

AGENCY AGREEMENT

This Agency Agreement (the “Agreement”) is made as of this _ day of _____, 2010, by and between LOI Capital, LLC, a Delaware limited liability company (the “Agent”) and Liquidation Outlet, Inc., a Washington corporation (the “Merchant”).

RECITALS

WHEREAS, Merchant filed a voluntary petition for relief under Title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Washington (Tacoma Division) (the “Bankruptcy Court”), and Merchant is managing its affairs as a debtor and debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code (“Chapter 11 Case”);

WHEREAS, Merchant and Agent (Agent, also referred to herein as the “Purchaser”) have entered into that certain Asset Purchase Agreement, dated as of March __, 2010 (the “Purchase Agreement”), and this Agreement is being entered into in connection with the closing of the transactions contemplated by the Purchase Agreement (the “Purchase Agreement Closing”); and

WHEREAS, pursuant to the Purchase Agreement, Purchaser may, in its sole discretion, elect during the Liquidation Election Period (as defined therein) to liquidate any or all of the inventory or fixed assets associated with any of Merchant’s store and distribution center locations through the conduct of “store closing,” “going out of business” or similar themed sales at such designated locations (the “Sale”) and disposing of Merchant’s owned FF&E (as hereinafter defined) located at such designated locations; and

WHEREAS, subject to the terms and conditions set forth herein, Merchant desires that Agent act as Merchant’s exclusive agent for the limited purpose of selling all of the Merchandise (defined below) located or to be located in Merchant’s stores (collectively, the “Stores”) and the distribution center (the “Distribution Center”) identified in Exhibit A attached hereto (collectively, the “Closing Locations”), which Closing Locations have been designated by Purchaser as Designated Liquidation Locations pursuant to, and as defined in, the Purchase Agreement; and

WHEREAS, except as expressly provided for herein or in the Purchase Agreement, this Agreement shall govern the conduct of the Sale at the Closing Locations, together with the parties’ respective rights and obligations relative 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. Defined Terms; Exhibits

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

<u>Defined Term</u>	<u>Section</u>
Agency Accounts	Section 3.3(a)
Agency Documents	Section 11.1(b)
Agent	Preamble
Agent Claim	Section 12.5
Agent Indemnified Parties	Section 13.1
Agreement	Preamble
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Benefits Cap	Section 4.1(c)
Central Services Expenses	Section 4.1
Closing Locations	Recitals
Designated Deposit Accounts	Section 3.3(b)
Distribution Center Occupancy Period	Section 5.2
Distribution Center	Recitals
Event of Default	Section 14
DSD Merchandise	Section 8.7
Excluded Benefits	Section 4.1
Expenses	Section 4.1
Expense L/C	Section 4.2(b)
FF&E	Section 15
Final Reconciliation	Section 3.4(a)
GOB Laws	Section 2.3(e)
Inventory Taking	Section 3.5(a)
Liens	Section 2.3(c)
Merchandise	Section 5.1(a)
Proceeds	Section 7.1
Purchase Agreement	Recitals
Purchase Agreement Closing	Recitals
Purchase Agreement Consideration	Section 2.3(c)
Purchaser	Recitals
Remaining Merchandise	Section 3.1(a)
Retained Employee	Section 9.1
Retention Bonus	Section 9.4
Sale	Recitals
Sale Commencement Date	Section 6.1
Sale Guidelines	Section 8.1
Sale Order	Section 2.3
Sale Term	Section 6.1
Sale Termination Date	Section 6.1
Sales Taxes	Section 8.3
Third Party	Section 4.1
Vacate Date	Section 6.2
WARN Act	Section 9.1

1.2. Exhibits. The Exhibits and Schedules annexed to this Agreement, as listed below, are an integral part of this Agreement:

<u>Exhibit</u>	<u>Section</u>	<u>Description</u>
Exhibit A	Recitals	Closing Locations
Exhibit 4.1(a)	Section 4.1(a)	Occupancy Expenses
Exhibit 4.2(b)	Section 4.2(b)	Form of Expense L/C
Exhibit 8.1	Section 8.1	Sale Guidelines
Exhibit 11.1(c)	Section 11.1(c)	Pre-Existing Liens

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

Section 2. Appointment of Agent

2.1. Merchant hereby appoints Agent, and Agent hereby agrees to serve, as Merchant's exclusive agent for the limited purpose of conducting the Sale at each of the Closing Locations in accordance with the terms and conditions of this Agreement. Merchant's and Agent's obligations hereunder are subject to the approval of this Agreement by the Bankruptcy Court and the consummation of the Purchase Agreement Closing, and this Agreement shall be of no force or effect in the event that the Sale Order is not obtained or the Purchase Agreement Closing is not consummated. Merchant and Agent acknowledge and agree that pursuant to the Purchase Agreement, Purchaser may at any time and from time to time prior to the conclusion of the Liquidation Election Period (as defined in the Purchase Agreement) designate any one or more of the Merchant's retail store and distribution center locations as Designated Liquidation Locations. Upon designation of any such location as a Designated Liquidation Location pursuant to Section 3.1 of the Purchase Agreement, such Designated Liquidation Location(s) shall for all purposes be deemed to be Closing Locations hereunder, and Exhibit A attached hereto shall be deemed to be automatically revised to include such new Closing Location(s), and Schedule 4.1(a) attached hereto shall be deemed to be automatically revised to include the Occupancy Expenses attributable to such new Closing Location(s) (which amounts shall be those amounts described on Schedule 3.2(a) of the Purchase Agreement as the Real Estate Occupancy Expenses for the applicable locations.

