RESOLUTION NUMBER 06-043

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A VOLUNTARY SALES AND USE TAX COLLECTION AGREEMENT BETWEEN THE CITY OF KETCHUM AND EVERYTHING IN ORDER, LLC, A WASHINGTON CORPORATION, FOR THE COLLECTION OF CITY SALES TAX.

WHEREAS, Everything In Order, LLC, an out of state wholesaler that supplies products to local independent retailers ("Everything") desires to enter into an agreement with the City of Ketchum ("Ketchum") pursuant to which Everything will collect the City Sales Tax (LOT) on behalf of its independent retailers and remit such tax proceeds to Ketchum thereby simplifying the administration and collection of the City Sales Tax; and

WHEREAS, pursuant to Idaho Code §§ 50-301 and 50-302, Ketchum has the authority to enter into contracts and to take such steps as are reasonably necessary to maintain the peace, good government, and welfare of the City and its trade, commerce, and industry; and

WHEREAS, pursuant to Ordinance 712 of the Ketchum City Council, the City of Ketchum may collect a one percent (1%) tax on the sales price of all property subject to taxation under Idaho Code § 63-3601, *et seq.*

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho that the City Council hereby authorizes and instructs the Mayor to execute a Voluntary Sales Tax and Use Tax Collection Agreement between the City of Ketchum and Everything In Order, LLC, a Washington Corporation for the collection of City Sales Tax.

This Resolution will be in full force and effect upon its adoption this 20th day of March 2006.

ATTEST:

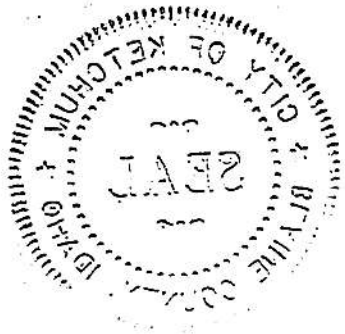
Sandra E. Cady, CMC
City Treasurer/Clerk

CITY OF KETCHUM

Randy Hall, Mayor

APPROVED AS TO FORM
AND CONTENT:

Benjamin W. Worst, City Attorney


CITY OF KETCHUM
BLAINE COUNTY, IDAHO
SEAL

Voluntary Sales And Use Tax Collection Agreement

Recitals

This Agreement is made between Everything In Order, LLC, of Pullman, Washington hereinafter referred to as "Pinnacle" and the City of Ketchum, Idaho, hereinafter referred to as the "Taxing Jurisdiction".

WHEREAS, Pinnacle is a corporation organized under the laws of a state other than the Taxing Jurisdiction; and

WHEREAS, Pinnacle maintains its headquarters outside of the Taxing Jurisdiction; and

WHEREAS, Pinnacle is a wholesaler of various consumer products. Pinnacle engages in interstate commerce by selling its products to Independent Business Owners, hereinafter referred to as "ambassadors" on a sale for resale basis at wholesale prices; and

WHEREAS, the ambassadors are independent businesses and not employees, agents, managers, legal representatives, franchisees, order takers or joint venturers of Pinnacle; and

WHEREAS, the ambassadors retail the products to the general public at a price determined by them; and

WHEREAS, Pinnacle provides a suggested retail price to the ambassadors, but the ambassadors are free to charge the price each ambassador deems suitable; and

WHEREAS, all sales made by ambassadors result in personal profits or losses because they are independent business owners; and

WHEREAS, Pinnacle delivers all its products by a common carrier or United States mail from its inventory which is not located in the Taxing Jurisdiction; and

WHEREAS, Pinnacle does not have any employees or inventory, nor does it own, lease or rent any real, personal or intangible property in the Taxing Jurisdiction; and

WHEREAS, in no instance is Pinnacle required or obligated to install, supervise, repair or maintain service of any nature in the Taxing Jurisdiction; and

WHEREAS, the parties recognize that this Agreement will be mutually beneficial to the Taxing Jurisdiction, Pinnacle and the ambassadors;

NOW, THEREFORE, in order to simplify and make more efficient the administration and collection procedures of the sales and use tax imposed by the Taxing Jurisdiction, and to eliminate the individual licensing of ambassadors for the purpose of sales and use taxes in the jurisdiction, it is agreed that:

1. The ambassadors shall be recognized by the Taxing Jurisdiction as "independent businesses" and not employees, agents, managers, legal representatives, franchisees, order takers or joint venturers of Pinnacle.

