

This is the 3<sup>rd</sup> affidavit of  
D. Gumprich in this case and was  
made on December 6, 2011

No. S-117081  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44

AND

IN THE MATTER OF STERLING SHOES INC. and STERLING SHOES GP INC.

PETITIONERS

**AFFIDAVIT**

I, **Daniel Gumprich**, Chartered Accountant and Chartered Business Valuator, of 2580 Viscount Way, Richmond, British Columbia, AFFIRM THAT:

1. I am the Chief Financial Officer of the Petitioners in this proceeding and as such I have personal knowledge of the matters deposed to in this Affidavit except where I depose to a matter based on information from an informant I identify, in which case I believe that both the information from the informant and the resulting statement are true.

2. I am authorized to make this affidavit on behalf of the Petitioners and Sterling Shoes Limited Partnership (the "**Partnership**", and together with the Petitioners, the "**Company**").

3. As outlined in my Affidavit #2, filed November 16, 2011, the Company has undertaken a number of steps in respect of its overall restructuring under the CCAA since the date of the Initial Order, made October 21, 2011 (as amended by order made on November 18, 2011, the **"Initial Order"**), including:

- (a) engaging in numerous discussions with creditors and suppliers to ensure the continued delivery of goods and services during the CCAA proceedings;
- (b) analyzing its five retail banners and wholesale division in order to assess the viability of each on a going-forward basis;
- (c) continuing the strategic and financial review of its 158 store locations to determine which locations do not effectively reach the Company's target audience, do not fit the Company's long-term vision for its operations or do not contribute to the financial viability of the business;
- (d) evaluating the Company's personnel requirements;
- (e) working with the Company's lender and the lender's advisors;
- (f) investigating and commencing the process of contacting potential liquidators to assist with store closures and related inventory sales;
- (g) investigating and commencing the process of contacting interested parties relating to potential lease assignments in respect of certain closing store leases;
- (h) working with its financial advisor and the Monitor to review the Company's financial and liquidity issues, develop an overall restructuring strategy and improve the Company's long-term financial prospects and enterprise value; and
- (i) fielding inquiries from numerous parties who have provided an initial expression of interest with respect to participating in a restructuring of the Company.

4. The Company has made progress on a number of the above-noted matters and, in particular, has:

- (a) determined it is in the best interests of the Company to close the Gia and Joneve retail banners and, as of the date of this Affidavit, has decided at this time to close 53 stores (the “**Closing Stores**”), which include all of the Gia and Joneve stores, to further its restructuring efforts. The Company has also determined to close its wholesale division, B-Code Imports;
- (b) completed a request for proposal process involving inventory liquidation to take place at the Closing Stores;
- (c) drafted, negotiated and, subject to Court approval, entered into an agency agreement with a third-party liquidator to assist in the sale of inventory to take place at the Closing Stores;
- (d) drafted and negotiated sale guidelines to govern the conduct of the inventory sale at the Closing Stores;
- (e) commenced a sales and investment solicitation process with the assistance of its financial advisor Capital West Partners LLP (“**Capital West**”), to solicit offers to acquire, restructure or recapitalize the Company;
- (f) entered into an extension agreement (the “**BMO Extension Agreement**”) with its lender, the Bank of Montreal (“**BMO**”), to extend the terms of a forbearance agreement dated October 21, 2011 (the “**Forbearance Agreement**”), between the Company and BMO, which will allow the Company to continue accessing its current credit facility, subject to certain conditions; and
- (g) considered and prepared a key employee incentive program (the “**KEIP**”) to assist with the retention of a limited number of employees during the restructuring process.

5. The Company continues to work diligently and in good faith in an effort to stabilize its business operations and towards a viable restructuring plan. The Company believes that the efforts taken to date, and those expected to take place, will allow the Company to emerge as a stronger business.

### **Store Closures**

6. As set out in the Petition, and in my earlier affidavits filed in these proceedings, the Company has conducted, and continues to conduct, a critical evaluation of its 158 retail stores, five retail banners and wholesale division.

7. As noted above, as of the date of this affidavit, the Company has decided to close 53 stores (including all stores operating under the Gia and Joneve retail banners) and its wholesale division, "B-Code Imports". Attached and marked as **Exhibit "A"** to this my affidavit is a list of the Closing Stores.

8. The decision to close the Closing Stores was made after careful analysis and consultation with the Company's advisors and the Monitor. The Closing Stores, and the Gia and Joneve banners generally, were negatively affecting the Company's overall position. The wholesale division did not fit within the Company's strategic vision on a going-forward basis. The Company is of the view that these decisions will improve its overall financial position and will better enable it to successfully restructure.

### **The Agency Agreement**

9. In connection with the store closures, the Company, in consultation with the Company's advisors, the Monitor and BMO's financial advisor, Richter Consulting Canada Inc. ("**Richter**"), determined that in order to maximize the value of the inventory at the Closing Stores, and to allow the Company to focus on other issues related to its restructuring efforts, it would engage a professional third-party liquidator with retail liquidation expertise to conduct the sale of inventory at the Closing Stores (the "**Sale**").

10. The Company is of the view that engaging a professional liquidator to undertake a sale of excess inventory will produce better results for the Company and its stakeholders than an attempt by the Company to liquidate without professional assistance. Furthermore, a professional liquidator will enable the Company to continue its efforts and focus on its remaining core business and elsewhere with respect to restructuring efforts under the CCAA.

11. The Company, with the assistance of the Monitor and Richter, identified numerous parties with sufficient expertise in retail liquidations that could potentially assist the Company with the Sale.

12. On or around November 18, 2011, the Partnership, with the assistance of its advisors, the Monitor and Richter, commenced a formal request for proposal (the “**RFP**”) process to solicit proposals for conduct of the Sale. The RFP was sent to 7 potential bidders and outlined a number of requirements that potential bidders had to satisfy in order to be considered “Qualified Parties”.

13. In order to participate in the RFP, each Qualified Party was required to execute a confidentiality agreement and submit a proposal (along with a \$250,000 refundable deposit) to the Monitor’s counsel by no later than November 28, 2011 at 5:00 P.M. (the “**Deadline**”). Proposals were required to remain open for acceptance by the Partnership until December 2, 2011 at 5:00 P.M.

14. Upon executing a Confidentiality Agreement, each Qualified Party was provided with access to a virtual data room which contained information about the Partnership and, in particular, the Closing Stores and the inventory. Proposals were to be submitted to counsel for the Monitor in the form of an agency agreement, a draft of which was provided to the Qualified Parties on November 21, 2011. It was understood that the draft agency agreement may be subject to further negotiations between the Partnership and the successful Qualified Party.

15. Four (4) proposals were received by counsel for the Monitor, two of which included joint ventures. As a result, six of the seven Qualified Parties submitted a proposal. All of the proposals were circulated to the Company, Monitor and Richter after the Deadline had passed.

16. Following a careful review of the proposals, the Company, in consultation with its advisor, the Monitor and Richter, selected Century Services LP (the “**Agent**”) to conduct the Sale. The Agent’s proposal provided for the highest guaranteed payment, the lowest agent’s fee percentage, and the highest merchant’s sharing recovery percentage. The Company was of the view that the Agent’s proposal was the most favourable of those submitted.

17. On December 6, 2011, the Partnership and the Agent executed an agency agreement (the “**Agency Agreement**”). The Agency Agreement is subject to certain conditions, including Court approval. Attached and marked as **Exhibit “B”** to this my affidavit is a true copy of a redacted version of the Agency Agreement. Unless otherwise defined herein, all capitalized terms used hereafter shall have the meanings given to them in the Agency Agreement.

18. Exhibit “B” has been redacted to remove certain confidential business terms. An unredacted copy of the executed Agency Agreement is attached as Exhibit “A” to my Affidavit # 4.

19. The redacted portions of the Agency Agreement contain sensitive and confidential details concerning the Company’s assets and the Agent’s proposal. As referenced above, the Agency Agreement was the product of the RFP, including the confidentiality provisions thereof, and the Agent’s proposal was submitted on that basis. If the Agent’s proposal were disclosed as part of the public record, that information might be used by the Agent’s competitors to gain a competitive advantage in future proposals.

20. In addition, if the details of the Sale, including the amount and cost of the inventory to be sold, were made public I believe that such information might be relied upon by the Company’s competitors. More significantly, however, I believe that the Company’s restructuring efforts would be prejudiced as the current plan is to release that information only to potential investors and purchasers who have executed non-disclosure agreements in favour of the Company.

21. For the foregoing reasons and others explained later in this affidavit, the Company is seeking an order sealing my Affidavit #4 so that it will be kept confidential.

22. Some of the key terms of the Agency Agreement include:

- (a) the Sale will commence no later than December 9, 2011 (the "**Sale Commencement Date**") and will be completed on or before February 29, 2012, (the "**Sale Termination Date**") unless the Sale Termination Date is (i) extended by mutual agreement between the Merchant and the Agent, 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 Sale Guidelines; or (ii) accelerated by the Agent on not less than seven (7) days' written notice to the Merchant. The period from and including the Sale Commencement Date to and including the Sale Termination Date is referred to herein as the "**Sale Term**";
- (b) the Merchant appoints the Agent as exclusive agent for the purpose of conducting a "store closing", "sale on everything", "everything must go" or mutually agreed theme sale at the Closing Stores during the Sale Term;
- (c) the Agent will pay the Merchant a guaranteed percentage of the aggregate Cost Value of the Merchandise plus additional amounts based on a sharing formula set out in the Agency Agreement;
- (d) the Agent must make a payment of 90% of the Guaranteed Amount no later than the date the Agency Agreement is approved by the Court. The Agent is required to post a letter of credit to secure its obligation to pay the balance of the Guaranteed Amount and the Agent's indemnification obligations arising from the Agency Agreement. The Agent must make payment of the balance of the Guaranteed Amount on the second business day following the issuance of the Final Inventory Report;
- (e) the Agent is entitled to the Agent's Fee based on a percentage of the aggregate Cost Value of the Merchandise in the Closing Stores. The Agent is also entitled to a commission in respect of the sale of any Owned FF&E;

- (f) the Agent will be responsible for all Expenses incurred in conducting the Sale, but shall be entitled to recover the Expenses from the Proceeds after payment of the Guaranteed Amount;
- (g) certain inventory is entitled to be transferred from the Merchant's continuing stores to the Closing Stores;
- (h) the parties will perform an Inventory Taking at the Closing Stores within fourteen (14) days after the Sale Commencement Date;
- (i) the Agent will conduct the Sale throughout the Sale Term in accordance with (i) applicable laws and regulations, (ii) the leases and other occupancy agreements relating to the Closing Stores, except as amended by Court Order or agreement with the applicable landlord, (iii) the Sale Guidelines and (iv) the terms of the Agency Agreement;
- (j) the Agent is required to provide the Merchant with at least seven (7) days' written notice prior to vacating a Closing Store;
- (k) the Agent shall be granted a court-ordered security interest and charge over all the Merchandise and the Proceeds to an aggregate amount of \$9,500,000, which will rank in priority to all of the CCAA Charges and any other Encumbrances (as such terms are defined in the Initial Order); and
- (l) the Agent has the right to elect to pay, as an Expense, retention bonuses up to a specified percentage of the aggregate Base Payroll to certain Retained Employees who do not voluntarily leave employment and are not terminated for cause. The Agent must provide a copy to the Merchant of its retention bonus plan at least one business day prior to the Sale Commencement Date.

