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<u>Defined Term</u>	<u>Section Reference</u>
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1.2 Exhibits. The Exhibits and Schedules annexed to this Agreement, as listed below, are an integral part of this Agreement:

Exhibit 1A	List of Closing Stores
Exhibit 3.1(g)	Guaranty Percentage Adjustment
Exhibit 3.1(h)	Mark Up Percentage
Exhibit 3.4(a)	Merchant's Wire Transfer Particulars
Exhibit 3.4(h)	Form of Guaranty Letter of Credit
Exhibit 3.5(a)	Inventory Taking Instructions
Exhibit 4.1(a)	Occupancy Expenses
Exhibit 4.3(a)	Form of Expense Letter of Credit
Exhibit 5.2(c)	Excluded Pricing Discounts and Adjustments
Exhibit 8.1	Sales Guidelines
Exhibit 11.1(c)	Encumbrances on Owned FF&E

1.3 Currency. Unless otherwise specified, all references to monetary amounts refer to Canadian dollars.

Section 2. Appointment of Agent.

2.1 Appointment. Merchant hereby appoints Agent, and Agent hereby agrees to serve, as Merchant's exclusive agent for the limited purpose of conducting the Sale in accordance with the terms and conditions of this Agreement. Merchant's and Agent's obligations hereunder are subject to the approval of the Court and shall be of no force and effect in the event that the Approval Order is not entered. Neither Merchant nor Agent shall be obligated to perform this Agreement and this Agreement shall not be effective unless, by 5:00

p.m. (Pacific Time) on May 8, 2012 or such later date as the parties may agree, Merchant has obtained the Approval Order and the Approval Order shall not have been stayed, varied, or vacated nor shall an application to restrain or prohibit the completion of the Sale be pending.

2.2 No Other Agreements. Except for incurring Expenses in connection with the Sale and as otherwise specifically provided in this Agreement, Agent shall have no authority to enter into any contract, agreement or other arrangement or take any other action, by or on behalf of Merchant, that would have the effect of creating any obligation or liability, present or contingent, on behalf of or for the account of Merchant without Merchant's prior written consent.

2.3 Approval Order. Forthwith upon execution of this Agreement by Agent and Merchant, Merchant shall file a notice of application to obtain an order of the Court authorizing Agent and Merchant to conduct the Sale in accordance with the terms hereof. Merchant shall obtain the issuance and entry of an order of the Court (the "Approval Order"), in form and substance satisfactory to, and obtained on application made on notice to such persons as agreed by, Merchant and Agent and Bank of Montreal (the "Lender"), acting reasonably. The Approval Order shall provide, among other things, that:

- (a) the terms of this Agreement, including the Sales Guidelines, and each of the transactions contemplated hereby, including the Sale, are approved;
- (b) Merchant and Agent shall be authorized to take any and all actions as may be necessary or desirable to implement this Agreement and each of the transactions contemplated hereby;
- (c) Agent shall be entitled to sell all Merchandise, and subject to Section 14 the Owned FF&E, hereunder free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, reservation of ownership or right of a third party of any nature or kind whatsoever, including, without limitation, the charges and encumbrances in favour of the Lender and the charges granted by the Court under the Initial Order (including the Administration Charge and the Directors' Charge, both as defined in the Initial Order) (collectively, "Encumbrances"), which Encumbrances will attach instead to the Guaranteed Amount and other amounts paid or to be paid by Merchant under this Agreement, in the same order and priority as they existed on the Sale Commencement Date;
- (d) subject to Section 2.3 hereof, no Encumbrances shall attach to any amounts payable by Merchant to, or retained by Agent, under this Agreement, or to any amounts that must be reimbursed by Merchant to Agent in the event that Agent over-funds any amounts due to Merchant, and Merchant will pay such amounts to Agent, and Agent will be entitled to receive and will retain such amounts, free and clear of any and all Encumbrances notwithstanding any enforcement;

- (e) Agent shall have the right to use the Closing Stores and all related store services, all furniture, trade fixtures and equipment located at the Closing Stores, including the Owned FF&E (collectively, the "FF&E"), and other assets of Merchant as designated hereunder for the purpose of conducting the Sale, subject to Section 3.3 hereof, free of any interference from any entity or person, subject to the terms of this Agreement, the Approval Order and the Sales Guidelines approved by the Court;
- (f) subject to compliance by Merchant and Agent with this Agreement and the Approval Order and the Sales Guidelines, all utilities, landlords, creditors, any successor or assignee of Merchant under any and all leases relating to the Closing Stores and all persons acting for or on their behalf shall not interfere with or otherwise impede the conduct of the Sale, or institute any action in any court or before any administrative body which in any way directly or indirectly interferes with or obstructs or impedes the conduct of the Sale;
- (g) subject to Section 8.1(d) hereof, Agent, as agent for Merchant, is authorized to conduct, advertise, use A-frames and sign-walkers, post signs and otherwise promote the Sale without further consent of any person in accordance with the terms and conditions of this Agreement and the Sales Guidelines;
- (h) Agent shall be granted a limited, royalty free, license and right to use until the Sale Termination Date the trade names, trademarks and logos, relating to and used in connection with the operation of the Closing Stores solely for the purpose of advertising and conducting the Sale in accordance with the terms of this Agreement and the Town Shoes APA; provided, however, that the form and content of all advertising and promotional material is subject to the prior approval of Merchant and Town Shoes, which approval shall not be unreasonably withheld or delayed, and will conform with the Sales Guidelines;
- (i) Agent shall not be liable for any claims against Merchant other than as expressly provided for in this Agreement, and Agent shall have no successor liabilities whatsoever;
- (j) subject to the entry of the Approval Order, a security interest and charge (the "Agent's Charge") is granted over all of the Merchandise, Proceeds, Agent's FF&E Commissions and Agent's share of proceeds from sales of Merchant Consignment Goods pursuant to Section 5.3 hereof (collectively, the "Charged Property") as security for all of the obligations of Merchant to Agent under this Agreement, including all amounts that are or may become owing or payable by Merchant to Agent under or in connection with this Agreement. For greater certainty, the Agent's Charge shall not extend to any of the property of Merchant or any of the Petitioners (as defined in the Initial Order) other than the Charged Property and the Agent's Charge does not apply to the amounts paid by Agent to Merchant on account of the Guaranteed Amount. The Agent's Charge shall:

- (i) be to the extent of the aggregate amount of ~~_____~~ ~~_____~~;
 - (ii) from the time of payment of the Initial Guaranty Payment to Merchant and the delivery of the Guaranty Letter of Credit and Expense Letter of Credit to Merchant pursuant to this Agreement, rank in priority to any and all other Encumbrances that may now exist or hereinafter arise, provided, however, that, to the extent of any unpaid portion of the Guaranteed Amount, the Merchant's Sharing Recovery Amount, Net FF&E Proceeds and Merchant's share of the proceeds from the sale of Merchant Consignment Goods due to Merchant hereunder (the "Unpaid Merchant's Entitlements"), the Agent's Charge shall be subordinate to all other Encumbrances, including the Charges (as defined in the Initial Order), the KEIP Charge (as defined in the December 9 Order) and all other court-ordered charges ordered by any further order of the Court, but solely to the extent of any Unpaid Merchant's Entitlements; and
 - (iii) be valid and enforceable as against all of the Charged Property against all persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of Merchant, for all purposes.
- (k) notwithstanding (i) the bankruptcy of Merchant; (ii) the provisions of any federal or provincial statutes; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing loan document, lease, sublease or offer to lease or other agreement which binds Merchant or any receiver/receiver manager, trustee in bankruptcy or agent of Merchant; and notwithstanding any provision to the contrary in any such agreement, the entering into of this Agreement and any other ancillary or related documents or agreements and any steps or actions taken in relation hereto, including the vesting of any Remaining Merchandise at the Sale Termination Date in Agent's possession free of any Encumbrances pursuant to Section 3.2 hereof, and the granting of the Agent's Charge and all steps taken and registrations made in any jurisdiction in the sole discretion of Agent, do not and will not constitute fraudulent preferences, fraudulent conveyances, transfer at undervalue, conduct that is oppressive, unfairly prejudicial to or that unfairly disregards the interest of any person, settlements or other challengeable, voidable or reviewable transactions under any applicable law and shall be binding on any receiver and any trustee in bankruptcy that may be appointed in respect of Merchant and shall not be void or voidable by creditors of Merchant;
- (l) notwithstanding any bankruptcy or receivership of Merchant, this Agreement shall be binding on any receiver and trustee in bankruptcy that may be appointed in respect of Merchant;

