

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:	)	
	)	Chapter 11
Quality Stores, Inc., <i>et al.</i> ,	)	
	)	Case No. GG-01-10662
	)	(Jointly Administered)
Debtors.	)	
	)	Hon. James D. Gregg

**ORDER (i) APPROVING AGENCY AGREEMENT, DATED AS  
OF DECEMBER 31, 2001, BETWEEN AND AMONG THE  
DEBTORS AND THE JOINT VENTURE FORMED BY  
TRACTOR SUPPLY COMPANY, GREAT AMERICAN GROUP,  
GORDON BROTHERS RETAIL PARTNERS, LLC AND  
DJM ASSET MANAGEMENT, (ii) AUTHORIZING AND  
APPROVING THE DISPOSITION OF THE DEBTORS'  
ASSETS IN THE REMAINING STORES AND THE REAL  
ESTATE INTERESTS ASSOCIATED THEREWITH IN  
THE MANNER PROVIDED BY THE AGENCY  
AGREEMENT AND (iii) GRANTING RELATED RELIEF**

By Motion dated December 14, 2001 ("Sale Motion"), Quality Stores, Inc., *et al.*, debtors and debtors in possession herein (the "Debtors"), proposed to sell outside of the ordinary course of business a substantial portion of their tangible and intangible assets located in their Remaining Stores (as defined in the Sale Motion)<sup>1</sup> to Hartwick Quality LLC ("Hartwick"). In connection with the Debtors' proposed sale of the Assets to Hartwick, the Debtors entered into an Agreement for Purchase and Sale of Retail Stores, dated as of December 14, 2001 (the

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<sup>1</sup>The Remaining Stores' assets that were the subject of the Sale Motion are described more fully therein, in the Hartwick Agreement and in the Agency Agreement (each as defined herein), each of which is incorporated herein by this reference. The specific assets that are the

“Hartwick Agreement”), with Hartwick, which Hartwick Agreement provides for the sale of certain of the Remaining Stores’ Assets (excluding certain “Excluded Assets”, as provided in the Hartwick Agreement) to Hartwick, with such sale to be free and clear of all liens, claims and encumbrances of whatever kind or nature. On December 20, 2001, this Court conducted a hearing (the “Sale Hearing”) to consider the relief sought in the Sale Motion, including (i) the Debtors’ request for approval of the Hartwick Agreement and the sale transaction contemplated thereby, subject to the conduct of a subsequent auction on December 27, 2001 (the “Auction”) for the receipt of higher and/or better offers, and (ii) approval of certain competitive bid and auction procedures with regard to the proposed sale transaction (“Sale Procedures”). On December 20, 2001, the Court issued an Order (“Hartwick Approval Order”), among other things, (i) approving the Sale Procedures, (ii) authorizing the conduct of the Auction, and (iii) approving the Hartwick Agreement and authorizing without need for further Court approval the Debtors’ consummation of the sale transaction provided for therein, subject only to the ultimate outcome of the Auction and confirmation and ratification of the Auction results at a hearing to be held on December 31, 2001 (the “Auction Confirmation Hearing”). On December 27, 2001, Debtor conducted the Auction, and as provided below, determined at the conclusion thereof (with the concurrence of the statutory committee of unsecured creditors (the “Committee”) and the Debtors’ secured lenders (collectively, the “Lenders”)) that the competing offer presented by the joint venture formed by Tractor Supply Company, Great American Group, Gordon Brothers Retail Partners, LLC and DJM Asset Management, LLC (the “Joint Venture”), as such offer is contained in a certain Agency Agreement, dated as of December 27, 2001 (the “Agency

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subject of the Agency Agreement and this Order are set forth in the Agency Agreement, and shall for purposes hereof be referred to as the “Remaining Stores’ Assets”.

Agreement”), was the highest and best offer presented at the Auction. On December 31, 2001, this Court conducted the Auction Confirmation Hearing to, *inter alia*, consider those matters arising from the Auction, including, but not limited to, (a) (i) approval of the Agency Agreement as a higher and better offer, (ii) authorizing and determining that the disposition of the Debtors’ Remaining Stores’ Assets in the manner provided by the Agency Agreement, including, without limitation, as concerns the Debtors’: (x) conduct of certain “going-out-of-business” sales (“GOB Sales”) from the Remaining Stores, (y) engagement of the Joint Venture (or certain constituent members thereof) as Debtors’ exclusive agent to conduct the GOB Sales, (z) grant of the Designation Rights (as defined herein) to the Joint Venture, shall be free and clear of all liens, claims and encumbrances, (iii) approving and directing certain procedures with regard to the Debtors’ sale, transfer, assumption and/or assignment of the entirety of Debtors’ right, title and interest in the Real Estate Interests consistent with the Agency Agreement and the Designation Rights arising thereunder, (iv) and certain additional matters addressed thereby and (b) such matters as arise under or relate to Debtors’ “Motion Pursuant to Sections 363(b) and 363(f) of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure for an Order (A) Approving a Consulting Agreement With a Consultant to be Selected by the Debtors, (B) Authorizing the Consultant to Conduct Store Closing Sales, and (C) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens and Other Interests”, dated November 14, 2001 (“GOB Sale Motion”).

UPON CONSIDERATION OF THE SALE MOTION, THE GOB SALE MOTION, THE RECORD OF THE SALE HEARING, THE RECORD OF THE AUCTION, AND THE

RECORD OF THE AUCTION CONFIRMATION HEARING, THE COURT FINDS AND DETERMINES THE FOLLOWING:

1. Unless otherwise defined in this Order, capitalized terms used herein shall have the meanings ascribed to such terms in the Agency Agreement, the Sale Motion, or the GOB Sale Motion, as the case may be.
2. On October 20, 2001 (the "Involuntary Date"), an involuntary petition (the "Involuntary Petition") was filed against the Debtors by certain petitioning creditors.
3. On November 1, 2001 (the "Filing Date"), the Debtor answered the Involuntary Petition and consented to the entry of an order for relief under chapter 11 of Title 11, United States Code (the "Bankruptcy Code"). The Debtors have continued in the management and operation of their businesses and properties as debtors-in-possession, pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed herein as of the date hereof.
4. Given the emergent circumstances, proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Procedures, the GOB Sale Motion, the Sale Hearing, and the Auction Confirmation Hearing has been provided in accordance with Sections 363(b) and (f) and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006, in that notice was appropriate and was given to (i) the Office of the United States Trustee for the Western District of Michigan (the "UST"), (ii) counsel for the Lenders, (iii) counsel for the Committee, (iv) counsel for Hartwick, (v) the non-debtor parties to certain executory contracts and leases which may be subject to assumption and assignment as provided in the Sale Motion, (vii) the landlords for the Debtors' Remaining Stores, (viii) the attorney's general and department of revenue of each state in which the Debtors' retail stores are located, (ix) any person or entity claiming a lien or other interest in

any Remaining Stores' Assets that are subject to sale under the Sale Motion and/or the GOB Sale Motion, (x) all potentially interested parties who either previously expressed an interest in acquiring the Remaining Stores' Assets, or who the Debtors believed may have had such an interest, and (xi) those parties who have filed a notice(s) of appearance in the chapter 11 cases, as such service is evidenced by the proofs of service on file with the Clerk of this Court, and no other or further notice of the Sale Motion, the GOB Sale Motion, the Sale Hearing, the Auction Confirmation Hearing, or the entry of this Order is necessary.

5. A reasonable opportunity has been afforded any interested person or entity to make a higher and better offer to purchase or otherwise dispose of the Remaining Stores' Assets described in the Hartwick Agreement and the Sale Motion.

6. The Agency Agreement represents the highest and best offer received by the Debtors for the Remaining Stores' Assets that are the subject of each such agreement.

7. The Debtors have advanced sound business reasons for seeking to (a) dispose of the Remaining Stores' Assets under the terms of the Agency Agreement, and as concerns the conduct the GOB Sales thereunder, each as set forth in the Agency Agreement, the Sale Motion, and the GOB Sale Motion, pursuant to Section 363(b) and (f) of the Bankruptcy Code, and it is a reasonable exercise of the Debtors' business judgment to enter into and consummate the transactions contemplated in the Agency Agreement, and to execute, deliver and perform their obligations thereunder.

8. The total consideration to be realized by the Debtors pursuant to the Agency Agreement is fair and reasonable, and the transactions contemplated by the Agency Agreement are in the best interest of the Debtors' estates and all parties interested therein.

9. It is in the best interest of the Debtors' estates and their creditors for the Debtors to dispose of the Remaining Stores' Assets, including the conduct of the GOB Sales and the grant of the Designation Rights thereunder, in the manner provided for under the Agency Agreement.

10. The Joint Venture is a good faith purchaser. Each of the constituent members of the Joint Venture are entitled to the protections set forth in Section 363(m) of the Bankruptcy Code if it/they consummate(s) the subject transactions in accordance with this Order and the Agency Agreement. The Agency Agreement and related documents and agreements are the product of substantial, extensive and good faith negotiations that were conducted at arm's length.

11. Various limited objections, responses and statements of position (collectively, the "Objections") to approval of the Sale Motion and/or GOB Sale Motion and related transactions were filed, which Objections are rendered moot, resolved or overruled, in whole or in part, in accordance with the findings, terms and provisions of the Hartwick Order and this Order as set forth below.

12. The Court conducted the Sale Hearing and the Auction Confirmation Hearing, and considered the pleadings filed with respect to the Sale Motion and the GOB Sale Motion, as well as the statements and arguments of respective counsel for the Debtors, the Committee, Hartwick, the Joint Venture, the Lender, the UST, and parties having filed Objections.

13. The relief requested in the Sale Motion and the GOB Sale Motion, including the approval of the Agency Agreement and the transactions contemplated thereunder, is in the best interests of the Debtors' estates, their creditors, and other parties in interest.

14. As reflected in the record of the Auction and the Auction Confirmation Hearing, the Committee and the Lenders expressly consent to and support the Debtors' consummation of the transactions provided for under the Agency Agreement.

15. The transaction(s) described in the Sale Motion and the GOB Sale Motion, and as contained in the Agency Agreement are hereby approved by this Order, including, but not limited to, (i) the disposition of the Debtors' Remaining Stores' Assets in the manner provided under the Agency Agreement, with such disposition to be free and clear of any and all liens, claims, and encumbrances of whatever kind or nature, pursuant to Section 363(f) of the Bankruptcy Code, (ii) grant of the Designation Rights to the Joint Venture, together with the procedures contemplated thereunder for the sale, transfer, assumption and assignment of the Debtors' Real Estate Interests, including certain unexpired leases pursuant to the terms of the Agency Agreement and this Order, (iii) the conduct of the going-out-of-business sales from the Debtors' remaining store locations pursuant to the terms of the Agency Agreement, and (iv) the grant of the real estate related designation rights contemplated under the Agency Agreement.

FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED THAT:

1. The grant and approval of the Sale Motion under the Hartwick Approval Order is hereby ratified, and the GOB Sale Motion is hereby granted and approved ~~as set forth~~ *to the extent provided* herein.
2. The results of the Auction, including, but not limited to, confirmation of the Transaction contemplated under the Agency Agreement as being the highest and best offer received at the Auction, is hereby ratified and confirmed.
3. The Joint Venture, and each constituent member thereof, is a good faith purchaser. The Joint Venture, and each constituent member thereof, is entitled to the protections set forth in

Section 363(m) of the Bankruptcy Code if it/they consummate(s) the transactions in accordance with this Order and the Agency Agreement.

4. The Debtors' execution and delivery of the Agency Agreement (a copy of which is annexed to this Order as Exhibit "A" and is incorporated herein by reference) is hereby approved and authorized in all respects, and the Agency Agreement is hereby approved and authorized in all respects, pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006, as fair, reasonable, and in the best interests of the Debtors' estates, their creditors, and other parties in interest. The Agency Agreement is a legally binding, valid, and enforceable contract between the Debtors' estates and the Joint Venture.

5. The Debtors and the Joint Venture are hereby authorized to close and, pursuant to Sections 105(a) and 363(b)(1) of the Bankruptcy Code, to conduct the GOB Sales at the Remaining Stores as identified in the Agency Agreement (collectively, the "Closing Stores"), and to sell or otherwise dispose of the merchandise inventories, furniture, fixtures and equipment at the Closing Stores.

6. The Debtors and the Joint Venture are hereby authorized to take such actions necessary and appropriate to effectuate the GOB Sales and the Agency Agreement, including, but not limited to, posting signs, banners and advertising such GOB Sales in accordance with the store closing guidelines (the "Guidelines") attached as Exhibit "B" hereto and incorporated herein, which Guidelines are hereby approved.

7. The removal of any equipment, furniture and/or fixtures from any Closing Store(s) in connection with its sale, transfer or other disposition authorized by this Order and



under the Agency Agreement shall be done only upon consultation with the landlord and upon terms agreeable to the landlord, and consistent with the Guidelines.

8. The provisions of this Order shall be self-executing and each and every federal, state or local agency, department or governmental authority with regulatory authority over the GOB Sales, newspapers and other advertising media in which the GOB Sales may be advertised, and landlords of the Closing Stores are directed to accept this Order as binding authority to consummate the GOB Sales at the Closing Stores, including, without limitation, the conducting and advertising of the GOB Sales.

9. The Debtors and the Joint Venture are hereby authorized and empowered to transfer inventory, equipment, furniture and fixtures between the Closing Stores, and any warehouse(s), manufacturing facility, or distribution center associated with the Debtors' businesses, in accordance with the terms of the Agency Agreement.

10. All parties and persons of every nature and description, including, but not limited to, landlords, utility companies, governmental agencies, sheriffs, marshals or other public officers, creditors and all those acting for or on their behalf, be, and they hereby are, jointly and severally restrained and enjoined from (a) in any way interfering with or otherwise impeding the conduct of the GOB Sales or other liquidation or auction sales at the Closing Stores, and the maintenance of the inventory, equipment, furniture and fixtures thereat, and (b) instituting any action or proceeding in any court or other administrative body, other than this Court, having as its objective the obtaining of an order or judgment which might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of GOB Sales or other liquidation or auction sales at the Closing Stores.