23. I understand that the Monitor and BMO support the selection of the Agent and support the Partnership entering into the Agency Agreement.



24. The Guaranteed Amount from the Sale of the Merchandise at the Closing Stores will be used by the Partnership to pay down the BMO indebtedness under the Partnership's existing credit facility with BMO.

#### **Agent's Charge**

25. As noted above, the Agency Agreement contemplates the creation of a Court-ordered charge in favour of the Agent in the amount of \$9,500,000 to secure all amounts due and owing to the Agent under the Agency Agreement, including reimbursement of any over-advances by the Agent to the Partnership (the "**Agent's Charge**").

26. The Agent's services are important to the Company and its restructuring efforts. In particular, in the Company's view, this represents the best way to maximize value from the inventory at its Closing Stores and improve its overall financial position, for the benefit of all stakeholders. Accordingly, the Company is of the view that it is necessary and appropriate that the Court make an order granting the Agent's Charge.

#### **Sale Guidelines**

27. In connection with the Sale, the Company prepared draft sale guidelines to govern the conduct of the Sale.

28. The Company provided those counsel on the CCAA Service List representing landlords of Closing Stores (the "**Landlords**") with a copy of the draft sale guidelines for their review and comment. The Landlords are some of the largest and most sophisticated landlords in Canada and comprise 41 of the 53 Closing Stores.

29. Following negotiations with the Landlords, the sale guidelines went through various iterations. Attached and marked as **Exhibit "C"** to this my affidavit is a true copy of the sale guidelines resulting from those discussions and negotiations with the Landlords (the "**Sale Guidelines**"). The Sale Guidelines form part of the Agency Agreement.

30. Those Landlords who have not requested to be included on the CCAA Service List will be delivered a copy of the Sale Guidelines as well as the Order approving them, should such

Order be granted. The proposed form of Order contains a comeback clause in favour of the Landlords should any of them have any concerns regarding the Sale Guidelines.

**Capital West and Solicitation Process**

31. As referenced in my Affidavit #1 of October 20, 2011 filed in support of the Petition, in August 2011 a special committee of Sterling Shoes Inc.'s board of directors (the "**Special Committee**") engaged Capital West as financial advisor to assist the Company in developing a viable restructuring plan and exploring strategic alternatives for the Company to permit it to continue operating as a going concern.

32. In connection with the above engagement, the Special Committee and Capital West entered into an agreement dated August 19, 2011 (the "**Capital West Agreement**"), a redacted copy of which is attached and marked as **Exhibit "D"** to this my affidavit.

33. Exhibit "D" has been redacted to remove certain confidential business terms. An unredacted copy of the Capital West Agreement is attached as Exhibit "B" to my Affidavit # 4. The Company has at all times understood that it was to keep the specific business terms of the Capital West Agreement confidential, and has done so.

34. Between August 19, 2011 and October 21, 2011, Capital West undertook a comprehensive review of the Company, including its past, current and future financial conditions and projections. Capital West also assisted in the development and production of a detailed business restructuring plan that outlined various restructuring possibilities.

35. As part of this process, Capital West approached certain investor groups regarding a potential investment in the Company. Most of those potential investor groups executed non-disclosure and standstill agreements ("**NDAs**") and were provided with the Company's information concerning possible restructuring options. The Company was informed by Capital West that certain investor groups would not invest in the Company outside of a formal restructuring.

36. Since the date of the Initial Order, Capital West has worked with the Company and the Monitor and has assisted the Company in developing a revised restructuring plan under the CCAA. Capital West has assisted the Company in conducting a solicitation process, pursuant to which Capital West identified and initiated contact with approximately 50 investor groups, certain of which have executed NDAs.

37. Moving forward, Capital West will continue assisting with a solicitation process. Attached and marked as **Exhibit "E"** to this my affidavit is a solicitation process outline which has been prepared with the involvement of Capital West (the "**Solicitation Process**"). The Solicitation Process involves the following:

- (a) contacting additional investors and negotiating additional NDAs (ongoing);
- (b) distributing a revised business plan and granting access to potential investors that have executed Confidentiality Agreements to an electronic data room (December 2011);
- (c) preparing for and delivering presentations to investors (January 2012);
- (d) receiving and reviewing non-binding proposals for an investment or purchase of all or part of the Company (February 2012);
- (e) selecting proposals to participate in a final, binding proposal process (February 2012);
- (f) responding to due diligence requests (February 2012);
- (g) receiving and reviewing the final, binding proposals (February 2012);
- (h) selecting the preferred proposal (February/March 2012);
- (i) negotiating and executing definitive agreements in respect of the winning proposal, subject to Court approval (March/April 2012); and
- (j) obtaining Court approval for the proposed agreement (March/April 2012).

38. The work undertaken by Capital West, particularly with respect to the Solicitation Process, is vital to the Company's efforts to develop a viable restructuring plan.

39. Pursuant to the Initial Order, the Company was authorized to continue paying Capital West their monthly work fee and reasonable out-of-pocket expenses, as set out in the Capital West Agreement. These fees and expenses are secured by the Administration Charge that was created by the Initial Order.

40. The Company seeks Court approval of the Capital West Agreement and, in particular, the fee structure contained therein (the "**Success Fees**"). Given both the importance and amount of work to be undertaken by Capital West, the Company is of the view that it is appropriate to have the Capital West Agreement and the Success Fees approved to ensure the continued participation and assistance of Capital West, which has provided, and continues to provide, important assistance to the Company in its restructuring efforts.

41. The Capital West Agreement includes detailed confidential information, including in respect of the Success Fees and the terms and conditions relating thereto. I am informed by Marco Tomassetti of Capital West that if the details regarding the Success Fees are disclosed as part of the public record, such information could be used by Capital West's competitors to negatively affect Capital West's business. There are a limited number of providers of services similar to those offered by Capital West, and those providers regularly compete for engagements. Specific knowledge of Capital West's fee structure in this case could provide its competitors with an unfair advantage in negotiations for future transactions.

42. Furthermore, as part of the Solicitation Process, Capital West will solicit offers from various investors and bidders to acquire, restructure or recapitalize the Company's business. These prospective investors may use the details of the Success Fees to provide them with leverage in their negotiations with the Company for more attractive terms. As such, disclosure of the Capital West Agreement, and particulars of the Success Fees in particular, as part of the public record will negatively affect the Company's ability to pursue some of its strategic options in its restructuring efforts, to the detriment of the Company and all of its stakeholders.

43. The foregoing are additional reasons why the Company is seeking an Order that my Affidavit #4 be sealed and thereby kept confidential.

#### **BMO Credit Facility**

44. As outlined in the Petition and my Affidavit #1, the Company has a lending facility with BMO. Prior to the Initial Order, the Company and BMO entered into the Forbearance Agreement that allowed the Company to continue accessing its lending facility, including an over-advance limit.

45. Pursuant to its original terms, the Forbearance Agreement was to expire on December 31, 2011 or, on the occurrence of certain events, at an earlier time.

46. In advance of the expiry date and in connection with entering into the Agency Agreement, the Company and BMO commenced negotiations to extend the expiry date of the Forbearance Agreement. On December 6, 2011, the Company and BMO entered into the BMO Extension Agreement.

47. Pursuant to the BMO Extension Agreement, BMO will continue to provide availability under the Existing Credit Agreement (as such term is defined in the Petition, dated October 21, 2011) to the Partnership, including an overadvance amount of up to \$2,000,000, on the terms and conditions set out in the Existing Credit Agreement, as amended by the BMO Extension Agreement. The BMO Extension Agreement will reduce the total facility available from \$15 million to \$10 million, upon the Company's receipt of the Initial Guaranty Payment from the Agent.

48. The BMO Extension Agreement expires on March 31, 2012, or such earlier time as provided in the BMO Extension Agreement on the occurrence of certain events.

#### **Key Employee Incentive Plan**

49. In order to achieve the best result for the Company's stakeholders through the proposed reorganization, the Company requires that, to the greatest extent possible, certain employees are retained and continue to focus on, and participate in, the Company's business. In particular, the

Company's ability to successfully reorganize depends on the continued employment and dedication of those employees who possess the necessary knowledge, experience and skills to support its daily operations and broader restructuring efforts.

50. To that end, the Company has identified a limited number of key employees (the "**Key Employees**"), each of whom possesses unique knowledge, experience and skills that are vital to the Company's business. Furthermore, given their intimate familiarity with the Company's operations and the difficult circumstances under which the Company is currently operating, these key employees cannot be replaced, or cannot be replaced without significant delay, cost and disruption to the Company's business. The departure of any of the Key Employees would cause significant disruption and would distract the Company from its restructuring and its business.

51. Certain of the Key Employees have expressed concern to me about the uncertainty of their employment given the financial circumstances of the Company. The Company believes that many of the Key Employees have received, or will receive, alternative employment offers.

52. The Company has had extensive discussions with the Monitor in respect of the formulation by the Company of a key employee incentive plan (the "**KEIP**"), that is designed to address the necessity of continued employment and motivation of the Key Employees, taking into account the Company's present financial situation.

53. The Company is of the view that the KEIP is necessary to provide an incentive for the Key Employees to continue in their employment through the restructuring of the Company and for the implementation of any potential plan of arrangement or compromise.

54. The KEIP provides for payments to the Key Employees up to a maximum aggregate of \$500,000, provided certain milestones/conditions are met.