- (m) the amounts deposited in the Merchant Designated Accounts in accordance with this Agreement are not property of Town Shoes and Town Shoes has no claim, ownership interest or other entitlement against or in such amounts, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Merchant;
- (n) the amounts deposited in the Merchant Designated Accounts (including Proceeds, Net FF&E Proceeds and Merchant Consignment Sale proceeds) shall be held in trust in favour of Merchant and Agent, and shall be distributed as set out in this Agreement; and
- (o) the transaction is exempt from the Bulk Sales Act (Ontario).

2.4 No Additional Merchandise. Merchant shall not be permitted to augment or otherwise bring new merchandise into the Closing Stores except that Agent may transfer Merchandise between and among the Closing Stores.

Section 3. Guaranteed Amount and Other Payments.

3.1 Payments to Merchant and Agent.

- (a) As a guaranty of Agent's performance hereunder in respect of the Sale of the Merchandise, Agent guarantees that Merchant shall receive an amount equal to [REDACTED] (the "Guaranty Percentage") of the aggregate Cost Value of the Merchandise included in the Sale (the "Guaranteed Amount"). The Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Merchandise as determined by the Final Inventory Report after verification and reconciliation thereof by Agent and Merchant. The Guaranteed Amount may therefore be modified as a result of quantities only and not as a result of unit costs of the Merchandise, the latter with respect to which Agent has already performed its diligence. As required and from time to time, any reference to "Guaranteed Amount" in this Agreement shall mean the amount calculated and adjusted from time to time in accordance with this Agreement. As to other adjustments, their calculation and nature is reflected in Section 5 hereof.
- (b) To the extent that Proceeds from the Sale of Merchandise included in the Sale exceed the sum of (i) the Guaranteed Amount, (ii) the Expenses in respect of the Closing Stores and (iii) [REDACTED] Of the aggregate Cost Value of the Merchandise in the Closing Stores (the "Agent's Fee") (collectively, the "Sharing Threshold"), then all remaining Proceeds of the Sale shall be shared [REDACTED] to Merchant (the "Merchant's Sharing Recovery Amount") [REDACTED] to Agent (the "Agent's Sharing Recovery Amount"). To the extent that Merchant is entitled to receive any Merchant's Sharing Recovery Amount from the Proceeds, Agent shall pay the Merchant's Sharing Recovery Amount in accordance with Section 3.4(c) hereof.

- (c) Agent shall also be entitled to receive a commission on the Net FF&E Proceeds, if any, as provided for in Section 14 hereof.
- (d) Agent shall pay to Merchant the Guaranteed Amount, the Merchant's Sharing Recovery Amount, if any, and the Net FF&E Proceeds in the manner and at the times specified in Section 3.4 below.
- (e) Subject to Section 3.4(d) below, if and to the extent that Agent or Merchant over-funds any amounts due to the other hereunder, then Merchant or Agent, as applicable, agrees to promptly reimburse (by no later than the next weekly reconciliation contemplated by Section 3.7) such over-payment amounts to Agent or Merchant, as applicable, to the extent such amount is not disputed by the other. If such over-payment amount is disputed by Merchant or Agent, then Merchant or Agent, as applicable, shall reimburse such over-payment amount to the other, if any, no later than five (5) days following the date on which such dispute is resolved pursuant to Section 3.7(c) of this Agreement.
- (f) Subject to Section 3.3 below, to ensure accurate sales audit functions, as well as accurate calculations of the Merchant's Sharing Recovery Amount, Agent shall be required to utilize Merchant's existing point-of-sale system for recording all sales of Merchandise in the Closing Stores; provided, however, that to the extent Merchant's existing point-of-sale system is inadequate to or not capable of processing all sales and transactions contemplated by this Agreement, Agent may install and use its own point-of-sale system in connection with the Sale, subject to Merchant's approval of such system, all of which shall not be unreasonably withheld or unduly delayed, and Merchant's right during the Sale Term to audit the system generated data from Agent's point-of-sale system (and such costs shall be an Expense hereunder).
- (g) The Guaranty Percentage has been established based upon the assumption that aggregate Cost Value of the Merchandise included in the Sale, without taking into account the Global Inventory Adjustment, is not less than [REDACTED] (the "Merchandise Threshold") and is not more than [REDACTED] (the "Merchandise Ceiling"). To the extent that the aggregate Cost Value of the Merchandise included in the Sale is less than the Merchandise Threshold, or higher than the Merchandise Ceiling, the Guaranty Percentage shall be adjusted in accordance with Exhibit 3.1(g) hereto, as and where applicable.
- (h) The Guaranty Percentage has also been established based upon the assumption that the Cost Value-to-Retail Price relationship of the Merchandise (Retail Price less Cost Value divided by Retail Price) on the date the Sale Commencement Date shall not be less than [REDACTED] (the "Mark Up Percentage"). To the extent that the Cost Value-to-Retail Price relationship of the Merchandise is less than the Mark Up Percentage, the Guaranty Percentage shall be adjusted downward in accordance with Exhibit 3.1(h) attached hereto. As used in this Agreement, "Retail Price" shall mean for

each item of Merchandise, the lower of (a) the lowest ticketed, shelf or marked price at the Sale Commencement Date, (b) the PLU, scan or file price at the Sale Commencement Date, and (c) the PLU, scan or file price contained in the Cost File, without giving effect to any hang-tags, shelf-tags, or point-of-sale or other temporary discounts at the cash register; items of Merchandise that are erroneously marked shall not be used in determining the Retail Price and a lower Retail Price shall not be used unless there are at least three (3) items of the same SKU at such lower Retail Price in such Closing Store, in which case the adjustment shall only apply to the units of the same SKU in that Closing Store. Agent shall effect all Merchandise discounts or markdowns during the Sale Term at the cash register and not to the ticketed or PLU, scan or file price.

- (f) The adjustments to the Guaranty Percentage contemplated by Exhibits 3.1(g) and (h) shall be independent and cumulative.
- (g) In addition, on the Sale Commencement Date Agent shall pay to Merchant an amount equal to the cash in the registers at the Closing Stores as of the Sale Commencement Date. An actual count of such cash shall be conducted by Agent and Merchant at the start of the Sale Commencement Date prior to any transactions.

3.2 Remaining Merchandise. Provided that no Event of Default has occurred and continues to exist on the part of Agent, and after all payments are made to Merchant as required hereunder, all Merchandise remaining, if any, at the Sale Termination Date (the "Remaining Merchandise") shall become the property of Agent free and clear of all Encumbrances, provided, however, that all proceeds received by Agent from the disposition of the Remaining Merchandise shall nevertheless constitute Proceeds for all the purposes of this Agreement. Notwithstanding the foregoing, Agent shall use commercially reasonable efforts and act in good faith to dispose of all of the Merchandise during the Sale Term.