2. Pinnacle shall assume the responsibility for the collection of sales and/or use taxes only on the products sold to ambassadors, and shall not assume responsibility for the collection of sales and/or use tax on any other products sold by the ambassadors. The collection will be based on the suggested retail price (or actual sales price if known) and ship-to-address, as determined by the zip code designation. Pinnacle shall maintain records of such transactions at its headquarters.

3. This method shall be acceptable for the collection of the sales and /or use taxes by Pinnacle. The parties agree that Pinnacle may subsequently improve its method of determining the applicable Taxing Jurisdiction and prior written consent of such change will not be required by the Taxing Jurisdiction.

4. Pinnacle shall remit the sales and/or use taxes to the Taxing Jurisdiction in lieu of payment of said taxes by, and individual licensing of, ambassadors. The following adjustments shall be allowed in computing the sales and/or use tax due the Taxing Jurisdiction:

    a. In the event an ambassador makes a sale at a retail price higher than the suggested retail price and subsequently remits the additional tax, Pinnacle shall adjust the next payment of sales and/or use tax to the Taxing Jurisdiction by an amount equal to the additional tax.

    b. In the event an ambassador makes a sale at a price lower than the suggested retail price and subsequently seeks a partial reimbursement of the tax previously paid, Pinnacle shall reimburse the ambassador and adjust the next payment to the Taxing Jurisdiction by an amount equal to the partial reimbursement. The partial reimbursement described in this subparagraph is the difference between the tax imposed on the suggested retail price and the ambassador's actual sales price.

    c. In the event an ambassador makes a sale and delivers or has delivered products to another ambassador or retail customer located outside the Taxing Jurisdiction where the sales and/or

use tax was originally imposed and paid and subsequently notifies Pinnacle, Pinnacle shall make the appropriate adjustment with the ambassador and the Tax Jurisdiction(s) involved. The ambassador will be required to collect and remit the applicable sales and/or use tax for the location where the products were delivered and will be reimbursed for the tax originally imposed and paid.

d. In the event an ambassador uses the product(s) personally, for demonstration purposes or as a gift and subsequently seeks a partial reimbursement of the tax previously paid; Pinnacle shall reimburse the ambassador and adjust the next payment to the Taxing Jurisdiction by an amount equal to the partial reimbursement. The partial reimbursement described in this subparagraph is the difference between the tax imposed on the suggested retail price and the ambassador's cost of the product(s).

e. In the event an ambassador makes a sale to a person or entity that is not required to pay sales and/or use taxes and subsequently requests a full reimbursement of the tax previously paid, Pinnacle shall reimburse the ambassador and adjust the next payment to the Taxing Jurisdiction by an amount equal to the reimbursement. Pinnacle shall require that there be a signed exemption certificate on file with Pinnacle for each person or entity to whom an ambassador makes a tax exempt sale, as described in this subparagraph.

f. In the event an ambassador is erroneously charged sales and/or use tax and subsequently seeks reimbursement of the erroneous amount; Pinnacle shall reimburse the ambassador and adjust the next payment to the Taxing Jurisdiction by an amount equal to the reimbursement.

g. In the event product(s) are returned and there is a refund of all or a portion of the price paid and the applicable tax previously paid, Pinnacle will adjust the next payment to the Taxing Jurisdiction by an amount equal to the tax refunded.

h. In the event Pinnacle has accrued and paid any sales and/or use taxes to the Taxing Jurisdiction which are subsequently not collectable after Pinnacle has exhausted reasonable means to collect, Pinnacle will be allowed to adjust the next payment to the Taxing Jurisdiction for this amount, if this deduction is allowed by the Taxing Jurisdiction's sales and/or use tax law.

For the adjustments described in subparagraphs 4a. through 4g., Pinnacle will require an ambassador to complete and submit a sales and/or use tax adjustment form (copy of proposed form is attached as Exhibit A). Taxing Jurisdiction agrees that this form is acceptable and may be modified by Pinnacle without the prior written consent of the Taxing Jurisdiction. Taxing Jurisdiction further agrees that this form has the same validity, force and effect as an exemption certificate.

For the adjustment described in subparagraph 4h., Pinnacle will maintain sufficient documentation to support the adjustment.