2.2. Except for incurring Expenses in connection with the Sale and as otherwise specifically provided in this Agreement, and except as otherwise provided in the Purchase Agreement, Agent shall have no authority to enter into any contract, agreement or other arrangement or to 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. The order of the Bankruptcy Court approving this Agreement and authorizing Merchant and Agent to conduct the Sale at the Closing Locations (the "Sale Order") shall provide, in a form reasonably satisfactory to the Merchant and Agent, among other things, that:

(a) the terms of this Agreement (and each of the transactions contemplated hereby) are approved;

(b) Merchant and Agent shall be authorized to continue 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 hereunder free and clear of all liens, claims and encumbrances thereon (collectively, “Liens”), with any presently existing Liens encumbering all or any portion of the Merchandise or the Proceeds (if any) attaching only to the purchase price payable under the Purchase Agreement (the “Purchase Agreement Consideration”) and other amounts to be received by Merchant under this Agreement;

(d) Subject to Agent’s obligations to pay Expenses pursuant to Section 4.1 hereof, Agent shall have the right to use the Closing Locations and all related store services, furniture, fixtures, equipment and other assets of Merchant as designated hereunder for the purpose of conducting the Sale, free of any interference from any entity or person;

(e) Agent, as agent for Merchant, is authorized to conduct, advertise, post signs and otherwise promote the Sale without further consent of any person (other than Merchant as provided for herein), in accordance with the terms and conditions of this Agreement and the Sale Guidelines (as the same may be modified and approved by the Bankruptcy Court), and without further compliance with applicable federal, state or local laws governing, *inter alia*, the conduct of store closing sales (the “GOB Laws”), other than those designed to protect public health and safety and tax, labor, employment, environmental and consumer protection laws (including consumer laws relating to deceptive practices and false advertising);

(f) all newspapers and other advertising media in which the Sale is advertised shall be directed to accept the Sale Order as binding and to allow Merchant and Agent to consummate the transactions provided for in this Agreement, including, without limitation, the conducting and advertising of the Sale in the manner contemplated by this Agreement;

(g) all utilities, landlords, creditors and all persons acting for or on their behalf shall not interfere with or otherwise impede the conduct of the Sale, institute any action in any court (other than in the Bankruptcy Court) or before any administrative body which in any way directly or indirectly interferes with or obstructs or impedes the conduct of the Sale;

(h) the Bankruptcy Court shall retain jurisdiction over the parties to enforce this Agreement;

(i) Agent shall not be liable for any claims against the Merchant other than as expressly provided for in this Agreement, and Agent shall have no successorship liabilities whatsoever;

(j) Agent shall have, subject to Purchaser’s obligation to pay the Purchase Agreement Consideration and Agent’s obligations to pay the Expenses, a valid, duly perfected first priority Lien in the Merchandise, FF&E and any Proceeds to which Agent is entitled in accordance with the terms of this Agreement.

Section 3. Payments

3.1. Payments to Merchant and Agent

(a) Merchant acknowledges that other than the payment of Expenses and any other amounts expressly provided in this Agreement, no amounts shall be payable hereunder by Merchant to Agent in respect of the Merchandise and Proceeds. Except as expressly provided herein, all consideration payable in respect of the Merchandise and the FF&E is included in the Purchase Agreement Consideration. Subject to Purchaser's obligation to pay the Purchase Agreement Consideration and Agent's obligation to pay all Expenses, Agent shall be entitled to retain all Proceeds of the Sale, as well as all proceeds of sales of FF&E and DSD Merchandise. All Merchandise and FF&E remaining at the conclusion of the Sale shall become the property of Agent, free and clear of all Liens ("Remaining Merchandise").

(b) If and to the extent that Agent over-funds any amounts due hereunder, then Merchant agrees to promptly reimburse such undisputed overpayment amounts to Agent.

(c) Merchant agrees that any amounts due by Agent to Merchant pursuant to this Agreement may in Agent's discretion be offset by the undisputed amount of Proceeds which have not, as of the applicable date of payment by Agent to Merchant, been transferred by Merchant to Agent.