3.3 Acknowledgement of Town Shoes APA. Agent acknowledges that Merchant has agreed to sell certain of its assets to Town Shoes pursuant to the Town Shoes APA, including Trademarks, Bank Accounts, Books and Records and Merchant's inventory, accounting and IT systems and other assets, as defined and as more particularly described in the Town Shoes APA and that notwithstanding any other provision of this Agreement, post Town Shoes APA closing, the rights of Merchant and Agent to access and use such assets will be subject to the terms and conditions of the Town Shoes APA.

3.4 Time of Payments.

- (a) Payment of Guaranteed Amount. Within two (2) Business Days of the date the Approval Order is issued and entered (the "Payment Date"), Agent shall pay by wire transfer to the account designated by Merchant as set out in Exhibit 3.4(a) or as Merchant shall otherwise direct in writing, an amount equal [REDACTED] of the estimated Guaranteed Amount (the "Initial Guaranty Payment"), calculated based upon the estimated aggregate Cost Value of the Merchandise to

be included in the Sale as reflected on Merchant's books and records as the goods on hand on the last Business Day immediately preceding the Sale Commencement Date (the "Estimated Guaranteed Amount"). For greater certainty, the Sale shall not commence until the Initial Guaranty Payment, together with the Guaranty Letter of Credit and the Expense Letter of Credit, have been received by Merchant.

- (b) Payment of Balance of Guaranteed Amount. The balance of the Guaranteed Amount, if any, shall be paid by Agent to Merchant by wire transfer to the account designated by Merchant on the second Business Day following the issuance of the final certified report of the aggregate Cost Value of the Merchandise by the Inventory Taking Service (the "Final Inventory Report"), after review, reconciliation and verification thereof by Merchant and Agent, which Final Inventory Report shall be satisfactory to the monitor of Merchant appointed by the Court under the CCAA ("Monitor") and Lender (to extent Lender has not been repaid in full), acting reasonably. Agent's failure to pay such balance at the time and manner set out herein shall entitle Merchant to draw upon the Guaranty Letter of Credit to the extent of such balance. The ~~_____~~ deposit (the "Deposit") paid by Agent to Monitor, in trust for Merchant and Agent, prior to the date of this Agreement shall be credited against the balance of the Guaranteed Amount, if any, owing to Merchant, or if there is no balance of the Guaranteed Amount owing to Merchant or the balance of the Guaranteed Amount is less than ~~_____~~ the balance of the ~~_____~~ after application against the balance of the Guaranteed Amount, if any, owing to Merchant, shall be returned to Agent on the Second Business Day following the issuance of the Final Inventory Report. If Agent fails to make the Initial Guaranty Payment or the balance of the Guaranteed Payment when due or to deliver the Guaranty Letter of Credit or Expense Letter of Credit hereunder as required under this Agreement and fails to make such payments or deliver such letters of credit within three (3) Business Days of being notified by Merchant that such payments have not been paid or letters of credit have not been received, the Deposit shall be forfeited to Merchant, as liquidated damages. For the purposes of this Agreement, "Business Day" means any day excluding a Saturday, Sunday or statutory holiday in the Province of British Columbia.

- (c) Payments in respect of Merchant's Sharing Recovery Amount and Net FF&E Proceeds. Agent shall pay to Merchant all amounts on account of the Merchant's Sharing Recovery Amount, if any, and the Net FF&E Proceeds, if any, as part of the weekly reconciliation conducted pursuant to Section 3.7(a), which in the case of the Merchant's Sharing Recovery Amount shall not commence until the first week after Proceeds reach the Sharing Threshold, and subject in all cases to the Final Reconciliation under Section 3.7(b).

- (d) Payments to Agent. Subject to payment of the Guaranteed Amount, Expenses, Merchant's Sharing Recovery Amount, if any, and all other amounts payable to Merchant from Proceeds hereunder, Agent shall retain from Proceeds, as its compensation for services rendered to Merchant hereunder, the Agent's Fee, plus Agent's Sharing Recovery Amount, if any. Agent shall also be entitled to receive the FF&E Commission, if any, to the extent that Merchant exercises its option to have Agent dispose of any of the Owned FF&E in the Closing Stores.
- (e) Over-Funding by Agent. In the event that the reconciliation of the Final Inventory Report indicates that the Initial Guaranty Payment exceeds the Guaranteed Amount (with the amount of such excess being the "Adjustment Amount"), Merchant shall remit such Adjustment Amount to Agent within five (5) Business Days after the Final Inventory Report has been reconciled by Merchant and Agent.
- (f) Timing of Wire Transfer Payments. All amounts required to be paid by Agent or Merchant under any provision of this Agreement shall be made by wire transfer of immediately available funds which shall be wired by Agent or Merchant, as applicable, no later than 2:00 p.m. (Pacific Time) on the date that such payment is due; provided, however, that all of the information necessary to complete the wire transfer has been received by Agent or Merchant, as applicable, by 10:00 a.m. (Pacific Time) on the date that such payment is due. In the event that the date on which any such payment is due is not a Business Day, then such payment shall be made by wire transfer on the next Business Day. Notwithstanding any of the foregoing, the Initial Guaranty Payment must be actually received by Merchant prior to the Sale commencing pursuant to Section 6.1 hereof.
- (g) Set-Off. Agent agrees that if at any time during the Sale Term, Merchant holds any undisputed amounts due to Agent as Proceeds hereunder, Merchant may, in its discretion, offset such amounts being held by Merchant against any amounts due and owing by, or required to be paid by, Agent under this Agreement. In addition, Merchant agrees that if at any time during the Sale Term, Agent holds any amounts due to Merchant hereunder, Agent may, in its discretion, offset such amounts being held by Agent against any undisputed amounts due and owing by, or required to be paid by Merchant under this Agreement. Any such setoffs shall be reconciled as part of the weekly reconciliation.
- (h) Guaranty Letter of Credit. On the Payment Date, in order to secure Agent's obligations in respect of the payment of the unpaid portion of the Guaranteed Amount (the "Remaining Guaranteed Amount"), Agent shall furnish Merchant with an irrevocable standby letter of credit naming Merchant as beneficiary, in the aggregate original face amount equal to the estimated Remaining Guaranteed Amount (being the Estimated Guaranteed Amount, less the Initial Guaranty Payment), which letter of credit shall be substantially in the form of Exhibit 3.4(h) hereof (the "Guaranty Letter of Credit"). The Guaranty Letter of Credit shall be issued by a bank selected by Agent and acceptable to Merchant, acting

reasonably. Provided no Event of Default by Merchant has occurred, in the event that Agent shall fail to pay to Merchant, any amount required to be paid on account of the Remaining Guaranteed Amount, Merchant shall be entitled to draw on the Guaranty Letter of Credit to fund such amount following five (5) days' written notice to Agent of Merchant's intention to do so. The Guaranty Letter of Credit shall expire no earlier than sixty (60) days after the Sale Termination Date; provided, that, in the event that at the scheduled expiration date of the Guaranty Letter of Credit there remains any unresolved dispute as to the amount of the Guaranteed Amount or the Remaining Guaranteed Amount, Merchant may, in its discretion, exercise the right to require Agent to have the expiration date of the Guaranty Letter of Credit extended for forty-five (45)-day intervals (or such other longer duration as Merchant and Agent may agree) until such time as the subject dispute has been resolved and any additional amounts due hereunder paid to Merchant, it being agreed that if Agent has for any reason not so extended the expiry date of the Guaranty Letter of Credit by the date which is fifteen (15) days prior to the then expiry date, Merchant shall have the right to make a drawing under the Guaranty Letter of Credit in an amount equal to the amounts Merchant asserts are then owing to Merchant, to be held in trust pending the Final Reconciliation; provided, further, that, in the event that Agent shall have indefeasibly paid to Merchant, all amounts due on account of the Guaranteed Amount prior to such date, Merchant agrees to surrender the original Guaranty Letter of Credit to the issuer thereof together with written notification that the Guaranty Letter of Credit may be terminated. Merchant and Agent agree that after payment of the unpaid portion of the Remaining Guaranteed Amount, the Guaranty Letter of Credit shall be terminated.