55. The general terms of the KEIP include:

- (a) each Key Employee has executed a letter agreement with the Partnership, whereby he or she acknowledges their agreement to the terms of the KEIP as well as certain others, including confidentiality requirements (the "**KEIP Letter**

**Agreement**”), a true copy of which is attached and marked as **Exhibit “F”** to this my affidavit;

- (b) each Key Employee has been allocated a lump sum incentive bonus (each an **“Incentive Bonus”**), to be paid to the Key Employee;
- (c) the Incentive Bonus is to be paid in three equal tranches upon the successful completion of the following benchmarks:
  - (i) the first one-third will be paid upon the earlier of: (i) the substantial completion of the Company’s proposed liquidation and store closure process; and (b) February 29, 2012;
  - (ii) the second one-third will be paid upon the Company’s execution of a binding agreement providing for either the acquisition, restructuring or recapitalization of the Company’s business; and
  - (iii) the final one-third, and any additional amounts not previously paid, will be paid upon the earlier of: (i) the implementation of a plan and emergence from the CCAA process; and (ii) the closing of a sale transaction and/or a recapitalization or restructuring agreement; and
- (d) payments under the KEIP will only be made if, at the date the relevant tranche of the Incentive Bonus is due, the Key Employee has fulfilled his or her employment obligations and has not voluntarily resigned or been terminated for cause.

56. The Company identified the Key Employees and calculated and assigned their respective Incentive Bonuses based upon a number of factors, including:

- (a) the nature of the Key Employee’s job requirements and duties;
- (b) the importance of the Key Employee to a successful restructuring;
- (c) the perceived risk that the Key Employee would seek alternative employment without the KEIP; and

(d) their base compensation levels.

57. The Company would face significant problems in seeking suitable replacements for departing Key Employees, particularly given the Company's current position and due to costs associated with executive search firms, above-market salaries, relocation expenses, and signing bonuses. In addition, the loss of Key Employees could create further stability concerns, potentially leading to departures of other employees.

58. There is urgency to this application as the Company is about to engage in a liquidation process, certain store closures will be effected in the near future, and stability of the business is crucial while the Company, with the assistance of Capital West, is engaged in the Solicitation Process. The Company requires the assistance of the Key Employees during this critical period. In my view, the Company may have difficulty retaining the services of the Key Employees unless the KEIP is implemented in the very near future.

59. The KEIP was approved by the Sterling Shoes Inc. Corporate Governance and Compensation Committee and the Board of Directors of Sterling Shoes Inc. and Sterling Shoes GP Inc.

60. Having regard to all of the circumstances of the Company, as set out above, in my view as Chief Financial Officer of the Company, the KEIP is fair and reasonable and in the best interests of the Company.

61. I understand that the Monitor and BMO support the proposed KEIP.

62. I have attached a list of the Key Employees and their respective Incentive Bonuses as Exhibit "C" in my Affidavit #4. This list contains personal information about the Key Employees, including the amounts they are eligible to be paid under the KEIP.

63. It is neither the policy of the Company nor, from my understanding, companies generally, to make the salaries of its employees publically known. Apart from privacy concerns of the Key Employees, such information would enable employers to attempt to outbid the Company for employees. Moreover, disclosure of the Key Employees and details of the KEIP details could



create negative morale among the Company's other employees and may hamper the Company's bargaining with its employees.

64. The foregoing are additional reasons that the Company is seeking an Order that my Affidavit #4 be filed under seal and kept confidential.

65. I have read the Affidavit #1 of Steven Richardson, affirmed December 5, 2011. Mr. Richardson is the Chair of the Corporate Governance and Compensation Committee and has provided his affidavit in support of the KEIP. Mr. Richardson's affidavit discloses the names of certain of the Key Employees and for the reasons expressed above, the Company seeks an Order sealing Mr. Richardson's Affidavit #1 to protect the sensitive and confidential nature of that information.

#### **KEIP Charge**

66. It is intended that the Incentive Bonuses payable under the KEIP will be funded out of the Company's cash flow. The Company proposes that a charge (the "**KEIP Charge**") in respect of the Company's obligations under the KEIP be granted in the amount of \$500,000 to provide a reasonable level of assurance to the Key Employees that the Incentive Bonuses will be paid if the conditions of the KEIP are met.

67. I understand the Monitor and BMO support the proposed KEIP Charge.

#### **Cash Flow**

68. The Company, with the assistance of the Monitor, has prepared a cash flow forecast through March 31, 2012 (the "**Cash Flow Forecast**").

69. Attached as **Exhibit "G"** is a copy of the Cash Flow Forecast.

70. As set out in the Cash Flow Forecast, the Company's principal uses of cash during the next 16 weeks will consist of the payment of ongoing costs of day to day operations and professional fees and disbursements in connection with these CCAA proceedings.


71. In addition, as outlined above, the Company seeks the approval of the KEIP which, if approved by the Court, will require the payment of Incentive Bonuses upon the occurrence of certain events. The Cash Flow Forecast includes all of the Company's financial commitments required under the KEIP.

## General

72. Since the date of the Initial Order, the Company has met its post-filing obligations to creditors and suppliers when due and has met its obligations to employees in the normal course. In particular, the Company has paid its statutory remittances for employees and continues to pay its taxes and make its real property lease payments in accordance with the terms of the Initial Order.

73. After reviewing the Cash Flow Forecast and after considering both the operations of the Company and the expected costs of operations on a going-forward basis, it is my view that the Company has sufficient liquidity, or in the alternative sufficient financing, to operate until the stay extension date of March 30, 2012.

AFFIRMED BEFORE ME at Vancouver,  
British Columbia on December 6, 2011.

  
A Commissioner for taking Affidavits for  
British Columbia

*Daniel S. G.*  
Daniel Gumprich

**Andrew Crabtree**  
*Barrister & Solicitor*  
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This is **Exhibit "A"** referred to in the Affidavit #3  
of Daniel Gumprich made before me at Vancouver,  
British Columbia this 6<sup>th</sup> day of December 2011.

A handwritten signature in black ink, consisting of stylized cursive letters, positioned above a horizontal line.

A Commissioner for the taking Affidavits  
for British Columbia

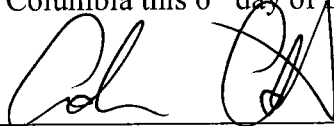
### LIST OF CLOSING STORES

Store No.	Store	Address	Province
180	Freedman	Unit 104 – 240 Leighland Avenue, Oakville	Ontario
144	Freedman	Unit 70A – 100 Anderson Road S, Calgary	Alberta
146	Freedman	1854 West 4 <sup>th</sup> Avenue, Vancouver	British Columbia
86	Freedman	640 Granville Street, Vancouver	British Columbia
140	Freedman	Unit 1572 – 6551 No. 3 Road, Richmond	British Columbia
142	Freedman	Unit 304 – 306, 1950 Harvey Avenue, Kelowna	British Columbia
89	Freedman	1315 Government Street, Victoria	British Columbia
186	Freedman	Unit H013 – 9350 Yonge Street, Richmond Hill	Ontario
42	Joneve	777 Park Royal North, West Vancouver	British Columbia
40	Joneve	Unit D058 – 700 West Georgia Street, Vancouver	British Columbia
45	Joneve	1075 Robson Street, Vancouver	British Columbia
47	Joneve	Unit 155 -100 Anderson Road South, Calgary	Alberta
124	Joneve	Unit 444 – 19705 Fraser Highway, Langley	British Columbia
60	Joneve	Unit 1245 – 6455 Macleod Trail SW, Calgary	Alberta
190	Joneve	Unit 1320 – 110 Place D’Orleans Drive, Orleans	Ontario
194	Joneve	Unit 1177 – 25 The West Mall, Toronto	Ontario
184	Joneve	Unit DD6B – 100 Bayshore Drive, Ottawa	Ontario
183	Joneve	Unit 237 – 1105 Wellington Road South, London	Ontario
193	Joneve	Unit 254 – 25 Peel Centre Drive, Brampton	Ontario
80	Joneve	Unit 175 – 109 <sup>th</sup> Street & Princess Elizabeth Avenue, Edmonton	Alberta

44	Joneve	Unit 2303 – 4700 Kingsway, Burnaby	British Columbia
187	Joneve	550 King Street North, Waterloo	Ontario
113	Gia	Unit 2156A Metrotown, 4700 Kingsway, Burnaby	British Columbia
41	Sterling	2230 West 4 <sup>th</sup> Avenue, Vancouver	British Columbia
70	Sterling	Unit 800 – 5111 Northland Drive N.W., Calgary	Alberta
150	Sterling	Unit E3 – 17600 Yonge Street, Newmarket	Ontario
152	Sterling	Unit A005B PO Box 147 – 220 Yonge Street, Toronto	Ontario
155	Sterling	Unit B211 – 5100 Erin Mills Parkway, Mississauga	Ontario
182	Sterling	Unit 88A – 221 Glendale Avenue, St. Catharines	Ontario
71	Sterling	Unit 127 – 4747 67 <sup>th</sup> Street, Red Deer	Alberta
156	Sterling	Unit M021 – 2960 Kingsway Drive, Kitchener	Ontario
158	Sterling	Unit 0255A – 999 Upper Wentworth Street, Hamilton	Ontario
163	Sterling	Unit C6B – 3100 Howard Avenue, Windsor	Ontario
166	Sterling	Unit 2022 – 419 King Street West, Oshawa	Ontario
171	Sterling	Unit E008 – 9350 Yonge Street, Richmond Hill	Ontario
173	Sterling	Unit J9 – 435 Stone Road West, Guelph	Ontario
176	Sterling	Unit 140 – 25 Peel Centre Drive, Brampton	Ontario
181	Sterling	Unit C1A – 390 North Front Street, Belleville	Ontario
168	Sterling	Unit 277 – 1105 Wellington Road South, London	Ontario
177	Sterling	Unit B-34 – 120 Adelaide Street West, Toronto	Ontario

28	Sterling	1073 Robson Street, Vancouver	British Columbia
161	Sterling	Unit 2-924 – 100 City Centre Drive, Mississauga	Ontario
178	Sterling	Unit 306 – 355 Hespeler Road, Cambridge	Ontario
162	Sterling	Unit 99 – 300 Borough Drive, Scarborough	Ontario
157	Sterling	Unit D006 – 509 Bayfield Street, Barrie	Ontario
159	Sterling	Unit 32 – 5000 Highway 7 East, Markham	Ontario
160	Sterling	Unit U072B – 1680 Richmond Street, London	Ontario
172	Sterling	Unit 0539 – 900 Dufferin Street, Toronto	Ontario
169	Sterling	Unit B205 – 1 Promenade Circle, Thornhill	Ontario
185	Sterling	Unit U019 – 945 Gardiners Road, Kingston	Ontario
22	Shoe Warehouse	Unit E – 1675 152 <sup>nd</sup> Street, Surrey	British Columbia
123	Shoe Warehouse	Unit 130 – 7515 Market Crossing, Burnaby	British Columbia
108	Shoe Warehouse	Unit 63 – 1644 Hillside Avenue, Victoria	British Columbia

This is **Exhibit "B"** referred to in the Affidavit #3  
of Daniel Gumprich made before me at Vancouver,  
British Columbia this 6<sup>th</sup> day of December 2011.