11. Pursuant to Section 363(f) of the Bankruptcy Code, the disposition of the Remaining Stores' Assets by the Debtors and the Joint Venture under the Agency Agreement shall be free and clear of all liens, claims, and encumbrances, including, but not limited to, (i) any and all claims and liens asserted by the Lender or mechanics' lien claimants, (ii) any and all claims and liens of lessors or other facilities in which inventory or various other Remaining Stores' Assets of the Debtors are maintained, and (iii) any and all other claims, of any kind or nature, whether matured or unmatured, contingent or not contingent, liquidated or unliquidated, whether or not allowable (as that term is used in the Bankruptcy Code), security interest, title retention, charges, and other interest in such property of any entity other than the Debtors, including all mortgages, security interests, conditional sales or title retention agreements, pledges, hypothecations, liens, judgments, encumbrances or claims of whatever kind or nature (including, but not limited to, any and all "claims" as defined in Section 101(5) of the Bankruptcy Code), whether arising by agreement, statute or otherwise and whether arising before, on or after the Involuntary Date, asserted by any third party against the Debtors, any affiliate of the Debtors, their estates, or the Remaining Stores' Assets (collectively, "Encumbrances"), with any such encumbrances to attach solely to the proceeds received by the Debtors under the Agency Agreement in the same validity, priority and extent that any of them may have had in the Remaining Stores' Assets.

12. Except as otherwise provided herein or in the Agency Agreement, the Joint Venture, nor any constituent member thereof, shall not assume, and shall not be deemed to have assumed, any debt, claim, obligation, or other third party liability of the Debtors whatsoever, provided that nothing herein shall be deemed to waive, limit, discharge or otherwise affect any

obligation of the Joint Venture under any document, instrument or agreement executed pursuant to or in furtherance of the Agency Agreement.

13. The GOB Sales or similar liquidation or auction sales at the Closing Stores shall be conducted by the Debtors and the Joint Venture without the necessity of compliance with any federal, state or local statute or ordinance or licensing requirement affecting the GOB Sales or similar store closing, liquidation or auction sales thereat.

14. The GOB Sales at the Closing Stores shall be conducted by the Debtors and the Joint Venture notwithstanding any restrictive provision of any lease affecting the GOB Sales or similar store closing, liquidation or auction sale thereat; provided, however, the Debtors shall timely pay all rent, taxes and other charges due under such leases until the later of rejection or vacating the premises at those Closing Stores in accordance with Section 365(d)(3) of the Bankruptcy Code.

15. In conducting the GOB Sales, the Debtors and the Joint Venture shall comply in all respects with, and the landlords at the Closing Stores shall be bound by, the Guidelines, except as otherwise set forth herein.

16. Effective upon the payment of the Transaction Consideration (as defined in the Agency Agreement) to the Debtors (or their designee), the Joint Venture is hereby granted a first-priority security interest in the Merchandise and the Proceeds (including, but not limited to, any proceeds received upon the disposition of any Real Property Interests under Section 15 of the Agency Agreement) thereof without the need for any state or local UCC filings to perfect such security interest; provided however, that the lien granted to Joint Venture hereunder shall

remain junior to the lien of the Lender, solely to the extent of the unpaid portion of any amount due the Debtors under the Agency Agreement.

17. On or after the Closing Date, the Debtors' creditors are directed to execute such documents and take all other actions as may be necessary to release any Encumbrances or any Asset(s) and/or Claims, if any, against the Remaining Stores' Assets or the Closing Stores, as such Encumbrances or Claims may have been recorded or may otherwise exist provided that failure to do so will not affect the validity of any provision hereof.

18. This Order (a) is and shall be effective as a determination that, on the Closing Date, all Encumbrances existing as to the Remaining Stores' Assets before the Closing Date have been unconditionally released, discharged and terminated, and (b) is and shall be binding upon and govern the acts of all entities including without limitation of all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Remaining Stores' Assets.

19. If any person or entity that has filed financing statements or other documents or agreements evidencing Encumbrances on or interests in the Remaining Stores' Assets shall not have delivered to the Debtors before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens or other interests that the person or entity has with respect to the Remaining Stores' Assets, the

Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Remaining Stores' Assets.

20. Nothing contained in any chapter 11 plan confirmed in these cases or the order of confirmation confirming any such chapter 11 plan or any other order entered in these cases shall conflict with or derogate from the provisions of the Agency Agreement or the terms of this Order. No provision of this Order shall release or be construed to release the Joint Venture from any of its obligations under the Agency Agreement.

21. The failure specifically to include any particular provision of the Agency Agreement in this Order shall not diminish or impair the efficacy of such provisions, it being the intent of the Court that the Agency Agreement be approved in its entirety.

22. The Agency Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material, and provided further that prior written notice thereof has been given to counsel to the Lender and counsel to the Committee, respectively.

23. The proceeds received from the Debtors under the Agency Agreement shall be held by the Debtors in escrow until such proceeds are allocated pursuant to Court Order.

24. This Court shall retain jurisdiction to enforce the provisions of the Agency Agreement and this Order in all respects, including, without limitation, retaining jurisdiction with respect to any action against Joint Venture for liability arising out of the conduct of the GOB Sales and the sale and transfer of the Debtors' merchandise inventories pursuant to the

Agency Agreement and this Order, and any action to interpret or enforce the terms of the Agency Agreement and this Order.

25. This Order shall be binding upon, and inure to the benefit of the Debtors, the Joint Venture, and their respective successors and assigns, including, but not limited to any chapter 11 or chapter 7 trustee that may be appointed in any of the Debtors' cases.

26. The Debtors and the Joint Venture are hereby authorized and directed to take such steps as may be required to implement and effectuate the transactions contemplated by the Agency Agreement and this Order.

27. In accordance with the provisions of Section 1146(c) of the Bankruptcy Code, the transactions contemplated under the Agency Agreement are deemed to be under or in contemplation of a plan to be confirmed under Section 1129 of the Bankruptcy Code, and therefore are exempt from any transfer, stamp or similar tax(s) arising as a result of or in connection with Debtors' disposition of the Remaining Stores' Assets in the manner contemplated under the Agency Agreement.

28. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agency Agreement and this Order.

29. The Debtors are hereby authorized to execute and deliver definitive or other documents, and are authorized to consummate the transactions contemplated by the Agency Agreement and this Order and to perform pursuant thereto.

30. Any Debtor-owned furniture, fixtures, equipment or other items of personal property remaining in the Closing Stores as of the effective date of the rejection of the

underlying lease for such premises by the Debtors shall, unless the affected lessor(s) have been previously notified in writing by the Debtors to the contrary at least three (3) days prior to the effective date of such lease rejection, be deemed abandoned by the Debtors and/or the Joint Venture.

31. The stays imposed under Fed. R. Bankr. P. 6004(g) and 6006(d) shall be and the same hereby are waived in all respects, and said stays shall be of no force or effect during the applicable appeal period.

32. In accordance with the terms of the Hartwick Agreement and the Hartwick Approval Order, the Debtors be, and they hereby are authorized and directed to pay Hartwick the Break-Up Fee and the Topping Fee, respectively, from the proceeds received by the Debtors under the Agency Agreement.

33. In the event the Joint Venture (or any constituent member thereof) advances or reimburses to the Debtors any amount under the Agency Agreement which is in respect to the satisfaction of any obligation due to a third party for the post-closing period that if not paid in timely manner shall give rise to an Encumbrance or Claim against any Remaining Stores Asset(s), the Debtors are hereby directed to timely remit and pay over to such third party(ies) the amount so advanced or reimbursed by the Joint Venture (or any constituent member thereof) in respect of such obligation so as to avoid the attachment of any such Encumbrances or Claims.

34. Pursuant to section 363(b) of the Bankruptcy Code and the Agency Agreement, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to effect, consummate and close (a) the assignment, transfer and conveyance of the Real Estate Interest designation rights to the Joint Venture as provided for under Section 15 of the Agency

Agreement (“Designation Rights”), (b) the subsequent assumption and assignment, transfer and conveyance of each of the Real Estate Interests (inclusive of all Owned Properties, Leased Properties, and any interests related thereto) to any Designee(s) in accordance with the procedures provided for in this Order and the Agency Agreement, and (c) execute and deliver, perform, tender, consummate, implement and close fully all additional instruments and documents that may be reasonably necessary or desirable to implement the Agency Agreement or any transaction relating to the disposition of the Real Estate Interests in accordance with the Agency Agreement, and to take all further actions as may be reasonably requested in accordance with the Agency Agreement by the Joint Venture or any Designee(s) for the purpose of assigning, transferring, granting, conveying, and conferring to the Joint Venture the Designation Rights, or any of the Owned Properties or Leased Properties to any such Designee(s), as the case may be, or reducing to possession the Designation Rights and the applicable Owned and/or Leased Properties, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Agency Agreement.

35. The Debtors are authorized and empowered to (i)(a) sell, convey, assign, transfer, and deliver to the Joint Venture the Designation Rights, including, but not limited to, the exclusive right, power and authority on the terms set forth in the Agency Agreement to select and identify from time to time during the respective Owned Property Marketing Period or Leased Property Marketing Period, as the case may be, one or more Designees to which any or all of the Owned Properties or Leased Properties may be sold and assigned and (b) without further order of the Court (unless an objection is timely filed by a landlord as set forth in Paragraph <sup>40</sup> of this Order), effective as of the Closing with respect to each Owned Property or Leased Property, as



applicable, sell, convey, assume, assign, transfer and deliver to any Designee (which may include the Agent LLC), the Debtors' interests in and to (and all of the Debtors' rights, title and interests in and to) such Owned or Leased Property.

36. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code and on the terms set forth in the Agency Agreement, (a) the Designation Rights shall be transferred to the Joint Venture upon the occurrence of the Closing under the Agency Agreement, and (b) each Owned and/or Leased Property shall be transferred to any Designee(s) upon the Closing Date with respect to such Owned or Leased Property (together with any affected sublease, occupancy or other agreement related to Debtors' occupancy of the subject property(ies)), and in each case shall be free and clear of (i) all Encumbrances, except Permitted Encumbrances and (ii) any and all claims (as that term is defined in section 101(5) of the Bankruptcy Code), obligations, demands, guaranties of or by the Debtors, debts, obligations, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, claims and encumbrances (A) that purport to give to any party a right or option to effect any forfeiture, modification or termination of the interest of any Debtor or of the Joint Venture, or its Designee(s), as the case may be, in the Designation Rights or the Owned and/or Leased Properties or (B) in respect of any taxes (other than taxes included in Permitted Encumbrances)) (collectively, "Claims"), in each case accruing, arising or relating to the period prior to the applicable transfer date related to such property, with all mortgages, liens and security interests to attach to any amounts payable to the Debtors under the Agency Agreement, in the order of their priority, with the same validity,

force and effect that they now have as against the Designation Rights or the Owned and/or Leased Properties, subject to any claims and defenses the Debtors and the Debtors' estates may possess with respect thereto; and provided further, that the determination of the amount of any such mortgages, liens and security interests shall be determined by the net cash proceeds actually received from the subsequent sale, transfer or assignment of the particular Owned or Leased Property against which such mortgages, liens and security interests are asserted.

37. Except as expressly permitted by the Agency Agreement, (i) all persons and entities holding Encumbrances (except Permitted Encumbrances) or Claims of any kind and nature (except subleases) accruing, arising or relating to a period prior to the Closing Date with respect to any Owned or Leased Property hereby are barred from asserting such Encumbrances or Claims against the Joint Venture, or any applicable Designees, as the case may be, or any of their respective affiliates, stockholders, members, partners, parent entities, successors, assigns, officers, directors or employees, agents, representatives, and attorneys, or the Owned or Leased Property in question, and (ii) the Joint Venture or any Designees for their applicable Owned or Leased Property, as the case may be, shall have no liability or responsibility for any Claim or Encumbrance (except Permitted Encumbrances) arising, accruing, or relating to a period prior to Closing, except as otherwise provided for in the Agency Agreement.

38. The transfer of the Designation Rights to the Joint Venture and the subsequent sale, transfer and/or assignment (subject to the right of a Notice Party to object as set forth in this Order) of any Owned Property or Leased Property to any applicable Designee(s), as the case may be, pursuant to the Agency Agreement constitutes a legal, valid, and effective transfer of the Designation Rights and the applicable Owned and/or Leased Property, as the case may be, and

vests or shall vest the Joint Venture or such applicable Designees, as the case may be, with all right, title, and interest to the Designation Rights or the applicable Owned and/or Leased Property, as the case may be, free and clear of all Claims and Encumbrances (and such Claims and Encumbrances shall be deemed unconditionally released, discharged, and terminated) except for Permitted Encumbrances.

39. ~~o~~ - Subject to the terms of the Agency Agreement, during the respective Owned Property Marketing Period or Leased Property Marketing Period, the Joint Venture shall have the exclusive right, power and authority, which right, power and authority may be exercised by the Joint Venture at any time and from time to time during the respective Marketing Period, in its discretion, to contact, solicit, negotiate with, and enter into binding agreements concerning any or all of the Owned Properties and Leased Properties, with any person, and sell, transfer and/or assign the Debtors' right, title and interest in and to any Owned and/or Leased Property hereunder to one or more Designees for such consideration and on such terms as the Joint Venture in its discretion deems appropriate, and subject to the right of the landlord with respect to any such lease to object thereto subject to Paragraph 40 of this Order upon the delivery by the Joint Venture of a Owned Property Sale Notice or Leased Property Assumption Notice as set forth in the Agency Agreement and in this Order.

39. ~~h~~ - Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, and in accordance with the Agency Agreement, the Joint Venture is authorized to designate for sale, transfer, assumption and assignment, as the case may be, by the Debtors (pursuant to documentation reasonably acceptable to the Joint Venture) of any Owned and/or Leased Property (together with any sublease thereunder) to any Designee, and the Debtors are authorized to sell, transfer,

assume and assign, as the case may be, any Owned and/or the Leased Property to the Joint Venture, or any Designee thereof; provided, that such sale, transfer, assumptions and assignment(s) will only become effective as to each Owned and/or Leased Property upon the date that is at least ten (10) business days after the filing with the Bankruptcy Court (and service ~~by regular mail~~ <sup>overnight delivery</sup> on any Notice Party and their respective counsel, if an appearance has been filed with the Court) of a Designee Notice by the Debtors and/or the Joint Venture (unless an objection is timely filed, in which case such sale, transfer, assumption and assignment, as applicable, will become effective only upon the resolution of such objection on terms mutually satisfactory to the Joint Venture, the Debtors, any Designee, and any affected Notice Party who timely objected, or by order of this Court resolving such objection).