3.5

Inventory Taking

- (a) Subject to the provisions of this paragraph, the parties have agreed to use the current book value of inventory as of the Sale Commencement Date, to determine the aggregate Cost Value of the Merchandise located in the Closing Stores on the Sale Commencement Date in accordance with this Agreement. In order to test the validity of the aggregate Cost Value of the Merchandise as reflected on Merchant's current books and records, subject to the availability of the Inventory Taking Service, on or within fourteen (14) days after the Sale Commencement Date (the "Inventory Completion Date"), Merchant and Agent shall cause to be taken an SKU and Retail Price level physical inventory (the "Inventory Taking") of the Merchandise located in the Closing Stores (the date of the Inventory Taking at each Closing Store shall be referred to as the "Inventory Date" for such Closing Store). Merchant and Agent shall jointly employ RGIS or another mutually acceptable inventory taking service (the "Inventory Taking Service") to conduct the Inventory Taking in accordance with procedures set forth on Exhibit 3.5(a) annexed hereto.

- (b) As an Expense, Agent shall be responsible for [REDACTED] of (i) the fees and expenses of the Inventory Taking Service and (ii) the payroll and related costs for the Retained Employees who work at the Closing Stores during the Inventory Taking in such Closing Stores, and Merchant shall pay the [REDACTED] of the fees and expenses of the Inventory Taking Service and related payroll costs. Except for the Inventory Taking costs provided for in the immediately preceding sentence in respect of allocation, Merchant and Agent shall each bear all other of their respective costs and expenses relative to the Inventory Taking. Merchant, Agent, Monitor and Lender may each have representatives present during the Inventory Taking and each shall have the right to review and verify the listing and tabulation of the Inventory Taking. Merchant agrees that the Inventory Taking in each of the Closing Stores shall be conducted either after or during normal Closing Store hours. Merchant and Agent agree to cooperate with each other to conduct the Inventory Taking at such times as would minimize disruption to the Sale. Merchant and Agent further agree that until the Inventory Taking is completed in each of the Closing Stores, neither Merchant nor Agent shall: (x) other than with respect to sales of Merchandise in the ordinary course as part of the Sale at the Closing Stores, transfer any Merchandise to or from any of Closing Stores, so as to make any such items unavailable for counting as part of the Inventory Taking, and/or (y) remove any hang tags, price tickets or inventory control tags affixed to any Merchandise. Merchant and Agent agree that they will, and agree to cause their respective representatives to, cooperate and assist in the preparation and calculation of the aggregate Cost Value of the Merchandise included in the Sale, including, without limitation, making available, to the extent necessary books, records, work papers and personnel.
- (c) The Inventory Taking, including, but not limited to, the determination of the aggregate Cost Value of the Merchandise, shall be reconciled by Merchant and Agent within twelve (12) days after its completion and Agent and Merchant shall use their reasonable best efforts to accomplish such reconciliation within such twelve (12) day period; provided, however, that the Final Inventory Report shall be completed not later than thirty (30) days after the Sale Commencement Date. In the event there is any dispute with respect to the reconciliation of the aggregate Cost Value of the Merchandise following completion of the Inventory Taking, then any such dispute shall be resolved in the manner and at the times set forth in Section 3.7(c) hereof.

3.6 Gross Rings. For the period from the Sale Commencement Date until the Inventory Date for each Closing Store (the "Gross Rings Period"), Merchant and Agent shall jointly keep (i) a strict count of all gross cash register receipts less applicable Sales Taxes but excluding any prevailing discounts and (ii) cash reports of sales at the Closing Stores to determine the actual Cost Value of the Merchandise sold by SKU and Retail Price ("Gross Rings") during the Gross Rings Period. All such records and reports shall be made available to Merchant and Agent during regular business hours upon reasonable notice. Any Merchandise included in the Sale using the Gross Rings shall be included in Merchandise using the Gross Rings method, and as soon as determinable and in no event later than with the payment of the balance of the Guaranteed Amount pursuant to Section 3.4(b) hereof, Agent shall pay that portion of the Guaranteed Amount calculated on the Gross Rings basis to account for shrinkage, on the basis of ~~_____~~ of the aggregate Cost Value of the Merchandise sold during the Gross Rings Period.

3.7 Reconciliation.

- (a) Weekly Reconciliation. On each Thursday during the Sale Term, commencing on the second Thursday after the Sale Commencement Date, Merchant and Agent shall cooperate to jointly prepare a reconciliation of the weekly Proceeds of the Sale, Expenses and Net FF&E Proceeds and any other Sale related items that either party may reasonably request, in each case for the prior week or partial week (i.e. Monday through Sunday), all pursuant to procedures agreed upon by Merchant and Agent.
- (b) Final Reconciliation. Within thirty (30) days after the Sale Termination Date, Merchant and Agent shall jointly prepare a final reconciliation of the Sale, including, without limitation, a summary of Proceeds, Expenses, Net FF&E Proceeds, Sales Taxes and any other accounting required hereunder (the "Final Reconciliation"). Within five (5) days of completion of the Final Reconciliation, Agent shall pay to Merchant, or Merchant shall pay to Agent, as the case may be, any and all amounts due to the other pursuant to the Final Reconciliation, whether such amounts are disputed or not, plus, in the case of disputed amounts, a reasonable estimate of interest to be accrued on such disputed amounts for a period of three (3) months. Merchant or Agent, as the case may be, shall hold any disputed amounts in trust pending resolution of the dispute by agreement of the parties or as determined in the manner set out in Section 3.7(c) below. Interest shall accrue on any disputed amounts until indefeasibly paid in full at a rate of ~~_____~~ with the "Prime Rate" being equal to the prime rate for Canadian dollar commercial loans charged by Lender from time to time. Subject to Section 3.3 hereof, during the Sale Term, and until all of Agent's obligations under this Agreement have been indefeasibly satisfied in full, Merchant and Agent shall have reasonable access to Merchant's and Agent's records with respect to the Merchandise, Proceeds, Net FF&E Proceeds, Sales Taxes and Expenses to review and audit such records relating to the Sale.

- (c) Dispute Resolution. In the event that there is any dispute with respect to the Final Reconciliation or the determination of the aggregate Cost Value of the Merchandise as reflected in the Final Inventory Report or with respect to any other matters arising from or related to this Agreement, such dispute shall be promptly (and in no event later than the third Business Day following the request by either Merchant or Agent) submitted to the Monitor for resolution, and failing which resolution, to the Court. In the event of a dispute, Agent shall extend the Guaranty Letter of Credit and/or the Expense Letter of Credit, as the case may be in accordance with the provisions of Sections 3.4(h) and 4.3 hereof. If Agent has for any reason not so extended the expiry date, Merchant shall have the right to make a drawing under the Guaranty Letter of Credit and/or the Expense Letter of Credit, as appropriate, in an amount equal to the amounts Merchant asserts are then owing to Merchant, plus a reasonable estimate of interest to be accrued thereon for a period of three (3) months, to be held in trust pending resolution of the disputed amounts pursuant this Section. Interest shall accrue on any disputed amounts until indefeasibly paid in full at a rate of Prime Rate plus four percent (4%) per annum.