5. The Taxing Jurisdiction shall notify Pinnacle of any change(s), substantive, administrative or procedural, affecting Pinnacle's responsibility for the collection and remittance of the sales and/or use taxes, including but not limited to rates, collection fees, exemptions, filing dates, payments, prepayments and, credits.

6. The effective date of this Agreement shall be April 1, 2006.

7. Any modifications, amendments and, changes to this Agreement are binding only if in writing and signed by an authorized ambassador of the Taxing Jurisdiction and Pinnacle.

8. The Taxing Jurisdiction or Pinnacle may cancel this Agreement at the end of any month with no less than sixty-(60) days prior written notice to the other party.

9. This Agreement to collect and remit the sales and/or use taxes to the Taxing Jurisdiction is made voluntarily by Pinnacle as a convenience to and in a spirit of cooperation with the Taxing Jurisdiction, provided, however, that this Agreement is made subject to the condition that the ambassadors' liability for sales and/or use taxes, to the extent collected by Pinnacle pursuant to this Agreement, shall cease upon its effective date.

10. Execution of this Agreement by the Taxing Jurisdiction shall under no circumstances be construed as a waiver of its right to prosecute any ambassador under the criminal provisions of its sales and/or use tax laws nor relieve any ambassador of their civil liability for any such taxes to the extent not remitted to Pinnacle for payment to the Taxing Jurisdiction in accordance with the terms of this Agreement.

11. By executing this Agreement, Pinnacle is not admitting nor is the Taxing Jurisdiction assuming that Pinnacle has sufficient contacts in the Taxing Jurisdiction to create nexus such that it could require Pinnacle to collect its sales and/or use taxes. The Taxing Jurisdiction agrees that it shall not impute or otherwise attribute the ambassadors' contacts, activities, agents,

ambassadors and property within the Taxing Jurisdiction to Pinnacle to create nexus requiring payment or collection of any tax, fee or assessment, including but not limited to corporate income, business license, excise, single business, franchise, net worth, gross receipts, business and occupational and ad valorem taxes. Taxing Jurisdiction also agrees that Pinnacle will have no reporting or other obligations for reporting payments in the course of its business as described and set forth in Section 6041 of the Internal Revenue Code.

12. This Agreement shall be binding upon and shall inure to the benefit of the Taxing Jurisdiction and Pinnacle, their respective successors and assigns.

13. All notices necessary or proper under this Agreement shall be in writing, delivered personally, or sent by certified mail to the following address for the Taxing Jurisdiction and the address set forth on the signature page for Pinnacle.

Taxing Jurisdiction Address:

_____

_____

_____

_____

14. This Agreement regarding the collection and remittance of taxes by Pinnacle will include all sales and/or use taxes administered by the Taxing Jurisdiction or its Agent.

15. Pinnacle shall be entitled to the collection allowance provided by the Taxing Jurisdiction. If the Taxing Jurisdiction modifies/changes its collection allowance for entities that voluntarily collect its sales and /or use tax, Pinnacle will be entitled to the new allowance.

16. By executing this Agreement, both Pinnacle and the Taxing Jurisdiction represent and warrant that they have full power and authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Date: _____

By: _____

Date: 3/6/06

By: Jill Fancher
Its: MANAGING MEMBER

Everything In Order, LLC
P.O. Box 548
Pullman, WA 99163

Exhibit A

Sales Tax Adjustment Form

SALES TAX ADJUSTMENT FORM

Mail to:

NAME

EMAIL ADDRESS

ADDRESS

CITY	COUNTY	STATE	ZIP

PHONE ( )

Purchased from another Consultant o
Lived here at time of purchase o

State and Local Sales Taxes You Were Charged	CITY	COUNTY	STATE	ZIP	TAX RATE
					%

THIS FORM COVERS THE PERIOD FROM (M/D/Y) _____ THRU (M/D/Y) _____

1. **SALES IN OTHER STATES** *(Do not include drop shipments)*
(When reporting sales to more than one state or locality use Part 1 on the reverse side to itemize.)
   a. Total suggested retail value of taxable products you purchased. $ _____
   b. Amount of tax you originally paid. *(Amount to be refunded to you)* $ _____
   c. TOTAL by STATE where sold and amount of tax collected.
   City _____ County _____ State ___ Zip Code _____
   Were the products sold 1.) outside the city limits? o Yes o No 2.) outside the police jurisdiction? o Yes o No
   Taxable retail value in state where sold (see note 1)$* _____ Total Tax Rate___% Tax Collected (see note 2)**$ _____
   (Your check will not be deposited until fourteen days after your refund is mailed.) *(Remit this Tax)*