40. The Designee Notice shall disclose the identity of the Designee (which may be the Agent LLC) and disclose the proposed intended use for the premises (in the case of a Leased Property) and such Designee's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (as limited by section 365(f) of the Bankruptcy Code). If any Notice Party objects to the assignment or transfer to a Designee based upon grounds of adequate assurance of future performance (each, an "Objecting Party"), such Objecting Party must file a written objection setting forth the bases for such objection on or before seven (7) <sup>business</sup> days after service by overnight mail of the Designee Notice (the "Designee Objection Deadline") and serve such objection so as to be actually received by each of the following parties on or before the Designee Objection Deadline: (a) the Joint Venture and its counsel, (b) the Debtors and their counsel, (c) the Designee and its counsel and (d) counsel to the Committee, at the addresses set forth for each

such party in the Designee Notice. The only grounds for raising an objection to any assignment or transfer to a Designee shall be (a) an alleged lack of adequate assurance of future performance under the assigned Leased Property related to such assignment or transfer under section 365 of the Bankruptcy Code (except as provided herein) or (b) cure amounts, and no other grounds for objections shall be considered by this Court or may be raised by any such Notice Parties. If a Notice Party fails to timely object as specified herein on or before the Designee Objection Deadline with respect to a proposed assignment of such Leased Property, such assignment shall be deemed binding on such Notice Party and any objection to such assignment or transfer shall be forever waived, released and barred, and the requirements of sections 365(b), (c) and (f) of the Bankruptcy Code with respect thereto shall be (and are hereby) deemed satisfied upon consummation of the sale and assignment of such Lease on the Closing Date with respect thereto; provided that on or before the effective date of any such assignment the Debtors shall either pay any cure amount with respect to such Leased Property or establish a reserve for any disputed cure in an amount agreed upon between the landlord and the Debtors or as ordered by the Court. If requested by a Designee, a subsequent order may be entered by the Bankruptcy Court (i) approving the assumption and assignment of the Leased Property in question to the Designee, (ii) determining that the requirements of adequate assurance of future performance have been satisfied and that anti-assignment provisions set forth in the underlying lease for the Leased Property (as identified in the Designee Notice) are null, void and of no force and effect and (iii) providing for such other relief as may be necessary in order to effect the assignment of the lease for the Leased Property to an Designee, including, but not limited to, obtaining any regulatory approval or permits in connection with the proposed use of the demised premises by

the Designee. The implementation of the foregoing procedures do not change or shift in any way the burdens of proof upon the parties at any hearing to resolve any objection as such burdens would otherwise exist with respect to the disputed issues.

41. Subject to and conditioned upon the occurrence of the closing of the assumption and assignment with respect to any lease for a Leased Property, and subject to the other provisions of this Order (including the aforementioned objection procedures), the Debtors are hereby authorized in accordance with sections 365(b) and (f) of the Bankruptcy Code to (i) assume and assign to any Designee(s) the applicable leases, with any applicable Designee being responsible only for the post-closing liabilities under the applicable leases except as otherwise provided for in the Agency Agreement and this Order and (ii) execute and deliver to any applicable Designee such assignment documents as may be reasonably necessary to sell, assign and transfer such lease(s); provided, that, notwithstanding anything in this Order to the contrary, there shall be no assumption of any such lease absent simultaneous assignment thereof to the applicable Designee. Except as otherwise provided in the Agency Agreement or this Order, neither the Joint Venture nor any Designee shall have any liability for the cure of any defaults existing or accruing, arising, or relating to a period prior to the closing under such applicable leases, and each non-Debtor party to any assumed and assigned lease is hereby barred and permanently enjoined from asserting against such applicable Designee any default, claim or liability existing, accrued, arising or relating to a period prior to the effective date of such assumption and assignment.

42. Upon the effective date with respect to the assumption and assignment of any lease for a Leased Property, any and all defaults under such lease(s) shall be deemed cured in all

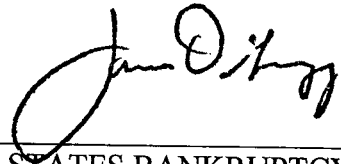
respects with regard to the applicable Designee. Pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall have no liabilities for any claims arising or relating to or accruing post-closing under any of the assigned leases.

43. Each and every anti-assignment provision contained in any lease for a Leased Property is null, void and of no force and effect in connection with any assumption and assignment of the leases for the Leased Properties to any Designee(s) pursuant to the Agency Agreement and this Order. The inability of any non-Debtor to enforce any such anti-assignment provision in connection with an assignment of a lease to a Designee pursuant to the Agency Agreement shall not and cannot in any way constitute a lack of adequate assurance of future performance. The lease for any Leased Property shall be transferred to, and remain in full force and effect for the benefit of the applicable Designee, in accordance with its terms, notwithstanding any provision in any such lease (including, without limitation, an anti-assignment provision, or as described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, conditions, or limits such assignment or transfer.

44. The period of time for the Debtors to assume and assign or reject any of the leases for the Leased Properties under section 365(d)(4) of the Bankruptcy Code is extended through and including the earlier to occur of (a) 270 days after the entry of this Order, and (b) the effective date of a plan of liquidation in the Debtors' chapter 11 cases,

Dated: Grand Rapids, Michigan  
December 31, 2001

provided, however, that the relief granted under this Paragraph 44 shall be without prejudice to the right of any affected landlord to file a motion to shorten the assumption/rejection period on appropriate notice to counsel for the Debtors, the lenders, the Committee and the Joint Venture.



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UNITED STATES BANKRUPTCY

JUDGE



## **EXHIBIT A**

## AGENCY AGREEMENT

This Agency Agreement (this "Agreement") is made as of this 31st of December, 2001, by and among: Quality Stores, Inc., a Delaware corporation, with a principal place of business at 455 E. Ellis Road, Muskegon, MI 49441 (the "Merchant"); Tractor Supply Company, a Delaware corporation, with a principal place of business at 320 Plus Park Blvd., Nashville, TN 37217 ("TSC"); Great American Group, a California corporation, with a principal place of business at One Parkway North Suite 520, Deerfield, IL 60015; Gordon Brothers Retail Partners, LLC, a Delaware limited liability company, with a principal place of business at 40 Broad Street, Boston, MA 02109; and DJM Asset Management LLC, a Delaware limited liability company, with a principal place of business located at 445 Broad Hollow Road, Melville, NY 11747 (collectively, the "Agent") (Merchant and Agent shall each be referred to herein as a "Party" or collectively as the "Parties")

### RECITALS

WHEREAS, Merchant is a debtor and debtor in possession under Chapter 11 of the United States Bankruptcy Code, in Chapter 11 Case No. GG01-10661 (the "Case") in the United States Bankruptcy Court for the Western District of Michigan (the "Bankruptcy Court"); and

WHEREAS, Merchant desires that Agent act as Merchant's exclusive agent for the purpose of disposing of all of: (A) the Merchandise (as hereafter defined) located at Merchant's (i) stores identified on Exhibit 1A attached hereto and made a part hereof (each a "Store" and collectively, the "Stores"), (ii) warehouse identified on Exhibit 1B attached hereto and made a part hereof (the "Warehouse", and together with the Stores, the "Closing Locations"), (iii) stores identified on Exhibit 1C attached hereto and made a part hereof (the "Closed Stores"), which Merchandise shall be moved to the Stores promptly following the Closing, by conducting a "going-out-of-business", "store closing", or similar theme sale (the "Sale") at the Stores, subject to the terms and conditions set forth herein; (B) Merchandise in-transit to the Closing Locations from either the Closed Stores or from third party vendors (if Merchant has pre-paid for such Merchandise); (C) Merchant's owned furniture, fixtures and equipment located at the Closing Locations (collectively the "FF&E"); and (D) Merchant's fee ownership and leasehold interests at the Closing Locations (collectively, the "Real Property Interests") (the foregoing shall be hereinafter collectively referred to as the "Transaction"); and

WHEREAS, Agent acknowledges that Merchant has previously disposed or is presently disposing of its inventory through "going out of business" or similar sales at one hundred and six (106) of its other retail locations (the "Other GOB Stores"), which inventory at the Other GOB Stores is not the subject of this Agency Agreement or the exclusive agency relationship between Merchant and Agent in connection with the Transaction; and

WHEREAS, Agent is willing to serve as Merchant's exclusive agent solely for the purposes of the Transaction in accordance with the terms and conditions of this Agreement.

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 is hereby acknowledged, Agent and Merchant agree as follows:

Section 1. Merchant hereby appoints Agent, and Agent hereby agrees to serve, as Merchant's exclusive agent solely for the purpose of the Transaction in accordance with the terms and conditions of this Agreement. Merchant's and Agent's obligations hereunder are subject to the approval of the Bankruptcy Court and shall be of no force and effect in the event that the Approval Order is not entered on December 31, 2001, unless otherwise mutually agreed between Merchant and Agent, in which event this Agreement shall terminate, the Good Faith Deposit shall be promptly refunded to Agent, and the Parties shall have no further obligations hereunder.

Section 2. Transaction Consideration/Closing.

2.1 Transaction Consideration. In consideration of the Merchant's agreement to enter into the Transaction with the Agent, the Agent shall pay the Merchant the total amount of One Hundred Four Million and 0/100 Dollars (\$104,000,000.00), as increased or decreased pursuant to the provisions of Section 4.2 hereof (such total, the "Transaction Consideration").

2.2 Timing of Payment.

(a) Agent has deposited the amount of \$8,870,000 (the "Good Faith Deposit") with Chicago Title Insurance Company (the "Title Company") to be held by the Title Company in its standard form of strict joint order escrow (the "Earnest Money Escrow"). Agent and Merchant shall equally split all fees and expenses of the Earnest Money Escrow.

(b) The Good Faith Deposit shall be applied against the Transaction Consideration. In the event that all Closing Conditions are satisfied or waived by Merchant or Agent, as the case may be, and Agent in bad faith refuses to close, the Good Faith Deposit shall be forfeited to Merchant as Merchant's sole and exclusive remedy against Agent therefor. The obligations set forth in this Section 2.2(b) shall survive any termination of this Agreement.

(c) On December 31, 2001 (the "Closing Date"), the Agent shall (i) along with Merchant, direct the Escrow Agent to transfer the Good Faith Deposit to Merchant; (ii) pay to the Merchant the amount of the Transaction Consideration less the total of the Good Faith Deposit plus the sum of Three Million and 0/100 Dollars (\$3,000,000.00), and (iii) deposit into the Inventory Escrow the amount of Three Million and 0/100 Dollars (\$3,000,000.00) (such payments, directions and deposits, collectively, the "Closing").

(d) The Closing shall occur promptly after the entry of the Approval Order at the offices of Kirkland & Ellis, 200 E. Randolph Drive, Chicago, Illinois, Suite 5400, or at such other location as the Parties may jointly designate.

2.3 Manner of Payment.

(a) 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. (Eastern 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. (Eastern 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.

(b) Agent shall be permitted, in Agent's sole discretion, to satisfy in whole or in part the Agent's obligations in respect the Transaction Consideration by offsetting Proceeds held by Merchant against such payment obligations; provided however, nothing contained in this Section 2.3(b) shall be deemed to amend, modify or otherwise affect the timing of the Agent's obligations to pay the Transaction Consideration pursuant to Section 2.1.

### Section 3. Expenses of the Sale.

3.1 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 3.2 below. As used herein, "Expenses" shall: (A) include (i) all Store-level expenses at the Stores actually incurred by Merchant during the Sale Term including but not limited to these items listed on Exhibit 3.1 attached hereto, and (ii) all non-Store-level expenses in the amount of the greater of (x) \$160,000/week for each week of the Sale Term or (y) \$1,600,000.00; and (B) not include (i) the costs and expenses for Merchant's central administrative services necessary for the Sale, including, but not limited to, home office employees, occupancy expenses for the home office, MIS services, inventory processing and handling and data processing and reporting to the extent such services are normally provided by Merchant, in house, and (ii) the costs of moving the Merchandise from the Closed Stores to the Closing Locations.

### 3.2 Payment of Expenses; Security.

(a) All Expenses incurred or accrued during each week of the Sale (i.e., Sunday through Saturday) shall be paid directly by Agent, paid by Agent to Merchant, or offset from Proceeds held by Merchant, immediately following the weekly Sale reconciliation by Merchant and Agent pursuant to Section 7.7 below, based upon invoices and other documentation reasonably satisfactory to Agent.

(b) To secure Agent's obligations to pay Expenses, Agent shall deliver to Merchant an irrevocable and unconditional standby letter of credit ("Expense L/C") in an original face amount of Three Million and 0/100 Dollars (\$3,000,000.00), substantially in the form of Exhibit 3.2(b), naming Merchant as the beneficiary. The Expense L/C shall be delivered to Merchant no later than the Sale Commencement Date, and shall be issued by a U.S. national bank selected by Agent and reasonably acceptable to Merchant, the statutory committee of unsecured creditors (the "Creditor's Committee"), and Fleet National Bank, as agent for Merchant's secured lender(s) (collectively, "Fleet").

(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 the Expense L/C will expire within five (5) business days and certain Expenses 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 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 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 paid to Merchant. To the extent that Merchant exercises a proper draw on the Letter of Credit, Agent shall, within five (5) business days after such draw, cause either (a) a replenishment of the Expense L/C to its original face amount, or (b) the issuance of a supplemental expense letter of credit in an amount equal to Merchant's draw on the Expense L/C (the "Supplemental Expense L/C"), which Supplemental Expense L/C shall be in substantially the same form and issued by the same bank as the Expense L/C.

#### Section 4. Merchandise.

##### 4.1 Merchandise Count.

(a) Agent acknowledges that a physical inventory of the Merchandise in a portion of the Stores has been completed and is ongoing through the Closing Date, as the same shall be rolled forward pursuant to Section 4.5 of this Agreement (the "Merchandise Count"). The Merchandise Count has been and shall be completed by RGIS. Agent may have representatives present during the Merchandise Count. Merchant and Agent acknowledge and agree that, as of the Closing Date, the Merchandise Count shall be completed as to only a portion of the Closing Locations (each such Closing Location shall be referred to as a "Counted Closing Location"; each Closing Location as to which the Merchandise Count will not be completed as of the Closing Date, plus each of the Closed Stores, shall be referred to as an "Uncounted Closing Location"). The same procedure shall be used for counting the Merchandise in the Uncounted Closing Locations as was used in counting the Merchandise in the Counted Closing Locations, including, without limitation, the treatment of Unsaleable Merchandise. During the Merchandise Count, the Merchandise has been and shall be valued at Merchant's actual cost for the Merchandise, determined on a perpetual cost basis as reflected on Merchant's books and records kept in the normal course. The Parties agree to be cooperative and reasonable in connection with the Merchandise Count. Merchant shall be responsible for the transfer of all Merchandise from the Warehouse and the Closed Stores to the Closing Locations. Merchant shall reasonably cooperate with Agent in the determination of the location for the transfer of the Merchandise.