3.8 Control of Proceeds.

- (a) During the Sale Term, all Proceeds of the Sale (including credit card proceeds), shall be collected by Agent and deposited on a daily basis into Merchant's existing accounts (the "Designated Merchant Accounts"); provided, however, that the Lender has agreed not to take any action with respect to such Proceeds deposited into the Designated Merchant Accounts during the Sale Term or Merchant has obtained an order of the Court providing for same. Merchant represents to Agent that the Designated Merchant Accounts from and after the closing of the Town Shoes APA, will be in the name of and controlled by Town Shoes and that Town Shoes has agreed and is obligated to hold all funds received into the Designated Merchant Accounts following the Town Shoes APA closing that do not arise from or relate to the businesss carried on at the Town Shoes Closing Stores, in trust for Merchant, and to remit such funds as soon as reasonably practicable following a request from Merchant. Merchant shall request, cause to be paid, receive and hold, from time to time and until they are disbursed in accordance with this Agreement, all of the Agency Agreement Proceeds in trust for the benefit of Agent and Merchant, as the case may be, for disbursement pursuant to this Agreement.
- (b) Following the entry of the Approval Order and commencing on the first Business Day following the payment by Agent of the Initial Guaranty Payment and the delivery by Agent to Merchant of the Guaranty Letter of Credit and the Expense Letter of Credit, and on each Business Day thereafter (or as soon thereafter as is practicable) during and following the Sale Term Merchant, shall promptly transfer or take all steps required by it to cause to be transferred, by wire fund transfers, all Proceeds, Gross FF&E Proceeds and the proceeds of the Merchant Consignment

Goods deposited in the Designated Merchant Accounts (collectively, the "Agency Agreement Proceeds"), less the amount of any Expenses which Agent is obligated to pre-fund Merchant or any other Expenses to be paid by Agent to Merchant pursuant to Section 4.2 hereof, which Merchant may offset and set-off against the Agency Agreement Proceeds, to one or more segregated trust account(s) established by Agent, dedicated solely for the deposit of the Agency Agreement Proceeds and the disbursement of amounts payable to Agent hereunder (the "Agency Accounts"). Merchant shall promptly upon Agent's request execute and deliver all necessary documents to open and maintain the Agency Accounts. Agent shall exercise sole signatory authority and control with respect to the Agency Accounts; provided, however, that upon request from Merchant from time to time, Agent shall deliver to Merchant copies of all bank statements and other information relating to such accounts. Merchant shall not be responsible for and Agent shall pay as an Expense hereunder, all bank fees and charges, including wire transfer charges, related to the Agency Accounts, whether incurred during or after the Sale Term. For greater certainty, "Agency Agreement Proceeds" shall not include any proceeds of Merchant's inventory sold prior to the Sale Commencement Date, if any, any proceeds of sales from the Town Shoes Stores, or other receivables owing to Merchant other than the Agency Agreement Proceeds.

- (c) From proceeds transferred from the Designated Merchant Accounts into the Agency Account from time to time (the "Gross Sale Proceeds"), Agent shall establish a holdback in the Agency Accounts in an amount equal to ~~_____~~ of all such Gross Sale Proceeds representing an estimate of Sales Taxes applicable to such Gross Sale Proceeds (the "Sales Tax Holdback"). Actual Sales Taxes are to be remitted from the Sales Tax Holdback to Merchant pursuant to Section 8.3 hereof, as part of the weekly reconciliation conducted by the Parties pursuant to Section 3.7(a) hereof. Subject to the terms of this Agreement, any surplus funds may be released to Agent from the Sales Tax Holdback after remittance of the full amount of the applicable Sales Taxes.
- (d) Permitted Disbursements from Agency Accounts. In addition to the remittance of Sales Taxes in accordance with Sections 3.8(c) and 8.3 hereof and remittance of Net FF&E Proceeds to Merchant pursuant to Section 14(b) hereof, the following disbursements are permitted to be made from the Agency Accounts after receipt by Merchant of payment by Agent of the Guaranteed Amount in full:
 - (i) after remittance of the applicable Sales Taxes to Merchant pursuant to Sections 3.8(c) and 8.3 hereof, remittance of Net FF&E Proceeds to Merchant pursuant to Section 14(b) hereof, and payment/reimbursement of all Expenses for the applicable week as part of the weekly reconciliation conducted pursuant to Section 3.7(a) of the Agency Agreement, all Gross Sale Proceeds remaining in the Agency Account shall be released to Agent on account of the return of the Guaranteed

Amount paid by Agent, up to the maximum of the Guaranteed Amount;

- (ii) after remittance of the applicable Sales Taxes to Merchant pursuant to Sections 3.8(c) and 8.3 hereof; remittance of Net FF&E Proceeds to Merchant pursuant to Section 14(b) hereof; payment/reimbursement of all Expenses for the applicable week; and payment in full to Agent of Agent's return of funds on account of the Guaranteed Amount; as part of the weekly reconciliation conducted pursuant to Section 3.7(a) hereof, all Gross Sale Proceeds remaining in the Agency Accounts shall be released to Agent on account of the Agent's Fee; and
- (iii) after remittance of the applicable Sales Taxes to Merchant pursuant to Sections 3.8(c) and 8.3 hereof; remittance of the Net FF&E Proceeds pursuant to Section 14(b) hereof; payment/reimbursement of all Expenses for the Sale Term; payment in full to Agent of Agent's return of funds on account of the Guaranteed Amount; and payment to Agent of the Agent's Fee in accordance with paragraph (ii) above, as part of the weekly reconciliation conducted pursuant to Section 3.7(a) of the Agency Agreement, all Gross Sale Proceeds remaining in the Agency Account shall be released to Merchant as to [REDACTED] of such remaining Gross Sale Proceeds (on account of Merchant's Sharing Recovery Amount) and to Agent as to [REDACTED] of such remaining Gross Sale Proceeds (on account of Agent's Sharing Recovery amount).

Section 4. Reimbursement of Expenses:

4.1 Expenses. Agent shall be unconditionally responsible for all Expenses incurred in conducting the Sale during the Sale Term, which Expenses shall be paid by Agent in accordance with Section 4.3 below (but which Agent may recover and retain from Proceeds after payment of the Guaranteed Amount; provided, however, that such Expenses shall not reduce the Guaranteed Amount). As used herein, "Expenses" shall mean all Closing Store level operating expenses of the Sale that arise or are incurred during the Sale Term (and prior to the Sale Term where expressly noted herein) limited to the following (without duplication):

- (a) occupancy expenses for the Closing Stores on a per location and per diem basis through the Vacate Date (as defined in Section 6.2 hereof) in an amount equal to the per diem totals set forth on Exhibit 4.1(a) hereto (the "Occupancy Expenses");
- (b) remittances by Agent to Merchant of an amount equal to the Base Payroll, plus overtime and commissions, if applicable, as well as vacation pay accruing during the Sale Term (but not arrears), for all Retained Employees used in conducting the Sale for actual days/hours worked during the Sale Term;