3.2. Intentionally Omitted

3.3. Control of Proceeds and Accounts

(a) Control of Proceeds. Agent shall use its best efforts to establish, within ten (10) business days after the Sale Commencement Date, its own accounts, dedicated solely for the deposit of the Proceeds and the disbursement of amounts payable by 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, upon request, Agent shall deliver to Merchant copies of all bank statements and other information relating to such accounts. Merchant shall not be responsible for and Agent shall pay as an Expense hereunder, all bank fees and charges, including wire transfer charges, related to the Agency Accounts, whether received 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.

(b) Designated Deposit Accounts. During the period between the Sale Commencement Date and the date Agent establishes the Agency Accounts, all Proceeds of the Sale (including credit card proceeds) shall be collected by Agent and deposited on a daily basis into depository accounts designated by Merchant for the Closing Locations, which accounts shall be designated solely for the deposit of Proceeds of the Sale (including credit card proceeds) and the disbursement of amounts payable by Agent hereunder (the "Designated Deposit Accounts"). On each business day after the Sale Commencement Date (or as soon thereafter as is practicable), Merchant shall promptly pay to Agent by wire funds transfer all collected funds constituting Proceeds deposited into the Designated Deposit Accounts (but not any other funds, including, without limitation, any proceeds of Merchant's inventory sold prior to the Sale

Commencement Date, which funds if related to periods prior to the Purchase Agreement Closing, shall be the property of Merchant, or if related to period following the Purchase Agreement Closing, shall be the property of Purchaser).

3.4. Final Reconciliation.

(a) Within thirty (30) days after the Sale Termination Date, Agent and Merchant shall jointly prepare a final reconciliation of the Sale including, without limitation, a summary of Proceeds, taxes, Expenses, and any other accountings required hereunder (the “Final Reconciliation”). Within five (5) days of completion of the Final Reconciliation, any undisputed and unpaid Expenses shall be paid by Agent. In the absence of an order of the Bankruptcy Court, no such disputed amount(s) shall be paid until the dispute has been resolved by agreement of the parties or as determined in the manner prescribed in Section 3.4(b) hereof. During the Sale Term, and until all of Agent’s obligations under this Agreement have been satisfied, Merchant and Agent shall have reasonable access to Merchant’s and Agent’s records with respect to Proceeds, taxes and Expenses to review and audit such records.

(b) In the event that there is any dispute with respect to the Final Reconciliation, 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 Bankruptcy Court for resolution. In the event of any such dispute, Agent shall take such steps as are necessary or appropriate to extend the Expense L/C until the date that is not less than thirty (30) days after the resolution of the subject dispute. If Agent has for any reason not so extended the expiry date of the Expense L/C by the date which is five (5) days prior to the then applicable expiry date, Merchant shall have the right to make a drawing under the Expense L/C in an amount equal to the amounts Merchant asserts are then owing to Merchant.

Section 4. Expenses of the Sale

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 4.2 below. As used herein, “Expenses” shall mean all Closing Location operating expenses of the Sale which arise during the Sale Term at the Closing Locations, including, without limitation, the following:

(a) Occupancy Expenses for the Closing Locations on a per location and per diem basis in an amount up to the aggregate per diem totals set forth on Exhibit 4.1(a) hereto, plus the portion of any percentage rent obligations allocable to the Sale (as determined in the manner described in the definition of “Occupancy Expenses” below) incurred by Merchant under applicable Closing Location leases or occupancy agreements;

(b) payroll for all Closing Location-level Retained Employees used in conducting the Sale as well as payroll for any of Merchant’s former employees hired by Agent for the Sale as independent contractors, in each case for actual days and hours worked in conducting the Sale;

(c) any amounts payable by Merchant for benefits for Retained Employees (including, but not limited to, FICA, unemployment taxes, workers’ compensation and health

care insurance benefits, but excluding Excluded Benefits) used in the Sale, in an amount up to 10% of base payroll for each Retained Employee in the Closing Locations (the “Benefits Cap”);

(d) Retention Bonuses for Retained Employees, as provided for in Section 9.4 below;

(e) costs of Agent’s on-site supervision, supervisor travel and supervisor bonuses;

(f) costs of banners and interior and exterior signage;

(g) promotional costs including, without limitation, advertising and direct mail;

(h) the costs and expenses of obtaining additional supplies as may be required by Agent in the conduct of the Sale;

(i) long distance telephone, postage/overnight delivery/courier charges;

(j) credit card and bank card fees, chargebacks and discounts;

(k) costs of moving, transferring, or consolidating Merchandise between the Closing Locations;

(l) Merchant’s casualty insurance premiums attributable to the Merchandise for the Sale Term;

(m) third party payroll processing fees (if applicable);

(n) Store security, armored car service, security personnel and monthly alarm services;

(o) trash removal and ordinary course third party cleanings;

(p) costs and expenses of delivery services (if applicable);

(q) cash shortfalls in registers;

(r) routine repair and maintenance costs;

(s) costs and expenses of marketing and selling the FF&E at the Closing Locations; and

(t) all expenses associated with the acquisition and inclusion in the Sale of DSD Merchandise.