(b) Subject to Section 4.1(a) above, for purposes of this Agreement, including, without limitation, the calculation of the Transaction Consideration, "Merchandise" shall mean all finished goods inventory that is owned by Merchant located in the Closing Locations and the Closed Stores on the Sale Commencement Date, including, but not limited to: (i) Merchandise subject to Gross Rings; (ii) Warehouse Merchandise; (iii) Third Party In-Transit Merchandise; (iv) Closed Store In-Transit Merchandise, and (v) all merchandise constituting Merchant's "Valu-Bilt" product line located in the Stores on the Closing Date. Notwithstanding the foregoing, "Merchandise" shall not include: (A) Unsaleable Merchandise; (B) goods which belong to sublessees, licensees or concessionaires of Merchant; (C) goods held by Merchant on memo, on consignment, or as bailee; (D) all merchandise constituting Merchant's "Valu-Bilt"

product line located in the Warehouse or in any location other than in the Stores; and (E) all merchandise at the Other GOB Stores.

(c) As used herein, the following terms shall have the respective meanings set forth below:

(i) “Unsaleable Merchandise” means any item of Merchandise that is so damaged or defective that such item has not been and is not being counted in the Merchandise Count by RGIS under its guidelines, if any, or practices consistently applied during the Merchandise Count.

(ii) “Warehouse Merchandise” means any item of Merchandise that is located in the Warehouse on the Sale Commencement Date.

(iii) “Gross Rings” means in the event that the Sale commences prior to the completion of the Merchandise Count at any Closing Location, then for the period from the Sale Commencement Date until the Merchandise Count for such Closing Location, Agent and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable Sales Taxes (“Gross Rings”), and (ii) cash reports of sales within such Closing Location. Register receipts shall show for each item sold the Retail Price for such item and the markdown or discount, if any, specifically granted by Agent in connection with such Sale. All such records and reports shall be made available to Agent and Merchant during regular business hours upon reasonable notice.

(iv) “Third Party In-Transit Merchandise” means Merchandise from third party vendors, for which Merchant has paid on C/A terms, which is in transit on the Closing Date to a Closing Location. On the Closing Date, Merchant shall assign to Agent all of Merchant’s rights against third party vendors in the event that the Third Party In-Transit Merchandise does not arrive at a Closing Location.

(v) “Closed Store In-Transit Merchandise” means Merchandise which is in transit on the Closing Date from a Closed Store to a Closing Location.

4.2 Merchandise Value. On the Closing Date, the value of (i) the Merchandise at the Counted Closing Locations, as indicated by the Merchandise Count and as rolled-forward through the Closing Date, as estimated pursuant to Section 4.5 of this Agreement, to reflect all Merchandise received and sold at the Counted Closing Locations after the date of the Merchandise Count (the “Closing Location Actual Merchandise Value”), plus (ii) ninety three and 2/10 percent (93.2%) of the perpetual cost value of the Merchandise at the Uncounted Closing Locations, as reflected on Merchant’s books and records (the “Uncounted Closing Location Estimated Merchandise Value”) (the total of the Closing Location Actual Merchandise Value and the Uncounted Closing Location Estimated Merchandise Value shall be referred to as the “Closing Date Merchandise Value”). In the event that the Closing Date Merchandise Value is: (i) less than One Hundred Thirty Million and 0/100 Dollars (\$130,000,000.00), then the Transaction Consideration shall be reduced at Closing by the amount of (A) One Hundred Thirty Million and 0/100 Dollars (\$130,000,000.00) minus the Closing Date Merchandise Value times (B) 0.60; or (ii) more than One Hundred Thirty Million and 0/100 Dollars (\$130,000,000.00),

then the Transaction Consideration shall be increased at Closing by the amount of (A) the Closing Date Merchandise Value less One Hundred Thirty Million and 0/100 Dollars (\$130,000,000.00) times (B) 0.70; provided, however, in no event shall the Transaction Consideration be increased by virtue of this provision by more than Three Million Five Hundred Thousand and 0/100 Dollars (\$3,500,000.00).

4.3 Inventory Escrow. At or prior to the Closing Date, the Merchant and the Agent shall create an escrow in substantially the form of Exhibit 4.3 attached hereto (the "Inventory Escrow"). At the Closing, (i) the Merchant, the Agent and the Title Company shall execute the Inventory Escrow, and (ii) the Agent shall deposit into the Inventory Escrow the total sum of Three Million and 0/100 Dollars (\$3,000,000.00) (the "Inventory Escrow Funds"). Upon the completion of the Merchandise Count at the Uncounted Closing Locations, as rolled back to the Closing Date (the "Uncounted Closing Location Actual Merchandise Value"). In the event that the Uncounted Closing Location Actual Merchandise Value exceeds the Uncounted Closing Location Estimated Merchandise Value, as adjusted pursuant to the adjustment mechanism in Section 4.5 of this Agreement, then (i) the Merchant and the Agent shall jointly direct the Title Company to disburse the Inventory Escrow Funds, plus all interest earned thereon, to Merchant, and (ii) Agent shall promptly pay to Merchant the amount of (A) the Uncounted Closing Location Actual Merchandise Value less the Uncounted Closing Location Estimated Merchandise Value, times (B) 0.70. In the event that the Uncounted Closing Location Actual Merchandise Value is less than the Uncounted Closing Location Estimated Merchandise Value, as adjusted pursuant to the adjustment mechanism in Section 4.5 of this Agreement, then the Merchant and the Agent shall jointly direct the Title Company to disburse to Agent that portion of the Inventory Escrow Funds equal to the amount of (A) the Uncounted Closing Location Estimated Merchandise Value less the Uncounted Closing Location Actual Merchandise Value, times (B) 0.60; provided, however, in no event shall Merchant be obligated to refund to Agent any portion of the Transaction Consideration in excess of the total amount of the Inventory Escrow Funds.

4.4 Excluded Goods. Merchant shall retain all rights and responsibility for any goods not included as Merchandise hereunder and shall remove such goods from the Stores on terms and conditions as shall be mutually agreed upon by Merchant and Agent.

4.5 Merchandise Roll-Forward Procedure. Merchant and Agent acknowledge and agree that (i) the Closing Date Merchandise Value shall be rolled-forward through the Closing Date to reflect all Merchandise received and sold at the Closing Locations through the Closing Date, and (ii) as of the Closing Date, the Closing Date Merchandise Value may be rolled-forward through only Saturday, December, 29, 2001. As a result, Merchant and Agent shall estimate the total of Merchandise to be received and sold at the Closing Locations on Sunday, December 30, 2001 and on the Closing Date for purposes of determining the Closing Date Merchandise Value (such estimate, the "Estimated Roll Forward Adjustment"). Within seven (7) days after the Closing Date, Merchant and Agent shall determine the actual amount of Merchandise received and sold at the Closing Locations on Sunday, December 30, 2001 and on the Closing Date (the "Actual Roll Forward Adjustment"). In the event that the Estimated Roll Forward Adjustment caused the Closing Date Merchandise Value to be higher than the Actual Roll Forward Adjustment, then the Merchant shall promptly pay to the Agent the amount by which the Estimated Roll Forward Adjustment is greater than the Actual Roll Forward Adjustment. In the

event that the Estimated Roll Forward Adjustment caused the Closing Date Merchandise Value to be lower than the Actual Roll Forward Adjustment, then the Agent shall promptly pay to Merchant the amount by which the Estimated Roll Forward Adjustment is less than the Actual Roll Forward Adjustment.

## Section 5. Sale Term.

5.1 Term. The Sale shall commence on January 1, 2002 (the "Sale Commencement Date"). Subject to any restrictions that may exist by virtue of applicable law or regulation (except as may otherwise be provided in the Approval Order), the Agent shall complete the Sale at each Store, and shall vacate each Closing Location, on or before March 31, 2002 (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." Subject to applicable law or regulation (except as may otherwise be provided in the Approval Order), the Sale Termination Date may be (a) extended by mutual written agreement of Agent and Merchant; or (b) accelerated by Agent, in which case Agent shall provide Merchant with not less than ten (10) days advance written notice of any such planned accelerated Sale Termination Date.

5.2 Vacating the Closing Locations. Subject to the terms of Section 5.1 hereof, Agent shall provide Merchant with not less than ten (10) days' advance written notice of its intention to terminate the Sale and vacate a Closing Location (the "Vacate Date"). On a Vacate Date, Agent shall vacate the Closing Location, remove all Remaining Merchandise and leave the Closing Location in "broom clean" condition (ordinary wear and tear excepted). Agent shall be obligated to pay all Expenses for each Closing Location until such Closing Location is vacated. All assets of Merchant used by Agent in the conduct of the Sale (e.g., FF&E, supplies) shall be returned by Agent to Merchant or left at the Closing Location's premises at the end of the Sale Term to the extent the same have not been used in the conduct of the Sale or have not been otherwise disposed of through no fault of Agent. Where reference is made in this Section 5 to vacating the Closing Locations, subject to the provisions of Section 15 hereof, such shall mean vacating the Closing Location 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.

## Section 6. Sale Proceeds.

6.1 Proceeds. For purposes of this Agreement, "Proceeds" shall mean the total amount (in dollars) of all sales of Merchandise made under this Agreement, inclusive of proceeds from the sale of merchandise which constitutes the Merchant's "Valu-Bilt" product line located at the Stores, but exclusive of (i) Sales Taxes, (ii) credit card and bank card fees and chargebacks, (iii) all funds received by Agent after the Sale Commencement Date but attributable to a sale of merchandise (other than a sale of the Merchandise) at a Closing Location prior to the Sale Commencement Date (referred to herein as "Accounts Receivable"), and (iv) all funds received from the sale of merchandise which constitutes the Merchant's "Valu-Bilt" product line located at the Warehouse and at any location other than in the Stores (hereinafter, "Valu-Bilt Proceeds").



6.2 Credit Card Proceeds. Agent shall 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 sales; provided however, Agent shall not accept Merchant's proprietary credit card. Merchant shall process credit card transactions, applying customary practices and procedures. 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 terminals each day during the Sale Term and to effect settlement with Merchant's credit card transactions under Merchant's merchant identification number(s). At Agent's request, Merchant shall cooperate with Agent to establish merchant identification numbers under Agent's name to enable Agent to process all credit card sales for Agent's account. Merchant shall deposit the net settlement received from any credit card sales receipts into the Designated Deposit Accounts until Agent opens the Agency Accounts, at which time any credit card sales receipts shall be deposited into the Agency Accounts. Merchant shall prepare a weekly reconciliation of the amounts deposited with respect to the sales of Merchandise by credit plus Sales Taxes 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.

6.3 Control of Proceeds.

(a) Within twenty-one (21) days after the Sale Commencement Date, Agent shall establish its own 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, upon request, Agent shall promptly deliver to Merchant copies of all bank statements and other information relating to the Agency 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 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) During the period between the Sale Commencement Date and the date Agent designates the Agency Accounts, all Proceeds of the Sale shall be collected by Agent and deposited on a daily basis into Merchant's existing accounts designated for the Stores, and are designated solely for the deposit of Proceeds of the Sale (including credit card proceeds), and the disbursement of amounts payable by Agent hereunder. Commencing on the first business day following Closing and the issuance of the Expense L/C, 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 constituting Proceeds deposited in such accounts (but not any other funds, including, without limitation, any proceeds of Merchant's inventory sold prior to the Sale Commencement Date). During this interim period, Agent shall control the Proceeds of the Sale, and Fleet shall not take any action with respect to such Proceeds, which shall inure solely for the benefit of Agent, subject to only Agent's payment obligations hereunder.

## Section 7. Conduct of the Sale.

7.1 Rights of Agent. Subject to the Approval Order and Agent's obligations under Section 3.1 of this Agreement, Agent shall be permitted to conduct the Sale as a "going-out-of-business sale", "store closing," or similar theme sale in the Stores throughout the Sale Term in a manner consistent with the Sale guidelines annexed hereto as Exhibit 7.1 (the "Sale Guidelines"). In addition to any other rights granted to Agent hereunder, in conducting the Sale, Agent, in the exercise of its sole discretion, shall have the right:

(a) to establish Sale prices and Store hours which comply 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 during the Sale Term all FF&E, bank accounts (other than Agent's obligation to pay bank fees pursuant to Section 6.3 hereof), Closing Location-level customer lists and mailing lists, computer hardware and software, existing supplies located at the Stores, intangible assets (including Merchant's trade names, logos and tax identification numbers), Stores' 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;

(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, in which cases the costs and expenses associated therewith shall be paid by Agent;

(d) to establish and implement advertising, signage (including interior banners in all Stores and exterior banners at non-enclosed malls), and promotion programs consistent with a "going-out-of-business", "store closing, this location only", "sale on everything, this location only," or similar theme sale, and as otherwise provided in the Approval Order and the Sale Guidelines (including, without limitation, by means of media advertising, A-frame, and similar signage); and

(e) to transfer Merchandise between Stores and from the Warehouse to the Stores.

7.2 Terms of Sales to Customers, Law Compliance. Subject to Agent's compliance with applicable law, all sales of Merchandise will be "final sales" and "as is", and all advertisements and sales receipts will reflect the same. Additionally, during the Sale Term Agent shall utilize register receipts in the Stores that are of a color that is different from the color utilized by Merchant in the Other GOB Stores and the Closed Stores. Agent shall also clearly mark all Merchandise sold at the Stores during the Sale Term so as to distinguish such Merchandise from the Merchandise sold at Merchant's Other GOB Stores and the Closed Stores. Agent shall not warrant the Merchandise in any manner, but will, to the extent legally permissible, pass on all manufacturer's warranties to customers. All sales will be made only for

cash, nationally recognized bank credit cards and, in Agent's discretion, personal checks. Except as may otherwise be provided in the Approval Order, Agent shall comply with all applicable laws and regulations in its conduct of the Sale, including laws and regulations governing the advertising of the Sale, Merchandise pricing and employment. If Agent fails to perform its responsibilities in accordance with this Section 7.2, 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 comply with applicable laws and regulations.