A handwritten signature in black ink, appearing to be 'DL' followed by a stylized flourish.

---

A Commissioner for the taking Affidavits  
for British Columbia

## **AGENCY AGREEMENT**

This Agency Agreement (the "Agreement") is made as of December 6, 2011, by and between Century Services LP, by its general partner Century Services Inc. ("Agent"), and Sterling Shoes Limited Partnership ("Merchant"), a limited partnership formed under the laws of Manitoba.

### **RECITALS**

**WHEREAS** Merchant operates 158 retail stores across Canada in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario;

**AND WHEREAS** Sterling Shoes Inc. and Sterling Shoes GP Inc., the general partner of Merchant ("Sterling GP"), have commenced a proceeding (the "CCAA Proceedings") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and obtained an initial order, as amended and extended (the "Initial Order") from the Supreme Court of British Columbia (the "Court") on October 21, 2011;

**AND WHEREAS** Merchant has also obtained certain protections under the Initial Order;

**AND WHEREAS** Merchant desires that Agent act as Merchant's exclusive agent for the limited purpose of (a) selling, by conducting a "store closing", "sale on everything", "everything must go" or mutually agreed theme sale (the "Sale"), all of the Merchandise (each as hereinafter defined) located or to be located in Merchant's retail store locations identified in Exhibit 1A annexed hereto (collectively, the "Closing Stores" and each a "Closing Store"); and (b) subject to Section 14 hereof, disposing of such Merchant's owned furniture, trade fixtures and equipment (collectively, "Owned FF&E") located at the Closing Stores, subject to the terms and conditions set forth herein;

**AND WHEREAS** Agent is willing to serve as Merchant's exclusive agent to conduct the Sale in accordance with the terms and conditions of this Agreement;

**AND WHEREAS** this Agreement shall govern the conduct of the Sale at the Closing Stores and Merchant's and Agent's respective rights and obligations with respect thereto.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent and Merchant hereby agree as follows:

#### **Section 1.     Definitions and Exhibits.**

1.1     Defined Terms. The terms set forth below are defined in the Sections referenced of this Agreement:

<i><b>Defined Term</b></i>	<i><b>Section Reference</b></i>
Additional Merchant Merchandise	Section 2.4
Additional Taxes & Penalties	Section 8.3



<i><b>Defined Term</b></i>	<i><b>Section Reference</b></i>
Adjustment Amount	Section 3.3(e)
Agency Accounts	Section 3.7(a)
Agency Documents	Section 11.1(b)
Agent	Preamble
Agent Claim	Section 12.6
Agent Indemnified Parties	Section 13.1
Agent's Charge	Section 2.3(j)
Agent's Fee	Section 3.1(b)
Agent's Sharing Recovery Amount	Section 3.1(b)
Agreement	Preamble
Approval Order	Section 2.3
Base Payroll	Section 4.1(c)
Benefits Cap	Section 4.1(c)
Business Day	Section 3.3(b)
CCAA	Recitals
Central Services Expenses	Section 4.2
Charged Property	Section 2.3(j)
Closing Stores	Recitals
Continuing Stores	Section 2.4
Cost File	Section 5.2(a)
Cost Value	Section 5.2(a)
Court	Recitals
Credit Card Processing Facilities	Section 7.2
Deposit	Section 3.3(b)
Defective Merchandise	Section 5.1(a)(i)
Designated Merchant Accounts	Section 3.7(a)
Encumbrances	Section 2.3(c)
Estimated Guaranteed Amount	Section 3.3(a)
Events of Default	Section 15
Excluded Benefits	Section 4.2
Excluded Defective Merchandise	Section 5.1(a)(ii)
Excluded Merchandise	Section 5.1(a)
Excluded Pricing Adjustments	Section 5.2(c)
Expenses	Section 4.1
FF&E	Section 2.3(e)
FF&E Commission	Section 14
Final Inventory Report	Section 3.3(b)
Final Reconciliation	Section 3.6(b)
Global Inventory Adjustment	Section 5.2(d)
Gross Rings	Section 3.5
Gross Rings Period	Section 3.5
Guaranteed Amount	Section 3.1(a)
Guaranty Letter of Credit	Section 3.3(h)

<i>Defined Term</i>	<i>Section Reference</i>
Guaranty Percentage	Section 3.1(a)
Initial Guaranty Payment	Section 3.3(a)
Initial Order	Recitals
Inventory Completion Date	Section 3.4(a)
Inventory Date	Section 3.4(a)
Inventory Taking	Section 3.4(a)
Inventory Taking Service	Section 3.4(a)
Lender	Section 2.32.3(a)
Letter of Credit	Section 4.3(a)
Merchandise	Section 5.1(a)
Merchant	Preamble
Merchant Consignment Goods	Section 5.3
Merchant Indemnified Parties	Section 13.2
Merchant Personal Information	Section 12.4
Merchant's Sharing Recovery Amount	Section 3.1(b)
Monitor	Section 3.3(b)
Net FF&E Proceeds	Section 14
Occupancy Expenses	Section 4.1
Owned FF&E	Recitals
Owned FF&E Option Notice	Section 14
Payment Date	Section 3.1(a)
Pre-Sale Returned Merchandise	Section 8.5
Prime Rate	Section 3.6(b)
Privacy Laws	Section 2.4
Proceeds	Section 7.1
Refund	Section 8.5
Remaining Guaranteed Amount	Section 3.3(h)
Remaining Merchandise	Section 3.2
Retained Employee	Section 9.1
Retention Bonus	Section 9.4
Returns Period	Section 8.5
Sale	Recitals
Sale Commencement Date	Section 6.1
Sale Guidelines	Section 8.1
Sale Term	Section 6.1
Sale Termination Date	Section 6.1
Sales Taxes	Section 8.3
Sharing Threshold	Section 3.1(b)
Sterling GP	Recitals
Third Party	Section 4.2
Vacate Date	Section 6.2

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 2.4	List of Additional Merchant Merchandise in Continuing Stores
Exhibit 3.3(a)	Merchant's Wire Transfer Particulars
Exhibit 3.3(h)	Form of Guaranty Letter of Credit
Exhibit 3.4(a)	Inventory Taking Instructions
Exhibit 4.1(a)	Occupancy Expenses
Exhibit 4.3(a)	Form of Expense Letter of Credit
Exhibit 8.1	Sale 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 December 9, 2011 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 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 Sale 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 liens, claims and encumbrances thereon, whether contractual, statutory, by operation of law or otherwise, including, without limitation, the 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) (collectively, "Encumbrances"), which Encumbrances will attach instead to the Guaranteed Amount and other amounts received or to be received 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(j) hereof, no Encumbrances shall attach to the portion of the Proceeds which are 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 retain such amounts, free and clear of 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, including the Owned FF&E (collectively, the "FF&E"), and other assets of Merchant as designated hereunder for the purpose of conducting the Sale, free of any interference from any entity or person, subject, to the terms of this Agreement, the Approval Order and the Sale Guidelines approved by the Court;
- (f) subject to compliance by Merchant and Agent with this Agreement and the Approval Order and the Sale 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 Sale 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;

- (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) a security interest and charge (the "Agent's Charge") over all of the Merchandise and Proceeds (except for the Guaranteed Amount) (collectively, the "Charged Property") shall be granted in favour of Agent as security for all of the obligations of Merchant to Agent under this Agreement, including all amounts owing by Merchant to Agent under or in connection with this Agreement. The Agent's Charge shall:
  - (i) be to the extent of the aggregate amount of \$9,500,000,
  - (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, provided, however, that the Agent's Charge shall be subordinate to all other CCAA Charges (as defined in the Initial Order), other court-ordered charges ordered by any further order of the Court and all other Encumbrances, solely to the extent of any unpaid portion of the Guaranteed Amount, the Merchant's Share Recovery Amount, Net FF&E Proceeds and Merchant's share of the proceeds from the sale of Merchant Consignment Goods due to Merchant hereunder; 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.

2.4 Additional Merchant Merchandise. Merchant shall not be permitted to augment or otherwise bring new merchandise into the Closing Stores except for: (a) Agent may transfer Merchandise between and among the Closing Stores, (b) Agent may transfer like merchandise of like quality to the Merchandise currently sold in the Closing Stores as set out in Exhibit 2.4 hereof (the "Additional Merchant Merchandise"), which Merchant will make available for transfer from Merchant's retail stores (other than the Closing Stores) to the Closing Stores (collectively, the "Continuing Stores") within eight (8) days after the Sale Commencement Date. For greater certainty, not all merchandise included in Exhibit 2.4 will be available for transfer to the Closing Stores and only Additional Merchant Merchandise actually transferred to the Closing Stores within such time period shall be included in the Sale. Payment of the Guaranteed Amount in respect of the Additional Merchant Merchandise included in the Sale shall be made by Agent in accordance with Section 3.3 hereof.

### 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 (inclusive of the Additional Merchant 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 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 such Closing Stores and (iii) [REDACTED] of the aggregate Cost Value of the Merchandise in such Closing Stores (the "Agent's Fee") (collectively, the "Sharing Threshold"), then all remaining Proceeds of such Sale shall be shared [REDACTED] to Merchant (the "Merchant's Sharing Recovery Amount") and [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 3.3(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 3.3 below.
- (e) subject to Section 3.3(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 3.6) 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 this Agreement.
- (f) 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.
- (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 shall nevertheless constitute Proceeds for 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

Time of Payments.