“Expenses” shall not include: (i) Central Service Expenses (which services shall be provided by Merchant to Agent free of charge throughout the Sale Term); (ii) Excluded Benefits; (iii) any rent or other occupancy expenses other than Occupancy Expenses in accordance with

Section 4.1(a) hereof; and (iv) any costs, expenses or liabilities arising during the Sale Term in connection with the Sale, other than the Expenses listed above, all of which shall be paid by Merchant 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.

As used herein, the following terms have the following respective meanings:

“Central Services Expenses” means costs and expenses for Merchant’s central administrative and distribution services necessary for the Sale including, but not limited to (a) Merchant’s inventory control system, (b) payroll system, and (c) accounting system.

“Excluded Benefits” means vacation days or vacation pay, sick days or sick leave, maternity leave or other leaves of absence, termination or severance pay, ERISA coverage and similar contributions (other than pension and 401(k) contributions), WARN Act claims, and benefits in excess of the Benefits Cap percentage limitation provided in Section 4.1(c) above.

“Occupancy Expenses” means rent, CAM, real estate and use taxes, HVAC, utilities, base telephone charges and all other categories of expenses at the Closing Locations as set forth on Exhibit 4.1(a) attached hereto, and in the specific amounts set forth on Exhibit 4.1(a), and the pro rata portion of percentage and/or overage rent attributable to Agent based on sales generated during the Sale Term as a proportion of sales generated by Merchant and Agent for the applicable percentage rent measurement period under each lease which contains a provision for percentage or overage rent. Merchant and Agent agree that Occupancy Expenses for any Closing Location shall be the amount of Real Estate Occupancy Expenses for such Closing Location set forth on Schedule 3.2(a) of the Purchase Agreement.

“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.

4.2. Payment of Expenses; Security

(a) All Expenses incurred during each week of the Sale (*i.e.*, Sunday through Saturday) shall be paid by Agent to or on behalf of Merchant, or offset from Proceeds held by Merchant, immediately following the weekly Sale reconciliation by Merchant and Agent pursuant to Section 8.7 below, based upon invoices and other documentation reasonably satisfactory to Agent.

(b) To secure Agent’s obligations to pay Expenses and any other amounts due from Agent to Merchant hereunder, Agent shall deliver to Merchant an irrevocable and unconditional standby letter of credit (“Expense L/C”) in an original face amount representing an amount equal to two (2) weeks’ estimated Expenses, naming Merchant as beneficiary (substantially in the form of Exhibit 4.2(b)), and issued by a U.S. national bank selected by Agent and reasonably acceptable to Merchant. The Expense L/C shall be delivered to Merchant no later than two (2) business days after the Sale Commencement Date. Merchant and Agent agree that at the point where there is less than two (2) weeks remaining in the Sale Term, the face amount of the Expense L/C shall be reduced in amount(s) to be agreed upon by Merchant and Agent.

(c) In the event that Agent fails to pay any Expense(s) when due, or within three (3) business days after Merchant notifies Agent that any Expense(s) are unpaid and past due, or in the event that Agent shall fail to pay to Merchant any other amount required to be paid hereunder, or fail to perform any obligation hereunder, or in the event the Expense L/C will expire within 5 business days and any amounts due hereunder are unpaid, Merchant shall be entitled to draw on the Expense L/C to fund such unpaid amount. The Expense L/C 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 L/C there remains any unresolved dispute as to any amount asserted by Merchant to be due hereunder (including, without limitation, any unpaid Expense), Merchant may, in its discretion, exercise the right to cause Agent to have the expiration date of the Expense L/C extended for thirty (30) 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 have been paid to Merchant.

Section 5. Merchandise

5.1. Merchandise Subject to this Agreement. For purposes of this Agreement, "Merchandise" shall mean all "Liquidation Merchandise" as such term is defined in the Purchase Agreement located at each Closing Location.

5.2. Excluded Goods. Merchant shall retain all rights and responsibility for any goods not included as "Merchandise" hereunder and shall remove such goods from the Closing Locations 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". Agent shall retain 20% of the sale price (less Sales Taxes) for all sales of Merchant Consignment Goods, and Merchant shall receive 80% of the sale price (less 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 Sale reconciliation by Merchant and Agent pursuant to Section 8.7 below. 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 Locations at its expense. Except as expressly provided in this Section 5.4 or in the Purchase Agreement, Agent shall have no cost, expense or responsibility in connection with any goods not included in Merchandise.

Section 6. Sale Term.