7.3 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) payable to any taxing authority having jurisdiction (collectively, "Sales Taxes") shall be added to the sales price of Merchandise and collected by Agent, on Merchant's behalf, and shall be deposited into Merchant's existing accounts, trust accounts or other accounts, as designated from time to time 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. 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 7.3, 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 7.3, and provided Merchant complies with its obligations in accordance with this Section 7.3, 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 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. To secure Agent's obligations to collect Sales Taxes for Merchandise sold during the Sale Term, on the first business day after the Sale Commencement Date, Agent shall deliver to Merchant an irrevocable and unconditional standby letter of credit (the "Sales Tax L/C") in an original face amount equal to Three Million and 0/100 Dollars (\$3,000,000.00), naming Merchant as the beneficiary, and conforming to all of the requirements of the Expense L/C.

7.4 Supplies. Agent shall have the right to use all existing supplies necessary to conduct the Sale (e.g., boxes, bags, twine, but not gift certificates, rain checks, merchandise credits or the like) located at the Closing Locations at no charge to Agent. In the event that additional supplies are required in any of the Stores during the Sale, the acquisition of such additional supplies shall be the responsibility of Agent as an Expense. From the date this Agreement, through the Sale Commencement Date, Merchant shall not transfer to or from the Stores so as to alter the mix or quantity of supplies at the Stores from that existing on such date, other than in the ordinary course of business.

7.5 Returns of Merchandise. Agent shall not accept returns of Merchandise sold by Merchant prior to the Sale Commencement Date .

7.6 Gift Certificates. Agent shall not accept Merchant's gift certificates/gift cards, Store credits, due bills, rain checks, discount cards, and other promotional items providing the customer with an additional discount on Merchandise which items have been issued by Merchant prior to the Sale Commencement Date.

7.7 Expense 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.

7.8 Force Majeure. If any casualty or act of God after the Closing Date prevents the conduct of the Sale at any Closing Location for a period in excess of five (5) consecutive days, such Closing Location and the Merchandise located at such Closing Location shall be eliminated from the Sale and Agent and Merchant shall have no further rights or obligations hereunder with respect thereto; provided, however, that: (i) the proceeds of any insurance attributable to such Merchandise shall constitute Proceeds;(ii) the Transaction Consideration shall not be reduced; and (iii) the Real Property Interest with respect to any such Real Property Location shall continue to be subject to the Agent's rights under Sections 14 and 15 of this Agreement.

#### Section 8. Employee Matters.

8.1 Merchant's Employees. Subject to the terms of any collective bargaining agreement or employment contract, and with due regard to Merchant's past practices, policies and procedures relating to the employment of its employees, Agent may use (i) Merchant's Store-level employees in the conduct of the Sale; (ii) Warehouse-level employees in connection with the transfer of Warehouse Merchandise to the Stores; and (iii) temporary employees retained by Merchant, to the extent Agent, in consultation with Merchant, deems expedient, and Agent in consultation with Merchant, may select and schedule the number and type of Merchant's employees required for the Sale (each such employee, a "Retained Employee"). Agent shall identify any such Retained Employees to be used in connection with the Sale as soon as practicable after entry of the Approval Order. In consultation with Merchant, Agent shall identify any employees who will not be used in connection with the Sale prior to the Sale Commencement Date. Employees will be selected by seniority and status where possible or where required by the terms of any collective bargaining agreement. Agent acknowledges that the selection and scheduling of Retained Employees and the decision to cease using Retained Employees in connection with the Sale shall be made with due regard to, but Agent shall not be obligated to comply with, Merchant's desire to minimize severance and termination costs to Merchant and to the extent reasonably possible shall be made so as not to interrupt any statutory working notice, provided that Agent's ability to terminate the Sale at any Sale Store under the terms of this Agreement shall not be impaired thereby. 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, vacation pay 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, termination type claims and obligations, or any other amounts required to be paid by statute or law; 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 its employees in anticipation of the Sale or prior to the Sale Termination Date. Merchant has not terminated and shall not during the Sale Term terminate any employee benefits or benefit programs. It is understood and agreed that Agent's on-site supervisors shall not be employees of Merchant under any circumstances.

8.2 Termination of Employees. Agent may in its discretion stop using any Retained Employee at any time during the Sale. In the event of termination of any Retained Employee, Agent will provide written notice to Merchant at least seven (7) 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 the Stores 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. Agent acknowledges that Merchant will be providing WARN Act notice of termination or lay-off to all or certain of its employees, but shall do so in consultation with Agent.

8.3 Payroll Matters. During the Sale Term, Merchant shall process and pay the base payroll and all related payroll taxes, workers' compensation, employment and unemployment insurance, and benefits for all Retained Employees in accordance with its usual and customary procedures. Any additional personnel hired by Agent for the Sale shall not be deemed to be employees of Merchant, nor shall Merchant be obligated to process the payroll therefor or offer benefits to said additional personnel.

8.4 Employee Retention Bonuses. Agent shall 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 a maximum of 10% of base payroll, to certain Store-level 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 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 within two (2) business days after the Sale Commencement Date. Agent shall not utilize the Retention Bonus as a mechanism to incentivize Store-level Retained Employees to act contrary to Merchant's best interests.

8.5 TSC's Retention of Certain Employees. During the Sale Term, TSC shall extend offers of future employment with TSC to approximately (i) eighty-four (84) store-level managers and/or assistant managers, and (ii) twenty (20) of Merchant's non store-level management employees; provided, however, in the event that TSC extends offers of future employment to less than eighty-four (84) store-level managers and/or assistant managers or less than twenty (20) non

store-level management employees, TSC shall tender payment to Merchant in an amount that is the sum of (A) the product of \$20,000 multiplied by the difference between eighty-four (84) and the number of store-level managers and/or assistant managers to whom TSC extended an offer of future employment, plus (B) the product of \$20,000 multiplied by the difference between twenty (20) and the number of non store-level management employees to whom TSC extended offers of employment. After the Closing Date, Merchant shall provide Agent with reasonable access to Merchant's employee records for purposes of determining whether to offer employment to Merchant's employees pursuant to Section 8.5 of this Agreement.

#### Section 9. Conditions Precedent.

9.1 The willingness of Agent and Merchant to enter into the transactions contemplated under this Agreement are 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) 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-Store transfer logs, markdown schedules, invoices, style runs and all other documents relative to the price, mix and quantities of inventory located at the Stores.

(c) The Bankruptcy Court shall have entered an order in substantially the form of Exhibit 9 attached hereto, mutually acceptable to Merchant and Agent (the "Approval Order"): (i) approving this Agreement in its entirety; (ii) authorizing the Agent and Merchant to enter into the Transaction, including but not limited to authorizing the conduct of the Sale, the disposition of the FF&E and the disposition of the Real Property Interests notwithstanding (A) any state or local law or regulation otherwise governing or purporting to govern the licensing and conduct of the Sale, (B) the provision in any lease, mortgage, or other occupancy agreement that purport to limit, govern or restrict the conduct of the Sale, and (C) the necessity of obtaining any third party consents; (iii) requiring that any liens granted by Merchant to its lender or any other party shall not encumber the Merchandise, Proceeds, FF&E or the Real Property Interests, but shall instead attach only to the Transaction Consideration and Merchant's entitlement to be reimbursed for Expenses; and (iv) granting Agent, subject to Agent's obligations to pay the Transaction Consideration and Expenses, a valid, duly perfected first priority lien and security interest in the Merchandise, the FF&E and the Real Property Interests and any Proceeds to which Agent is entitled in accordance with the terms of this Agreement.

(d) The Creditor's Committee and Fleet shall have consented to the entry of the Approval Order.

(e) The Closing Date Merchandise Value shall be at least One Hundred Fifteen Million and 0/100 Dollars (\$115,000,000.00).

#### Section 10. Representations, Warranties and Covenants.

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

(a) Except as set forth on Exhibit 10.1(a) annexed hereto, Merchant (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation; (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 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.

(b) Subject to the issuance and entry of the Approval Order, 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 issuance and entry of the Approval Order, 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 issuance and entry of the Approval Order, 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. Subject to the issuance and entry of the Approval Order and Section 365 of the Bankruptcy Code, no court order or decree of any federal, state or local 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 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. 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 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) Subject to entry of the Approval Order, Merchant (i) owns good and marketable title to all of the Merchandise, and (ii) as of the applicable Real Property Closing Date, will own good and marketable title to the Real Property Interests, in each case, free and clear of all Liens, other than Permitted Encumbrances.

(i) For the purposes of this Agreement, "Permitted Encumbrances" shall mean (a) Liens for taxes that are not yet due and payable; (b) Liens which, individually or in the aggregate, do not interfere with the present uses of or detract from the value of any one or more of the Real Property Locations or that would have a Material Adverse Effect on the operation of any of the Real Property Locations; (c) as to any Leased Property, any Lien encumbering, attaching to or otherwise affecting solely the interest of the landlord thereunder

and not the interest of the tenant thereunder, and does not materially interfere with any rights of the tenant under the Lease; (d) as to any Real Property Interest, all covenants, conditions, restrictions, easements, rights of way and other similar matters of record which, individually or in the aggregate do not interfere with the present uses of or detract from the value of the Real Property Interest for such Real Property Location taken as a whole or that would have a Material Adverse Effect on the operations of the Real Property Locations; and (e) all building, zoning, land use and other similar laws affecting the Real Property Location, so long as law enforcement of same would not have a Material Adverse Effect on the continued operation of such Real Property Location as currently operated.

(ii) For the purposes of this Agreement, "Material Adverse Effect" shall mean any change, event or effect (or series of related changes, events or defects) which, when taken individually or together, could have a material adverse effect on a major portion of the Merchandise, FF&E, FFE Proceeds, Proceeds, Real Property Interests, and Real Property Locations or on the business, operations, assets or liabilities of the business conducted at the Closing Locations.

(iii) For the purposes of this Agreement, "Lien" shall mean any claim, pledge, option, charge, hypothecation, easement, security interest, right-of-way, encroachment, mortgage, deed of trust or other encumbrance.

(d) Except for any non-compliance which could not reasonably be expected to have a Material Adverse Effect, Merchant has been operating and will continue to operate through the Closing Date, the Closing Locations in compliance with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local and foreign governments (and in all agencies thereof), and no action suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed, commenced, or the knowledge of Merchant, threatened, against any of them alleging failure to so comply.

(e) Each of the leases for the leased Real Property Locations (collectively the "Real Property Leases") is legal, valid, binding, enforceable and in full force and effect, and subject to the entry of the Approval Order, no event of default currently exists thereunder, no event has occurred thereunder that after the giving of notice and the passage of any applicable cure period would constitute an event of default, and Merchant has neither delivered nor received any notice from the other party to any such lease of the termination thereof (excluding in each case defaults to be cured, by Bankruptcy Court order). Subject to entry of the Approval Order, each of the leases for the leased Real Property Locations may be freely assigned (without third party consent) by Merchant to TSC, Agent or Agent's designee. Merchant has delivered to TSC true, correct and complete copies of the leases for the Real Property Locations listed on Exhibit 15.6, and, since the date of such delivery, those leases have not been modified, supplemented or amended.

(f) There are no pending, or to the best of Merchant's knowledge, threatened condemnation proceedings against any of the Real Property Locations.



(g) Except with respect to Store No. 60, as to which Merchant has provided Agent notice of a special assessment there is no pending or, to the best of Merchant's knowledge, proposed special assessment affecting or which may affect the Real Property Interests.

(h) Within ten (10) days after the date of this Agreement, Merchant shall deliver to Agent the following items to the extent same, or the information from which same can be prepared, are in the possession or control of Merchant:

(i) True, complete and accurate copies of all Real Property Leases, including, without limitation, all amendments to and assignments of them and all notices delivered pursuant to them;

(ii) True, complete and accurate copies of all environmental inspection reports with respect to the Real Property Locations; and

(iii) True, complete and accurate copies of all title policies, title commitments, surveys, and site plans with respect to the Real Property Locations.

Without in any way modifying the obligations of Merchant pursuant to this Agreement, Agent acknowledges that this Section 10.1(h) imposes no obligation on Merchant to obtain new environmental inspection reports, surveys, title policies or commitments or site plans with respect to the Real Property Locations.

(i) Except as disclosed in the environmental reports provided by Merchant to Agent:

(i) The Real Property Locations comply with all federal, state, local and foreign statutes, regulations, orders and ordinances, and all common law concerning occupational health and safety, pollution or protection of the environment, as amended and in effect on or prior to the date the Approval Order is entered (hereinafter, the "Environmental Laws").

(ii) Merchant has all permits, licenses, and other authorizations that are required pursuant to Environmental Law for the occupation and operation of the Real Property Locations.

(iii) Merchant has not received any notice regarding any actual or alleged violation or any liabilities or potential liabilities (including any investigatory, remedial, or corrective obligations) under Environmental Laws, in each case relating to the Real Property Locations.

(iv) There have been no releases of hazardous materials and no other condition exhibits at the Real Property Locations that could reasonably be expected to require response activity or any measure (as such term is defined under MCL 324.20107a) under any Environmental Law.

(j) During the Sale Term, Merchant shall provide to Agent reasonable access to (i) its pricing, cost and data files relative to the operation of the Stores, and (ii) the Store Agreements, provided that such access does not unreasonably interfere with or disrupt the business and affairs of Merchant.

All representations, warranties and covenants of Merchant provided in this section 10.1 shall not survive the Closing Date, provided, however, that the provisions of Section 10.1(c) shall survive with respect to a given Real Property Location through the Real Property Termination Date for that Real Property Location, provided, further, however, that the provisions of Section 10.1(j) shall survive through the Sale Term..