2. **SALES MADE TO ANOTHER COUNTY OR CITY WITHIN YOUR STATE** ***(Pertains only to states with local taxes.)***
   a. Total suggested retail value of taxable products. (see note 3)* $ _____
   b. Tax rate _____ % and amount of tax you originally paid. $ _____
   c. Tax rate _____ % and amount of tax collected. (see note 4)** $ _____
   City _____ County _____ Zip Code _____
   d. **DIFFERENCE** *(PAYMENT IS ONLY NEEDED IF LINE "C" IS GREATER THAN LINE "B")* _____ $ _____
   Were the products sold 1.) outside the city limits? o Yes o No 2.) outside the police jurisdiction? o Yes o No
   (When reporting sales to more than one locality use Part 2 on the reverse side to itemize.)

3. **SALES MADE TO TAX-EXEMPT CUSTOMERS**
(When reporting sales to more than one customer use Part 3 on the reverse side.)
   a. Name of each tax-exempt customer _____.
   b. Reason for exemption (Hospital, School, etc.)_____.
   c. Product(s) Sold _____.
   o Signed exemption certificate attached per government regulation. (retained on file for 3 years)
   o Certificate already on file for customer with the company. (filed within the last 3 years)
   d. Total suggested retail value of taxable products. *(Do not include tax in this figure.)* $ _____
   e. Amount of tax you originally paid. *(Amount to be refunded to you)* $ _____

4. **PRODUCTS USED FOR PERSONAL OR DEMONSTRATION USE** ***or***
SALES TO A RETAIL CUSTOMER AT OTHER THAN SUGGESTED RETAIL PRICE.
   Do you live outside the city limits? o Yes o No *(Do not include sales to other consultants)*
   Were products sold to a customer? o Yes o No
   a. Total suggested retail value of taxable products. (Do not round figures) $ _____
   b. Total sales tax on suggested retail you originally paid. $ _____
   c. Wholesale cost of taxable products used or selling price (see note 5) $ _____
   d. Total sales tax due on wholesale cost or tax collected on actual sale price. $ _____
   e. Total amount of difference due you. *(Amount to be refunded to you)* $ _____
   f. OR, total amount of difference due, if you collected more than you originally paid.
   (Enclose check payable to Sales Tax Dept.) $ _____

TOTAL AMOUNT REFUNDED TO YOU (Lines 1b,2d,3e, & 4e)	$ _____

I HEREBY CERTIFY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Consultant Number _____ Date _____ Signature _____

This form can be duplicated for additional copies. Please keep a copy for your records.

Section 1–SALES IN OTHER STATE

State/County or Parish/City/Zip Code	Sold Outside City Limits Y or N	Taxable Retail Amount (taxable where sold)	Tax Rate–%	Tax Collected

Total Line 1C on front* $ **Total Line 1C on front** $**

***(note 1)**This total taxable retail amount should appear on line c. of Section 1. If the taxable amount in the state of purchase is different than the state you sold in, the total on line a. will be different than the total on line c.
****(note 2)**This total is the tax collected in other states and should appear on line c. of Section 1 by the $ on the far right. Your check for this tax collected must accompany your claim form. Make your check payable to Sales Tax Dept.

SECTION 2–SALES MADETO ANOTHER CITY OR COUNTY WITHIN YOUR STATE

State/County or Parish/City/Zip Code	Sold Outside City Limits Y or N	Taxable Retail Amount (taxable where sold)	Tax Rate–%	Tax Collected

Total Line 2A on front* $ **Total Line 2C on front** $**

***(note 3)**This total retail amount should appear on line a. of Section 2.
****(note 4)**This total collected amount should appear on line c. of Section 2.

SECTION 3–SALES MADE TO TAX-EXEMPT CUSTOMERS

Name	Reason for Exemption	Product or Products Sold

(note 5) – THE WHOLESALE PRICE INCLUDES THE COST OF THE PRODUCTS PLUS SHIPPING AND HANDLING