6.1. Term. Subject to the terms of the Sale Order, the Sale shall commence at the Closing Locations on the first calendar day after the designation of such Closing Location as a Designated Liquidation Location pursuant to the Purchase Agreement (the "Sale Commencement Date"); provided that in no event shall the Sale commence at any Closing Location prior to the consummation of the Purchase Agreement Closing. The Agent shall complete the Sale, and shall vacate each Closing Location's premises in favor of Merchant or its representative or assignee on or before July 31, 2010 (the "Sale Termination Date"). The period from the Sale Commencement Date to the Sale Termination Date shall be referred to herein as the "Sale Term." The Sale Termination Date may be (a) extended by mutual written agreement of Agent and Merchant,

following approval of the Bankruptcy Court on notice to interested parties, or (b) accelerated by Agent, in which case Agent shall provide Merchant with not less than five (5) days' advance written notice of any such planned accelerated Sale Termination Date.

6.2. Vacating the Closing Locations. Agent shall vacate each of the Closing Locations no later than the Sale Termination Date and (ii) provide Merchant with not less than five (5) days' advance written notice of its intention to vacate any Closing Location (as to each, the "Vacate Date"). On the Vacate Date, Agent shall vacate the applicable Closing Location in favor of Merchant or its representatives or assignee, remove all Remaining Merchandise and leave the Closing Location in "broom clean" condition (ordinary wear and tear excepted), subject to the right to abandon, neatly in place, any unsold FF&E. All assets of Merchant used by Agent in the conduct of the Sale and that have not been sold to Purchaser pursuant to the Purchase Agreement shall be returned by Agent to Merchant or left at the Closing Locations to the extent same have not been used in the conduct of the Sale or have not been otherwise disposed of through no fault of the Agent. Where reference is made in this Section 6 to vacating the Closing Locations, such shall mean vacating the Closing Locations, 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 Location premises or a waiver of Purchaser's "Designation Rights" with regard to such Closing Location under the Purchase Agreement. Agent agrees that it shall be obligated to repair any damage caused by Agent (or any representative, agent or licensee thereof) to any Closing Location during the Sale Term, ordinary wear and tear excepted.

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, exclusive of Sales Taxes, 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.

7.2. Credit Card Proceeds. Agent shall use its best efforts to establish its own merchant identification numbers under Agent's name to enable Agent to process all credit card sales for Agent's account within ten (10) days after the Sale Commencement Date. Until such time as Agent establishes its own identification numbers, during the Sale Term Agent may use Merchant's credit card facilities (including Merchant's credit card terminals and processor(s), merchant identification number(s), credit card processor coding and existing bank accounts utilized for collection of credit card sales) to process credit card sales. Merchant shall process credit card transactions on behalf of Agent, applying customary practices and procedures. Merchant shall cooperate reasonably and in good faith 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 transactions under Merchant's merchant identification number(s). Until such time as Agent establishes its own merchant identification numbers, Merchant shall deposit the net settlement received from any credit card sales receipts into the Designated Deposit Accounts. Merchant shall prepare a weekly reconciliation of the amounts deposited into the Designated Deposit Accounts in respect of the sales of Merchandise by credit card, and of the Sales Taxes attributable to such sales, less credit card and bank card fees, chargebacks and service charge adjustments, returns allowances and customer credits. Merchant shall not be responsible for

paying 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.

Section 8. Conduct of the Sale

8.1. Rights of Agent. Subject to entry of the Sale Order, Agent shall be permitted to conduct a “store closing,” “going-out-of-business” or similar themed sale at the Stores throughout the Sale Term in a manner consistent with the “Sale Guidelines” annexed hereto as Exhibit 8.1, whether by in-store or media advertising or promotional materials. In addition to any other rights granted to Agent hereunder or under the Purchase Agreement, in conducting the Sale, Agent, in the exercise of its sole discretion, shall have the right:

(a) to establish Closing Locations’ hours, which are consistent with the terms of applicable leases, mortgages or other occupancy agreements and local laws or regulations, including, without limitation, Sunday closing laws;

(b) to use without charge (except where designated as an Expense pursuant to Section 4.1 hereof) during the Sale Term all FF&E, bank accounts, customer lists and mailing lists, computer hardware and software, existing supplies located at the Closing Locations, intangible assets (including Merchant’s names, logos and tax identification numbers), keys, case keys, security codes, and safe and lock combinations required to gain access to and operate the Closing Locations, and any other assets of Merchant located at the Closing Locations (whether owned, leased, or licensed) consistent with applicable terms of leases or licenses. Agent shall exercise due care and return to the Merchant immediately at the end of the Sale all materials and supplies except materials or supplies expended or sold to Purchaser under the Purchase Agreement;

(c) to use Merchant’s central office facilities, 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;

(d) to establish sales prices and implement advertising, signage (including exterior banners and signs), and promotion programs consistent with the sale theme described herein, and as otherwise provided in the Sale Order and the Sale Guidelines, as and where applicable (including, without limitation, by means of media advertising, A-frame, and similar signage, and use of sign walkers, in Agent’s discretion);

(e) to transfer Merchandise between the Closing Locations only after the Inventory Taking (as contemplated by and defined in the Purchase Agreement) is completed at both the transferring and the receiving location; and

(f) Agent may conduct one or more auctions of Merchandise, Additional Merchandise, and/or FF&E from the Closing Locations.