- (c) remittances by Agent to Merchant of any amounts payable by Merchant for benefits that accrue during the Sale Term for Retained Employees used in the Sale (including, but not limited to, employment insurance premiums, workers' compensation and health care insurance benefits) but excluding Excluded Benefits, in an amount not to exceed [REDACTED] of the Base Payroll for each Retained Employee in the Closing Stores (the "Benefits Cap");
- (d) Retention Bonuses for Retained Employees, as provided in Section 9.4 below;
- (e) all costs associated with Agent's on-site supervision of the Sale by Agent's employees or independent contractors and associated reasonable corporate travel costs and reasonable and customary bonuses;
- (f) all costs of signage and banners (interior and exterior) and in-store signs which are produced for the Sale, approved by Merchant pursuant to Section 8.1(d) hereof and in compliance with the Sales Guidelines, whether incurred prior to the Sale or during the Sale Term;
- (g) promotional costs incurred by Agent pursuant to the terms of this Agreement, including, without limitation, sign walkers, advertising and direct mailings relating to the Sale;
- (h) cost of additional supplies used at the Closing Stores as may be required by Agent in the conduct of the Sale (excluding those supplies located at the Closing Stores on the Sale Commencement Date which may be used by Agent at no charge);
- (i) local and long distance telephone expenses incurred at the Closing Stores;
- (j) credit card and bank card fees, bank charges, chargebacks and discounts with respect to Merchandise sold in the Sale;
- (k) costs of processing moving, transferring or consolidating Merchandise between and among the Closing Stores and any and all costs, including delivery and freight costs, related to the processing, moving, transfer and consolidation of Merchandise between and among such Closing Stores;
- (l) bank service charges (for Closing Store and Merchant corporate accounts), cheque guarantee fees, and bad cheque expenses, to the extent attributable to the Sale;
- (m) all fees and charges required to comply with applicable laws in connection with the Sale;
- (n) Closing Stores' cash theft and other cash shortfalls in the cash registers, except to the extent covered by insurance;

- (o) postage, courier and overnight mail charges to and from or among the Closing Stores and head office (to the extent relating to the Sale);
- (p) Closing Stores' trash removal;
- (q) [REDACTED] of each of (i) the fees of the Inventory Taking Service to conduct the Inventory Taking at the Closing Stores and (ii) payroll and related costs for Retained Employees who work at the Closing Stores during the Inventory Taking in such Closing Stores;
- (r) Third Party payroll processing fees;
- (s) cost of all security in the Closing Stores (to the extent customarily provided in the Closing Stores), including, without limitation, armored car service, security personnel and monthly alarm services for the Closing Stores;
- (t) cost of Agent's actual cost of capital, letter of credit fees and currency conversion expenses related to the Sale, including wire transfer and bank charges related to the payment of the Initial Guaranty Payment and the issuance of the Guaranty Letter of Credit and Expense Letter of Credit;
- (u) Agent's reasonable out-of-pocket legal fees and expenses, including, but not limited to, legal fees and expenses, incurred in connection with the review of data, and preparation, negotiation and execution of this Agreement, the Approval Order, Sales Guidelines and any ancillary documents incurred prior to the Sale Term, in an amount not to exceed [REDACTED];
- (v) Third Party cleaning expenses related to the Closing Stores;
- (w) to the extent not included in the per diem totals set forth in Exhibit 4.1(a) hereof, routine repair and maintenance costs, other than costs resulting from Agent's negligent acts or omissions during the Sale Term;
- (x) all costs and expenses of providing such additional Closing Store-level services, including, without limitation, the employment of temporary help (which shall be coordinated and implemented through Merchant's human resources department) pursuant to Section 9.1 hereof, which Agent, in its discretion, considers appropriate, and other miscellaneous Closing Store-level expenses incurred by Agent as approved by Merchant;
- (y) actual cost of Agent's insurance required under Section 12.3 hereof; and
- (z) Central Services Expenses in an amount equal to [REDACTED] during the Sale.

"Expenses" shall not include: (i) Excluded Benefits; (ii) any rent or other occupancy expenses other than Occupancy Expenses in accordance with Section 4.1(a) hereof; (iii) Central Services Expenses (except as provided in Section 4.1 or any expenses associated with any of Merchant's warehouses or distribution centres); (iv) harmonized sales tax and goods and services tax on any of the Expenses if Agent is registered for harmonized sales tax or goods and services under Part IX of the *Excise Tax Act* (Canada), provided, however, that notwithstanding the foregoing, Agent shall continue to pay Sales Taxes on the Expenses incurred by Merchant and reimbursed by Agent pursuant to this Agreement; and (v) any costs, expenses or liabilities arising during the Sale Term in connection with the Sale of Merchandise, other than the Expenses listed above, all of which shall be paid by Agent or Merchant, as applicable, promptly when due during the Sale Term. Notwithstanding anything herein to the contrary, to the extent that any Expense listed in Section 4.1 is also included on Exhibit 4.1(a), then Exhibit 4.1(a) shall control and such Expense shall not be double counted.

4.2 Certain Definitions.

As used in this Article 4 and this Agreement, the following terms have the following respective meanings:

"Base Payroll" means base hourly payroll, excluding overtime, commissions, bonuses and vacation pay payable under Merchant's compensation policy in effect as at the Sale Commencement Date.

"Central Services Expenses" means costs and expenses for Merchant's central administrative services necessary for the Sale including, but not limited to (a) Merchant's inventory control system, including inventory handling, data processing and reporting; (b) payroll system; and (c) accounting system; provided, however, that post-Town Shoes APA closing, "Central Services Expenses" shall mean such services as provided to Merchant by Town Shoes pursuant to the Town Shoes APA.

"Excluded Benefits" means vacation days or vacation pay (other than as provided for in Section 4.1(b) hereof), sick days or sick leave, maternity leave benefits, disability benefits or other leaves of absence, termination or severance pay (including, without limitation, any notice or pay, in lieu of notice in accordance with provincial employment/labour standards, common law, or contract) and similar amounts, any amounts payable for pension, profit-sharing, bonus or other retirement, benefit or incentive plans other than those expressly described in Section 4.1(c) and all benefits in excess of the Benefits Cap provided for in Section 4.1(c) above.

"Occupancy Expenses" means only the per diem per Closing Store amounts as set forth on Exhibit 4.1(a).

"Third Party" means, with reference to any Expenses to be paid to a "third party," a party that is not affiliated with or related to Merchant.

All Expenses incurred during each week (i.e., Monday through Sunday) of the Sale Term shall be paid by Agent to or on behalf of Merchant, or offset by Merchant from the Agency Agreement Proceeds held by Merchant, immediately following the weekly reconciliation by Merchant and Agent pursuant to Section 3.7(a) above, based upon invoices and other documentation satisfactory to Agent, acting reasonably; provided, however, Agent shall be obligated to pre-fund any Occupancy Expenses and payroll-related expenses consistent with Merchant's customary rent and payroll funding practices and timing, and Merchant shall reimburse Agent in accordance with Section 3.1(e) any over-advance in respect of Occupancy Expenses for any Occupancy Expenses pre-funded by Agent in respect of a period after which Agent has vacated the Closing Store.

4.3 Expense Letter of Credit.

- (a) To secure payment of the Expenses, on the Payment Date, Agent shall deliver to Merchant an irrevocable standby letter of credit in an original face amount equal to ~~the~~ estimated Expenses that would be incurred by Merchant, naming Merchant (or its designee) as beneficiary (substantially in the form of Exhibit 4.3(a), (the "Expense Letter of Credit"), which shall be issued by a bank selected by Agent and acceptable to Merchant, acting reasonably, and shall contain terms, provisions and conditions mutually acceptable to Merchant and Agent. Merchant and Agent agree that at the point where there are fewer than seven (7) days remaining in the Sale Term, the face amount of the Expense Letter of Credit may be reduced in amount(s) to be agreed upon by Merchant and Agent. The Expense Letter of Credit shall expire not earlier than the date that is sixty (60) days after the Sale Termination Date; provided that, in the event that at the scheduled expiration date of the Expense Letter of Credit there remains any unresolved dispute as to the amount of any unpaid Expense hereunder, Merchant may, in its discretion, exercise the right to cause Agent to have the expiration date of the Expense Letter of Credit extended for additional forty-five (45) day intervals (or such other longer duration as Merchant and Agent may agree) until such time as the dispute has been resolved and any additional amounts due hereunder have been paid.
- (b) In the event that (a) Agent fails to pay any Expense(s) when due, (b) fails to pay any Expense(s) within two (2) Business Days after Merchant notifies Agent that any Expense(s) are unpaid and past due, or (c) in the event the Expense Letter of Credit will expire within five (5) Business Days and one or more Expenses are then unpaid, Merchant shall be entitled to draw on the Expense Letter of Credit to fund such unpaid amount.