10.2 Agent's Representations, Warranties and Covenants. The entities comprising the Agent, individually and jointly, hereby represent, warrant and covenant in favor of Merchant as follows:

(a) Each entity comprising the Agent: (i) is a corporation or limited liability company, as the case may be, duly and validly existing and in good standing under the laws of the State of its organization; (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) Each entity comprising the Agent has (i) 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, and (ii) 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 entities comprising the Agent and, constitutes the legal, valid and binding obligation of the entities comprising the 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 the consummation of the transactions contemplated by this Agreement by each entity comprising the Agent, 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 each entity comprising the Agent is a party or by which each entity comprising the 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 any entity comprising the Agent, or has been settled or resolved, or to the knowledge of each entity comprising the Agent, has been threatened against or affects any entity comprising the Agent, which questions the validity of this Agreement or any action taken or to be taken by each entity comprising the Agent in connection with this Agreement, or which if adversely determined, would have a material adverse effect upon the ability of each entity comprising the Agent to perform its obligations under this Agreement.

(d) During the Sale Term, Agent shall timely pay all Expenses in accordance with the provisions of this Agreement.

(e) Except as contemplated by this Agreement and authorized by the Approval Order, during the Sale Term, each entity comprising the Agent shall comply with the applicable terms of the leases for the Closing Locations.

(f) During the Sale Term, the Agent shall collect applicable Sales Taxes for the Sale of Merchandise and shall remit same to Merchant in accordance with the procedures set forth in Section 7.3 hereof.

(g) Notwithstanding anything else in this Agreement to the contrary, each entity comprising the Agent, on behalf of itself and its designees, acknowledges and agrees that Agent is accepting the Merchandise and Real Property Interests "as-is" "where-is" and "with all faults" and without any warranties, representations or guarantees, either express or implied, of any kind, type or nature whatsoever, from, or on behalf of, Merchant. Without limiting the generality of the foregoing, each entity comprising the Agent acknowledges and agrees that Merchant hereby expressly disclaims any and all implied warranties concerning the condition of the Merchandise and the Real Property Interests, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

All representations, warranties and covenants set forth in this Section 10.2 shall not survive the Closing Date; provided, however, that the provisions of Section 10.2(d), (e), (f) and (g) shall survive the Closing Date.

#### Section 11. Insurance.

11.1 Merchant's Liability Insurance. Merchant shall continue until the Owned Property Termination Date and the Leased Property 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 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 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 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, Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts.

11.2 Merchant's Casualty Insurance. Merchant shall continue until the the Owned Property Termination Date and the Leased Property 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. 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 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. In the event of a claim under any such policies, Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts.

11.3 Workers' Compensation Insurance. Merchant shall continue until the Sale Termination Date, workers' 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. In the event of a claim under any such policies related to a Retained Employee for an event during the Sale Term, Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts.

11.4 Agent's Insurance. Agent shall maintain, at Agent's sole cost and expense throughout the Sale Term, in such amounts reasonably required to cover the risks insured, comprehensive public liability and automobile liability insurance policies covering injuries to persons and property in or in connection with Agent's agency at the Stores, and shall cause Merchant to be named an additional insured with respect to such policies. As soon as is practicable after 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).

11.5 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 title to the Merchandise or the Real Estate Interests, or to be the employer of Merchant's employees located at the 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. Notwithstanding the foregoing, Merchant and Agent agree that, subject to the terms of this Agreement, Agent shall bear all responsibility for liability claims of customers, employees and other persons arising from events occurring at the Stores during the Sale Term in excess of the amounts collected under the Merchant's insurance policies (provided that Agent shall remain obligated to pay the deductible or retention on each such insurance policy), irrespective of whether such claim arises directly from the acts or omissions of Agent, or its supervisors, agents, independent contractors, or employees located at the Stores (an "Agent Claim"). In the event of an Agent Claim, Agent shall administer such claim and shall present such claim to Agent's liability insurance carrier in accordance with Agent'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 Merchant at the address listed in this Agreement.

## Section 12. Indemnification.

12.1 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) subject to Agent’s performance and compliance with its obligations pursuant to Sections 3.1 and 8 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; and

(b) subject to Agent’s compliance with its obligations under Section 7.3 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.

(c) Merchant’s failure to comply with its agreements and covenants under this Agreement.

12.2 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) Except as otherwise provided in the Approval Order, Agent’s material breach of or failure to comply with any local, state, or federal laws or regulations, or any of its agreements and covenants contained in this Agreement;

(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 fact or circumstance arising during the Sale in any of the Closing Locations arising from an act or failure to act on the part of the Agent; and

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

### Section 13. Defaults.

13.1 In the event that Merchant breaches any material provision of this Agreement prior to the Closing Date, Agent, as its sole and exclusive remedy therefor, shall have the right to

pursue the remedy of specific performance against Merchant to enforce the provisions of this Agreement.

13.2 Merchant and Agent acknowledge and agree that as a result of the passage of time, fluctuating market conditions and other reasons, damages as a result of a breach of this Agreement by Agent would be difficult, if not impossible, to determine. Therefor, in the event that Agent breaches any material provision of this Agreement prior to the Closing Date, Merchant, as its sole and exclusive remedy therefor, shall have the right to terminate this Agreement and retain the Good Faith Deposit as liquidated damages and not as a penalty therefor.

Section 14. Fixtures. With respect to the FF&E, to the extent permitted under Merchant's lease at each Real Property Location, as the same shall be modified by the Approval Order, Agent shall sell the FF&E at the Closing Locations. All proceeds generated from the sale of the FF&E, net of expenses and sales taxes associated therewith (the "FF&E Proceeds"), shall constitute the property of the Agent. Upon at least ten (10) days prior written notice, Agent may abandon, in place, any unsold FF&E, at the Closing Locations.

Section 15. Owned/Leased Real Estate Disposition

15.1 Real Estate Designation Rights.

(a) Agent shall have the exclusive right to act a Merchant's exclusive agent for the purposes of marketing and disposing of Merchant's Real Property Interests in the owned and leased real property identified on Exhibit A1 (collectively, the "Real Property Locations") through the respective Owned Property Marketing Period or Leased Property Marketing Period (each as defined below and as and to the extent applicable), and thereafter to designate the ultimate purchaser or assignee of, all of the Merchant's right, title and interest in and to such Real Property Location hereto and incorporated herein, together with all permanent fixtures and improvements located thereon owned by Merchant.

(b) As security for Agent's obligations pursuant to this Section 15, on or before February 15, 2002 (unless Agent shall have delivered an Owned Property Drop Out Notice and a Leased Property Drop Out Notice with respect to all Real Property Locations), Agent shall cause the issuance of a letter of credit (substantially in the form annexed hereto as Exhibit 15.1(b)), in an amount equal to two (2) weeks estimated Real Estate Expenses for the Real Property Locations (the "Real Estate L/C").

15.2 Title Insurance. On or before January 30, 2002, Merchant shall cause the Title Company to deliver to Agent (or its designee) a title insurance commitment (a "Title Commitment") for an ALTA Owner's Policy of Title Insurance for each parcel of the Owned Real Property, in such amount as Merchant and Agent reasonably agree to be the fair market value of the Owned Real Property, insuring Agent's (or its designee's) interest therein in each parcel of the Owned Real Property as of the Owned Real Property Closing Date, subject only to Permitted Encumbrances. On the Owned Real Property Closing Date, Merchant shall cause the Title Company to issue a title insurance policy based upon the Title Commitment (the "Title Policy"). Merchant and Agent shall split equally all costs for the Title Commitment and the Title

Policy. Agent acknowledges that Merchant has already paid for the cost of the Title Commitment, and on February 15, 2002 shall pay to Merchant an amount equal to the cost for one-half of the costs of the Title Commitments for all parcels of Owned Real Property for which a Title Drop Out Notice has not been delivered on or prior to such date.

15.3 Surveys. On or before January 30, 2002, Merchant shall cause Bock & Clark National Surveyors (the "Surveyor") to deliver to Agent (or its designee) a current survey for each parcel of Owned Real Property, conforming to current ALTA/ACSM Minimum Detail Requirements for Urban Land Title Surveys, and certified to Agent, Agent's designee, and the Title Company (the "Surveys"). Merchant and Agent shall split equally all costs for the Surveys. Agent acknowledges that Merchant has already paid for the cost of the Surveyor, and on February 15, 2002 shall pay to Merchant an amount equal to the cost for one-half of the costs of the Surveyor for all parcels of Owned Real Property for which a Title Drop Out Notice has not been delivered on or prior to such date.

15.4 Title and Survey Defects. If the Title Commitments shall disclose exceptions other than Permitted Encumbrances (the "Unpermitted Encumbrances"), or if Survey shall disclose matters that render title unmarketable (the "Survey Defects"), then Agent shall have until February 6, 2002 to deliver a notice (a "Title Notice") to Merchant requiring removal of or title insurance over such Unpermitted Encumbrances, or corrections of the Survey Defects, whereupon Merchant shall endeavor to correct the Survey Defects or have the Unpermitted Encumbrances removed from the Title Commitments or commit to have the Title Company insure over the same. Merchant shall have until February 25, 2002 to remove or insure over all Unpermitted Encumbrances or Survey Defaults referred to in the Title Notice. In the event that the Merchant shall fail to timely do the same, then Agent may, at any time prior to March 1, 2002, deliver a notice of its intention to drop such parcel of Owned Real Property (each, a "Title Drop Out Notice"). In the event that Agent delivers a Title Drop Out Notice, the Transaction Consideration shall not be reduced and Merchant shall not be deemed in breach of the Agreement.

#### 15.5 Parties Respective Obligations During Designation Period.

(a) Merchant's Obligations Period. Subject to the Agent's (or its designee) obligations to pay Expenses pursuant to Section 3.1 hereof, all obligations and liabilities arising under or in connection with each of the Exhibit A1 locations, including, but not limited to, any and all mortgage payments, base rent, percentage rent, additional rent, CAM, utilities, real estate and other taxes, maintenance and repairs, and any other charges arising thereunder, shall be the responsibility of Merchant for the period commencing on the Closing Date through the date on which Agent deliver either a Drop Out Notice or a Sale Notice (the "Merchant Period"). The Merchant shall pay when due any and all amounts, liabilities and other obligations due and owing with respect to the Real Property Locations allocable to the Merchant Period as and when due. From the date hereof through and until the applicable expiration of the applicable Owned Property Marketing Period or Leased Property Marketing Period, the Merchant shall not enter into, extend, modify, amend, reject or otherwise terminate any material agreement with respect to any Real Property Location (each such agreement, a "Store Agreement"), or grant any party a lien or security interest in any or all of the subject properties, in each case without the prior written consent of Agent.

(b) Marketing Period Costs. In addition to Agent's obligations pursuant to Section 3.1 hereof, on each Wednesday during the period beginning on the Sale Termination Date and ending on (a) the Owned Property Termination Date or Leased Property Termination Date, as applicable, (b) the fifteenth (15th) day following the date upon which Agent provides an Owned Property Sale Notice, or (c) the later of the fifteen (15th) day following the date upon which Agent provides a Lease Assumption Notice or the date on which the Court enters an order approving the assumption of the lease (provided Merchant diligently requests the entry of such an order), Agent (or its designee) shall reimburse or advance to the Merchant all ordinary and customary occupancy expenses (the "Real Estate Occupancy Expenses") with respect to each Real Property Location on a per Real Property Location, per diem basis provided however on Tuesday, Merchant shall provide Agent (or its designees) invoices reasonable acceptable to Agent in support of the actual Real Estate Occupancy Expenses incurred during the prior week; provided, further, however, Agent (or its designee) shall not be obligated to fund as a Real Estate Occupancy Expense any amount in respect of an extraordinary repair or maintenance of any Real Property Location property, unless the need for such repair or maintenance arises from any act or omission on the part of Agent during the Owned Property Marketing Period or the Leased Property Marketing Period, as the case may be, constituting gross negligence or willful misconduct of Agent. If Agent (or its designee) fails to reimburse or advance to the Merchant any such Real Estate Occupancy Expense within such three (3) business day period, then following the expiration of a five (5) day cure period after receipt by the Agent of notice of such failure to reimburse or advance (the "Unpaid Real Estate Occupancy Expenses"), in addition to all of its other rights at law and equity, the Merchant shall be entitled to revoke Agent's (or its designee) right to market and attempt to sell Merchant's right, title and interest in and to such Real Property Location owned or leased property, as the case may be. Such revocation shall be effective upon the second business day following the expiration of the referenced five (5) day cure period (each, a "Revocation Notice"); provided however, in the event that there is a good faith dispute between Merchant and Agent as to whether such Unpaid Real Estate Occupancy Expense is due and owing by Agent to Merchant, Agent shall tender payment of the undisputed portion of the Unpaid Occupancy Expense to Merchant and shall negotiate in good faith with Merchant to resolve the dispute with respect to the remaining Unpaid Real Estate Occupancy Expense, in which case Merchant shall not have the right to serve Agent with a Revocation Notice. For the sake of clarity, in no event shall Merchant be entitled to be reimbursed twice by Agent for the same expense under the provisions of Sections 3.1 and 15.5.

(c) Intentionally Deleted.

(d) For purposes of this Agreement, (i) the "Owned Property Termination Date" shall mean with respect to each owned property, the first to occur of (a) the seventh (7th) day following the date upon which Agent delivers to the Merchant a Owned Property Dropout Notice or a Title Drop Out Notice with respect to such owned property, (b) the effective date of any termination following Agent's receipt of a Revocation Notice, and (c) the date that is two hundred and seventy (270) days after the applicable Owned Property Closing Date; and (ii) the "Leased Property Termination Date" shall mean, with respect to any leased property, the first to occur of (a) the seventh (7th) day following the date upon which Agent delivers to the Merchant a Leased Property Dropout Notice (as hereinafter defined) with respect to such leased property, (b) the effective date of any termination following Agent's receipt of a Revocation Notice, and (c) the date that is ninety (90) days after the Leased Property Closing Date.



(e) During the Owned Property Marketing Period and the Leased Property Marketing Period, as the case may be, the Merchant agrees to cooperate with the Agent to arrange for the sale of the Merchant's interests, owned and/or leased, in those properties that Agent, in its sole discretion, determines, with such sales to be on such terms as Agent, in its sole discretion, deems acceptable. Without limiting the generality of the foregoing, the Merchant agree: (i) to provide Agent with all due diligence materials and information as Agent shall reasonably request in connection with its efforts to market and attempt to sell the Real Property Location owned and leased properties (including, without limitation, existing real property surveys, environmental reports, real estate tax and utility records, complete copies of the subject leases and any abstracts prepared with respect thereto, and all communications with the lessees thereunder) and (ii) cooperate with Agent, its agents and any potential purchasers of any of the Real Property Location properties to provide reasonable access to such properties.