8.2. Terms of Sales to Customers. Subject to Agent’s compliance with applicable law, all sales of Merchandise will be “final sales” and “as is, where is” and all advertisements and sales receipts (including credit card 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, nationally recognized bank credit cards, and, in Agent's discretion, personal checks; provided, however, if Agent determines to accept personal checks, Agent shall bear the risk of loss therefor. Agent shall clearly mark the receipts for all Merchandise sold at Closing Locations during the Sale Term so as to distinguish such Merchandise from the merchandise sold at Merchant's other store locations.

8.3. Sales Taxes. During the Sale Term, all sales, excise, gross receipts and other taxes attributable to sales of Merchandise as indicated on Merchant's point of sale equipment (other than taxes on income, but specifically including, without limitation, gross receipts taxes payable to the State of Washington) 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 bi-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 promptly the proceeds thereof to Merchant, Merchant shall promptly pay or cause to be paid all Sales Taxes and file all applicable reports and documents required by the applicable taxing authorities. 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 strict compliance 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 attorneys' 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 Sales Taxes 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. In the event that additional supplies are required in any of the Closing Locations 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.

(a) During the first seven (7) days of the Sale Term only, which period is consistent with Merchant's customary policies, Agent shall accept for return items of merchandise that were sold and delivered within the seven (7) days prior to the date of such return, to the extent such return is consistent with Merchant's customary policies (each item a "Customer Returned Good," and collectively the "Customer Returned Goods"). Agent shall be

obligated to maintain and deliver to Merchant a detailed returned merchandise log, including copies of all relevant merchandise receipts and credits, as well as mark the affected merchandise in such a fashion so as to render such merchandise readily identifiable by Merchant and Agent. After the seventh (7th) day after the Sale Commencement Date, customers seeking to return, exchange or repair goods, shall be directed to contact a designated representative of Merchant, which return, repair or exchange request shall be handled by Merchant consistent with Merchant's prior practices.

(b) All customer requests for cash refunds or merchandise credits with regard to Customer Returned Goods and/or cancellation of Customer Ordered Merchandise shall be processed exclusively through Merchant's home office, and Agent shall not issue any cash refunds or credits to customers in respect of any sale written prior to the Sale Commencement Date.

8.6. Sale Reconciliation. On each Wednesday during the Sale Term, commencing on the second Wednesday after the Sale Commencement Date, Agent and Merchant shall cooperate to reconcile Expenses and such other Sale-related items as either party shall reasonably request, in each case for the prior week or partial week (*i.e.*, Sunday through Saturday), all pursuant to procedures agreed upon by Merchant and Agent. Within thirty (30) days after the end of the Sale Term, Agent and Merchant shall complete a final reconciliation of the Sale, the written results of which shall be certified by representatives of each of Merchant and Agent as a final settlement of accounts between Merchant and Agent.

8.7. DSD Merchandise. In order to maximize the return on the Liquidation Merchandise, Agent may include "direct store delivery" inventory ("DSD Merchandise") in the Sale of like categories and quality as historically offered by Merchant at the Stores. All expenses associated with the acquisition of the DSD Merchandise shall be an expense of the Agent.

Section 9. Employee Matters

9.1. Merchant's Employees. Subject to the applicable provisions of the Sale Order and any other provisions in this Agreement relating to employees, Agent may use Merchant's employees in the conduct of the Sale to the extent Agent in its sole discretion deems expedient, and Agent may select and, with Merchant, schedule the number and type of Merchant's employees required for the Sale. Agent shall identify any such employees to be used in connection with the Sale (each such employee, a "Retained Employee") prior to the Sale Commencement Date. Retained 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 and except as otherwise expressly provided in this Agreement, 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, Worker Adjustment Retraining Notification Act ("WARN Act") claims and other termination type claims and obligations, or any other amounts required to be paid by statute or law (except to the extent such items are amounts for which Merchant is entitled to indemnification pursuant hereto); nor shall Agent become liable under any collective bargaining or employment agreement or be deemed a

joint or successor employer with respect to such employees. Merchant shall not, without Agent's prior written consent, raise the salary or wages or increase the benefits for, or pay any bonuses or make any other extraordinary payments to, any of the Retained Employees, except as otherwise provided in this Agreement.

9.2. Termination of Employees By 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 five (5) days prior thereto, except for termination "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 after such termination. From and after the date of this Agreement and until the Sale Termination Date, Merchant shall not transfer or dismiss employees of any Closing Location 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 and all related payroll taxes, worker's compensation, employment and unemployment insurance, and benefits for all Retained Employees (except for independent contractors hired by Agent) in accordance with its usual and customary procedures. At Agent's expense, Merchant shall also process payroll for additional personnel hired by Agent for the Sale.

