,900. In most instances, the Debtors pay these premiums directly to the Insurance Carriers at the commencement of the respective policies. In addition to annual premiums, pursuant to certain of the Insurance Programs, the Debtors are required to pay various deductibles for claims asserted under the policies. As of the Petition Date, the Debtors are not aware of any prepetition claims for which the deductible has not been paid. However, out of an abundance of caution, the Debtors are seeking the Court's authorization to pay any such undisputed obligations, in their discretion, as they come due.

#### **Basis for Relief**

17. Pursuant to section 503(b)(1) of the Bankruptcy Code, a debtor may incur, and the court, after notice and a hearing, shall allow as administrative expenses, among other things, "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1). In addition, pursuant to section 363(b) of the Bankruptcy Code, a debtor may, in the exercise of its sound business judgment and after notice and a hearing, use property of the estate outside of the ordinary course of business. *Id.* § 363(b). Section 105(a) of the Bankruptcy Code further provides that "[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). The Debtors submit that the use of the estates' funds for payment of the Insurance Obligations is permitted by sections 105(a), 363(b) and 503(b)(1), as necessary costs of preserving the estates.

18. Many of the Debtors' obligations under their Insurance Programs will constitute postpetition obligations of the Debtors' estates. However, to the extent that the Insurance Obligations are prepetition claims, such obligations are necessary and appropriate, and may be authorized under sections 105(a) and 363(b) of the Bankruptcy Code pursuant to the "doctrine of necessity." The "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (authorizing the payment of prepetition employee wages and benefits while recognizing the 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"); *In re Lehigh & New England Ry, Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to the continued operation of the debtor). 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. The rationale for the "doctrine of necessity" is consistent with the paramount goal of chapter 11 - "facilitating the continued operation and rehabilitation of the debtor..." *Ionosphere Clubs*, 98 B.R. at 176. Accordingly, pursuant to section 105(a) and 363(b) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

19. The nature of the Debtors' business and the extent of their operations make it essential for the Debtors to maintain their Insurance Programs on an ongoing and uninterrupted basis. The nonpayment of any premiums, deductibles, or related fees under one of the Insurance

Programs could result in one or more of the Insurance Carriers terminating their existing policies, declining to renew their insurance policies, or refusing to enter into new insurance agreements with the Debtors in the future. If the Insurance Programs are allowed to lapse without renewal, the Debtors could be exposed to substantial liability for damages resulting to persons and property of the Debtors and others, which exposure could have an extremely negative impact on the Debtors' ability to successfully reorganize. Furthermore, the Debtors would then be required to obtain replacement policies on an expedited basis at what they expect to be a significantly higher cost to their estates. Accordingly, the Debtors must make all payments with respect to Insurance Programs.

20. It should be noted, finally, that courts in this jurisdiction have granted the relief requested herein in numerous other chapter 11 cases. *See, e.g., In re General Motors Corp.*, Case No. 09-50026 (REG) (Bankr. S.D.N.Y. June 1, 2009); *In re Lehman Bros. Holdings Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Nov. 5, 2008); *In re PRC, LLC*, Case No. 08-10239 (MG) (Bankr. S.D.N.Y. Jan. 25, 2008); *In re Silicon Graphics, Inc., et al.*, Case No. 06-10977 (ALG) (Bankr. S.D.N.Y. May 31, 2006); *In re Atkins Nutritionals, Inc., et al.*, Case No. 05-15913 (ALG) (Bankr. S.D.N.Y. Aug. 1 2005); *In re Footstar, Inc., et al.*, case No. 04-22350 (ASH) (Bankr. S.D.N.Y. Mar 31, 2004); *In re Loral Space & Commc'ns Ltd., et al.*, Case No. 03-41710 (RDD) (Bankr. S.D.N.Y. Jul. 16, 2003).

21. Accordingly, by this Motion, the Debtors seek authority, pursuant to sections 105(a), 363(b), and 503(b) of the Bankruptcy Code to honor their Insurance Obligations and continue their Insurance Programs uninterrupted, as such programs were in effect as of the Petition Date.



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

22. 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**

23. 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**

24. 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: July \_\_, 2010  
New York, New York

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

**Exhibit A**

<b><u>TYPE OF COVERAGE</u></b>	<b><u>INSURER</u></b>	<b><u>POLICY NUMBER</u></b>	<b><u>DURATION</u></b>	<b><u>DEDUCTIBLE</u></b>	<b><u>ANNUAL PREMIUM</u></b>
Property	Hartford Fire	12UUMJY7685	08/01/09 - 08/01/10	\$100,000	\$6,250
Property	Hartford Casualty	12SBAVE9091	11/11/09 - 11/11/10	\$1,000	\$750
Boiler & Machinery	Continental	BM1098776725	01/31/10 - 01/13/11	\$1,000	\$750
Commercial Automobile (liability only)	Hartford Fire	12UENTG0269	01/31/10 - 01/31/11	n/a	\$8,800
General Liability	Chicago	NGL1000521	01/13/10 - 01/13/11	\$10,000	\$106,750
ERISA Bond	Travelers Casualty	104268922	10/07/08 - 10/07/11	n/a	\$0
Workers Compensation	PMA Insurance	2008004179818	02/03/10 - 02/03/11	n/a	\$360,000
Umbrella	Continental Casualty	4018025955	01/31/10 - 01/31/11	\$10,000	\$26,000
Directors and Officers	Illinois National Insurance	01-420-58-47	12/13/09- 12/13/10	\$500,000	\$133,600

**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 503(b) OF THE  
BANKRUPTCY CODE (I) AUTHORIZING DEBTORS TO (A) CONTINUE THEIR  
LIABILITY, PROPERTY AND OTHER INSURANCE PROGRAMS, (B) PAY ALL  
OBLIGATIONS IN RESPECT THEREOF, AND (II) FOR AUTHORIZATION FOR  
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND  
TRANSFERS RELATED TO SUCH OBLIGATIONS**

Upon the motion, dated July 19, 2010 (the “Motion”)<sup>2</sup> of Empire Resorts Inc. (“Empire”) and its affiliated debtors, as debtors in possession (collectively, “Debtors”), for an order pursuant to sections 105(a), 363 (b), and 503(b) of the Bankruptcy Code, 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

<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.

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 503(B) of the Bankruptcy Code, (i) to continue the Insurance Programs uninterrupted and to honor their undisputed prepetition obligations thereunder, and (ii) to pay in their sole discretion, all Insurance Obligations.
3. Nothing in this Order shall impair the ability of the Debtors or appropriate party in interest to contest any claim of any creditor pursuant to applicable law or otherwise dispute, contest, setoff, or recoup any claim, or assert any rights, claims or defenses related thereto.
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