- (a) Payment of Guaranteed Amount. No later than the date the Approval Order is issued and entered (the "Payment Date"), Agent shall pay to an account designated by Merchant an amount equal to [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"). Such payment shall be made to Merchant by wire transfer to the account designated by Merchant as set out in Exhibit 3.3(a).
- (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 (the "Monitor") and Lender, acting reasonably. Agent's failure to pay such balance at the times and manner set out herein shall entitle Merchant to draw upon the Guaranty Letter of Credit to the extent of such balance. [REDACTED] of the [REDACTED] deposit (the "Deposit") paid to Merchant by 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 [REDACTED], the balance of the [REDACTED], 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. 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 3.6(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 3.6(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 issued.
- (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. In order to secure Agent's obligations under this Agreement, including, without limitation, Agent's indemnification obligations under Sections 8.3 and 13.2 hereof and Agent's obligations in respect of the payment of the unpaid portion of the Guaranteed Amount (the "Remaining Guaranteed Amount"), on the Payment Date, 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 3.3(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.

3.4

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 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 3.4(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 Store during the Inventory

Taking in such Closing Stores, and Merchant shall pay the remaining [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 (for greater certainty, Additional Merchant Merchandise may be transferred to any Closing Store pursuant to Section 2.4 hereof during 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 shall include all Additional Merchant Merchandise transferred to a Closing Store after completion of the Inventory Taking at such Closing Store pursuant to Section 2.4 hereof, and Agent and Merchant shall use their reasonable best efforts to accomplish such reconciliation within such twelve (12) day period; provided, further, 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 3.6(c) hereof.

3.5 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 ("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 3.3(b) hereof, Agent shall pay that portion of the Guaranteed Amount calculated on the Gross Rings basis using the actual Cost Value of the Merchandise sold during the Gross Rings Period.

3.6 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, Additional Merchant Merchandise, 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 3.6(c) below. Interest shall accrue on any disputed amounts until indefeasibly paid in full at a rate of Prime Rate plus four percent (4%) per annum, with the "Prime Rate" being equal to the prime rate for Canadian dollar commercial loans charged by Bank of Montreal from time to time. The balance of the Deposit remaining after application and/or return of [REDACTED] of the Deposit pursuant to Section 3.3(b) hereof, being [REDACTED], shall be credited against amounts owing to Merchant upon Final Reconciliation, or if there are no amounts owing to Merchant or the amount owing to Merchant upon Final Reconciliation is less than [REDACTED] the balance of the Deposit remaining after application against the amount, if any, owing to Merchant upon Final Reconciliation, shall be returned to Agent within five (5) days of the Final Reconciliation. 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, 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 3.3(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.

3.7 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 confirming same. 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), Merchant shall promptly pay to Agent by wire funds transfer all collected funds (including credit card proceeds) constituting Proceeds deposited in the Designated Merchant Accounts (but not any other funds, including, without limitation, any proceeds of Merchant's inventory sold prior to the Sale Commencement Date, if any, or any proceeds of sales from the Continuing Stores); and
- (b) Following the entry of the Approval Order and 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, during the Sale Term, Agent shall have the right, but not the obligation, to establish its own segregated trust accounts, dedicated solely for the deposit of the Proceeds and the disbursement of amounts payable to Agent hereunder (the "Agency Accounts") and 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 fee and charges, including wire transfer charges, related to the Agency Accounts, whether incurred during or after the Sale Term. Upon Agent's designation of the Agency Accounts, all Proceeds of the Sale (including credit card proceeds) shall be deposited into the Agency Accounts.

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:

- (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) payroll 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) 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 Base Payroll for each Retained Employee in the Closing Stores (the "Benefits Cap"). "Base Payroll" shall exclude commissions and bonuses payable under Merchant's compensation policy in effect as at the Sale Commencement Date;
- (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 Sale 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, transfer and consolidation of Merchandise between and among such Closing Stores, provided, however, that all costs related to the processing and transfer of Additional Merchant Merchandise from the Continuing Stores to the Closing Stores shall be at the Merchant's expense;
- (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;
- (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' snow and 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, preparation, negotiation and execution of this Agreement, the Approval Order, Sale 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, 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] per Store, per week for each week 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) costs related to the processing and transfer of Additional Merchant Merchandise from the Continuing Stores to the Closing Stores; (v) 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 (vi) 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 herein, the following terms have the following respective meanings:

"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.

"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, 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 Proceeds held by Merchant, immediately following the weekly reconciliation by Merchant and Agent pursuant to Section 3.6(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 [REDACTED] 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 day (45) 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, including display merchandise, that is owned by Merchant and located at the Closing Stores as of the Sale Commencement Date; (ii) Additional Merchant Merchandise, (iii) Defective Merchandise, and (iv) Pre-Sale Returned Merchandise which is saleable as first quality merchandise and received during the Returns Period pursuant to Section 8.5 hereof, and (v) merchandise subject to Gross Rings. 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, other than Additional Merchant Merchandise, received by or delivered to the Closing Stores after the Sale Commencement Date; (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, 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 aggregate of the cost for such item of Merchandise as reflected in Merchant's master cost file identified as "*Cost File re On Hand inventory at Closing Stores and Additional Merchant Merchandise.xlsx*" provided by Merchant (the "Cost File"); 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, 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 (vi) 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 one and [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. If Merchant elects at the beginning 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". The 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 receive [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 3.6(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 December 9, 2011 ("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 3.3(a), 3.3(h) and 4.3 hereof prior to the commencement of the Sale. Notwithstanding that the Approval Order may not be obtained until after the start of transactions in the Closing Stores on the Sale Commencement Date, all Merchandise sold in the Closing Stores on the Sale Commencement Date during the entire day that the Closing Store is open for business shall be included as Merchandise using the Gross Rings method and all Expenses incurred on such date shall be for the account of the Agent. Agent shall complete the Sale and vacate each Closing Store's premises in favour of Merchant or its representative or assignee on or before February 29, 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 Sale Guidelines; (b) accelerated by Agent on not less than seven (7) days' advance written notice to Merchant, (the "Sale Termination Date") or; (c) set out in Exhibit A1 hereof as an earlier store closing date that is to apply to each such specified Closing Store. 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 the Sale Termination Date, Agent shall provide Merchant with not less than seven (7) 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. 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.

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 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, except as amended by Court order or agreement of the applicable landlord, (c) the sale 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 ("Sale 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) 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, bank accounts, customer lists and mailing and email lists (provided, however, such access shall be provided solely through Merchant's outside advertisement services, and Agent shall not have direct access to any personally identifiable information contained therein), 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 exercise due care and return to Merchant immediately at the end of the Sale all materials and supplies except materials or supplies expended;
- (c) to use Merchant's central office facilities, POS 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); 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 Sale

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 and, subject to Section 2.4, from any of the Continuing Stores to any of 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 less than a weekly basis for deposit in Merchant's existing accounts, trust accounts or other accounts, as designated by Merchant. Provided that Agent has collected all Sales Taxes during the Sale and remitted the proceeds thereof to Merchant, Merchant shall promptly pay all Sales Taxes and file all applicable reports and documents required by the applicable taxing authorities; provided, however, that notwithstanding anything to the contrary herein, in the event that Agent uses any system other than Merchant's point of sale system to compute Sales Taxes relating to the Sale, Agent shall reimburse Merchant for any additional Sales Taxes, interest, fines, penalties, and the like payable to any taxing authority as the result of a Sales Tax audit conducted by or on behalf of such authority which discloses that the Sales Taxes collected by Agent and paid over to Merchant for any period during the Sale were less than those mandated by applicable law (any such additional Sales Taxes and other amounts are collectively referred to herein as "Additional Taxes and Penalties"). Merchant will be given access to the computation of gross receipts for verification of all such Sales Tax collections. Provided Agent performs its responsibilities in accordance with this Section 8.3, Merchant shall indemnify and hold harmless Agent from and against any and all costs, including, but not limited to, reasonable attorneys' fees, assessments, fines or penalties which Agent sustains or incurs as a result or consequence of the failure by Merchant to promptly pay such taxes to the proper taxing authorities and/or the failure by Merchant to promptly file with such taxing authorities all reports and other documents required, by applicable law, to be filed with or delivered to such taxing authorities. If Agent fails to perform its responsibilities in accordance with this Section 8.3, and provided Merchant complies with its obligations in accordance with this Section 8.3, Agent shall indemnify and hold harmless Merchant from and against any and all costs including, but not limited to, reasonable



legal fees, assessments, fines or penalties which Merchant sustains or incurs as a result or consequence of the failure by Agent to collect Sales Taxes, remit to Merchant, and/or, to the extent Agent is required hereunder to prepare reports and other documents, the failure by Agent to promptly deliver any and all reports and other documents required to enable Merchant to file any requisite returns with such taxing authorities.

8.4 Supplies. Agent shall have the right to use all existing supplies necessary to conduct the Sale (e.g., boxes, bags, twine, merchandise credits or the like) located at the Closing Stores at no charge to Agent. In the event that additional supplies are required in any of the Closing Stores during the Sale, the acquisition of such additional supplies shall be the responsibility of Agent as an Expense; provided, however, that Merchant shall assist Agent in obtaining supplies from Merchant's vendors at Merchant's cost.

8.5 Returns of Merchandise. During the first fourteen (14) days of the Sale Term (the "Returns Period"), and only at the Closing Stores, Agent shall accept returns of merchandise sold by Merchant prior to the Sale Commencement Date, otherwise consistent with Merchant's return policy in effect at the time such item was purchased (the "Pre-Sale Returned Merchandise"). To the extent that any item of Pre-Sale Returned Merchandise is saleable as first-quality merchandise and is received during the Returns Period, then such item shall be included in the Sale and as Merchandise at the Cost Value, without adjustment. To the extent that any item of Pre-Sale Returned Merchandise is returned is not saleable first quality merchandise or is received after the the Returns Period, then such item shall form part of the Excluded Merchandise under this Agreement. The aggregate Cost Value of the Merchandise shall be increased by the applicable Cost Value of any Pre-Sale Returned Merchandise included in Merchandise as provided for in this Section 8.5. Agent shall reimburse customers for Pre-Sale Returned Merchandise in the same tender as such item was purchased (as the case may be, the "Refund"). Merchant shall promptly reimburse Agent in cash for any Refunds Agent is required to issue to customers in respect of any Pre-Sale Returned Merchandise as part of the weekly reconciliation process. To the extent that Merchant is required to reimburse Agent for refunds to customers in respect of any Pre-Sale Returned Merchandise, such amounts shall not reduce Proceeds under this Agreement. Any Pre-Sale Returned Merchandise not included in Merchandise shall be disposed of by Agent in accordance with instructions received from Merchant or, in the absence of such instructions, returned to Merchant at the end of the Sale Term.