Section 5. Merchandise

5.1 Merchandise Subject to this Agreement.

- (a) For purposes of this Agreement, including, without limitation, the calculation of the Guaranteed Amount, "Merchandise" shall mean: (i) all finished goods

inventory that is owned by Merchant and located at the Closing Stores as of the Sale Commencement Date, including all display merchandise, Defective Merchandise and merchandise subject to Gross Rings, and (ii) all Pre-Sale Returned Merchandise which is saleable as first quality merchandise and received during the Returns Period pursuant to Section 8.5 hereof. Notwithstanding the foregoing, Merchandise shall not include: (1) goods which belong to sublessees, licensees or concessionaires of Merchant; (2) goods held by Merchant on memo, on consignment, or as bailee, unless otherwise agreed to by Merchant and Agent; (3) FF&E, including Owned FF&E, which are located in the Closing Stores; (4) Pre-Sale Returned Merchandise which is not saleable as first quality merchandise, whether returned during or after the Returns Period; (5) Excluded Defective Merchandise; (6) any inventory received by or delivered to the Closing Stores after the Sale Commencement Date (other than from a Closing Store); and (7) returned to vendor goods collectively, the "Excluded Merchandise"). As used in this Agreement the following terms have the respective meanings set forth below:

- (i) "Defective Merchandise" means any item of non-first quality inventory that is not saleable in its current physical condition, worn, scratched, faded, torn, soiled or affected by other similar defects rendering it not first quality and for greater certainty, excludes Excluded Defective Merchandise.
- (ii) "Excluded Defective Merchandise" shall mean (i) those items of Defective Merchandise that are not saleable in the ordinary course because they are so damaged or defective that they cannot reasonably be used for their intended purpose, including single shoes, mismatched footwear and missized pairs and (ii) those items of Defective Merchandise for which Merchant and Agent cannot agree upon a Cost Value.

5.2

Valuation.

- (a) For purposes of this Agreement, "Cost Value" shall mean with respect to each item of Merchandise, the lower of (a) the aggregate total of the actual SKU/UPC level cost for such item of Merchandise as reflected in Merchant's master cost file identified as "*Phase 2 - Liquidation Inventory w/April25.xlsx*" provided by Merchant (the "Cost File") and (b) the item's Retail Price; provided, however, that the Cost Value of Defective Merchandise shall be dealt with in accordance with Section 5.2(d) below.
- (b) Merchant represents, and Agent acknowledges, that the Cost File does not account for any Excluded Pricing Adjustments, and no such adjustments shall be taken into account in determining the Cost Value of any item of Merchandise.
- (c) For purposes of this Agreement, "Excluded Pricing Adjustments" shall mean the following discounts or price adjustments offered by Merchant: (i) point-of-sale discounts or similar adjustments as set out in Exhibit 5.2(e) hereto, regardless of

duration; (ii) employee discounts; (iii) member or customer appreciation points or coupons; (iv) multi-unit purchase discounts; (v) adjustments for damaged, defective, or "as-is" items; (vi) coupons, catalog, website, or circular prices, or "buy one, get one" type discounts; and (vii) customer savings pass discounts or bounce back coupons, or discounts for future purchases based on dollar value of past purchases, or similar customer specific, temporary, or employee non-product specific discounts or pricing accommodations.

- (d) With respect to Defective Merchandise, for purposes of determining the Cost Value thereof, and in lieu of any other adjustments to the Cost Value of Merchandise under this Agreement (e.g., adjustments for Defective Merchandise, clearance merchandise, mis-mates and near-mates, and/or Excluded Pricing Adjustments), the aggregate Cost Value of the Merchandise shall be adjusted (i.e., reduced) by means of a single global downward adjustment equal to [REDACTED] of the aggregate Cost Value of the Merchandise (the "Global Inventory Adjustment"). Notwithstanding the foregoing, and for avoidance of doubt, the Cost Value of the Merchandise shall be adjusted for the exclusion from Merchandise of all Excluded Defective Merchandise.

5.3 Excluded Goods. Merchant shall retain all rights and responsibility for any goods not included as "Merchandise" hereunder, including, without limitation, the Excluded Merchandise, and shall remove such goods from the Closing Stores prior to the Sale Commencement Date, or as soon thereafter as reasonably practicable; provided, however, if Merchant elects on the first day of the Sale Term, Agent shall accept those goods not included as "Merchandise" hereunder and as identified by Merchant for sale as "Merchant Consignment Goods". Election by Merchant to include Merchant Consignment Goods in the Sale constitutes a representation and warranty by Merchant that it is entitled to sell such goods and to allocate the proceeds of such sale as provided for in this Agreement. Agent shall retain [REDACTED] of the sale price (less one hundred percent (100%) of applicable Sales Taxes) for all sales of Merchant Consignment Goods, and Merchant shall [REDACTED] of the sale price, plus one hundred percent (100%) of applicable Sales Taxes in respect of such sales. Merchant shall receive its share of the receipts of sales of Merchant Consignment Goods on a weekly basis, immediately following the weekly reconciliation by Merchant and Agent pursuant to Section 3.7(a) hereof. If Merchant does not elect to have Agent sell such goods not included as Merchandise, then all such items will be removed by Merchant from the Closing Stores at its expense as soon as practicable after the date hereof. Except as expressly provided in this Section 5.3, Agent shall have no cost, expense or responsibility in connection with any goods not included in Merchandise, including but not limited to, sales commissions and percentage rent.

Section 6. Sale Term.

6.1 Term. The Sale shall commence at the Closing Stores forthwith upon the issuance and entry of the Approval Order by the Court, but in no event later than May 10, 2012 (the "Sale Commencement Date"); provided, however, that the Initial Guaranty Payment, the Guaranty Letter of Credit and the Expenses Letter of Credit shall have been received by Merchant in accordance with Sections 3.4(a), 3.4(h) and 4.3 hereof prior to the commencement

of the Sale. Agent shall complete the Sale and vacate each Closing Store's premises in favour of Merchant or its representative or assignee on or before July 31, 2012, unless otherwise: (a) extended by mutual agreement between Merchant and Agent, and with the consent of the affected landlord for such Closing Store(s) if the extension is proposed to go beyond the sale termination date provided for in the Sales Guidelines; provided, that, in no event shall the Sale Termination Date be extended beyond the Inventory Sale Completion Date (as defined in the Town Shoes APA); or (b) accelerated by Agent on not less than fifteen (15) days' advance written notice to Merchant (the latest date calculated in accordance with the foregoing being, the "Sale Termination Date"). The period from the Sale Commencement Date to the Sale Termination Date shall be referred to herein as the "Sale Term".