#### 15.6 Owned Property Marketing Period.

(a) For the period commencing on the date of issuance and entry of the Approval Order(s) through and including the Owned Property Termination Date (the "Owned Property Marketing Period"), Agent shall have the exclusive right, in the exercise of its sole and absolute discretion, to market and attempt to sell all of the Real Property Interests owned by Merchant (the "Owned Properties").

(b) At any time prior to expiration of the Owned Property Marketing Period for each Owned Property, Agent shall have the right, which right may be exercised at any time and from time to time in Agent's sole and absolute discretion, to provide notice to Merchant (each such notice, an "Owned Property Sale Notice") of Agent's election to require the Merchant to convey the Merchant's right, title and interest in and to one or more Owned Property(ies) to any such party as Agent shall designate (each, a "Designee") without the necessity of obtaining higher and better offers.

(c) In the event that Agent has determined that (a) (i) an event, fact circumstance, act or omission constituting a violation of any Environmental Law, (ii) the presence of petroleum, hazardous substance, hazardous materials, hazardous waste, or any underground storage tank (as defined under applicable Environmental Laws) in soil, groundwater, surface water, sediments or indoor air with respect to which response activity or any measure (as such term is defined in MCL 324.20107a) is affirmatively required under Environmental Laws assuming continued commercial use of the Real Property Location ("Environmental Condition"); Agent may thereafter deliver an Owned Property Drop Out Notice, provided, however, in the event Agent (or its designee) delivers a Owned Property Dropout Notice the Transaction Consideration shall not be reduced. Within five (5) days following the date upon which Agent (or its designee) delivers to the Merchant an Owned Property Sale Notice, or on such longer term as Agent may designate in its sole discretion, the Merchant shall take all requisite actions (including, without limitation, actions required, if any, to obtain approval under section 363 of the Bankruptcy Code) to convey all of Merchant's right, title and interest in and to such Owned Property to such Designee. Through and including the Owned Property Marketing Period, Agent shall have the right to direct the Merchant to transfer title to any Owned Property to a limited liability company affiliated with one or more of the

entities comprising Agent pursuant to section 363 of the Bankruptcy Code (the "Agent LLC") subject to the procedures set forth above as if the Agent LLC were a Designee.

(d) At any time prior to the expiration of the Owned Property Marketing Period applicable to any particular Owned Property, Agent shall have the right, which right may be exercised at any time and from time to time in Agent's sole and absolute discretion, to provide notice to the Merchant (each such notice, an "Owned Property Dropout Notice") of Agent's election to discontinue its efforts to market and attempt to sell any Owned Property(ies). Upon the Owned Property Termination Date, the Agent shall have no further obligation or liability with respect to the subject Owned Property identified in the Owned Property Dropout Notice (including any obligation to continue to pay any per diem Real Estate Occupancy Expenses with respect thereto), and the Merchant shall thereafter be solely responsible for all amounts payable or other obligations or liabilities that may be owed in connection with such Owned Property(ies).

(e) Subject to Agent's payment of the Transaction Consideration and payment of Real Estate Occupancy Expenses during the Owned Property Marketing Period, all proceeds generated by the sale of any and all Owned Property(ies) shall be the property of Agent.

(f) For the purposes of this Section 15.6, TSC shall be the Designee for all Real Property Locations identified on Exhibit 15.6.

#### 15.7 Leased Properties Marketing Period.

(a) For the period commencing on the date of the issuance and entry of the Approval Order(s) through and including the Leased Property Termination Date (the "Leased Property Marketing Period"), Agent shall have the exclusive right to market and attempt to sell all of Merchant's right, title and interest in and to the leased properties held by Merchant (the "Leased Properties").

(b) At any time prior to the expiration of the Leased Property Marketing Period applicable to any particular Leased Property, Agent shall have the right, which right may be exercised at any time and from time to time in Agent's sole and absolute discretion, to provide notice to the Merchant (each such notice, a "Leased Property Dropout Notice") of Agent's (or its designee) election to discontinue its efforts to market and attempt to sell any Leased Property(ies). Upon the Leased Property Termination Date, Agent shall have no further obligation or liability with respect to the subject Leased Property(ies) covered by a Leased Property Dropout Notice (including any obligation to continue to pay any per diem Real Estate Occupancy Expenses with respect thereto), and the Merchant shall thereafter be solely responsible for all amounts payable or other obligations or liabilities that may be owed in connection with such Leased Property(ies) (including, without limitation, any damages resulting from the rejection of any affected lease(s) under section 365 of the Bankruptcy Code or otherwise).

(c) At any time prior to the expiration of the Leased Property Marketing Period for each Leased Property, Agent shall have the right, which right may be exercised at any time and from time to time in Agent's sole and absolute discretion, to provide notice to the Merchant (each such notice, a "Lease Assumption Notice") of Agent's election to require the

Merchant to assume the Lease(s) identified in the subject Lease Assumption Notice(s) and assign same to Agent's Designee. Within fifteen (15) days following the date upon which Agent delivers a Lease Assumption Notice to the Merchant, the Merchant shall, at no additional cost or expense to Agent, take all requisite actions (including, without limitation, actions required under section 365 of the Bankruptcy Code) to assume and assign the Leased Property to the Designee identified by Agent under such Lease Assumption Notice(s).

(d) Without limiting the generality of the foregoing, upon receipt of a Lease Assumption Notice, the Merchant shall use its best efforts to obtain the entry of an order of the Court approving the assumption of the Leased Property(ies) identified in such Lease Assumption Notice(s) and the assignment of such lease(s) to the specified Designee. As used herein, the term "best efforts" shall not require the Merchant to pay any funds or assume any claims, but shall require Merchant or their chapter 11 estates to (i) expend or incur fees, costs and expenses for the payment of attorneys and other professionals whose services may reasonably be required by Agent in connection with the prosecution of any motion seeking the entry of any such assumption and assignment order and (ii) pay any cure amounts outstanding and necessary to comply with Section 365 of the Bankruptcy Code, as provided in subsection (f) below.

(e) The Designee under any Lease Assumption Notice shall provide adequate assurance of future performance with respect to any Leased Property that Agent seeks to have assigned pursuant to a Lease Assumption Notice.

(f) In the event Agent elects to require the Merchant to assume and assign any Leased Property, as provided above, any and all cure amounts arising under section 365(b)(1) of the Bankruptcy Code with respect to such lease shall be apportioned between the parties as follows: (a) the Merchant shall pay all such amounts arising with respect to the period prior to the commencement of the Leased Property Marketing Period and (b) Agent shall pay all such amounts as shall have arisen and relate solely to the Leased Property Marketing Period. Upon the Closing Date, subject to Agent's payment of the Real Estate Occupancy Expenses, any and all security deposits, tax and insurance escrows or similar impounds held by the lessees under the subject leases shall be the property of Agent. In the event Agent (or its designee) elects to require the Merchant to assume and assign any lease, as provided above, and the Merchant has insufficient funds with which to pay any Merchant-apportioned amounts under section 365(b)(1) of the Bankruptcy Code with respect to such lease, then in such event Agent shall be permitted to advance the payment of such cure amount and offset such payment against any Real Estate Occupancy Expense or other Expense payment obligation.

(g) Regardless of whether Agent directs the Merchant to reject any one or more Leased Properties at any time, the cost and expenses of the rejection at any time of any one or more such leases, including, without limitation, the filing and prosecution of any motions or other papers with respect to the same, shall be borne solely by the Merchant and their chapter 11 estates.

#### 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 the Agent: Great American Group  
One Parkway North - Suite 520  
Deerfield, IL 60015  
Attn: Benjamin L. Nortman  
Tel: 847/444-1400  
Fax: 847/444-1401

Gordon Brothers Retail Partners LLC  
40 Broad Street  
Boston, MA 02109  
Attn: Mitchell Cohen  
Tel: 617/422-6207  
Fax: 617/422-6288

DJM Asset Management LLC  
445 Broad Hollow Road  
Melville, NY 11747  
Attn: Andrew E. Graiser  
Tel: 631/752-1100  
Fax: 631/752-1231

Tractor Supply Company  
320 Plus Park Blvd.  
Nashville, TN 37217  
Attn: James Wright  
Tel: 615/366-4619  
Fax: 615/366-4855

With a copy to: Traub, Bonacquist & Fox LLP  
655 Third Avenue – 21st Floor  
New York, NY 10017  
Attn: Paul Traub  
Tel: 212/476-4770  
Fax: 212/476-4787

Shipman & Goodwin LLP  
One Landmark Square  
Stamford, CT 06901-2676  
Attn: Edward M. Kane  
Tel: 203/324-8108  
Fax: 203/324-8199

If to Merchant:       Quality Stores, Inc.  
                              455 E. Ellis Road  
                              Muskegon, MI 49441

With a copy to:       Kirkland & Ellis LLP  
                              200 East Randolph  
                              Chicago, IL 60601  
                              Attn: James H.M. Sprayregan, Esq.  
                              Tel: 312/861-2000  
                              Fax: 312/861-2200

16.2 Governing Law; Consent to Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of New York, without regard to conflicts of laws principles thereof. The parties hereto agree that the Bankruptcy Court shall retain 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 contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes and cancels 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. Merchant and Agent shall be permitted to collaterally assign their rights under this Agreement to their lenders.

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 [Intentionally left blank.]

16.10 Reporting. If requested by Merchant, Agent shall prepare weekly reports including, without limitation, reports that comply with the Merchant's current weekly cash reporting to its central office, reflecting the progress of the Sale which shall specify the Proceeds received to date. The Agent will maintain and provide to Merchant sales records to permit calculation of and compliance with any percentage rent obligations under Stores leases. During the course of the Sale, Merchant shall have the right to have representatives continually act as observers of the Sale in the Stores so long as they do not interfere with the conduct of the Sale.

16.11 Termination. This Agreement shall remain in full force and effect until the first to occur of: (i) receipt by Merchant of written notice from Agent that any of the closing conditions specified in Section 9 hereof have not been satisfied within 5 days of the anticipated Sale Commencement Date set forth in Section 5.1; or (ii) the expiration of the Sale Term and completion and certification by Merchant and Agent of the final Sale reconciliation pursuant to Section 7.7 above.

16.12 Security Interest. On the Closing Date, Merchant hereby grants to Agent a first priority security interest in and lien upon the Merchandise, the Proceeds, the FF&E, the FF&E Proceeds and the Real Property Interests, to secure all obligations of Merchant to Agent hereunder. The security interest granted to Agent hereunder shall remain junior to the security interest of Merchant's secured pre-petition and post-petition lenders, to the extent of the unpaid portion of the Transaction Consideration and Expenses. Upon Closing, the security interest granted to Agent hereunder shall be deemed properly perfected without the need for further filings or documentation. Agent further agrees that in the event Agent fails to pay Merchant any portion of the Transaction Consideration, Expenses, or any other undisputed amounts due Merchant under this Agreement, and such failure shall continue for five (5) days after written notice by Merchant to Agent, then the security interest granted to Agent hereunder shall be deemed released in an amount equal to such unpaid amounts, provided however, the balance of Agent's security interest shall remain in full force and effect.

16.13 Joint and Several Liability: Notwithstanding anything to the contrary in this Agreement, whether expressly stated, implied or otherwise interpreted or certified, or any other document related thereto, the obligations of the Agent under this Agreement are the joint and several obligations of Tractor Supply Company, Great American Group, Gordon Brothers Retail Partners LLC, and DJM Asset Management LLC.

12/28/01 FRI 13:14 FAX 312 861 2200

KIRKLAND & ELLIS

002

IN WITNESS WHEREOF, Agent and Merchant hereby execute this Agreement  
by their duly authorized representatives as of the day and year first written above.

TRACTOR SUPPLY COMPANY

By: \_\_\_\_\_  
Name:  
Title:

GREAT AMERICAN GROUP

By: \_\_\_\_\_  
Name:  
Title:

GORDON BROTHERS RETAIL PARTNERS LLC

By: \_\_\_\_\_  
Name:  
Title:

DJM ASSET MANAGEMENT LLC

By: \_\_\_\_\_  
Name:  
Title:

QUALITY STORES, INC.

By: William A. Waack  
Name: WILLIAM A. WAACK  
Title: President

DEC 31 '01 10:56 FAX 312 861 2200  
 12/28/01 FRI 10:57 FAX 312 861 2200

ONE COPY TO COMPLETION/ISSUED P. 71  
 KIRKLAND & ELLIS

LEADS

*National Bank*

Consented and Agreed to  
 with respect to Sections 6.3 and 16.13  
 FLEET CAPITAL, for itself and as Agent for Merchant's  
 Other Secured Lenders.  
 Secured Lenders

By:

*[Signature]*  
 Name: *[Signature]*  
 Title: *[Signature]*



DEC. 30. 2001 1:05PM  
NT BY: J F WRIGHT;

SHIPMAN & GOODWIN;

DEC-30-01 2:00PM; NO. 6852 P. 2

FROM : STEVEN E FOX

FAX NO. : 914 941 6154

Dec. 30 2001 11:33AM P2

IN WITNESS WHEREOF, Agent and Merchant hereby execute this Agreement  
by their duly authorized representatives as of the day and year first written above.

TRACTOR SUPPLY COMPANY

By: James F. Wright  
Name: JAMES F. WRIGHT  
Title: PRESIDENT/COO

GREAT AMERICAN GROUP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GORDON BROTHERS RETAIL PARTNERS LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DJM ASSET MANAGEMENT LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

QUALITY STORES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FROM :

PHONE NO. : 8476700483

Dec. 30 2001 11:14AM P1

FROM : STEVEN E FOX

FAX NO. : 914 941 6154

Dec. 30 2001 10:23AM P2

IN WITNESS WHEREOF, Agent and Merchant hereby execute this Agreement  
by their duly authorized representatives as of the day and year first written above.

TRACTOR SUPPLY COMPANY

By: \_\_\_\_\_  
Name:  
Title:

GREAT AMERICAN GROUP

By: Thomas E. Pabst  
Name: Thomas E. Pabst  
Title: Chief Administrative Officer

GORDON BROTHERS RETAIL PARTNERS LLC

By: \_\_\_\_\_  
Name:  
Title:

DJM ASSET MANAGEMENT LLC

By: \_\_\_\_\_  
Name:  
Title:

QUALITY STORES, INC.