8.6 Gift Certificates. Agent shall accept Merchant's valid gift certificates, gift cards, and Merchandise credits issued by Merchant prior to the Sale Commencement Date. Merchant shall reimburse Agent in cash for all of the gift cards honored, and such amounts shall be reconciled and remitted as part of the weekly reconciliation provided for in Section 3.6(a).

8.7 Force Majeure. If any casualty, act of terrorism, or act of God prevents or substantially inhibits the conduct of business in the ordinary course at any Closing Store for one (1) or more days, such Closing Store and the Merchandise located at such Closing Store shall, in Agent's discretion, be eliminated from the Sale and considered to be deleted from this Agreement as of the date of such event, and Agent and Merchant shall have no further rights or obligations hereunder with respect thereto; provided, however, that (i) subject to the terms of

Section 7.1 above, the proceeds of any insurance attributable to such Merchandise shall constitute Proceeds hereunder, and (ii) the Guaranteed Amount shall be reduced to account for any Merchandise eliminated from the Sale which is not the subject of insurance proceeds, and Merchant, shall reimburse Agent for the amount the Guaranteed Amount is so reduced in connection with the next weekly reconciliation pursuant to Section 3.6.

8.8 Merchant's Right to Monitor. In addition to Merchants right to review Agent's books and records relating to the Sale under Section 3.6(b), Merchant shall have the right to monitor the Sale and activities attendant thereto and to be present in the Closing Stores during the hours when the Closing Stores are open for business; provided, however, that Merchant's presence does not unreasonably disrupt the conduct of the Sale. Merchant shall also have a right of access to the Closing Stores at any time in the event of an emergency situation and shall promptly notify Agent of such emergency.

#### Section 9. Employee Matters.

9.1 Merchant's Employees. Agent may use Merchant's store-level employees in the conduct of the Sale to the extent Agent deems expedient and Agent may select and schedule the number and type of Merchant's employees required for the Sale; provided, however, that Agent shall draw first from Merchant's employees from the Closing Stores, and then, with the consent of Merchant, acting reasonably and only to the extent reasonably required by Agent to conduct the Sale, from Merchant's other employees from the Continuing Stores. Agent shall identify any such store-level employees to be used in connection with the Sale (each such employee, a "Retained Employee") prior to the Sale Commencement Date. Notwithstanding the foregoing, Merchant's employees shall at all times remain employees of Merchant and shall not be considered or deemed to be employees of Agent. Merchant and Agent agree that except to the extent that wages and benefits of Retained Employees constitute Expenses hereunder, nothing contained in this Agreement and none of Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by Agent of any of Merchant's obligations relating to any of Merchant's employees including, without limitation, Excluded Benefits, notice and other termination type claims and obligations, or any other amounts required to be paid by statute or law; nor shall Agent become liable under any employment agreement or be deemed a joint or successor employer with respect to such employees. Agent shall comply in the conduct of the Sale with all of Merchant's employee rules, regulations, guidelines and policies which have been provided to Agent in writing. Merchant shall not, without the prior consent of Agent, raise the salary or wages or increase the benefits for, or pay any bonuses or other extraordinary payments to, any of the Retained Employees prior to the Sale Termination Date. If the number of Retained Employees made available to Agent pursuant to this Section 9.1 is insufficient to effectively run the Sale as determined by Agent in its sole discretion, Agent may request that Merchant engage additional temporary contract personnel on a per diem basis, and Merchant shall use reasonable commercial efforts to fulfill such request. If Merchant fails to facilitate the engagement of sufficient Retained Employees and temporary contract personnel as requested by Agent hereunder, Agent may engage such temporary personnel and all related costs and expenses shall constitute Expenses of Agent under this Agreement.

9.2 Termination of Employees By Merchant. All responsibility for hiring and firing and supervision of the conduct of the Retained Employees shall rest with Merchant. Agent may in its discretion stop using any Retained Employee at any time during the Sale. In the event Agent determines to discontinue its use of any Retained Employee in connection with the conduct of the Sale, Agent will provide written notice to Merchant at least seven (7) days prior thereto, except for discontinuance of use "for cause" (such as dishonesty, fraud or breach of employee duties), in which event no prior notice to Merchant shall be required, provided Agent shall notify Merchant as soon as practicable prior to such discontinuance of use so that Merchant can coordinate the termination of such Retained Employee and Agent shall provide Merchant with all supporting documents or information so that Merchant can arrange for the termination of such Retained Employee. From and after the date of this Agreement and until the Sale Termination Date, Merchant shall not transfer or terminate Retained Employees (except "for cause") without Agent's prior consent (which consent shall not be unreasonably withheld). Notwithstanding any other provision hereof, Agent will indemnify Merchant with respect to any claims by Retained Employees arising from Agent's treatment of such Retained Employees.

9.3 Payroll Matters. During the Sale Term, Merchant shall process and pay the Base Payroll, commissions, and all related payroll taxes, worker's compensation, employment and unemployment insurance, and benefits, including accruing vacation pay (but not arrears) for all Retained Employees to be reimbursed by Agent as per Section 4.1 hereof (except for employees and independent contractors hired by Agent) in accordance with its usual and customary procedures.

9.4 Employee Retention Bonuses. Agent shall have the right to elect to pay, as an Expense, retention bonuses (each a "Retention Bonus") (which bonuses shall be inclusive of payroll taxes but as to which no benefits shall be payable), up to a maximum aggregate amount equal to [REDACTED] of aggregate Base Payroll, to certain Retained Employees who do not voluntarily leave employment and are not terminated "for cause". Subject only to limitation of [REDACTED] of aggregate Base Payroll, the actual amount of the Retention Bonus to be paid to any Retained Employee shall be in an amount to be determined by Agent, and shall be payable within thirty (30) days after the Sale Termination Date, and shall be processed through Merchant's payroll system. Agent shall provide Merchant with a copy of Agent's Retention Bonus plan at least one (1) Business Day prior to the Sale Commencement Date.

#### Section 10. Conditions Precedent.

The willingness of Merchant and Agent to enter into the transactions contemplated under this Agreement is directly conditioned upon the satisfaction of the following conditions at the time or during the time periods indicated, unless specifically waived in writing by the applicable party:

- (a) All representations and warranties of Merchant and Agent hereunder shall be true and correct in all material respects and no Event of Default shall have occurred at and as of the date hereof and as of the Sale Commencement Date; and

- (b) The Court shall have entered the Approval Order, in a form and substance acceptable to Merchant and Agent, acting reasonably, on or before December 9, 2011 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.

Section 11. Representations, Warranties, Covenants and Acknowledgements.

11.1 Merchant's Representations, Warranties and Covenants. Merchant hereby represents, warrants and covenants to Agent as follows:

- (a) Merchant (i) is a limited partnership duly established under the laws of the Province of Manitoba, and (ii) is and during the Sale Term will continue to be, duly authorized, and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Closing Stores are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of Merchant to execute and deliver this Agreement and perform fully its obligations hereunder. Sterling GP, in its capacity as general partner of Merchant, has all requisite corporate power and authority to own, lease and operate the assets and properties of Merchant and to carry on Merchant's business as presently conducted.
- (b) Subject to the entry of the Approval Order: (i) Sterling GP, in its capacity as general partner of Merchant, has the right, power and authority to execute and deliver this Agreement and each other document and agreement contemplated hereby (collectively, together with this Agreement, the "Agency Documents") and to perform the obligations of Merchant thereunder; (ii) all necessary action has been taken by or on behalf of Merchant to authorize the execution and delivery by Merchant of the Agency Documents and no further consent or approval is required for Merchant to enter into and deliver the Agency Documents, to perform the obligations thereunder, and to consummate the Sale; (iii) each of the Agency Documents has been duly executed and delivered by or on behalf of Merchant and constitutes the legal, valid and binding obligation of Merchant enforceable in accordance with its terms; and (iv) no court order or decree of any federal, state, local, or provincial governmental authority or regulatory body is in effect that would prevent or materially impair, or is required for Merchant's consummation of, the transactions contemplated by this Agreement, and no consent of any Third Party which has not been obtained is required therefor, other than as shall be obtained prior to the Sale Commencement Date, except for any such consent the failure of which to be obtained could not reasonably be expected to have a material adverse effect on the ability of Sterling GP, in its capacity as general partner of Merchant, to execute and deliver this Agreement and perform fully the obligations of Merchant hereunder. Other than for any consent as shall be obtained prior to the Sale Commencement Date, and those contracts or agreements identified by Merchant to Agent on or prior to the Sale

Commencement Date, if any, no contract or other agreement to which Merchant is a party or by which Merchant is otherwise bound will prevent or materially impair the consummation of the Sale and the other transactions contemplated by this Agreement.

- (c) Sterling GP, in its capacity as general partner of Merchant, owns, and will own at all times during the Sale Term, good and marketable title to all of the Merchandise and Owned FF&E to be included in the Sale, free and clear of all Encumbrances of any nature, other than the Encumbrances listed on Exhibit 11.1(c) and any applicable statutory liens. Merchant shall not create, incur, assume or suffer to exist any Encumbrance upon or with respect to any of the Merchandise or the Proceeds, in each case, except for the Agent's Charge and such Encumbrances as shall have been disclosed by Merchant to Agent and identified in Exhibit 11.1(c) and any applicable statutory liens).
- (d) Merchant has maintained its Cost File in the ordinary course of business and the Cost File and all records relating thereto are true and accurate in all material respects as to the actual cost recognized on Merchant's books and records for the goods referred to therein as of the dates and for the periods indicated therein. Merchant represents that (i) the ticketed prices of all items of Merchandise do not and shall not include any Sales Taxes and (ii) all cash registers located at the Closing Stores are programmed to correctly compute all Sales Taxes required to be paid by the customer under applicable law, as such calculations have been identified to Merchant by its retained service provider.
- (e) Through the Sale Commencement Date, Merchant shall ticket or mark all items of inventory received at the Closing Stores prior to the Sale Commencement Date in a manner consistent with similar Merchandise located at the Closing Stores. To the extent Merchandise is not pre-ticketed prior to its receipt in the Closing Stores, Agent shall be responsible for ticketing Merchandise transferred from other Closing Stores pursuant to Section 2.4(a), Additional Merchant Merchandise as such merchandise is received in the Closing Stores after the Sale Commencement Date. The removal from such merchandise of any sale stickers or other markings indicating items are on sale prior to the Sale Commencement Date, if any, will be done in the ordinary course of Merchant's business.
- (f) To the best of Merchant's knowledge, all Merchandise is in compliance with all applicable federal, state, provincial or local product safety laws, rules and standards. Merchant shall provide Agent with its historic policies and practices, if any, regarding product recalls prior to the Sale Commencement Date.
- (g) Subject to the provisions of the Approval Order, throughout the Sale Term, Agent shall have the right to the unencumbered use and occupancy of, and peaceful and quiet possession of, each of the Closing Stores, the assets currently located at the Closing Stores and the utilities and other services provided at the Closing Stores. Merchant shall, throughout the Sale Term, maintain in good working order,

condition and repair all cash registers, heating systems, air conditioning systems, elevators, escalators and all other mechanical devices necessary for the conduct of the Sale at the Closing Stores. Except any amounts owing as a result of the commencement of the CCAA Proceedings, and absent a bona fide dispute, throughout the Sale Term, Merchant shall remain current on all expenses and payables necessary for the conduct of the Sale (other than those relating to any period prior to the commencement of the CCAA Proceedings), subject to any restrictions that may be imposed under the CCAA.