6.2 Vacating the Closing Stores. Subject to the terms of Section 6.1 hereof, if Agent intends to vacate a Closing Store prior to July 31, 2012, Agent shall provide Merchant with not less than fifteen (15) days' advance written notice thereof (as to each such Closing Store, as applicable, the "Vacate Date"); provided, however, that Agent shall coordinate the Vacate Date with Merchant to minimize occupancy expenses in respect of the Closing Stores. For greater certainty, the Vacate Date shall not be later than July 31, 2012, subject to such extension to a later date as permitted in accordance with Section 6.1 hereof. On each Vacate Date and on the Sale Termination Date (as applicable), Agent shall vacate each Closing Store in favor of Merchant or its representatives or assignee, remove all Remaining Merchandise (subject to the right to abandon, neatly in place, the FF&E) and leave the applicable Closing Stores in "broom swept" condition. Agent agrees that it shall be obligated to forthwith repair any damage caused by Agent (or any representative, agent or licensee thereof) to any Closing Store during the Sale Term, ordinary wear and tear excepted. Agent's obligations to pay all Expenses, including Occupancy Expenses, for each Closing Store subject to Vacate Date notice shall continue until the applicable Vacate Date for such Closing Store. All assets of Merchant not used by Agent in the conduct of the Sale (e.g. FF&E, supplies, etc.) shall be returned by Agent to Merchant or left at the Closing Stores, as applicable, unless otherwise disposed of through no fault of Agent. Where reference is made in this Section 6 to vacating the Closing Stores, such shall mean vacating the Closing Stores, in favor of Merchant, its representatives or assignee and shall not mean vacating possession or disclaimer of lease in favor of the landlord or owner of the Closing Store premises, such lease being the property of Merchant.

Section 7. Sale Proceeds

7.1 Proceeds. For purposes of this Agreement, "Proceeds" shall mean the total amount (in dollars) of all sales of Merchandise made under this Agreement. Notwithstanding anything herein to the contrary, "Proceeds" shall be exclusive of (i) Sales Taxes, and (ii) returns, allowances and customer credits. All proceeds of Merchant's insurance (net of any deductible) directly attributable to loss or damage to Merchandise or loss of cash arising from events occurring during the Sale Term shall constitute Proceeds under this Agreement. Proceeds shall also include any and all proceeds received by Agent from the disposition of unsold Merchandise at the end of the Sale whether through salvage, bulk sale or otherwise.

7.2. Credit Card Proceeds. Agent shall have the right during the Sale Term to use Merchant's credit card facilities (including Merchant's credit card terminals and processor(s), credit card processor coding, merchant identification number(s) and existing bank accounts) for credit card Proceeds relating solely to the Sale (collectively, the "Credit Card Processing Facilities"); provided, however, Agent shall have the right to obtain Agent's own merchant identification numbers and bank accounts following the payment of the Initial Guaranty Payment on the Sale Commencement Date and all other amounts payable to Merchant on such date. To the extent that Agent uses Merchant's existing Credit Card Processing Facilities, Agent shall comply with all of Merchant's existing agreements with persons providing such Credit Card Processing Facilities. To the extent Agent so elects, Merchant shall exercise commercially reasonable efforts to assist Agent in obtaining such merchant identification number and bank accounts and shall update their systems to recognize and accept such merchant identification numbers and Merchant shall process credit card transactions on behalf of Agent and for Agent's account, applying customary practices and procedures. To the extent available, Agent shall have the right to accept Merchant's proprietary card. Without limiting the foregoing, Merchant shall cooperate with Agent to down-load data from all credit card terminals each day during the Sale Term and to effect settlement with Merchant's credit card processor(s) and shall take such other actions necessary to process credit card transactions on behalf of Agent under Merchant's identification number(s). Merchant shall not be responsible for and Agent shall pay as an Expense hereunder, all credit card fees, charges and chargebacks related to the Sale, whether received during or after the Sale Term. For greater certainty, the Net FF&E Proceeds do not constitute "Proceeds" as such term is defined herein.

Section 8. Conduct of the Sale.

8.1 Rights of Agent. Subject to the issuance and entry of the Approval Order by the Court, Agent shall be permitted to conduct the Sale throughout the Sale Term in a manner consistent with (a) applicable laws and regulations, (b) the leases and other occupancy agreements relating to the Closing Stores, as such leases and other occupancy agreements have been amended by Court order or by agreement of the applicable landlord, (c) the sales guidelines annexed hereto as Exhibit 8.1, as the same may be modified and approved by the Court, subject to Agent's approval, acting reasonably ("Sales Guidelines") and (d) the terms of this Agreement. In addition to any other rights granted to Agent hereunder, in conducting the Sale, Agent, in the exercise of its sole discretion, but expressly subject in all cases to the restrictions set out above, shall have the right:

- (a) to establish Closing Stores' hours, which are consistent with the terms of applicable leases, mortgages or other occupancy agreements and local laws or regulations;
- (b) subject to Section 3.3 hereof, to use without charge during the Sale Term (except where otherwise designated as an Expense pursuant to Section 4.1 hereof), all Owned FF&E and other FF&E, Closing Store level (and to the extent available, corporate) point of sale systems and equipment and computer hardware and software, existing supplies located at the Closing Stores, intangible assets (including Merchant's names, logos, trademarks and tax identification numbers).

Closing Stores' keys, case keys, security codes, and safe and lock combinations required to gain access to and operate the Closing Stores, and any other assets of Merchant located at the Closing Stores (whether owned, leased, or licensed) consistent with applicable terms of leases or licenses. Agent shall, at Merchant's expense and direction, exercise due care and return to Merchant or dispose immediately at the end of the Sale all materials and supplies except materials or supplies expended;

- (e) subject in all cases to Section 3.3 hereof, to use Merchant's central office facilities, point of sale systems, central administrative services and personnel to process payroll, perform MIS and provide other central office services necessary for the Sale to the extent that such services are normally provided by Merchant in house, at no cost to Agent (except as otherwise provided in Section 4.1 hereof) and Merchant shall provide such facilities, systems, services and personnel; provided, however, that in the event Agent requests Merchant to provide services other than those normally provided to the Closing Stores and relating to the sale of Merchandise by Merchant in the ordinary course of business and as expressly contemplated by this Agreement, Agent shall be responsible to reimburse Merchant for actual incremental cost of such services incurred by Merchant as an Expense of the Sale hereunder;
- (d) to establish Sale prices and implement advertising, signage (including exterior banners and signs), and promotional programs consistent with the sale theme described herein, and as otherwise provided in the Approval Order and the Sales Guidelines, as and where applicable (including, without limitation, by means of media advertising, A-frame, offsite signage and similar signage, and use of sign walkers, in Agent's discretion), provided, however, that all signage and promotional materials shall be subject to the prior approval of Merchant and in no event shall any signage or promotion materials contain the words "Bankruptcy", "Going out of Business", "Liquidation" or "Court-Ordered Sale"; and
- (e) once the Inventory Taking has been completed at both the transferring Closing Store and the receiving Closing Store, to transfer Merchandise between and among the Closing Stores.

8.2 Terms of Sales to Customers. Subject to Agent's compliance with applicable law, all sales of Merchandise will be "final sales" (and the same shall be printed or stamped on customer receipts) and "as is, where is" and all advertisements and sales receipts will reflect the same. Agent shall not warrant the Merchandise in any manner, but will, to the extent legally permissible, pass on all manufacturers' warranties to customers. All sales will be made only for cash or, nationally recognized bank credit cards.

8.3 Sales Taxes. During the Sale Term, all sales taxes or any other charges or taxes attributable to sales of Merchandise as indicated on Merchant's point of sale equipment payable to any taxing authority having jurisdiction (collectively, "Sales Taxes") shall be added to the sales price of Merchandise and collected on Merchant's behalf, and provided to Merchant on no