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, Agent and Merchant hereby execute this Agreement  
by their duly authorized representatives as of the day and year first written above.

TRACTOR SUPPLY COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GREAT AMERICAN GROUP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GORDON BROTHERS RETAIL PARTNERS LLC

By: Gary Kulp  
Name: GARY KULP  
Title: Principal and Managing Director

DJM ASSET MANAGEMENT LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

QUALITY STORES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I:\Projects\Ritter\Quality\TSC\Agency Agreement-2.rtf

FROM : STEVEN E FOX

FAX NO. : 914 941 6154

Dec. 30 2001 10:26AM P2

IN WITNESS WHEREOF, Agent and Merchant hereby execute this Agreement  
by their duly authorized representatives as of the day and year first written above.

## TRACTOR SUPPLY COMPANY

By: \_\_\_\_\_  
Name:  
Title:

## GREAT AMERICAN GROUP

By: \_\_\_\_\_  
Name:  
Title:

## GORDON BROTHERS RETAIL PARTNERS LLC

By: \_\_\_\_\_  
Name:  
Title:

## DJM ASSET MANAGEMENT LLC

By: Andrew Graiser  
Name: ANDREW GRAISER  
Title: CO-PRESIDENT

## QUALITY STORES, INC.

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT 1A****Stores****Owned Property**

<b><u>Store Number</u></b>	<b><u>Street Address</u></b>	<b><u>City</u></b>	<b><u>State</u></b>
1	2480 Chicago Drive	Hudsonville	Michigan
2	8610 Shaver Road	Portage	Michigan
3	5241 West Grand River	Lansing	Michigan
7	1488 Marion-Waldo Rd.	Marion	Ohio
8	3601 East McGalliard Road	Muncie	Indiana
10	23735 U.S. 23 South	Circleville	Ohio
11	3294 U.S. 30 East	Warsaw	Indiana
13	3801 West State Street	Fremont	Ohio
14	2727 West Fourth Street	Mansfield	Ohio
16	846 U.S. 68 South	Xenia	Ohio
17	2035 Hebron Road	Newark	Ohio
21	1651 South Main Street	Bellefontaine	Ohio
22	1550 Whitehall Road	Muskegon	Michigan
23	64497 U.S. Route 33	Goshen	Indiana
24	2375 East Pleasant Street	Noblesville	Indiana
26	5020 Gull Road	Kalamazoo	Michigan
31	3245 North Adrian	Adrian	Michigan
32	5688 East Pickard	Mt. Pleasant	Michigan
35	2805 Springport Road	Jackson	Michigan
36	4265 Holland Road	Saginaw East	Michigan
37	5555 Bay Road, Route 84	Saginaw North	Michigan
40	2520 West State Street	Alliance	Ohio
63	4058 West Vienna Road	Clio	Michigan
104*	102 East Jones Road	Fostoria	Ohio
436	735 North West End Blvd.	Quakertown	Pennsylvania

\*Service Center

**Leased Property**

<b><u>Store Number</u></b>	<b><u>Street Address</u></b>	<b><u>City</u></b>	<b><u>State</u></b>
4	648 East Chicago Road	Coldwater	Michigan
5	6 Elm Grove Crossing	Wheeling	West Virginia
6	1415 Wagner Avenue	Greenville	Ohio
9	3541 Lincoln Way East	Wooster	Ohio
12	71 Pine Lake Avenue	LaPorte	Indiana
15	4841 State Road #38 East	Lafayette	Indiana
18	240 Bluebell Drive NW	Philadelphia	Ohio
19	4525 Hamilton-Middleton Rd.	Hamilton	Ohio
20	3700 ClayPool Street	Lancaster	Ohio
25	1122 South Shannon St.	Van Wert	Ohio
27	224 Lafayette Street	London	Ohio

**EXHIBIT 1A****Stores**

28	1500 Covington Avenue	Piqua	Ohio
29	1286 Old US 27 South	Gaylord	Michigan
30	995 East North Street	Kendallville	Indiana
33	736 North Van Dyke	Bad Axe	Michigan
34	1437 East Main Street	Owosso	Michigan
38	67176 Gratiot Avenue	Richmond	Michigan
41	1834 D Second Street	Defiance	Ohio
42	545 East Monroe Street	Dundee	Michigan
43	US Rte. 221 South	Keyser	West Virginia
44	2630 East Grand River	Howell	Michigan
45	935 North Main	Bluffton	Indiana
46	2070 Cedar South	Imlay City	Michigan
47	2050 South M-76	West Branch	Michigan
48	750 Perry Street	Big Rapids	Michigan
50	2000 Southgate Parkway	Cambridge	Ohio
51	1328 West Main Street	Fremont	Michigan
52	780 East Main Street	Jackson	Ohio
53	709 West Perkins Avenue	Sandusky	Ohio
54	526 East Cedar Street	Gladwin	Michigan
55	405 West Walton Street	Willard	Ohio
56	1253 Lincoln Road	Allegan	Michigan
57	2995 South State Road	Ionia	Michigan
58	10203 Straights Highway	Cheboygan	Michigan
59	15212 US Rte. 224	Findlay	Ohio
60	825 US 31 South	Traverse City	Michigan
61	161 Rochester Plaza	Rochester	Indiana
62	06675 M-66 North	Charlevoix	Michigan
64	912 West State Street	Hastings	Michigan
65	4572 West US 10	Ludington	Michigan
66	150 South Bradley Highway	Rogers City	Michigan
67	2025 North Mitchell Highway	Cadillac	Michigan
70	4011 17 Mile Road	Cedar Springs	Michigan
71	245 North State Rte. 2	Martinsville	West Virginia
72	Greenville Plaza #1, Hadley	Greenville	Pennsylvania
73	R.D. #7	Mt. Pleasant	Pennsylvania
74	3978 Vineyard Drive	Dunkirk	New York
75	499 Down Tower Plaza	Coshocton	Ohio
76	Wolf Run River Road	Clearfield	Pennsylvania
77	Silver Bridge Plaza	Gallipolis	Ohio
78	2125 South 11th Street	Niles	Michigan
79	390 West Columbus Ave.	Corry	Pennsylvania
80	378 State Road	Arcade	New York
84	540 Water Street	Chardon	Ohio
85	310 Ripley Boulevard	Alpena	Michigan
86	Unit 1 Market Place	Weston	West Virginia
88	725 Broad Street	Salamanca	New York
92	1500 Main Street	Follansbee	West Virginia
93	Unit 1 Somerset Mall	Somerset	Pennsylvania
100	1135 Columbus Pike	Delaware	Ohio
107	2003 East Tipton	Seymour	Indiana
109	1212 North Queen Street	Martinsburg	West Virginia
110	1513 Harrison Avenue	Elkins	West Virginia

**EXHIBIT 1A****Stores**

111	315 Gross Avenue	Marietta	Ohio
112	9101 Ohio River Road	Wheelersburg	Ohio
113	108 Academy Drive	Ripley	West Virginia
114	1240 Bellefontaine Street	Wapakoneta	Ohio
115	Routes 8 and 62	Franklin	Pennsylvania
116	2310 Claremont Avenue	Ashland	Ohio
118	900 Morgantown Street	Uniontown	Pennsylvania
119	157 73rd Street	South Haven	Michigan
120	1733 Pearl Road	Brunswick	Ohio
123	405 East Clifty Drive	Madison	Indiana
124	1540 North Morton Street	Franklin	Indiana
125	1637 North Barron Street	Eaton	Ohio
126	1495 North Shoop Avenue	Wauseon	Ohio
128	406 South 1st Street	LaGrange	Kentucky
129	314 Deo Drive	North Newark	Ohio
130	528 North Main Street	Columbia City	Indiana
132	4179 Plank Road	Fredericksburg	Virginia
133	1935 Old State Road	Corydon	Indiana
136	376 Reno Drive	Wayland	Michigan
147	210 Emily Road	Clarksburg	West Virginia
154	1929 N. Greensburg Crossing	Greensburg	Indiana
409	4178 A Bolivar Road	Wellsville	New York
412	4974 East Main	Batavia	New York
413	Foote Avenue, US Hwy. 60	Jamestown	New York
415	5728 Buckeystown Pike	Frederick	Maryland
416	2380 Rochester Road	Canandaigua	New York
417	4567 South Dupont Highway	Dover	Delaware
423	154 Vestal Parkway West	Vestal	New York
424	903 Rte. 22, Hwy. W	Indiana	Pennsylvania
425	86 Victory Highway	Painted Post	New York
426	396 State Highway 23	Oneonta	New York
428	230 Greater Butler Mart	Butler	Pennsylvania
429	1695 Lincoln Way East	Chambersburg	Pennsylvania
430	408 North Fruitland Blvd.	Salisbury	Maryland
432	848 State Route 13	Cortland	New York
435	1215 North High Street	Millville	New Jersey
437	360 Grant Avenue	Auburn	New York
439	1222 Arsenal Street	Watertown	New York
440	7327 Senaca Road North	Hornell	New York
441	5125 Commercial Drive	Utica	New York
443	Route 30 North	Amsterdam	New York
445	150 Getty Lane	Winchester	Virginia
447	6017 South Transit Road	Lockport	New York
450	Route 417 West State Road	Olean	New York
453	1701 Massey Boulevard	Hagerstown	Maryland
455	310 Latrobe	Latrobe	Pennsylvania
456	1020 Center Street	Horseheads	New York
458	4099 Lakeville Road	Geneseo	New York
459	1877 New Berwick Highway	Bloomsburg	Pennsylvania
461	1-25 Baldwin Boulevard	Shamokin Dam	Pennsylvania
462	806 West Broadway	Fulton	New York
466	7696 Route 31	Lyons	New York

**EXHIBIT 1A**

**Stores**

468	1146 Main Street	Ravenna	Ohio
469	2366 East State Street	Salem	Ohio
474	1150 Scioto Street	Urbana	Ohio
475	10410-B US Hwy. 22/522	Lewistown	Pennsylvania
478	3869 Peters Mountain Road	Halifax	Pennsylvania
580	235 Kentucky Home Square	Bardstown	Kentucky
585	1204 East High Street	Bryan	Ohio
587	3300 West 16th	Bedford	Indiana
588	950 Columbus	Kenton	Ohio
591	2 Jamesway Plaza	Cobleskill	New York
595	240 South White Horse Pike	Hammonton	New Jersey
724	24 Georgetown Place	Georgetown	Delaware

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### **EXHIBIT 3.1**

- (a) Occupancy Expenses on a per Closing Location and per diem basis.
- (b) payroll for all Closing Location-level Retained Employees used in conducting the Sale or the transfer of Warehouse Merchandise to the Stores, as the case may be for the actual days worked (or in the case of hourly employees, the hours worked) in connection with the Sale;
- (c) any amounts payable or accrued by Merchant for benefits for Closing Location-level Retained Employees (including, but not limited to, vacation days or vacation pay, sick days or sick leave, FICA, unemployment taxes, workers' compensation and health care insurance benefits, but excluding Excluded Benefits) for Retained Employees used in the Sale for services performed during the Sale Term.
- (d) Retention Bonuses for Retained Employees as provided in Section 8.4. of this Agreement;
- (e) actual costs of Agent's on-site supervision, supervisor travel and supervisor bonuses;
- (f) In-Store signs and banners which are produced for the Sale;
- (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, and bad check write-offs and fees;
- (k) costs of moving, transferring or consolidating Merchandise between Stores and from the Warehouse to the Stores;
- (l) the portion of Merchant's casualty insurance premiums attributable to the Merchandise;
- (m) Third Party payroll processing fees;
- (n) armored car service;
- (o) trash removal and ordinary course third party cleanings;
- (p) Closing Location security and building alarm service;

(q) all costs for moving the Merchandise from the Warehouse to the Closing Location; and

(r) agent's actual cost of capital and letter of credit fees.

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

"Occupancy Expenses" means, without limitation, rent (including, base rent and any portion of percentage rent specifically allocable to the period of the Sale Term on an annualized basis), mortgage payments, CAM (including, but not limited to, snow removal, sprinkler expense and landscaping), real estate and use taxes, HVAC, utilities, telephone charges (including base telephone, leased line charges and data circuit charges), personal property leases (including, point of sale equipment), personal property taxes, equipment repair and maintenance (including cash register maintenance), systems repair and maintenance (including POS systems, store servers, signature pads, routers), building maintenance, building insurance relating to the Stores and Merchant's liability and casualty insurance.

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

## **EXHIBIT 7.1**

### **GUIDELINES FOR CONDUCT OF THE SALES**

(a) The Sale shall be conducted so that the subject Closing Location remains open during Closing Location normal hours of operation provided for in the Lease for that Closing Location, and, except as may be provided for in any Approval Order, the existing terms of the Merchant's Leases for the Closing Location shall control (i) the operation of the Closing Location during the Sales and (ii) the conduct of the Sales.

(b) The Sale shall be conducted in accordance with applicable state and local "Blue Laws".

(c) Agent shall not use flashing lights or any type of amplified sound on the leased premises or on any common areas to advertise the Sales or solicit customers for the Sale at that Closing Location.

(d) With respect to the advertising of the Sales, Agent shall be permitted to promote and advertise the Sale in accordance with the Agency Agreement and applicable law, including, without limitation, by means of electronic and print media advertising and in-store and exterior signage and banners; provided that all signage shall be professionally lettered, and all banners and hanging signs shall be hung in a professional manner.

(e) Conspicuous signs shall be posted at the Closing Locations to the effect that all sales are "final."

(f) Agent shall not make any alterations to the storefront or exterior walls of any of the Closing Locations, provided however, to the extent that the Approval Order permits, Agent is permitted to hang signage and banners on the exterior of a Closing Location, provided however, Agent shall be obligated to restore the exterior walls or façade of the Closing Location, at Agent's expense, to the condition in which it existed on the Sale Commencement Date.

(g) Agent shall not make any alterations to interior or exterior store lighting.

(h) Except as modified by agreement with any lessor, or by any Approval Order, all provisions of any Lease with respect to the affected premises shall remain in full force and effect.

(i) Removal by Agent of Merchandise or FF&E will be conducted in the ordinary course of the Merchant's business.

(j) Agent shall not remove from any Closing Location r any FF&E so affixed to the real estate that an interest therein arises under real estate law (i.e., "fixtures" within the meaning of the Uniform Commercial Code).