- (h) Except any amounts owing as a result of the commencement of the CCAA Proceedings, Merchant had paid, and will continue to pay throughout the Sale Term, all self-insured or Merchant-funded employee benefit programs for Closing Store employees, including health and medical benefits and insurance and all proper claims made or to be made in accordance with such programs (other than those relating to any period prior to the commencement of the CCAA Proceeding).
- (i) Other than the proceeding under the CCAA, no action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against Merchant, or has been settled or resolved, or to Merchant's knowledge, is threatened against or affects Merchant, relative to Merchant's business or properties, or which questions the validity of this Agreement, or that if adversely determined, would adversely affect the conduct of the Sale, which is not otherwise stayed by the Initial Order.
- (j) Merchant has not taken, and shall not throughout the Sale Term take, any action, the result of which is to materially increase the cost of operating the Sale including, without limitation, increasing salaries, wages or other amounts payable to employees, except to the extent that an employee was due an annual raise.
- (k) Merchant is not party to any collective bargaining agreements with its employees at the Closing Stores and no labour unions represent Merchant's employees at the Closing Stores and as at the date of this Agreement, there are no strikes work stoppages or other labour disruptions affecting the Closing Stores or Merchant's central office facilities.

11.2 Agent's Representations, Warranties and Covenants. Agent hereby represents, warrants and covenants in favor of Merchant as follows:

- (a) Agent is (i) a limited partnership, duly and validly existing and in good standing under the laws of the state or province of its organization, (ii) has all requisite power and authority to carry on its business as presently conducted in the jurisdictions where the Closing Stores are located and to consummate the transactions contemplated hereby and (iii) is and during the Sale Term will continue to be duly authorized and qualified to do business, and in good standing,

in each jurisdiction where the nature of its business or properties requires such qualification.

- (b) Agent has the right, power and authority to execute and deliver each of the Agency Documents to which it is a party and to perform its obligations thereunder. Agent has taken all necessary actions required to authorize the execution, delivery, and performance by Agent of the Agency Documents, and no further consent or approval is required on the part of Agent for Agent to enter into and deliver the Agency Documents and to perform its obligations thereunder and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by Agent and constitutes the legal, valid and binding obligation of Agent enforceable in accordance with its terms. No court order or decree of any federal, provincial, state or local governmental authority or regulatory body is in effect that would prevent or impair or is required for Agent's consummation of the transactions contemplated by this Agreement, and no consent of any Third Party which has not been obtained is required therefor other than as provided herein. No contract or other agreement to which Agent is a party or by which Agent is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.
- (c) No action, arbitration, suit, notice, or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved, or to Agent's knowledge, has been threatened against or affects Agent, which questions the validity of this Agreement or any action taken or to be taken by Agent in connection with this Agreement, or which if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement.
- (d) The Sale shall be conducted in compliance with the terms of this Agreement, the Sale Guidelines and the Approval Order.

#### 11.3 Agent's Acknowledgements.

- (a) Agent hereby acknowledges that prior to the execution of this Agreement, Merchant has provided Agent reasonable access to all pricing and cost files, computer hardware, software and data files, inter-stores transfer logs, markdown schedules, invoices, style runs and all other documents relative to the price, mix and quantities of inventory located at the Closing Stores and the Additional Merchant Merchandise set out in Exhibit 2.4 hereof.
- (b) Agent hereby acknowledges that prior to the execution of the Agreement, and on the date immediately preceding the Inventory Date, Agent has had and shall have had the opportunity to inspect the Closing Stores and the Merchandise.

Section 12. Insurance.

12.1 Merchant's Liability Insurance. Merchant shall continue, at its expense, until the Sale Termination Date, in such amounts as it currently has in effect, all of its liability insurance policies including, but not limited to, products liability, comprehensive public liability, auto liability and umbrella liability insurance, covering injuries to persons and property in, or in connection with Merchant's operation of the Closing Stores, and shall cause Agent to be named an additional named insured with respect to all such policies. Prior to the Sale Commencement Date, Merchant shall, on a best efforts basis, deliver to Agent certificates evidencing such insurance setting forth the duration thereof and naming Agent as an additional named insured, in form reasonably satisfactory to Agent. All such policies shall, on a best efforts basis, require at least thirty (30) days' prior notice to Agent of cancellation, non-renewal or material change. In the event of a claim under any such policies Merchant shall be responsible for the payment of all deductibles, retentions or self-insured amounts to the extent said claim arises from or relates to the alleged acts or omissions of Merchant or its employees, agents (other than Agent's employees), or independent contractors (other than Agent and independent contractors hired by Agent in conjunction with the Sale).

12.2 Merchant's Casualty Insurance. Merchant shall continue until the Sale Termination Date, in such amounts as it currently has in effect, fire, flood, theft and extended coverage casualty insurance covering the Merchandise in a total amount equal to no less than the Cost Value thereof, which coverage shall be reduced from time to time to take into account the sale of Merchandise. In the event of a loss to the Merchandise on or after the date of this Agreement, the proceeds of such insurance attributable to the Merchandise (net of any deductible to be paid by Merchant) shall constitute Proceeds. Prior to the Sale Commencement Date, Merchant shall, on a best efforts basis, deliver to Agent certificates evidencing such insurance setting forth the duration thereof and naming Agent as additional named insured, in form and substance reasonably satisfactory to Agent. All such policies shall, on a best efforts basis, require at least thirty (30) days prior notice to Agent of cancellation, non-renewal or material change. Merchant shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date, without Agent's prior written consent.

12.3 Agent's Insurance. Agent shall maintain at Agent's cost and expense throughout the Sale Term, in such amounts as it currently has in effect, comprehensive public liability and automobile liability insurance policies covering injuries to persons and property in or in connection with Agent's agency at the Closing Stores and shall cause Merchant to be named an additional insured with respect to such policies. Prior to the Sale Commencement Date, Agent shall deliver to Merchant certificates evidencing such insurance policies, setting forth the duration thereof and naming Merchant as an additional insured, in form and substance reasonably satisfactory to Merchant. In the event of a claim under such policies Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, to the extent said claim arises from or relates to the alleged acts or omissions of Agent or Agent's employees, agents or independent contractors.



12.4        Protection of Merchant Personal Information. Agent shall honour and observe, in connection with the transactions contemplated by this Agreement, Merchant's privacy policies and all applicable Privacy Laws with respect to the collection, use, transfer and disclosure of any personal information obtained in connection with this Agreement or the Sale, including personal information about Merchant's customers and the Retained Employees (the "Merchant Personal Information"). Agent shall collect Merchant Personal Information only for purposes related to this Agreement and the Sale. Agent shall not disclose Merchant Personal Information to any person other than to its advisors on a need to know basis. Agent shall protect and safeguard the Merchant Personal Information against unauthorized collection, use or disclosure, as provided by Privacy Law and Agent shall cause its representatives to observe the terms of this Section 12.4 and to protect and safeguard all Merchant Personal Information in their possession. If either Merchant or Agent terminates this Agreement as provided herein, Agent shall promptly deliver to Merchant all Merchant Personal Information in its possession or in the possession of any of its representatives, including all copies, reproductions, summaries or extracts thereof. "Privacy Law" shall include the *Personal Information Protection and Electronic Documents Act* (Canada), the *Freedom of Information and Protection of Privacy Act* (Canada) and any comparable law of any other province or territory of Canada.

12.5        Worker's Compensation Insurance. Merchant shall continue to pay until the Sale Termination Date appropriate worker's compensation insurance (including employer liability insurance) covering all Retained Employees in compliance with all statutory requirements. Prior to the Sale Commencement Date, Merchant shall deliver to Agent a certificate of its insurance broker or carrier evidencing such insurance.

12.6        Risk of Loss. Without limiting any other provision of this Agreement, Merchant acknowledges that Agent is conducting the Sale on behalf of Merchant solely in the capacity of an agent, and that in such capacity (i) Agent shall not be deemed to be in possession or control of the Closing Stores or the assets located therein or associated therewith, or of Merchant's employees located at the Closing Stores, and (ii) except as expressly provided in this Agreement, Agent does not assume any of Merchant's obligations or liabilities with respect to any of the foregoing. Agent shall not be deemed to be a successor employer. Merchant and Agent agree that, subject to the terms of this Agreement, Merchant shall bear all responsibility for liability claims of customers, employees and other persons arising from events occurring at the Closing Stores during and after the Sale Term, except to the extent any such claim arises from the acts or omissions of Agent or its supervisors, agents, independent contractors, or employees (an "Agent Claim"). In the event of any liability claim other than an Agent Claim, Merchant shall administer such claim and shall present such claim to Merchant's liability insurance carrier in accordance with Merchant's policies and procedures existing immediately prior to the Sale Commencement Date, and shall provide a copy of the initial documentation relating to such claim to Agent at the address listed in this Agreement. To the extent that Merchant and Agent agree that a claim constitutes an Agent Claim or the parties cannot agree whether a claim constitutes an Agent Claim, each party shall present the claim to its own liability insurance carrier, and a copy of the initial claim documentation shall be delivered to the other party to the foregoing address.

Section 13. Indemnification.