9.4. Employee Retention Bonuses. Agent may, in its discretion, pay as an Expense retention bonuses ("Retention Bonuses") (which bonuses shall be inclusive of payroll taxes but as to which no benefits shall be payable) up to approximately 10% of base payroll, to certain Retained Employees who do not voluntarily leave employment and are not terminated "for cause". The amount of such Retention Bonuses, which will be payable within thirty (30) days after the Sale Termination Date, shall be in an amount to be determined by Agent, in its discretion, and shall be processed through Merchant's payroll system. Agent shall not utilize the Retention Bonus as a mechanism to encourage Retained Employees to act contrary to Merchant's best interests.

Section 10. Conditions Precedent.

The willingness of Agent and Merchant 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;

(b) The Bankruptcy Court shall have entered the Sale Order in a form reasonably acceptable to Merchant and Agent; and

(c) The Purchase Agreement Closing shall have been consummated and Purchaser shall have designated the Designated Liquidation Locations, which shall be the Closing Locations hereunder.

Section 11. Representations, Warranties and Covenants

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

(a) Merchant (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington; (ii) has all requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as presently conducted; 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, including all jurisdictions in which the Closing Locations 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.

(b) Subject to the entry of the Sale Order in the Chapter 11 Case, 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 fully its obligations thereunder. Subject to the entry of the Sale Order in the Chapter 11 Case, Merchant has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval on the part of Merchant is required for Merchant to enter into and deliver the Agency Documents, to perform its obligations thereunder, and to consummate the Sale. Subject to the entry of the Sale Order in the Chapter 11 Case, each of the Agency Documents has been duly executed and delivered by Merchant and constitutes the legal, valid and binding obligation of Merchant enforceable in accordance with its terms. 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 the Merchant's consummation of, the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefore, 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 Merchant to execute and deliver this Agreement and perform fully its obligations hereunder. Other than for any consent as shall be obtained prior to the Sale Commencement Date, no contract or other agreement to which the Merchant is a party or by which the Merchant is otherwise bound will prevent or materially impair the consummation of the Sale and the other transactions contemplated by this Agreement.

(c) Merchant shall not create, incur, assume or suffer to exist any security interest, lien or other charge or encumbrance upon or with respect to any of the Merchandise or the Proceeds, in each case, except for such pre-existing liens and security interests as shall have been disclosed by Merchant to Agent and identified in Exhibit 11.1(c) hereof.

(d) To the best of Merchant's knowledge, all Merchandise is in material compliance with all applicable federal, state 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.

(e) Subject to the terms of this Agreement, Agent shall have the right to the unencumbered use and occupancy of, and peaceful and quiet possession of, each of the Closing Locations, the assets currently located at the Closing Locations to the extent Merchant is entitled to use the same, and the services provided at the Closing Locations to the extent Merchant is entitled to such services. As an Expense (Occupancy Expense or otherwise), Merchant shall throughout the Sale Term maintain in a manner consistent with its customary and historic practices, all cash registers, heating systems, air conditioning systems, elevators, escalators, alarm systems, and all other mechanical devices used in the ordinary course of operation of the Closing Locations or, if applicable, use reasonable efforts to cause any applicable landlord to comply with its obligations under applicable lease and occupancy agreements with respect to any such matter.

(f) Since March 1, 2010, Merchant has paid all self-insured or Merchant funded employee benefit programs for Closing Location employees, including health and medical benefits and insurance and all proper claims made or to be made in accordance with such programs.

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

(a) Agent (i) is a limited liability company duly and validly existing and in good standing under the laws of the State of Delaware; (ii) has all requisite power and authority to carry on its business as presently conducted and to consummate the transactions contemplated hereby; and (iii) is and during the Sale Term will continue to be duly authorized and qualified as a foreign company 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 fully its obligations thereunder. Agent has taken all necessary actions required to authorize the execution, delivery, and performance 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, to perform its obligations thereunder, and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by the 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.

Section 12. Insurance

12.1. Merchant's Liability Insurance. Merchant shall continue 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 Locations, and shall cause Agent to be named an additional insured with respect to all such policies. Prior to the Sale Commencement Date, Merchant shall deliver to Agent certificates evidencing such insurance setting forth the duration thereof and evidencing Agent named as an additional insured, in form reasonably satisfactory to Agent. All such policies shall 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) shall constitute Proceeds. Prior to the Sale Commencement Date, Merchant shall deliver to Agent certificates evidencing such insurance setting forth the duration thereof, in form and substance reasonably satisfactory to Agent. All such policies shall 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. Worker's Compensation Insurance. Merchant shall continue until the Sale Termination Date, in such amounts as it currently has in effect, 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.

12.4. 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 Locations, 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 reasonable 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.