13.1 Merchant Indemnification. Merchant shall indemnify and hold Agent and its officers, directors, employees, agents and independent contractors (collectively, "Agent Indemnified Parties") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees and expenses, asserted directly or indirectly against an Agent Indemnified Party resulting from, or related to:

- (a) Merchant's material breach of or failure to comply with any local, state, provincial, or federal laws or regulations, or any of its agreements, covenants, representations and warranties contained in the Agency Documents;
- (b) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of any customers, employees or agents of Agent by Merchant or any of its employees, agents, independent contractors or other officers, directors or representatives of Merchant;
- (c) subject to Agent's performance and compliance with its obligations pursuant to section 4.1(b), 4.1(c) and Section 9 hereof, any failure by Merchant to pay its employees any wages, salaries or benefits due to such employee during the Sale Term or other claims asserted against Agent by Merchant's employees resulting from Merchant's (and not Agent's) treatment of its employees;
- (d) subject to Agent's compliance with its obligations under Section 8.3 hereof, any failure by Merchant to pay any Sales Taxes to the proper taxing authorities or to properly file with any taxing authorities any reports or documents required by applicable law to be filed in respect thereof;
- (e) the gross negligence or willful misconduct of Merchant or any of its officers, directors, employees, agents (other than Agent) or representatives; and
- (f) violations of law by Merchant; provided, however, that Merchant shall not indemnify Agent from and against any claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees and expenses arising from or contributed to by Agent's negligent or willful wrongful acts or omissions.

13.2 Agent Indemnification. Agent shall indemnify and hold Merchant and its officers, directors, employees, agents and representatives ("Merchant Indemnified Parties") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees and expenses, asserted directly or indirectly against a Merchant Indemnified Party resulting from, or related to:

- (a) Agent's material breach of or failure to comply with any local, state, provincial or federal laws or regulations, or any of its agreements, covenants, representations or

warranties contained in this Agreement or other Agency Document and any order of the Court relating to the Sale;

- (b) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of any customers, employees or agents of Merchant by Agent or any of its employees, agents, independent contractors or other officers, directors or representatives of Agent;
- (c) any claims by any party engaged by Agent as an employee or independent contractor arising out of such engagement;
- (d) any Agent Claims;
- (e) any Sales Tax assessments (and penalties and interest arising therefrom or in respect thereof) in the event that Agent uses any system other than Merchant's point of sale system to compute Sales Taxes relating to the Sale;
- (f) the gross negligence or willful misconduct of Agent or any of its officers, directors, employees, agents or representatives; and
- (g) violations of law by Agent; provided, however, that Agent shall not indemnify Merchant from and against any claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees and expenses arising from or contributed to by Merchant's negligent or willful wrongful acts or omissions.

The foregoing indemnity is supplemental to and does not replace any of the other indemnities in this Agreement given by Agent, including, without limitation, the indemnities of Agent contained in Section 8.3 hereof.

Section 14. Fixtures. With respect to Owned FF&E located in the Closing Stores, at Merchant's sole option, exercisable by Merchant by written notice (the "Owned FF&E Option Notice") to Agent within thirty (30) days after the Sale Commencement Date, Agent shall have the exclusive right to dispose of all of the Owned FF&E located in the Closing Stores identified by Merchant in the Owned FF&E Option Notice. Agent shall be entitled to receive (i) a commission equal to [REDACTED] (the "FF&E Commission") of the net proceeds from the sale of such Owned FF&E in the elected Closing Stores (net of Sales Taxes), plus (ii) reimbursement by Merchant of Agent's out of pocket expenses related to the disposition of the Owned FF&E which are not duplicative of the Expenses set out in Section 4.1 and are in accordance with a budget mutually agreed upon between Merchant and Agent. As of the Sale Termination Date, Agent may abandon, in place, in a neat and orderly manner any unsold Owned FF&E at the Closing Stores. The removal of any sold Owned FF&E shall be done in a manner consistent with the Sale Guidelines. Notwithstanding the foregoing, Agent shall not be entitled to sell any FF&E except Owned FF&E located at the Closing Stores set out in an Owned FF&E Option Notice from Merchant. All net proceeds from the disposition of the Owned FF&E at the Closing Stores, net of Sales Taxes and the FF&E Commission (collectively, the "Net FF&E")

Proceeds”), shall be deposited in a segregated account designated solely for the deposit of the Net FF&E Proceeds.

Section 15. Events of Default. The following shall constitute “Events of Default” hereunder:

- (a) Merchant or Agent shall fail to perform any of their respective material obligations hereunder, if such failure remains uncured seven (7) days after receipt of written notice thereof;
- (b) Any representation or warranty made by Merchant or Agent proves untrue in any material respect as of the date made or at any time during the Sale Term, to the extent curable, continues uncured seven (7) days after written notice to the defaulting party; or
- (c) Subject to Section 8.7, the Sale is terminated or materially interrupted or impaired at any Closing Store for any reason other than (i) an Event of Default by Agent; or (ii) any other material breach or action by Agent not authorized under this Agreement.

In the event of an Event of Default, the non-defaulting Party in the case of an Event of Default under subsection (a) or (b) or Agent in the case of subsection (c) may, in its discretion, elect to terminate this Agreement upon seven (7) Business Days' written notice to the other Party and pursue any and all rights and remedies and damages resulting from such Event of Default hereunder.

Section 16. Miscellaneous.

16.1 Notices. All notices and communications provided for pursuant to this Agreement shall be in writing, and sent by hand, by facsimile, electronic (PDF) transmission or courier delivery, as follows:

If to Agent: Century Services LP, by its general partner Century Services Inc.  
6 Director Court, Suite 200  
Vaughan, ON L4L3Z5  
Attn.: Mr. Jamie Dunbar  
Tel: 416-862-8100 ext 2290  
Fax: 416-862-8121  
Email: [jdunbar@centuryservices.com](mailto:jdunbar@centuryservices.com)

With a mandated copy (which shall not constitute notice) to:

TORKIN MANES LLP  
151 Yonge Street  
Suite 1500  
Toronto ON M5C 2W7  
Attn: Fay Sulley  
Tel: (416) 863-1188  
Fax: (416) 863-0305  
Email: [fsulley@torkinmanes.com](mailto:fsulley@torkinmanes.com)

If to Merchant:       STERLING SHOES LIMITED PARTNERSHIP  
2580 Viscount Way, Richmond, BC, V6V 1N1  
Attn: Daniel Gumprich  
Fax: 604.278.7751  
Email: [daniel@sterlingshoes.com](mailto:daniel@sterlingshoes.com)

With a mandated copy (which shall not constitute notice) to:

BLAKE, CASSELS & GRAYDON LLP  
595 Burrard Street  
P.O. Box 49314  
Suite 2600, Three Bentall Centre  
Vancouver, BC V7X 1L3  
Attn: Peter L. Rubin  
Tel: (604) 631-3315  
Fax: (604) 631-3309  
Email: [peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)

16.2       Governing Law; Consent to Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without regard to conflicts of laws principles thereof. The parties hereto agree that the Court shall retain exclusive jurisdiction to hear and finally determine any disputes arising from or under this Agreement, and by execution of this Agreement each party hereby irrevocably accepts and submits to the jurisdiction of such Court with respect to any such action or proceeding and to service of process by certified mail, return receipt requested to the address listed above for each party.

16.3       Entire Agreement. This Agreement, together with the other Agency Documents, contain the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersede and cancel all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto, including, without limitation, the letter from Merchant dated November 18, 2011 requesting proposals, as amended by letter dated November 21, 2011 and Agent's proposal submitted on November 28, 2011.

16.4 Amendments. This Agreement may not be modified except in a written instrument executed by each of the parties hereto.

16.5 No Waiver. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. Failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

16.6 Successors and Assigns; Merchant's Authority. This Agreement shall inure to the benefit of and be binding upon Merchant and Agent, including, but not limited to, any trustee in bankruptcy or receiver or interim receiver thereof; provided, however, that this Agreement may not be assigned by Merchant without the prior written consent of Agent. Notwithstanding anything to the contrary herein, to the extent that Merchant sells Merchant's Business and/or assigns or otherwise transfers its right, title and interest in and under any of the leases for any of the Closing Stores, any such assignment or transfer shall be subject to the terms of this Agreement and shall contain an express provision that such assignee or transferee shall not interfere with Agent's conduct of the Sale and/or rights to occupy the Closing Stores as provided herein.

16.7 Subcontractors. Agent may utilize the services of subcontractors and or licensees in connection with the performance of its obligations hereunder.

16.8 Confidentiality. The terms of this Agreement shall be confidential, except for disclosures which may be required by law or as Merchant considers appropriate, acting reasonably and in consultation with Agent, in connection with obtaining the Approval Order. Agent acknowledges and agrees that in connection with Merchant's application for the Approval Order, Merchant will file a copy of this Agreement with the pricing information redacted and without Exhibits 3.3(h), 4.1(a) and 4.3(a) to this Agreement and will seek an order sealing an unredacted copy of this Agreement, including such Exhibits.

16.9 Execution in Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one agreement. This Agreement may be executed by facsimile or other electronic transmission, and such facsimile or electronic signature shall be treated as an original signature hereunder.

16.10 Section Headings. The headings of sections of this Agreement are inserted for convenience only and shall not be considered for the purpose of determining the meaning or legal effect of any provisions hereof.

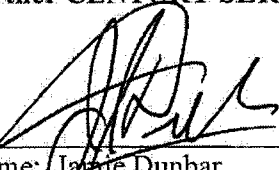
16.11 Survival. All representations, warranties, covenants, agreements and indemnities made herein, by the parties hereto, shall be continuing, shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Agreement.

16.12        Termination. This Agreement shall remain in full force and effect until the expiration of the Sale Term and completion and certification by Merchant and Agent of the Final Reconciliation pursuant to Section 3.6 above. Notwithstanding the foregoing, (a) the representations, warranties and indemnities of Merchant and Agent contained herein and the provisions of Sections Section 11 and Section 13 above, and (b) any claim arising from a breach of this Agreement prior to its termination, shall survive the termination of this Agreement pursuant to this Section 16.12.


**[SIGNATURES NEXT PAGE]**

IN WITNESS WHEREOF, Agent and Merchant have executed this Agreement as of the day and year first written above.

**CENTURY SERVICES LP, by its general partner CENTURY SERVICES INC.**

By   
Name: Jamie Dunbar  
Title: Vice-President

**STERLING SHOES LIMITED PARTNERSHIP, by its general partner STERLING SHOES GP INC.**

By   
Name: DAVE ACRES  
Title: CEO & PRESIDENT