12.5. 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 Locations or the assets located therein or associated therewith, or of Merchant's employees located at the Closing Locations, 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 Locations during and after the Sale Term, except to the extent any such claim arises directly from the acts or omissions of Agent, or its supervisors, agents, independent contractors, or employees located at the Closing Locations (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, Agent shall administer such claim and shall present such claim to its liability insurance carrier, and shall provide copies of the initial documentation relating to such claim to Merchant. In the event that Merchant and Agent 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 attorneys' fees and expenses, asserted directly or indirectly against Agent resulting from, or related to:

(a) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in any Agency Document;

(b) subject to Agent's performance and compliance with its obligations pursuant to Sections 4.1(b) and 4.1(c) and Section 9 hereof, any failure of Merchant to pay to its employees any wages, salaries or benefits due to such employees 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;

(c) 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;

(d) any consumer warranty or products liability claims except to the extent such claims arise from representations made by the Agent relating to the Merchandise or FF&E;

(e) the gross negligence or willful misconduct of Merchant or any of its officers, directors, employees, agents (other than Agent) or representatives.

13.2. Agent Indemnification. Agent shall indemnify and hold Merchant and its officers, directors, employees, agents and representatives harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, asserted directly or indirectly against, Merchant resulting from, or related to (including acts or omissions of persons or entities affiliated with or acting on behalf of the Agent):

(a) Agent's material breach of or failure to comply with any local, state, or federal laws or regulations, or any of its agreements, covenants, representations or warranties contained in any Agency Document;

(b) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of any 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; and

(e) the gross negligence or willful misconduct of Agent or any of its officers, directors, employees, agents or representatives.

Section 14. Defaults. The following shall constitute "Events of Default" hereunder:

(a) Merchant's or Agent's failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting party; or

(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 and throughout the Sale Term.

In the event of an Event of Default, the non-defaulting party 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 default hereunder in the event such cure is not affected by the defaulting party.

Section 15. Fixtures. With respect to furniture, fixtures and equipment and Other Fixed Assets (as defined in the Purchase Agreement) owned by Merchant and located at the Closing Locations (collectively, the "FF&E"), Agent shall have the right to sell the FF&E in any such Closing Locations. Notwithstanding any other provision of this Agreement, and subject to the terms of the Purchase Agreement, Agent shall bear any and all costs and expenses incurred in connection with the disposition of the FF&E and shall be entitled to retain the proceeds of sale of the FF&E. At the conclusion of the Sale, Agent may abandon in place in a neat and orderly manner any unsold FF&E at the Closing Locations.

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, or a recognized overnight delivery service, as follows:

if to Agent, to:

LOI Capital, LLC
c/o Hudson Capital Partners, LLC
One Gateway Center, Suite 402
Newton, Massachusetts 02458
Attention: Mr. David Peress, President
Fax: (617) 249-1537

with a copy to:

Greenberg Traurig, LLP
One International Place
Boston, Massachusetts 02110
Attention: Jeffrey M. Wolf, Esq.
Fax: (617) 310-6001

if to Merchant, to:

Liquidation Outlet, Inc.
1025 Valley Avenue
Puyallup, Washington 98371
Attention: Mr. Gary Woodring
Fax: [(____) ____-____]

with a copy to:

Oldfield & Helsdon, PLLC
1401 Regents Boulevard, Suite 102
P.O. Box 64189
Fircrest, Washington 98466
Attention: Jeffrey P. Helsdon, Esq.
Fax: (253) 414-3500

16.2. Governing Law; Consent to Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of Washington, without regard to conflicts of laws principles thereof. The parties hereto agree that the Bankruptcy 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 and the Purchase Agreement 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.

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. This Agreement shall inure to the benefit of and be binding upon Agent and Merchant, including, but not limited to, any chapter 11 or chapter 7 trustee. Agent shall not be permitted to assign its rights or obligations under this Agreement.

16.7. 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, and such facsimile signature shall be treated as an original signature hereunder.

16.8. 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.

16.9. Survival. All representations, warranties, covenants and agreements 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.

16.10. 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 Sale reconciliation pursuant to Section 8.7 above. Notwithstanding the foregoing, (a) the representations, warranties and indemnities of Merchant and Agent contained herein and the provisions of Section 11 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 16.10.

16.11. Security Interest. Upon payment of the Purchase Agreement Consideration and in consideration of the Agent's payment of the Expenses, and the provision of services hereunder to Merchant, Merchant hereby grants to Agent a first priority security interest in and lien upon the Merchandise, the FF&E and the Proceeds to secure all obligations of Merchant to Agent hereunder. Upon entry of the Sale Order and payment of the Purchase Agreement Consideration and the issuance of the Expense L/C, the security interest granted to Agent hereunder shall be deemed properly perfected without the need for further filings or documentation.

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IN WITNESS WHEREOF, Agent and Merchant hereby execute this Agency Agreement as of the day and year first written above.

AGENT:

LOI CAPITAL, LLC

By: _____
Name:
Title:

MERCHANT:

LIQUIDATION OUTLET, INC.

By: _____
Name:
Title: