UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K
☑ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended February 3, 2018

or
☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
For the transition period from __________ to __________

Commission File Number 1-8897

BIG LOTS, INC.
(Exact name of registrant as specified in its charter)

Ohio 06-1119097
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

300 Phillipi Road, P.O. Box 28512, Columbus, Ohio 43228-5311
(Address of principal executive offices)

(614) 278-6800
(Registrant’s telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:
Title of each class Name of each exchange on which registered
Common Shares $0.01 par value New York Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☑ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☑

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act Large accelerated filer ☑ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐ Emerging growth company ☑

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☑

The aggregate market value of the Common Shares held by non-affiliates of the Registrant (assuming for these purposes that all executive officers and directors are “affiliates” of the Registrant) was $2,105,403,532 on July 29, 2017, the last business day of the Registrant's most recently completed second fiscal quarter (based on the closing price of the Registrant's Common Shares on such date as reported on the New York Stock Exchange).

The number of the Registrant’s common shares, $0.01 par value, outstanding as of March 30, 2018, was 42,182,744.

Documents Incorporated by Reference
Portions of the Registrant's Proxy Statement for its 2018 Annual Meeting of Shareholders are incorporated by reference into Part III of this Annual Report on Form 10-K.
<table>
<thead>
<tr>
<th>Part I</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 1.</td>
<td>Business</td>
</tr>
<tr>
<td>Item 1A.</td>
<td>Risk Factors</td>
</tr>
<tr>
<td>Item 1B.</td>
<td>Unresolved Staff Comments</td>
</tr>
<tr>
<td>Item 2.</td>
<td>Properties</td>
</tr>
<tr>
<td>Item 3.</td>
<td>Legal Proceedings</td>
</tr>
<tr>
<td>Item 4.</td>
<td>Mine Safety Disclosures</td>
</tr>
<tr>
<td>Suplemental Item. Executive Officers of the Registrant</td>
<td>14</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part II</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 5.</td>
<td>Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</td>
</tr>
<tr>
<td>Item 6.</td>
<td>Selected Financial Data</td>
</tr>
<tr>
<td>Item 7.</td>
<td>Management's Discussion and Analysis of Financial Condition and Results of Operations</td>
</tr>
<tr>
<td>Item 7A.</td>
<td>Quantitative and Qualitative Disclosures About Market Risk</td>
</tr>
<tr>
<td>Item 8.</td>
<td>Financial Statements and Supplementary Data</td>
</tr>
<tr>
<td>Item 9.</td>
<td>Changes in and Disagreements With Accountants on Accounting and Financial Disclosure</td>
</tr>
<tr>
<td>Item 9A.</td>
<td>Controls and Procedures</td>
</tr>
<tr>
<td>Item 9B.</td>
<td>Other Information</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part III</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 10.</td>
<td>Directors, Executive Officers and Corporate Governance</td>
</tr>
<tr>
<td>Item 11.</td>
<td>Executive Compensation</td>
</tr>
<tr>
<td>Item 13.</td>
<td>Certain Relationships and Related Transactions, and Director Independence</td>
</tr>
<tr>
<td>Item 14.</td>
<td>Principal Accounting Fees and Services</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part IV</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 15.</td>
<td>Exhibits, Financial Statement Schedules</td>
</tr>
<tr>
<td>Item 16.</td>
<td>Form 10-K Summary</td>
</tr>
<tr>
<td>Signatures</td>
<td>74</td>
</tr>
</tbody>
</table>
Item 1. Business

The Company

Big Lots, Inc., an Ohio corporation, through its wholly owned subsidiaries (collectively referred to herein as “we,” “us,” and “our” except as used in the reports of our independent registered public accounting firm included in Item 8 of this Annual Report on Form 10-K (“Form 10-K”)), is a community retailer operating in the United States (“U.S.”) (see the discussion below under the caption “Merchandise”). At February 3, 2018, we operated a total of 1,416 stores. Our goal is to exceed the expectations of our core customer (whom we refer to as Jennifer) by providing her with great savings on value-priced merchandise, which includes tasteful and “trend-right” import merchandise, consistent and replenishable “never out” offerings, and brand-name closeouts. We are dedicated to providing Jennifer with friendly service, trustworthy value, and affordable solutions in every season and category.

Similar to many other retailers, our fiscal year ends on the Saturday nearest to January 31, which results in some fiscal years being comprised of 52 weeks and some fiscal years being comprised of 53 weeks. Unless otherwise stated, references to years in this Form 10-K relate to fiscal years rather than to calendar years. The following table provides a summary of our fiscal year calendar and the associated number of weeks in each fiscal year:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Number of Weeks</th>
<th>Year Begin Date</th>
<th>Year End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>52</td>
<td>February 4, 2018</td>
<td>February 2, 2019</td>
</tr>
<tr>
<td>2017</td>
<td>53</td>
<td>January 29, 2017</td>
<td>February 3, 2018</td>
</tr>
<tr>
<td>2016</td>
<td>52</td>
<td>January 31, 2016</td>
<td>January 28, 2017</td>
</tr>
<tr>
<td>2015</td>
<td>52</td>
<td>February 1, 2015</td>
<td>January 30, 2016</td>
</tr>
<tr>
<td>2013</td>
<td>52</td>
<td>February 3, 2013</td>
<td>February 1, 2014</td>
</tr>
</tbody>
</table>

We manage our business on the basis of one segment: discount retailing. We evaluate and report overall sales and merchandise performance based on the following key merchandising categories: Furniture, Seasonal, Soft Home, Food, Consumables, Hard Home, and Electronics, Toys, & Accessories. The Furniture category includes our upholstery, mattress, case goods, and ready-to-assemble departments. The Seasonal category includes our Christmas trim, lawn & garden, summer, and other holiday departments. The Soft Home category includes our fashion bedding, utility bedding, bath, window, decorative textile, home organization, area rugs, home décor, and frames departments. The Food category includes our beverage & grocery, candy & snacks, and specialty foods departments. The Consumables category includes our health, beauty and cosmetics, plastics, paper, chemical, and pet departments. The Hard Home category includes our small appliances, table top, food preparation, stationery, greeting cards, and home maintenance departments. The Electronics, Toys, & Accessories category includes our electronics, toys, jewelry, and hosiery departments. Please refer to the consolidated financial statements and related notes in this Form 10-K for our financial information. Specifically, see note 1 to the accompanying consolidated financial statements for our net sales results by merchandise category for 2017, 2016, and 2015.

In May 2001, Big Lots, Inc. was incorporated in Ohio and was the surviving entity in a merger with Consolidated Stores Corporation. By virtue of the merger, Big Lots, Inc. succeeded to all the businesses, properties, assets, and liabilities of Consolidated Stores Corporation.

Our principal executive offices are located at 300 Phillipi Road, Columbus, Ohio 43228, and our telephone number is (614) 278-6800. In May 2018, our principal executive offices will have a new address and move to 4900 E. Dublin-Granville Road, Columbus, Ohio 43081.
Merchandise

We focus our merchandise strategy on providing outstanding value to Jennifer in all of our merchandise categories. We utilize traditional sourcing methods and also take advantage of closeout channels to be able to offer outstanding value. We evaluate our product offerings using a rating process that measures the quality, brand, fashion, and value of each item. This process requires us to focus our product offering decisions on our customers’ expectations and enables us to compare the potential performance of traditionally-sourced merchandise, either domestic or import, to closeout merchandise, which is generally sourced from production overruns, packaging changes, discontinued products, order cancellations, liquidations, returns, and other disruptions in the supply chain of manufacturers. We believe that enhancing our focus on our customers’ expectations has improved our ability to provide a desirable assortment of offerings in our merchandise categories. For net sales and comparable store sales by merchandise category, see the discussion below under the captions “2017 Compared To 2016” and “2016 Compared To 2015” in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” (“MD&A”) of this Form 10-K.

Real Estate

The following table compares the number of our stores in operation at the beginning and end of each of the last five fiscal years:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Stores open at the beginning of the year</td>
<td>1,432</td>
<td>1,449</td>
<td>1,460</td>
<td>1,493</td>
<td>1,495</td>
</tr>
<tr>
<td>Stores opened during the year</td>
<td>24</td>
<td>9</td>
<td>9</td>
<td>24</td>
<td>55</td>
</tr>
<tr>
<td>Stores closed during the year</td>
<td>(40)</td>
<td>(26)</td>
<td>(20)</td>
<td>(57)</td>
<td>(57)</td>
</tr>
<tr>
<td>Stores open at the end of the year</td>
<td>1,416</td>
<td>1,432</td>
<td>1,449</td>
<td>1,460</td>
<td>1,493</td>
</tr>
</tbody>
</table>

For additional information about our real estate strategy, see the discussion under the caption “Operating Strategy - Real Estate” in the accompanying MD&A in this Form 10-K.

The following table details our U.S. stores by state at February 3, 2018:

<table>
<thead>
<tr>
<th>State</th>
<th>Store Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>29</td>
</tr>
<tr>
<td>Arizona</td>
<td>34</td>
</tr>
<tr>
<td>Arkansas</td>
<td>11</td>
</tr>
<tr>
<td>California</td>
<td>151</td>
</tr>
<tr>
<td>Colorado</td>
<td>18</td>
</tr>
<tr>
<td>Connecticut</td>
<td>14</td>
</tr>
<tr>
<td>Delaware</td>
<td>5</td>
</tr>
<tr>
<td>Florida</td>
<td>104</td>
</tr>
<tr>
<td>Georgia</td>
<td>53</td>
</tr>
<tr>
<td>Idaho</td>
<td>6</td>
</tr>
<tr>
<td>Illinois</td>
<td>34</td>
</tr>
<tr>
<td>Indiana</td>
<td>44</td>
</tr>
<tr>
<td>Iowa</td>
<td>3</td>
</tr>
<tr>
<td>Kansas</td>
<td>8</td>
</tr>
<tr>
<td>Kentucky</td>
<td>40</td>
</tr>
<tr>
<td>Louisiana</td>
<td>23</td>
</tr>
<tr>
<td>Maine</td>
<td>6</td>
</tr>
<tr>
<td>Maryland</td>
<td>26</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>21</td>
</tr>
<tr>
<td>Michigan</td>
<td>45</td>
</tr>
<tr>
<td>Minnesota</td>
<td>6</td>
</tr>
<tr>
<td>Missouri</td>
<td>25</td>
</tr>
<tr>
<td>Montana</td>
<td>3</td>
</tr>
<tr>
<td>Nebraska</td>
<td>3</td>
</tr>
<tr>
<td>Nevada</td>
<td>13</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>7</td>
</tr>
<tr>
<td>New Jersey</td>
<td>27</td>
</tr>
<tr>
<td>New Mexico</td>
<td>12</td>
</tr>
<tr>
<td>New York</td>
<td>63</td>
</tr>
<tr>
<td>North Carolina</td>
<td>72</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1</td>
</tr>
<tr>
<td>Ohio</td>
<td>96</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>26</td>
</tr>
<tr>
<td>Oregon</td>
<td>15</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>67</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1</td>
</tr>
<tr>
<td>South Carolina</td>
<td>34</td>
</tr>
<tr>
<td>Tennessee</td>
<td>47</td>
</tr>
<tr>
<td>Texas</td>
<td>112</td>
</tr>
<tr>
<td>Utah</td>
<td>8</td>
</tr>
<tr>
<td>Vermont</td>
<td>4</td>
</tr>
<tr>
<td>Virginia</td>
<td>38</td>
</tr>
<tr>
<td>Washington</td>
<td>26</td>
</tr>
<tr>
<td>West Virginia</td>
<td>16</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>10</td>
</tr>
<tr>
<td>Wyoming</td>
<td>2</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>1</td>
</tr>
</tbody>
</table>

Total stores: 1,416

Number of states: 47

Of our 1,416 stores, 33% operate in four states: California, Texas, Florida, and Ohio, and net sales from stores in these states represented 34% of our 2017 net sales. We have a concentration in these states based on their size, population, and customer base.
Associates

At February 3, 2018, we had approximately 34,800 active associates comprised of 11,000 full-time and 23,800 part-time associates. Approximately 68% of the associates employed throughout the year are employed on a part-time basis. Temporary associates hired for the holiday selling season increased the number of associates to a peak of approximately 38,100 in 2017. We consider our relationship with our associates to be good, and we are not a party to any labor agreements.

Competition

We operate in the highly competitive retail industry. We face strong sales competition from other general merchandise, discount, food, furniture, arts and crafts, and dollar store retailers, which operate in traditional brick and mortar stores and/or online. Additionally, we compete with a number of companies for retail site locations, to attract and retain quality employees, and to acquire our broad merchandising assortment from vendors. We operate an e-commerce platform which faces additional challenges from a wider range of retailers in a highly competitive market.

Purchasing

The goal of our merchandising strategy is to consistently provide outstanding value to our customers in all of our merchandise categories. We believe that we have achieved this goal by reducing our reliance on sourcing merchandise through closeout offerings and expanding our planned purchases in most merchandise categories. In particular, over the past few years, we have expanded our planned purchases in our Food, Consumables, Soft Home, and Furniture merchandise categories to provide a merchandise assortment that our customers expect us to consistently offer in our stores at a significant value. In connection with the implementation of our merchandising strategy, we have expanded the role of our global sourcing department, and assessed our overseas vendor relationships. We expect our import partners to responsibly source goods that our merchandising teams identify as having our desired mix of quality, fashion, and value. During 2017, we purchased approximately 23% of our merchandise directly from overseas vendors, including approximately 19% from vendors located in China. Additionally, a significant amount of our domestically-purchased merchandise is manufactured abroad. As a result, a significant portion of our merchandise supply is subject to certain risks described in “Item 1A. Risk Factors” of this Form 10-K.

Although less prevalent in certain merchandise categories, the sourcing and purchasing of quality closeout merchandise directly from manufacturers and other vendors, typically at prices lower than those paid by traditional discount retailers, continues to represent an important competitive advantage for our Food and Consumables categories. We believe that our strong vendor relationships and our strong credit profile support this sourcing model. We expect that the unpredictability of the retail and manufacturing environments coupled with what we believe is our significant purchasing power position will continue to support our ability to source quality closeout merchandise at competitive prices in these categories.

Warehouse and Distribution

The majority of our merchandise offerings are processed for retail sale and distributed to our stores from our five regional distribution centers located in Pennsylvania, Ohio, Alabama, Oklahoma, and California. We selected the locations of our distribution centers to help manage transportation costs and the distance from distribution centers to our stores. While certain of our merchandise vendors deliver directly to our stores, the large majority of our inventory is staged and delivered from our distribution centers to facilitate prompt and efficient distribution and transportation of merchandise to our stores and help maximize our sales and inventory turnover rate. During 2015, we announced our intention to open a new distribution center in California and relocate our existing California distribution operations to this facility. Construction began on the new facility in 2017 and we expect the transition to occur in the summer of 2019.

In addition to our regional distribution centers that handle store merchandise, we operate two warehouses within our Ohio distribution center. One warehouse distributes fixtures and supplies to our stores and our five regional distribution centers and the other warehouse serves as a fulfillment center for our e-commerce operations.

For additional information regarding our warehouses and distribution facilities and related initiatives, see the discussion under the caption “Warehouse and Distribution” in “Item 2. Properties” of this Form 10-K.
Advertising and Promotion

Our brand image is an important part of our marketing program. Our principal trademarks, including the Big Lots® family of trademarks, have been registered with the U.S. Patent and Trademark Office. We use a variety of marketing vehicles to promote our brand operations, including television, internet, social media, e-mail, in-store point-of-purchase, and print media.

During 2017, we performed a comprehensive review of our brand identity and began to define ourselves as a community retailer. As a community retailer, we are focused on serving alongside Jennifer and investing in causes that are important to her. We serve the community on a national level through our Big Lots Foundation which focuses on healthcare, housing, hunger, and education. On a local level, we invest and support our associates throughout our geographic regions and serve alongside Jennifer with our point of sale campaigns, and the positive impacts those campaigns generate for our foundation partners. We believe our community retailing approach differentiates us from the competition and allows us to make a difference in the communities we serve.

In all markets served by our stores, we design and distribute printed advertising circulars, through a combination of newspaper insertions and mailings. In 2017, we distributed multi-page circulars representing 28 weeks of advertising coverage, which was a one week decrease from 2016. We create regional versions of these circulars to tailor our advertising message to market differences caused by product availability, climate, and customer preferences. Our customer database is an important marketing tool that allows us to communicate in a cost effective manner with our customers, including e-mail delivery of our circulars. In 2017, we rolled-out our new rewards program, BIG Rewards which replaced our former Buzz Club Rewards® program. The BIG Rewards program rewards our customers for making frequent and high ticket purchases and offers a special birthday surprise to our BIG Rewards members.

Another element of our marketing approach focuses on brand management by communicating our message directly to Jennifer through social and digital media outlets, including Facebook®, Instagram®, Twitter®, Pinterest®, and YouTube®. Our marketing program also employs a traditional television campaign, which combines strategic branding and promotional elements used in most of our other marketing media. Our highly-targeted media placement strategy uses strategically selected networks and programs aired by national cable providers as the foundation of our television advertising. In addition, we use in-store promotional materials, including in-store signage, to emphasize special bargains and significant values offered to our customers. Total advertising expense as a percentage of total net sales was 1.7%, 1.8%, and 1.8% in 2017, 2016, and 2015, respectively.

Seasonality

We have historically experienced, and expect to continue to experience, seasonal fluctuations in our sales and profitability, with a larger percentage of our net sales and operating profit realized in our fourth fiscal quarter, which includes the Christmas holiday selling season. In addition, our quarterly net sales and operating profits can be affected by the timing of new store openings and store closings, advertising, and certain holidays. We historically receive a higher proportion of merchandise, carry higher inventory levels, and incur higher outbound shipping and payroll expenses as a percentage of sales in our third fiscal quarter in anticipation of increased sales activity during our fourth fiscal quarter. Performance during our fourth fiscal quarter typically reflects a leveraging effect which has a favorable impact on our operating results because net sales are higher and certain of our costs, such as rent and depreciation, are fixed and do not vary as sales levels escalate. If our sales performance is significantly better or worse during the Christmas holiday selling season, we would expect a more pronounced impact on our annual financial results than if our sales performance is significantly better or worse in a different season.
The following table sets forth the seasonality of net sales and operating profit (loss) for 2017, 2016, and 2015 by fiscal quarter:

<table>
<thead>
<tr>
<th>Fiscal Year 2017</th>
<th>First</th>
<th>Second</th>
<th>Third</th>
<th>Fourth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net sales as a percentage of full year</td>
<td>24.6%</td>
<td>23.2%</td>
<td>21.1%</td>
<td>31.1%</td>
</tr>
<tr>
<td>Operating profit as a percentage of full year</td>
<td>26.5</td>
<td>15.9</td>
<td>1.9</td>
<td>55.7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fiscal Year 2016</th>
<th>First</th>
<th>Second</th>
<th>Third</th>
<th>Fourth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net sales as a percentage of full year</td>
<td>25.2%</td>
<td>23.1%</td>
<td>21.3%</td>
<td>30.4%</td>
</tr>
<tr>
<td>Operating profit as a percentage of full year</td>
<td>25.2</td>
<td>15.6</td>
<td>0.8</td>
<td>58.4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fiscal Year 2015</th>
<th>First</th>
<th>Second</th>
<th>Third</th>
<th>Fourth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net sales as a percentage of full year</td>
<td>24.7%</td>
<td>23.3%</td>
<td>21.5%</td>
<td>30.5%</td>
</tr>
<tr>
<td>Operating profit (loss) as a percentage of full year</td>
<td>22.3</td>
<td>13.0</td>
<td>(0.9)</td>
<td>65.6</td>
</tr>
</tbody>
</table>

The seasonality of our net sales and related merchandise inventory requirements influences the availability of and demand for cash or access to credit. We historically have drawn upon our credit facility to assist in funding our working capital requirements, which typically peak near the end of our third fiscal quarter, and in funding our share repurchase programs. We historically have higher net sales, operating profits, and cash flow provided by operations in the fourth fiscal quarter, which generally allows us to substantially repay our seasonal borrowings and fund our share repurchase programs. In 2017, our total indebtedness (outstanding borrowings and letters of credit) peaked in November 2017 at approximately $425 million under our $700 million unsecured credit facility entered into in July 2011, and most recently amended in May 2015 (“2011 Credit Agreement”). The 2011 Credit Agreement expires in May 2020. At February 3, 2018, our total indebtedness under the 2011 Credit Agreement was $204.8 million, which included $199.8 million in borrowings and $5.0 million in outstanding letters of credit. We expect that borrowings will vary throughout 2018 depending on various factors, including our seasonal need to acquire merchandise inventory prior to the peak selling season, the timing and amount of sales to our customers, the timing of and amount of capital expenditures, and the timing of share repurchase or dividend payment activity. For a discussion of our sources and uses of funds, see “Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities” and “Capital Resources and Liquidity” in the accompanying MD&A, in this Form 10-K.

Available Information

We make available, free of charge, through the “Investor Relations” section of our website (www.biglots.com) under the “SEC Filings” caption, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), as soon as reasonably practicable after we file such material with, or furnish it to, the Securities and Exchange Commission (“SEC”). Our filings with the SEC may be read and copied at the SEC’s Public Reference Room at 100 F Street, NE, Washington, DC 20549. Information on the operation of the Public Reference Room may be obtained by calling 1-800-SEC-0330. These filings are also available on the SEC’s website at http://www.sec.gov free of charge as soon as reasonably practicable after we have filed or furnished the above referenced reports.

In the “Investor Relations” section of our website (www.biglots.com) under the “Corporate Governance” and “SEC Filings” captions, the following information relating to our corporate governance may be found: Corporate Governance Guidelines; charters of our Board of Directors’ Audit, Compensation, Nominating/Corporate Governance Committees, and our Public Policy and Environmental Affairs Committee; Code of Business Conduct and Ethics; Code of Ethics for Financial Officers; Chief Executive Officer and Chief Financial Officer certifications related to our SEC filings; the means by which shareholders may communicate with our Board of Directors; and transactions in our securities by our directors and executive officers. The Code of Business Conduct and Ethics applies to all of our associates, including our directors and our principal executive officer, principal financial officer, and principal accounting officer. The Code of Ethics for Financial Professionals applies to our Chief Executive Officer and all other Senior Financial Officers (as that term is defined therein) and contains provisions specifically applicable to the individuals serving in those positions. We intend to satisfy the requirement under Item 5.05 of Form 8-K regarding disclosure of amendments to and waivers from, if any, our Code of Business Conduct and Ethics (to the extent applicable to our directors and executive officers (including our principal executive officer, principal financial officer and principal accounting officer)) and our Code of Ethics for Financial Professionals in the “Investor Relations” section of our website (www.biglots.com) under the “Corporate Governance” caption. We will provide any of the foregoing information without charge upon written request to our Corporate Secretary. The contents of our website are not incorporated into, or otherwise made a part of, this Form 10-K.
Table of Contents

Item 1A. Risk Factors

The statements in this section describe the material risks to our business and should be considered carefully. In addition, these statements constitute cautionary statements under the Private Securities Litigation Reform Act of 1995.

Our disclosure and analysis in this Form 10-K and in our 2017 Annual Report to Shareholders contain forward-looking statements that set forth anticipated results based on management’s plans and assumptions. From time to time, we also provide forward-looking statements in other materials we release to the public as well as oral forward-looking statements. Such statements give our current expectations or forecasts of future events. They do not relate strictly to historical or current facts. Such statements are commonly identified by using words such as “anticipate,” “estimate,” “expect,” “objective,” “goal,” “project,” “intend,” “plan,” “believe,” “will,” “should,” “may,” “target,” “forecast,” “guidance,” “outlook,” and similar expressions in connection with any discussion of future operating or financial performance. In particular, forward-looking statements include statements relating to future actions, future performance, or results of current and anticipated products, sales efforts, expenses, interest rates, the outcome of contingencies, such as legal proceedings, and financial results.

We cannot guarantee that any forward-looking statement will be realized. Achievement of future results is subject to risks, uncertainties, and potentially inaccurate assumptions. If known or unknown risks or uncertainties materialize, or should underlying assumptions prove inaccurate, actual results could differ materially from past results or those anticipated, estimated, or projected results set forth in the forward-looking statements. You should bear this in mind as you consider forward-looking statements.

You are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date thereof. We undertake no obligation to publicly update forward-looking statements, whether as a result of new information, future events, or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our Quarterly Reports on Form 10-Q and Current Reports on Form 8-K filed with the SEC.

The following cautionary discussion of material risks, uncertainties, and assumptions relevant to our businesses describes factors that, individually or in the aggregate, we believe could cause our actual results to differ materially from expected and historical results. Additional risks not presently known to us or that we presently believe to be immaterial also may adversely impact us. Should any risks or uncertainties develop into actual events, these developments could have material adverse effects on our business, financial condition, results of operations, and liquidity. Consequently, all of the forward-looking statements are qualified by these cautionary statements, and there can be no assurance that the results or developments we anticipate will be realized or that they will have the expected effects on our business or operations. We note these factors for investors as permitted by the Private Securities Litigation Reform Act of 1995. There can be no assurances that we have correctly and completely identified, assessed, and accounted for all factors that do or may affect our business, financial condition, results of operations, and liquidity, as it is not possible to predict or identify all such factors. Consequently, you should not consider the following to be a complete discussion of all potential risks or uncertainties.

Our ability to achieve the results contemplated by forward-looking statements is subject to a number of factors, any one, or a combination, of which could materially affect our business, financial condition, results of operations, or liquidity. These factors may include, but are not limited to:

**If we are unable to successfully execute our operating strategies, our operating performance could be significantly impacted.**

There is a risk that we will be unable to meet or exceed our operating performance targets and goals in the future if our strategies and initiatives are unsuccessful. Our ability to execute the business activities associated with our operating and strategic plans, particularly as we focus on becoming a community retailer, and effectively adapt our plans to the changing marketplace, could impact our ability to meet our operating performance targets. See the accompanying MD&A in this Form 10-K for additional information concerning our operating strategy.
If we are unable to compete effectively in the highly competitive discount retail industry, our business and results of operations may be materially adversely affected.

The discount retail industry, which includes both traditional brick and mortar stores and online marketplaces, is highly competitive. As discussed in Item 1 of this Form 10-K, we compete for customers, products, employees, real estate, and other aspects of our business with a number of other companies. Some of our competitors have broader distribution (e.g., more stores and/or a more established online presence), and/or greater financial, marketing, and other resources than us. It is possible that increased competition, significant discounting, or improved performance by our competitors may reduce our market share, gross margin, and operating margin, and may materially adversely affect our business and results of operations.

If we are unable to compete effectively in today’s omnichannel retail marketplace, our business and results of operations may be materially adversely affected.

With the saturation of mobile computing devices, competition from other retailers in the online retail marketplace is very high and growing. Certain of our competitors, and a number of pure online retailers, have established online operations against which we compete for customers and products. It is possible that the competition in the online retail space may reduce our market share, gross margin, and operating margin, and may materially adversely affect our business and results of operations in other ways. In 2016, we expanded our operations to include an e-commerce platform to enhance our omnichannel experience. Operating an e-commerce platform is a complex undertaking and there is no guarantee that the resources we have applied to this effort will result in increased revenues or improved operating performance. If our online retailing initiatives do not meet our customers’ expectations, the initiatives may reduce our customers’ desire to purchase goods from us both online and at our brick and mortar stores and may materially adversely affect our business and results of operations.

Our inability to properly manage our inventory levels and offer merchandise that meets changing customer demands may materially impact our business and financial performance.

We must maintain sufficient inventory levels to successfully operate our business. However, we also must seek to avoid accumulating excess inventory to maintain appropriate in-stock levels to customer demands. We obtain approximately one quarter of our merchandise directly from vendors outside of the U.S. These foreign vendors often require lengthy advance notice of our requirements to be able to supply products in the quantities that we request. This usually requires us to order merchandise and enter into purchase order contracts for the purchase of such merchandise well in advance of the time these products are offered for sale. As a result, we may experience difficulty in responding to a changing retail environment, which makes us vulnerable to changes in price and in consumer preferences. In addition, we attempt to maximize our operating profit and operating efficiency by delivering proper quantities of merchandise to our stores in a timely manner. If we do not accurately anticipate future demand for a particular product or the time it will take to replenish inventory levels, our inventory levels may not be appropriate and our results of operations may be negatively impacted.

We rely on manufacturers located in foreign countries for significant amounts of merchandise and a significant amount of our domestically-purchased merchandise is manufactured abroad. Our business may be materially adversely affected by risks associated with international trade.

Global sourcing of many of the products we sell is an important factor in driving higher operating profit. During 2017, we purchased approximately 23% of our products directly from overseas vendors, including 19% from vendors located in China, and a significant amount of our domestically-purchased merchandise is manufactured abroad. Our ability to identify qualified vendors and to access products in a timely and efficient manner is a significant challenge, especially with respect to goods sourced outside of the U.S. Global sourcing and foreign trade involve numerous factors and uncertainties beyond our control including increased shipping costs, increased import duties, more restrictive quotas, loss of most favored nation trading status, currency and exchange rate fluctuations, work stoppages, transportation delays, economic uncertainties such as inflation, foreign government regulations, political unrest, natural disasters, war, terrorism, trade restrictions (including retaliation by the U.S. against foreign practices or by foreign countries against U.S. practices), political instability, the financial stability of vendors, merchandise quality issues, and tariffs. U.S. policy on trade restrictions is ever-changing and may result in new laws, regulations or treaties that increase the costs of importing goods and/or limit the scope of available foreign vendors. These and other issues affecting our international vendors could materially adversely affect our business and financial performance.
Disruption to our distribution network, the capacity of our distribution centers, and our timely receipt of merchandise inventory could adversely affect our operating performance.

We rely on our ability to replenish depleted merchandise inventory through deliveries to our distribution centers and from the distribution centers to our stores by various means of transportation, including shipments by sea, rail and truck carriers. A decrease in the capacity of carriers (e.g., trans-Pacific freight carrier bankruptcies) and/or labor strikes, disruptions or shortages in the transportation industry could negatively affect our distribution network, our timely receipt of merchandise and transportation costs. In addition, long-term disruptions to the U.S. and international transportation infrastructure from wars, political unrest, terrorism, natural disasters, governmental budget constraints and other significant events that lead to delays or interruptions of service could adversely affect our business. Also, a fire, earthquake, or other disaster at one of our distribution centers could disrupt our timely receipt, processing and shipment of merchandise to our stores which could adversely affect our business. Additionally, as we seek to expand our operation through the implementation of our online retail capabilities, we may face increased or unexpected demands on distribution center operations, as well as new demands on our distribution network.

If we are unable to secure customer, employee, vendor and company data, our systems could be compromised, our reputation could be damaged, and we could be subject to penalties or lawsuits.

In the normal course of business, we process and collect relevant data about our customers, employees and vendors. During 2016, our normal activities expanded to include conducting sales transactions through an online channel. The protection of our customer, employee, vendor and company data is critical to us. We have implemented procedures, processes and technologies designed to safeguard our customers’ debit and credit card information and other private data, our employees’ and vendors’ private data, and our records and intellectual property. We also utilize third-party service providers in connection with certain technology related activities, including credit card processing, website hosting, data encryption and software support. We require these providers to take appropriate measures to secure such data and information and assess their ability to do so.

Despite our procedures, technologies and other information security measures, we cannot be certain that our information technology systems or the information technology systems of our third-party service providers are or will be able to prevent, contain or detect all cyberattacks, cyberterrorism, or security breaches. As evidenced by other retailers who have suffered serious security breaches, we may be vulnerable to data security breaches and data loss, including cyberattacks. A material breach of our security measures or our third-party service providers’ security measures, the misuse of our customer, employee, vendor and company data or information or our failure to comply with applicable privacy and information security laws and regulations could result in the exposure of sensitive data or information, attract a substantial amount of negative media attention, damage our customer or employee relationships and our reputation and brand, distract the attention of management from their other responsibilities, subject us to government enforcement actions, private litigation, penalties and costly response measures, and result in lost sales and a reduction in the market value of our common shares. While we have insurance, in the event we experience a material data or information security breach, our insurance may not be sufficient to cover the impact to our business, or insurance proceeds may not be paid timely.

In addition, the regulatory environment surrounding data and information security and privacy is increasingly demanding, as new and revised requirements are frequently imposed across our business. Compliance with more demanding privacy and information security laws and standards may result in significant expense due to increased investment in technology and the development of new operational processes.

If we are unable to maintain or upgrade our computer systems or if we are unable to convert to alternate systems in an efficient and timely manner, our operations may be disrupted or become less efficient.

We depend on a variety of information technology and computer systems for the efficient functioning of our business. We rely on certain hardware, telecommunications and software vendors to maintain and periodically upgrade many of these systems so that we can continue to support our business. Various components of our information technology and computer systems, including hardware, networks, and software, are licensed to us by third party vendors. We rely extensively on our information technology and computer systems to process transactions, summarize results, and manage our business. Our information technology and computer systems are subject to damage or interruption from power outages, computer and telecommunications failures, computer viruses, cyberattacks or other security breaches, catastrophic events such as fires, floods, earthquakes, tornados, hurricanes, acts of war or terrorism, and usage errors by our employees or our contractors. In recent years, we have begun using hosted solutions for certain of our information technology and computer systems, which are more exposed to telecommunication failures.
If our information technology or computer systems are damaged or cease to function properly, we may have to make a significant investment to fix or replace them, and we may suffer loss of critical data and interruptions or delays in our operations as a result. Any material interruption experienced by our information technology or computer systems could negatively affect our business and results of operations. Costs and potential interruptions associated with the implementation of new or upgraded systems and technology or with maintenance or adequate support of our existing systems could disrupt or reduce the efficiency of our business.

**Declines in general economic conditions, disposable income levels, and other conditions, such as unseasonable weather, could lead to reduced consumer demand for our merchandise, thereby materially affecting our revenues and gross margin.**

Our results of operations can be directly impacted by the health of the U.S. economy. Our business and financial performance may be adversely impacted by current and future economic conditions, including factors that may restrict or otherwise negatively impact consumer financing, disposable income levels, unemployment levels, energy costs, interest rates, recession, inflation, tax reform, natural disasters or terrorist activities and other matters that influence consumer spending. Specifically, our Soft Home, Hard Home, Furniture and Seasonal merchandise categories may be threatened when disposable income levels are negatively impacted by economic conditions. Additionally, the net sales of cyclical product offerings in our Seasonal category may be threatened when we experience extended periods of unseasonable weather. Inclement weather can also negatively impact our Furniture category, as many customers transport the product home personally. In particular, the economic conditions and weather patterns of four states (California, Texas, Florida, and Ohio) are important as approximately 33% of our current stores operate and 34% of our 2017 net sales occurred in these states.

**Changes in federal or state legislation and regulations, including the effects of legislation and regulations on product safety and hazardous materials, could increase our cost of doing business and adversely affect our operating performance.**

We are exposed to the risk that new federal or state legislation, including new product safety and hazardous material laws and regulations, may negatively impact our operations and adversely affect our operating performance. Changes in product safety legislation or regulations may lead to product recalls and the disposal or write-off of merchandise, as well as fines or penalties and reputational damage. If our merchandise and food products do not meet applicable governmental safety standards or our customers’ expectations regarding quality or safety, we could experience lost sales, increased costs and be exposed to legal and reputational risk.

In addition, if we discard or dispose of our merchandise, particularly that which is non-salable, in a fashion that is inconsistent with jurisdictional standards, we could expose ourselves to certain fines and litigation costs related to hazardous material regulations. Our inability to comply on a timely basis with regulatory requirements, execute product recalls in a timely manner, or consistently implement waste management standards, could result in fines or penalties which could have a material adverse effect on our financial results. In addition, negative customer perceptions regarding the safety of the products we sell could cause us to lose market share to our competitors. If this occurs, it may be difficult for us to regain lost sales.

**We are subject to periodic litigation and regulatory proceedings, including Fair Labor Standards Act, state wage and hour, and shareholder class action lawsuits, which may adversely affect our business and financial performance.**

From time to time, we are involved in lawsuits and regulatory actions, including various collective, class action or shareholder derivative lawsuits that are brought against us for alleged violations of the Fair Labor Standards Act, state wage and hour laws, sales tax and consumer protection laws, False Claims Act, federal securities laws and environmental and hazardous waste regulations. Due to the inherent uncertainties of litigation, we may not be able to accurately determine the impact on us of any future adverse outcome of such proceedings. The ultimate resolution of these matters could have a material adverse impact on our financial condition, results of operations, and liquidity. In addition, regardless of the outcome, these proceedings could result in substantial cost to us and may require us to devote substantial attention and resources to defend ourselves. For a description of certain current legal proceedings, see note 10 to the accompanying consolidated financial statements.
Our current insurance program may expose us to unexpected costs and negatively affect our financial performance.

Our insurance coverage is subject to deductibles, self-insured retentions, limits of liability and similar provisions that we believe are prudent based on our overall operations. We may incur certain types of losses that we cannot insure or which we believe are not economically reasonable to insure, such as losses due to acts of war, employee and certain other crime, and some natural disasters. If we incur these losses and they are material, our business could suffer. Certain material events may result in sizable losses for the insurance industry and adversely impact the availability of adequate insurance coverage or result in excessive premium increases. To offset negative cost trends in the insurance market, we may elect to self-insure, accept higher deductibles or reduce the amount of coverage in response to these market changes. In addition, we self-insure a significant portion of expected losses under our workers’ compensation, general liability, including automobile, and group health insurance programs. Unanticipated changes in any applicable actuarial assumptions and management estimates underlying our recorded liabilities for these self-insured losses, including potential increases in medical and indemnity costs, could result in significantly different expenses than expected under these programs, which could have a material adverse effect on our financial condition and results of operations. Although we continue to maintain property insurance for catastrophic events, we are self-insured for losses up to the amount of our deductibles. If we experience a greater number of self-insured losses than we anticipate, our financial performance could be adversely affected.

If we are unable to attract, train, and retain highly qualified associates while also controlling our labor costs, our financial performance may be negatively affected.

Our customers expect a positive shopping experience, which is driven by a high level of customer service from our associates and a quality presentation of our merchandise. To grow our operations and meet the needs and expectations of our customers, we must attract, train, and retain a large number of highly qualified associates, while at the same time control labor costs. We compete with other retail businesses for many of our associates in hourly and part-time positions. These positions have historically had high turnover rates, which can lead to increased training and retention costs. In addition, our ability to control labor costs is subject to numerous external factors, including prevailing wage rates, the impact of legislation or regulations governing labor relations or benefits, and health insurance costs.

The loss of key personnel may have a material impact on our future results of operations.

We believe that we benefit substantially from the leadership and experience of our senior executives. The loss of services of these individuals could have a material adverse impact on our business. Competition for key personnel in the retail industry is intense, and our future success will depend on our ability to recruit, train, and retain our senior executives and other qualified personnel.

If we are unable to retain existing and secure suitable new store locations under favorable lease terms, our financial performance may be negatively affected.

We lease almost all of our stores, and a significant number of these leases expire or are up for renewal each year, as noted below in “Item 2. Properties” and in MD&A in this Form 10-K. Our strategy to improve our financial performance includes sales growth while managing the occupancy cost of each of our stores. The primary component of our sales growth strategy revolves around increasing our comparable store sales, which will require renewing many leases each year. Additional components of our sales growth strategy are to relocate certain stores to a new location within an existing market and to open new store locations, either as an expansion in an existing market or as an entrance into a new market. If the commercial real estate market does not allow us to negotiate favorable lease renewals and new store leases, our financial position, results of operations, and liquidity may be negatively affected.

Our inability to comply with the terms of the 2011 Credit Agreement may have a material adverse effect on our capital resources, financial condition, results of operations, and liquidity.

We have the ability to borrow funds under the 2011 Credit Agreement, and we utilize this ability at various times depending on operating or other cash flow requirements. The 2011 Credit Agreement contains financial and other covenants, including, but not limited to, limitations on indebtedness, liens, and investments, as well as the maintenance of a leverage ratio and a fixed charge coverage ratio. Additionally, we are subject cross-default provisions within the synthetic lease agreement (the “Synthetic Lease”) that we entered into associated with our new distribution center in California. A violation of any of these covenants may permit the lenders to restrict our ability to further access loans and letters of credit and may require the immediate repayment of any outstanding loans. Our failure to comply with these covenants may have a material adverse effect on our capital resources, financial condition, results of operations, and liquidity.
A significant decline in our operating profit and taxable income may impair our ability to realize the value of our long-lived assets and deferred tax assets.

We are required by accounting rules to periodically assess our property and equipment and deferred tax assets for impairment and recognize an impairment loss or valuation charge, if necessary. In performing these assessments, we use our historical financial performance to determine whether we have potential impairments or valuation concerns and as evidence to support our assumptions about future financial performance. A significant decline in our financial performance could negatively affect the results of our assessments of the recoverability of our property and equipment and our deferred tax assets and trigger the impairment of these assets. Impairment or valuation charges taken against property and equipment and deferred tax assets could be material and could have a material adverse impact on our capital resources, financial condition, results of operations, and liquidity (see the discussion under the caption “Critical Accounting Policies and Estimates” in the accompanying MD&A in this Form 10-K for additional information regarding our accounting policies for long-lived assets and income taxes).

Changes in accounting guidance could significantly affect our results of operations and the presentation of those results.

Changes in accounting standards, including new interpretations and applications of accounting standards, may have adverse effects on our financial condition, results of operations, and liquidity. The Financial Accounting Standards Board (“FASB”) has issued and/or adopted new guidance that proposes numerous significant changes to current accounting standards. This new guidance could significantly change the presentation of financial information and our results of operations. Additionally, the new guidance may require us to make systems and other changes that could increase our operating costs. Specifically, implementing future accounting guidance related to leases is requiring us to make significant changes to our lease management system systems.

We also may be subject to a number of other factors which may, individually or in the aggregate, materially adversely affect our business. These factors include, but are not limited to:

- Changes in governmental laws and regulations, including matters related to taxation;
- A downgrade in our credit rating could negatively affect our ability to access capital or could increase our borrowing costs;
- Events or circumstances could occur which could create bad publicity for us or for types of merchandise offered in our stores which may negatively impact our business results including our sales;
- Fluctuating commodity prices, including but not limited to diesel fuel and other fuels used by utilities to generate power, may affect our gross profit and operating profit margins;
- Infringement of our intellectual property, including the Big Lots trademarks, could dilute their value; and
- Other risks described from time to time in our filings with the SEC.

Item 1B. Unresolved Staff Comments

None.
Item 2. Properties

Retail Operations

All of our stores are located in the U.S., predominantly in strip shopping centers, and have an average store size of approximately 31,500 square feet, of which an average of 22,200 is selling square feet. For additional information about the properties in our retail operations, see the discussion under the caption “Real Estate” in “Item 1. Business” and under the caption “Real Estate” in MD&A in this Form 10-K.

The average cost to open a new store in a leased facility during 2017 was approximately $1.4 million, including the cost of inventory. All of our stores are leased, except for the 53 stores we own in the following states:

<table>
<thead>
<tr>
<th>State</th>
<th>Stores Owned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>1</td>
</tr>
<tr>
<td>California</td>
<td>38</td>
</tr>
<tr>
<td>Colorado</td>
<td>3</td>
</tr>
<tr>
<td>Florida</td>
<td>3</td>
</tr>
<tr>
<td>Louisiana</td>
<td>1</td>
</tr>
<tr>
<td>Michigan</td>
<td>1</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2</td>
</tr>
<tr>
<td>Ohio</td>
<td>1</td>
</tr>
<tr>
<td>Texas</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>53</strong></td>
</tr>
</tbody>
</table>

Additionally, in 2017, we closed one owned site, which we are not operating and is available for sale. Since this owned site is no longer operating as an active store, it has been excluded from our store counts at February 3, 2018.

Store leases generally obligate us for fixed monthly rental payments plus the payment, in most cases, of our applicable portion of real estate taxes, common area maintenance costs (“CAM”), and property insurance. Some leases require the payment of a percentage of sales in addition to minimum rent. Such payments generally are required only when sales exceed a specified level. Our typical store lease is for an initial minimum term of five to ten years with multiple five-year renewal options. Forty-eight store leases have sales termination clauses that allow us to exit the location at our option if we do not achieve certain sales volume results.

The following table summarizes the number of store lease expirations in each of the next five fiscal years and the total thereafter. As stated above, many of our store leases have renewal options. The table also includes the number of leases that are scheduled to expire each year that do not have a renewal option. The table includes leases for stores with more than one lease and leases for stores not yet open and excludes 7 month-to-month leases and 53 owned locations.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Expiring Leases</th>
<th>Leases Without Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>242</td>
<td>49</td>
</tr>
<tr>
<td>2019</td>
<td>237</td>
<td>42</td>
</tr>
<tr>
<td>2020</td>
<td>243</td>
<td>36</td>
</tr>
<tr>
<td>2021</td>
<td>262</td>
<td>53</td>
</tr>
<tr>
<td>2022</td>
<td>199</td>
<td>15</td>
</tr>
<tr>
<td>Thereafter</td>
<td>186</td>
<td>14</td>
</tr>
</tbody>
</table>
Warehouse and Distribution

At February 3, 2018, we owned approximately 9.0 million square feet of distribution center and warehouse space. We own and operate five regional distribution centers strategically located across the United States. The regional distribution centers utilize warehouse management technology, which we believe enables highly accurate and efficient processing of merchandise from vendors to our retail stores. The combined output of our regional distribution centers was approximately 2.4 million merchandise cartons per week in 2017. Certain vendors deliver merchandise directly to our stores when it supports our operational goal to deliver merchandise from our vendors to the sales floor in the most efficient manner. We operate our e-commerce fulfillment center out of our Columbus warehouse.

Distribution centers and warehouse space, and the corresponding square footage of the facilities, by location at February 3, 2018, were as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>Year Opened</th>
<th>Total Square Footage (Square footage in thousands)</th>
<th>Number of Stores Served</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rancho Cucamonga, CA</td>
<td>1984</td>
<td>1,423</td>
<td>253</td>
</tr>
<tr>
<td>Columbus, OH</td>
<td>1989</td>
<td>3,559</td>
<td>321</td>
</tr>
<tr>
<td>Montgomery, AL</td>
<td>1996</td>
<td>1,411</td>
<td>304</td>
</tr>
<tr>
<td>Tremont, PA</td>
<td>2000</td>
<td>1,295</td>
<td>331</td>
</tr>
<tr>
<td>Durant, OK</td>
<td>2004</td>
<td>1,297</td>
<td>207</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>8,985</strong></td>
<td><strong>1,416</strong></td>
</tr>
</tbody>
</table>

Corporate Office

We own the facility in Columbus, Ohio that serves as our headquarters for corporate associates. During 2016, we entered into an agreement to lease a new facility for our corporate headquarters, which is also in Columbus, Ohio. We continue to anticipate moving our corporate operations to this new facility in the first half of 2018.

Item 3. Legal Proceedings

Item 103 of SEC Regulation S-K requires that we disclose actual or known contemplated legal proceedings to which a governmental authority and we are each a party and that arise under laws dealing with the discharge of materials into the environment or the protection of the environment, if the proceeding reasonably involves potential monetary sanctions of $100,000 or more. Accordingly, please refer to the discussion in note 10 to the accompanying consolidated financial statements regarding the settlement we entered into with the various counties in the State of California.

Aside from these matters, no response is required under Item 103 of Regulation S-K. For a discussion of certain litigated matters, also see note 10 to the accompanying consolidated financial statements.

Item 4. Mine Safety Disclosures

None.

Supplemental Item. Executive Officers of the Registrant

Our executive officers at April 3, 2018 were as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Offices Held</th>
<th>Officer Since</th>
</tr>
</thead>
<tbody>
<tr>
<td>David J. Campisi</td>
<td>62</td>
<td>Chief Executive Officer and President</td>
<td>2013</td>
</tr>
<tr>
<td>Lisa M. Bachmann</td>
<td>56</td>
<td>Executive Vice President, Chief Merchandising and Operating Officer</td>
<td>2002</td>
</tr>
<tr>
<td>Timothy A. Johnson</td>
<td>50</td>
<td>Executive Vice President, Chief Administrative Officer and Chief Financial Officer</td>
<td>2004</td>
</tr>
<tr>
<td>Michael A. Schlonsky</td>
<td>51</td>
<td>Executive Vice President, Human Resources and Store Operations</td>
<td>2000</td>
</tr>
<tr>
<td>Stephen M. Hafer</td>
<td>54</td>
<td>Senior Vice President, Chief Customer Officer</td>
<td>2018</td>
</tr>
<tr>
<td>Ronald A. Robins, Jr.</td>
<td>54</td>
<td>Senior Vice President, General Counsel and Corporate Secretary</td>
<td>2015</td>
</tr>
</tbody>
</table>
David J. Campisi is our Chief Executive Officer and President. On December 4, 2017, we announced that Mr. Campisi was on a temporary medical leave of absence. Before joining Big Lots in May 2013, Mr. Campisi served as the Chairman and Chief Executive Officer of Respect Your Universe, Inc., an activewear retailer. Prior to that, Mr. Campisi served as Executive Vice President and General Merchandise Manager, Women’s Apparel, Accessories, Intimates and Cosmetics of Kohl’s Corporation, a department store retailer. Additionally, Mr. Campisi served as Senior Vice President and General Merchandise Manager, Apparel, Home, and Home Electronics of Fred Meyer’s Corporation, a department store retailer.

Lisa M. Bachmann is responsible for merchandising and global sourcing, information technology, merchandise presentation, and merchandise planning and allocation. On December 4, 2017, we announced that in connection with Mr. Campisi’s temporary medical leave of absence, the Board assigned Mr. Campisi’s executive responsibilities to Ms. Bachmann and Mr. Johnson. Ms. Bachmann was promoted to Executive Vice President, Chief Merchandising and Operating Officer in August 2015, at which time she assumed responsibility for merchandising and global sourcing. Prior to that, Ms. Bachmann was promoted to Executive Vice President, Chief Operating Officer in August 2012 and Executive Vice President, Supply Chain Management and Chief Information Officer in March 2010. Ms. Bachmann joined us as Senior Vice President, Merchandise Planning, Allocation and Presentation in March 2002.

Timothy A. Johnson is responsible for financial reporting and controls, financial planning and analysis, treasury, risk management, tax, internal audit, investor relations, real estate, asset protection and distribution and transportation services. On December 4, 2017, we announced that in connection with Mr. Campisi’s temporary medical leave of absence, the Board assigned Mr. Campisi’s executive responsibilities to Ms. Bachmann and Mr. Johnson. Mr. Johnson was promoted to Executive Vice President, Chief Administrative Officer and Chief Financial Officer in August 2015, at which time he assumed responsibility for distribution and transportation services. Prior to that Mr. Johnson was promoted to Executive Vice President, Chief Financial Officer in March 2014. Mr. Johnson assumed responsibility for real estate in June 2013 and asset protection in November 2013. Mr. Johnson was promoted to Senior Vice President, Chief Financial Officer in August 2012, at which time he assumed responsibility for treasury and risk management. He was promoted to Senior Vice President of Finance in July 2011. He joined us in August 2000 as Director of Strategic Planning.

Michael A. Schlonsky is responsible for store operations, talent management and oversight of human resources. He was promoted to Executive Vice President in August 2015, at which time he assumed responsibility for store operations. He was promoted to Senior Vice President, Human Resources in August 2012 and promoted to Vice President, Associate Relations and Benefits in 2010. Prior to that, Mr. Schlonsky was promoted to Vice President, Associate Relations and Risk Management in 2005. Mr. Schlonsky joined us in 1993 as Staff Counsel and was promoted to Director, Risk Management in 1998, and to Vice President, Risk Management and Administrative Services in 2000.

Stephen M. Haffer is responsible for customer engagement, and messaging touchpoints, including marketing, advertising, brand development and e-commerce. Mr. Haffer joined us in 2018 as Senior Vice President, Chief Customer Officer. Prior to joining us, Mr. Haffer was an executive at American Signature, Inc., the parent company for Value City Furniture and American Signature Home stores, where he served in a number of roles over a 25-year career spanning marketing, e-commerce, information technology and business development, leading up to his appointment as Chief Innovation Officer in 2016.

Ronald A. Robins, Jr. is responsible for legal affairs and compliance. Mr. Robins joined us in 2015 as Senior Vice President, General Counsel and Corporate Secretary. Prior to joining us, Mr. Robins was a partner at Vorys, Sater, Seymour and Pease LLP and also previously served as General Counsel, Chief Compliance Officer, and Secretary of Abercrombie & Fitch Co., an apparel retailer.
Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common shares are listed on the New York Stock Exchange ("NYSE") under the symbol "BIG." The following table reflects the high and low sales prices for our common shares as reported on the NYSE composite tape for the fiscal periods indicated:

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th></th>
<th>2016</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>High</td>
<td>Low</td>
<td>High</td>
<td>Low</td>
</tr>
<tr>
<td>First Quarter</td>
<td>$55.10</td>
<td>$46.84</td>
<td>$47.95</td>
<td>$35.86</td>
</tr>
<tr>
<td>Second Quarter</td>
<td>51.77</td>
<td>45.10</td>
<td>53.95</td>
<td>41.61</td>
</tr>
<tr>
<td>Third Quarter</td>
<td>54.18</td>
<td>46.95</td>
<td>56.30</td>
<td>42.40</td>
</tr>
<tr>
<td>Fourth Quarter</td>
<td>$64.42</td>
<td>$50.67</td>
<td>$56.54</td>
<td>$42.58</td>
</tr>
</tbody>
</table>

In June 2014, we announced that our Board of Directors commenced a cash dividend program. Since the commencement of the program, we have declared and paid fifteen consecutive quarterly cash dividends. The following reflects our quarterly dividend payments for 2016 and 2017:

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Quarter</td>
<td>$0.25</td>
<td>$0.21</td>
</tr>
<tr>
<td>Second Quarter</td>
<td>0.25</td>
<td>0.21</td>
</tr>
<tr>
<td>Third Quarter</td>
<td>0.25</td>
<td>0.21</td>
</tr>
<tr>
<td>Fourth Quarter</td>
<td>0.25</td>
<td>0.21</td>
</tr>
<tr>
<td>Total</td>
<td>$1.00</td>
<td>$0.84</td>
</tr>
</tbody>
</table>

In the first quarter of 2018, our Board of Directors declared a dividend payable on April 6, 2018 to shareholders of record on March 23, 2018 and increased the amount of the dividend from $0.25 to $0.30 per share. Although it is the present intention of our Board of Directors to continue to pay a quarterly cash dividend in the future, the determination to pay future dividends will be at the discretion of our Board of Directors and will depend on our financial condition, results of operations, capital requirements, compliance with applicable laws and agreements and any other factors deemed relevant by our Board.

After making investments in the business and paying declared dividends, we have utilized the excess of our cash provided by operations for share repurchase programs. Any future decisions on the uses of excess cash will be determined by our Board of Directors taking into account business conditions then existing, including our financial condition, results of operations, capital requirements, compliance with applicable laws and agreements, opportunities for reinvesting cash, and other factors deemed relevant by our Board of Directors.

The following table sets forth information regarding our repurchase of common shares during the fourth fiscal quarter of 2017:

<table>
<thead>
<tr>
<th>Period</th>
<th>(a) Total Number of Shares Purchased (1)</th>
<th>(b) Average Price Paid per Share (1)</th>
<th>(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</th>
<th>(d) Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 29, 2017 - November 25, 2017</td>
<td>—</td>
<td>$53.88</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>November 26, 2017 - December 23, 2017</td>
<td>—</td>
<td>54.10</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>December 24, 2017 - February 3, 2018</td>
<td>—</td>
<td>57.37</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>—</td>
<td>$54.78</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>
In November 2017, December 2017, and January 2018, in connection with the vesting of certain outstanding restricted stock awards and restricted stock units, we acquired 48,308, and 97 of our common shares, respectively, which were withheld to satisfy minimum statutory income tax withholdings.

On March 7, 2018, our Board of Directors authorized a program for the repurchase of up to $100.0 million of our common shares (“2018 Repurchase Program”). The 2018 Repurchase Program has no scheduled termination date.

At the close of trading on the NYSE on March 30, 2018, there were approximately 630 registered holders of record of our common shares.

The following graph and table compares, for the five fiscal years ended February 3, 2018, the cumulative total shareholder return for our common shares, the S&P 500 Index, and the S&P 500 Retailing Index. Measurement points are the last trading day of each of our fiscal years ended February 1, 2014, January 31, 2015, January 30, 2016, January 28, 2017 and February 3, 2018. The graph and table assume that $100 was invested on February 2, 2013, in each of our common shares, the S&P 500 Index, and the S&P 500 Retailing Index and reinvestment of any dividends. The stock price performance on the following graph and table is not necessarily indicative of future stock price performance.

<table>
<thead>
<tr>
<th>Indexed Returns</th>
<th>Years Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company / Index</td>
<td>$100.00     $82.84     $143.62     $123.38     $157.47     $190.59</td>
</tr>
<tr>
<td>Big Lots, Inc.</td>
<td>$100.00     $120.46     $137.60     $136.68     $165.20     $202.93</td>
</tr>
<tr>
<td>S&amp;P 500 Index</td>
<td>$100.00     $125.54     $150.54     $175.82     $208.43     $294.52</td>
</tr>
<tr>
<td>S&amp;P 500 Retailing Index</td>
<td>$100.00</td>
</tr>
</tbody>
</table>
Item 6. Selected Financial Data

The following statements of operations and balance sheet data have been derived from our consolidated financial statements and should be read in conjunction with MD&A and the consolidated financial statements and related notes included herein.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>2017 (a)</th>
<th>2016 (b)</th>
<th>2015 (a)</th>
<th>2014 (a)</th>
<th>2013 (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net sales</td>
<td>$5,270,980</td>
<td>$5,200,439</td>
<td>$5,190,582</td>
<td>$5,177,078</td>
<td>$5,124,755</td>
</tr>
<tr>
<td>Cost of sales (exclusive of depreciation expense shown separately below)</td>
<td>3,128,538</td>
<td>3,101,020</td>
<td>3,123,442</td>
<td>3,133,124</td>
<td>3,117,386</td>
</tr>
<tr>
<td>Gross margin</td>
<td>2,142,442</td>
<td>2,099,419</td>
<td>2,067,140</td>
<td>2,043,954</td>
<td>2,007,369</td>
</tr>
<tr>
<td>Selling and administrative expenses</td>
<td>1,723,996</td>
<td>1,730,956</td>
<td>1,708,499</td>
<td>1,699,764</td>
<td>1,664,031</td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>117,093</td>
<td>120,460</td>
<td>122,854</td>
<td>119,702</td>
<td>113,228</td>
</tr>
<tr>
<td>Operating profit</td>
<td>301,353</td>
<td>248,003</td>
<td>235,787</td>
<td>224,488</td>
<td>230,110</td>
</tr>
<tr>
<td>Interest expense</td>
<td>(6,711)</td>
<td>(5,091)</td>
<td>(3,683)</td>
<td>(2,588)</td>
<td>(3,293)</td>
</tr>
<tr>
<td>Other income (expense)</td>
<td>712</td>
<td>(5,091)</td>
<td>(3,683)</td>
<td>(2,588)</td>
<td>(3,293)</td>
</tr>
<tr>
<td>Income from continuing operations before income taxes</td>
<td>295,354</td>
<td>244,299</td>
<td>226,850</td>
<td>221,900</td>
<td>226,805</td>
</tr>
<tr>
<td>Income tax expense</td>
<td>105,522</td>
<td>91,471</td>
<td>83,977</td>
<td>85,239</td>
<td>85,515</td>
</tr>
<tr>
<td>Income from continuing operations</td>
<td>189,832</td>
<td>152,828</td>
<td>142,873</td>
<td>136,661</td>
<td>141,290</td>
</tr>
<tr>
<td>Loss from discontinued operations, net of tax</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(22,385)</td>
<td>(15,995)</td>
</tr>
<tr>
<td>Net income</td>
<td>$189,832</td>
<td>$152,828</td>
<td>$142,873</td>
<td>$114,276</td>
<td>$125,295</td>
</tr>
<tr>
<td>Earnings per common share - basic:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Continuing operations</td>
<td>$4.43</td>
<td>$3.37</td>
<td>$2.83</td>
<td>$2.49</td>
<td>$2.46</td>
</tr>
<tr>
<td>Discontinued operations</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(0.41)</td>
<td>(0.28)</td>
</tr>
<tr>
<td>Total earnings per common share - basic</td>
<td>$4.43</td>
<td>$3.37</td>
<td>$2.83</td>
<td>$2.08</td>
<td>$2.18</td>
</tr>
<tr>
<td>Earnings per common share - diluted:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Continuing operations</td>
<td>$4.38</td>
<td>$3.32</td>
<td>$2.80</td>
<td>$2.46</td>
<td>$2.44</td>
</tr>
<tr>
<td>Discontinued operations</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(0.40)</td>
<td>(0.28)</td>
</tr>
<tr>
<td>Total earnings per common share - diluted</td>
<td>$4.38</td>
<td>$3.32</td>
<td>$2.80</td>
<td>$2.06</td>
<td>$2.16</td>
</tr>
<tr>
<td>Weighted-average common shares outstanding:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>42,818</td>
<td>45,316</td>
<td>50,517</td>
<td>54,935</td>
<td>57,415</td>
</tr>
<tr>
<td>Diluted</td>
<td>43,300</td>
<td>45,974</td>
<td>50,964</td>
<td>55,552</td>
<td>57,958</td>
</tr>
<tr>
<td>Cash dividends declared per common share</td>
<td>$1.00</td>
<td>$0.84</td>
<td>$0.76</td>
<td>$0.51</td>
<td>—</td>
</tr>
<tr>
<td>Balance sheet data:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total assets</td>
<td>$1,651,726</td>
<td>$1,607,707</td>
<td>$1,640,370</td>
<td>$1,635,891</td>
<td>$1,739,599</td>
</tr>
<tr>
<td>Working capital</td>
<td>432,365</td>
<td>315,784</td>
<td>315,984</td>
<td>411,446</td>
<td>483,833</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>51,176</td>
<td>51,164</td>
<td>54,144</td>
<td>52,261</td>
<td>68,629</td>
</tr>
<tr>
<td>Long-term obligations under bank credit facility</td>
<td>199,800</td>
<td>106,400</td>
<td>62,300</td>
<td>62,100</td>
<td>77,000</td>
</tr>
<tr>
<td>Shareholders’ equity</td>
<td>$669,587</td>
<td>$650,630</td>
<td>$720,470</td>
<td>$789,550</td>
<td>$901,427</td>
</tr>
<tr>
<td>Cash flow data:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash provided by operating activities</td>
<td>$250,368</td>
<td>$311,925</td>
<td>$342,352</td>
<td>$318,562</td>
<td>$198,334</td>
</tr>
<tr>
<td>Cash used in investing activities</td>
<td>$(156,508)</td>
<td>$(84,701)</td>
<td>$(113,193)</td>
<td>$(90,749)</td>
<td>$(97,495)</td>
</tr>
<tr>
<td>Store data:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total gross square footage</td>
<td>44,638</td>
<td>44,570</td>
<td>44,914</td>
<td>45,134</td>
<td>45,708</td>
</tr>
<tr>
<td>Total selling square footage</td>
<td>31,399</td>
<td>31,519</td>
<td>31,775</td>
<td>32,006</td>
<td>32,732</td>
</tr>
<tr>
<td>Stores open at end of the fiscal year</td>
<td>1,416</td>
<td>1,432</td>
<td>1,449</td>
<td>1,460</td>
<td>1,493</td>
</tr>
</tbody>
</table>

(a) The period presented is comprised of 52 weeks.
(b) The period presented is comprised of 53 weeks.
Table of Contents

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

The discussion and analysis presented below should be read in conjunction with the accompanying consolidated financial statements and related notes. Please refer to “Item 1A. Risk Factors” of this Form 10-K for a discussion of forward-looking statements and certain risk factors that may have a material adverse effect on our business, financial condition, results of operations, and/or liquidity.

Our fiscal year ends on the Saturday nearest to January 31, which results in some fiscal years with 52 weeks and some with 53 weeks. Fiscal year 2017 was comprised of 53 weeks, while fiscal years 2016 and 2015 were each comprised of 52 weeks. Fiscal year 2018 will be comprised of 52 weeks.

Operating Results Summary

The following are the results from 2017 that we believe are key indicators of our operating performance when compared to 2016.

- Net sales increased $70.5 million, or 1.4%.
- Comparable store sales for stores open at least fifteen months, including e-commerce, increased $18.9 million, or 0.4%.
- Gross margin dollars increased $43.0 million with a 20 basis point increase in gross margin rate to 40.6% of sales.
- Selling and administrative expenses decreased $7.0 million. As a percentage of net sales, selling and administrative expenses decreased 60 basis points to 32.7% of net sales.
- Operating profit rate increased 90 basis points to 5.7%.
- Diluted earnings per share increased 31.9% to $4.38 per share, compared to $3.32 per share in 2016.
- Our return on invested capital increased to 22.9% from 19.0%.
- Inventory of $872.8 million represented a $14.1 million increase, or 1.6%, from 2016.
- We acquired approximately 3.1 million of our outstanding common shares for $150.0 million, under our 2017 Repurchase Program (as defined below in “Capital Resources and Liquidity”), at a weighted average price of $48.04 per share.
- We declared and paid four quarterly cash dividends in the amount of $0.25 per common share, for a total paid amount of approximately $44.7 million.

The following table compares components of our consolidated statements of operations as a percentage of net sales:

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net sales</td>
<td>100.0 %</td>
<td>100.0 %</td>
<td>100.0 %</td>
</tr>
<tr>
<td>Cost of sales (exclusive of depreciation expense shown separately below)</td>
<td>59.4</td>
<td>59.6</td>
<td>60.2</td>
</tr>
<tr>
<td>Gross margin</td>
<td>40.6</td>
<td>40.4</td>
<td>39.8</td>
</tr>
<tr>
<td>Selling and administrative expenses</td>
<td>32.7</td>
<td>33.3</td>
<td>32.9</td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>2.2</td>
<td>2.3</td>
<td>2.4</td>
</tr>
<tr>
<td>Operating profit</td>
<td>5.7</td>
<td>4.8</td>
<td>4.5</td>
</tr>
<tr>
<td>Interest expense</td>
<td>(0.1)</td>
<td>(0.1)</td>
<td>(0.1)</td>
</tr>
<tr>
<td>Other income (expense)</td>
<td>0.0</td>
<td>0.0</td>
<td>(0.1)</td>
</tr>
<tr>
<td>Income before income taxes</td>
<td>5.6</td>
<td>4.7</td>
<td>4.4</td>
</tr>
<tr>
<td>Income tax expense</td>
<td>2.0</td>
<td>1.8</td>
<td>1.6</td>
</tr>
<tr>
<td>Net income</td>
<td>3.6 %</td>
<td>2.9 %</td>
<td>2.8 %</td>
</tr>
</tbody>
</table>
See the discussion below under the captions “2017 Compared To 2016” and “2016 Compared To 2015” for additional details regarding the specific components of our operating results.

In 2017, our selling and administrative expenses include recoveries of $3.0 million from our insurance carriers related to a legal matter. Additionally, our income tax expense reflects a $4.5 million charge for the impact of the Tax Cuts and Jobs Act of 2017 related to our net deferred tax position and a $3.5 million benefit for the reduction in our federal tax rate.

In 2016, our selling and administrative expenses include $27.8 million of costs associated with the termination of our pension plans, which was completed near the end of fiscal 2016, partially offset by a $3.8 million gain on the sale of a company-owned property in California.

In 2015, our selling and administrative expenses include both a $4.5 million charge associated with the settlement of a legal matter and $12.9 million of costs associated with the termination of our pension plans, which commenced in 2015 and was completed near the end of fiscal 2016.

**Operating Strategy**

In 2013, we introduced our Edit to Amplify operating strategy (“Edit to Amplify”). Edit to Amplify applies to all aspects of our business, but particularly focuses on merchandising, marketing, and our customers’ shopping experience, which we believe represent the key drivers of our net sales.

During 2016, we began to focus our Edit to Amplify strategy on what we call “ownable” or “winnable” merchandise categories. In 2017, we continued to focus on our core customer, Jennifer, who we believe is cause minded, home focused, and deal driven. Our goal is to offer Jennifer affordable solutions in every season and category. Through our “ownable” and “winnable” merchandise categories, we are committed to offering product assortments that score highly in quality, brand, fashion, and value (“QBFV”) at a price tag Jennifer will love and exceeding Jennifer’s expectations by employing a customer-first mentality, including friendly experiences, and delivering a product assortment that meets her everyday needs and delivers exciting surprises intended to drive discretionary purchases.

In 2018, we expect to continue to enhance our operating strategy, and anticipate:

- Earnings per diluted share to be $4.75 to $4.95.
- Comparable store sales increase in the low single digits.
- Opening 30 new stores and closing 40 stores.
- Cash flow (operating activities less capital expenditures) of approximately $120 to $130 million.
- Cash returned to shareholders of approximately $150 million, through our quarterly dividend program and the 2018 Repurchase Program.

Additional discussion and analysis of our financial performance and the assumptions and expectations upon which we are basing our guidance for our future results is set forth below under the caption “2017 Compared To 2016.”

**Merchandising**

We intend to achieve our goal of exceeding Jennifer’s expectations by offering quality product assortments and friendly solutions that align with our understanding of her hidden needs. We are committed to providing Jennifer products with high levels of QBFV at a reliable value. Our Edit to Amplify strategy evaluates our product mix using the separate components of “Edit” and “Amplify.” The “Edit” component focuses on downsizing, or potentially eliminating, those departments within our merchandise categories and product offerings that we believe Jennifer does not prioritize or where we believe we do not maintain a competitive advantage. The “Amplify” component enhances the assortment of those merchandise categories and product offerings that we believe are important to Jennifer’s shopping experience, and in which we believe we have a competitive advantage. We continue to enhance the “Amplify” component of our strategy and have narrowed our focus to internally define our merchandise categories as “ownable” or “winnable.” An “ownable” merchandise category is one where we believe Jennifer views us as a destination to shop for a tasteful assortment of products and affordable solutions. We believe that our value proposition and in-store execution differentiates us from the competition in our “ownable” categories. A “winnable” merchandise category is one where we believe the reliable value of our focused, trend-right assortment and/or closeout merchandise differentiates us from the competition when Jennifer shops for these key product offerings. We believe that our Furniture, Seasonal, Soft Home, Food, and Consumables merchandise categories are “ownable” or “winnable” and align our business with how our core customer shops our stores, while our Hard Home and Electronics, Toys, & Accessories merchandise categories provide convenient adjacencies to our “ownable” or “winnable” categories.
We define our Furniture and Seasonal categories as “ownable”:

- Our Furniture category primarily focuses on our core customer’s home furnishing needs, such as upholstery, mattresses, case goods, and ready-to-assemble. In Furniture, we believe our competitive advantage is attributable to our sourcing relationships, our in-store availability, and everyday value offerings. A significant majority of our offerings in this category consists of replenishable products sourced either from recognized brand-name manufacturers or sold under our own brands. Our long-standing relationships with certain brand-name manufacturers, most notably in our mattresses and upholstery departments, allow us to work directly with them to create product offerings specifically for our stores, which enables us to provide a high-quality product at a competitive price. Additionally, we believe our “buy today, take home today” practice of carrying in-stock inventory of our core furniture offerings, which allows Jennifer to take home her purchase at the end of her shopping experience, positively differentiates us from our competition. We encourage Jennifer to shop in store by allowing her to touch and feel the quality and comfort of our products. We believe that offering a focused assortment, which is displayed in furniture vignettes, provides Jennifer a solution for decorating her home when combined with our home decor offerings.

- Our Seasonal category is “ownable” in our patio furniture, gazebos, and Christmas trim departments. We believe we have a competitive advantage in this category by creating trend-right products with strong value proposition in our own brands. We believe our in-store shopping experience differentiates us from the competition. We have a large selection of samples assembled and displayed throughout the seasonal section of our store and have packaged the box stock so that it is very easy for Jennifer to purchase and take home. Much of this merchandise is sourced on an import basis, which allows us to maintain our competitive pricing. Additionally, our Seasonal category offers a mix of departments/products that complement her outdoor experience and holiday decorating desires. We continue to work with our vendors to expand our assortment to respond to Jennifer's evolving wants and needs.

We define our Soft Home, Food, and Consumables categories as “winnable”:

- Our Soft Home category is considered a “winnable” category, but has the potential to be an “ownable” category in areas such as bedding, bath, home fashion, and accents. Over the past few years, we have enhanced our assortment in Soft Home by allocating more selling space to the category to support a wider range of replenishable, fashion-based products. Our competitive advantage in Soft Home is centered around (1) a trend-right, focused assortment with improved quality and perceived value; and (2) our ability to outfit Jennifer’s home with the décor that compliments an in-store furniture purchase. We have worked to develop a “solutions” approach when combining our Soft Home offerings with our Furniture and Seasonal categories through our cross-merchandising efforts on color palette coordination. This helps Jennifer envision how the product can work in her home and enhances our brand image.

- Our Food and Consumables categories focus primarily on catering to Jennifer's daily essentials, or “need, use, buy most” items, by providing reliable value and consistency of product offerings. We believe we possess a competitive advantage in the Food and Consumables categories based on our sourcing capabilities for closeout merchandise. Manufacturers and vendors have closeout merchandise for a variety of different reasons, including other retailers canceling orders or going out of business, production overruns, or marketing or packaging changes. We believe our vendor relationships, along with our size and financial strength, afford us these opportunities. To supplement our closeout business, we have focused on improving and expanding our “never out” product assortment to provide more consistency in those areas where Jennifer desires consistently available product offerings. We have added top brands to our “never out” programs in both Food and Consumables and believe our assortment and value proposition will continue to differentiate us in this highly competitive industry.

We consider our Hard Home and Electronics, Toys, & Accessories as convenience categories:

- Our Hard Home and Electronics, Toys, & Accessories categories serve as convenient adjacencies to our “ownable” and “winnable” categories. Over the past few years, we have intentionally narrowed our assortments in these categories and allocated linear footage to the “ownable” and “winnable” categories. Our product assortments in these categories focus on value and savings in areas such as food prep, table top, home maintenance, small appliances, and electronics.
Our merchandising management team is aligned with our merchandise categories. The primary goal of this team is to increase our total company comparable store sales (“comp” or “comps”). We focus our performance review of members within merchandising management on comps by merchandise category, as we believe it is the key metric that will drive our long-term net sales. By focusing on growing our “ownable” and “winnable” merchandise categories, and managing contraction in certain departments within those categories, we believe our merchandising management team can effectively address the changing shopping behaviors of our customers and implement more tailored solutions within each merchandise category, which we believe will lead to continued growth in our comps in the future.

### Marketing

The top priority of our marketing activities is to increase our comps. In 2016, we began a comprehensive review of our brand identity to gain further insights into Jennifer’s perception of our brand and how best to improve the overall effectiveness of our marketing efforts. After extensive research, we identified three key insights about Jennifer: she is (1) deal-driven, (2) home-focused and (3) cause-mind ed. We determined that we needed to identify Jennifer’s hidden needs and align them with our greatest strengths. We learned Jennifer feels most special when serving others and investing in causes bigger than herself. We believe that this aligns with our involvement in the community and mission at the Big Lots Foundation to improve and enrich the lives of families and children. As a result, we began to develop a new brand identity focused on the vision of community orientation and serving as Jennifer’s second family. Our mission is simple, we exist to serve everyone like family. We strive to be known for our three core traits: (1) friendly, (2) reliable and trustworthy value, and (3) community driven, and intend to embed these traits in everything that we do. We want to be known as a new kind of community retailer that serves the community and offers affordable solutions for every season and category. In 2018, we plan to launch a new campaign to share our new brand identity with Jennifer and introduce our new brand line “Serve Big, Save Lots.”

As we implement our new brand identity, we have shifted our marketing efforts to focus on strengthening our new brand and connecting with our core customer, Jennifer. We continue to increase our use of social and digital media outlets including conducting entire campaigns through these outlets (specifically on Facebook®, Instagram®, Pinterest®, Twitter®, and YouTube®) to drive increased brand awareness with our core customer and to attempt to speak to new potential customers. These outlets provide us with a channel to deliver our brand message directly to Jennifer, while also providing her with the opportunity to share direct feedback with us, which can enhance our understanding of what is most important to her and improve the shopping experience in our stores.

Given our customer's proficiency with mobile devices and digital media, we focus on communicating with her through those channels. In the past we have used our Buzz Club Rewards® Program to communicate our promotions and deals. In 2017, we launched a new loyalty program, BIG Rewards, to more effectively incentivize our loyal customers. Our new program rewards Jennifer with a coupon after every third purchase, offers her a birthday surprise, and special rewards after large-ticket furniture purchases. We believe our BIG Rewards Program will help increase engagement with Jennifer and clearly communicate our offerings.

In addition to electronic, social and digital media, our marketing communication efforts involve a mix of television advertising, printed ad circulars, and in-store signage. The primary goals of our television advertising are to promote our brand and, from time to time, promote products or special discounts in our stores. We have begun using more local television advertising and digital streaming media in concentrated markets, which allows us to connect deeper and more frequently with Jennifer. Our printed advertising circulars and our in-store signage initiatives focus on promoting our value proposition on our unique merchandise offerings.

### Shopping Experience

Starting in 2015, a major focus of our business has been to increase our investment in our store teams and improve in-store execution through a number of initiatives designed to deliver more consistent experiences, while catering to Jennifer's needs. Those key initiatives include redefining the roles and responsibilities of our store associates, and implementing a new scheduling system and standardized furniture sales training. We completed full chain roll outs of private label credit card, which provide access to revolving credit, through a third party, for use on both larger ticket items and daily purchases, and furniture coverage/warranty programs, which provides a method for obtaining multi-year warranty coverage for furniture purchases. We continue to promote our Easy Leasing lease-to-own program, which provides a single use opportunity for access to third-party financing.
In 2017, we introduced our “Store of the Future” concept which incorporates our new brand identity and seeks to enhance the way Jennifer shops our stores, including:

- Showcasing our “ownable” and “winnable” merchandise categories by moving our Furniture department to the front center of the prototype store with Seasonal and Soft Home on either side to improve the coordination of our home decorating solutions. We moved Food and Consumables to the back of the prototype store, while keeping them visible with clear sight lines from the entrance of the store. We have also added color coordinated way-finding signage to help Jennifer navigate our stores.

- Creating a warm and personalized tone throughout the store through improved lighting, new flooring, softening the colors on our walls, and greeting Jennifer with a “Hello” wall as she enters the store. We increased the length of our check-out counter and removed signage and clutter to make checking out more friendly and efficient. Additionally, we have added furniture vignettes and incorporated lifestyle photography to provide visual solutions for Jennifer.

- Highlighting our focus on the community with a “connect with the community” board that highlights local events and support. The wall behind the check out counters thanks Jennifer for shopping her community Big Lots. We personalized the signage throughout the store and back room to reflect our friendly and community-oriented values.

In addition to our efforts to improve the in-store shopping experience, we continue to focus on improving our e-commerce platform, which we launched in the spring of 2016. Our integrated e-commerce platform offers a narrowed assortment of our in-store offerings. In 2017, we began offering on our e-commerce platform expanded fabric and color options on select products in our Furniture and Seasonal categories, including items only available online. We continue to strengthen our relationships with our key vendor partners to enhance and expand our product assortments. See “Real Estate” below for the projected roll-out schedule for the Store of the Future concept.

**Real Estate**

Historically, we have determined that our average store size of approximately 22,000 selling square feet is appropriate for us to provide our core customer with a positive shopping experience and properly present a representative assortment of merchandise categories that our core customer finds meaningful. In late 2016, we engaged a third party specialist and began a study to analyze our store design and layout in relation to the changing retail landscape and needs of our core customers. During 2017, we began testing certain design and layout revisions and adaptations and evaluated the customer feedback and operating results. In 2017, we rolled-out our Store of the Future layout to two geographic markets and expect to convert over 600 stores to the new format by 2020. As we transition to our new Store of the Future design, we intend to open slightly larger stores with an average size of approximately 23,000 selling square feet. As we increase our capital investment in our stores, we have worked with our landlords to negotiate longer lease terms and renewal options. Through 2018, we expect to convert nearly 15% of our fleet to the Store of the Future layout through remodels and new store openings.

As discussed in “Item 2. Properties,” of this Form 10-K, we have 242 store leases that will expire in 2018. During 2018, we anticipate opening 30 new stores and closing approximately 40 of our existing locations. The majority of these closings are to relocate stores to improved locations within the same local market, with the balance resulting from a lack of renewal options or our belief that a location’s sales and operating profit volume are not strong enough to warrant additional investment in the location. As part of our evaluation of potential store closings, we consider our ability to transfer sales from a closing store to other nearby locations and generate a better overall financial result for the geographic market. For our remaining store locations with fiscal 2018 lease expirations, we expect to exercise our renewal option or negotiate lease renewal terms sufficient to allow us to continue operations and achieve an acceptable return on our investment.
## 2017 COMPARED TO 2016

### Net Sales

Net sales by merchandise category (in dollars and as a percentage of total net sales), net sales change (in dollars and percentage), and comps in 2017 compared to 2016 were as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>Change</th>
<th>Comps</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Furniture</strong></td>
<td>$1,237,022</td>
<td>23.6%</td>
<td>$1,195,365</td>
<td>23.0%</td>
</tr>
<tr>
<td><strong>Food</strong></td>
<td>824,487</td>
<td>15.6%</td>
<td>830,508</td>
<td>16.0%</td>
</tr>
<tr>
<td><strong>Consumables</strong></td>
<td>822,533</td>
<td>15.6%</td>
<td>817,747</td>
<td>15.7%</td>
</tr>
<tr>
<td><strong>Soft Home</strong></td>
<td>789,596</td>
<td>15.0%</td>
<td>750,814</td>
<td>14.4%</td>
</tr>
<tr>
<td><strong>Seasonal</strong></td>
<td>765,907</td>
<td>14.5%</td>
<td>739,106</td>
<td>14.2%</td>
</tr>
<tr>
<td><strong>Hard Home</strong></td>
<td>428,788</td>
<td>8.1%</td>
<td>437,575</td>
<td>8.4%</td>
</tr>
<tr>
<td><strong>Electronics, Toys, &amp; Accessories</strong></td>
<td>402,647</td>
<td>7.6%</td>
<td>429,324</td>
<td>8.3%</td>
</tr>
</tbody>
</table>

| Net sales               | $5,270,980 | 100.0% | $5,200,439 | 100.0% | $70,541 | 1.4% | 0.4% |

We periodically assess and make minor adjustments to our product hierarchy, which can impact the roll-up of our merchandise categories. Our financial reporting process utilizes the most current product hierarchy in reporting net sales by merchandise category for all periods presented. Therefore, there may be minor reclassifications of net sales by merchandise category compared to previously reported amounts.

Net sales increased $70.5 million, or 1.4%, to $5,271.0 million in 2017, compared to $5,200.4 million in 2016. The increase in net sales was principally due to an extra week of sales, as 2017 had 53 weeks, which increased net sales by $69.1 million, coupled with a 0.4% increase in comps, which increased net sales by $18.9 million. The increases in net sales were partially offset by the net decrease of 16 stores since the end of 2016, which decreased net sales by $17.5 million.

Our Soft Home, Seasonal, and Furniture merchandise categories generated positive comps:

- **Soft Home** experienced increases in net sales and comps which were primarily driven by continued improvement in the product assortment, quality, and perceived value by our customers, particularly in our bath and kitchen textiles.
- The positive comps and increased net sales in our **Seasonal** category were primarily the result of strength in our summer and lawn & garden departments, which was the result of improved product assortment, particularly in outdoor décor and patio furniture, and strategically higher inventory levels in 2017 compared to 2016.
- The **Furniture** category experienced increased net sales and comps during 2017, primarily driven by strength in our upholstery and mattress departments and the positive impact of our Easy Leasing lease-to-own program and our third-party, private label credit card offering.

The positive comps in our Seasonal, Soft Home, and Furniture merchandise categories were partially offset by negative comps in our Consumables, Food, Hard Home and Electronics, Toys, & Accessories merchandise categories:

- **Consumables** experienced a slight decrease in comps in numerous departments due to the timing of closeout inventory purchases, which was partially offset by positive comps in our health, beauty, and cosmetics department due to the introduction of an everyday, branded product program and space expansions in our bath / body wash and over-the-counter / nutritional health departments.
- The **Food** category experienced decreased net sales and comps due to product mix imbalances, particularly in our snacks and dry goods, and a highly competitive marketplace. We invested in growing our Food inventory position from the beginning of the year to address these imbalances and in improving our assortment of “never out” products.
- The negative comps and decreased net sales in **Hard Home and Electronics, Toys, & Accessories** resulted from an intentionally narrowed merchandising assortment.

For 2018, we expect net sales to be in the range of flat to up slightly compared to 2017, which is based on an anticipated increase in comps in the low single digits, partially offset by a lower overall store count and the absence of the 53rd week. We expect comps above the company average in our Furniture, Soft Home and Seasonal categories, driven by continued focus on these “ownable” and “winnable” categories. We anticipate below company average comps in our Hard Home and Electronics, Toys, & Accessories categories due to continued downsizing and narrowed product assortments.
Gross Margin

Gross margin dollars increased $43.0 million, or 2.0%, to $2,142.4 million in 2017, compared to $2,099.4 million in 2016. The increase in gross margin dollars was principally due to an increase in net sales, which increased gross margin dollars by approximately $28.5 million along with a higher gross margin rate, which increased gross margin dollars by approximately $14.5 million. Gross margin as a percentage of net sales increased 20 basis points to 40.6% in 2017 compared to 40.4% in 2016. The gross margin rate increase was the result of a higher initial mark-up, driven by favorable cumulative inbound freight costs and lower product costs, and a lower shrink rate, partially offset by a higher overall markdown rate.

For 2018, we expect our gross margin rate to be up slightly compared to 2017, which is driven by continued sales growth in our higher margin “ownable” and “winnable” categories and a lower shrink rate.

Selling and Administrative Expenses

Selling and administrative expenses were $1,724.0 million in 2017, compared to $1,731.0 million in 2016. The decrease of $7.0 million, or 0.4%, was primarily due to the absence of pension termination related expenses of $27.8 million, decreases in accrued bonus expense of $9.5 million, legal settlement costs of $7.7 million, share-based compensation expense of $5.2 million, self-insurance costs of $4.1 million, and utility expenses of $3.1 million, partially offset by increases in store operations payroll of $12.2 million, distribution and outbound transportation costs of $9.6 million, occupancy charges of $8.6 million, and corporate office payroll expenses of $6.3 million, the absence of a gain on the real estate sale of $3.8 million, and an increase in professional fees of $2.9 million. In 2016, the pension expense included all costs associated with the termination of our pension plan including settlement charges and professional fees. The decrease in accrued bonus expense was driven by our performance relative to our operating plan in 2017 as compared to our out-performance relative to our operating plan in 2016. During 2016, we incurred $4.8 million in charges related to State of California wage and hour claims brought against both our stores and our distribution center and an action related to our handling of hazardous materials and hazardous waste in California. Additionally, in the third quarter of 2017, we collected $3.0 million in recoveries from our insurance carriers related to the previously disclosed tabletop torches matter. The decrease in share-based compensation expense was primarily a result of fewer performance share units expensing in 2017 compared to 2016. The decrease in self-insurance costs was driven by a decreased occurrence of high cost claims within our health benefit program. The decrease in utility expenses was primarily driven by cost saving initiatives, such as our LED lighting replacement project. The increase in store operations payroll was driven by the addition of the 53rd week in fiscal 2017. The increase in distribution and outbound transportation costs was driven by higher fuel prices in 2017 compared to 2016, coupled with additional expenses as we continue to sell and ship larger sized items in our Furniture and Seasonal categories. The increase in occupancy charges was primarily driven by annual rent increases for the renewal of expiring leases, coupled with increases in real estate taxes. The increase in corporate office payroll expenses was primarily driven by annual merit increases and the addition of the 53rd week in fiscal 2017. In the fourth quarter of 2016, we recorded a gain on real estate resulting from the sale of an owned store location, while no similar transaction occurred in 2017. The increase in professional fees was driven by consulting fees for various corporate projects.

As a percentage of net sales, selling and administrative expenses decreased by 60 basis points to 32.7% in 2017 compared to 33.3% in 2016. Our future selling and administrative expense as a percentage of net sales depends on many factors, including our level of net sales, our ability to implement additional efficiencies, principally in our store and distribution center operations, and fluctuating commodity prices, such as diesel fuel, which directly affects our outbound transportation cost.

For 2018, selling and administrative expenses as a percentage of net sales are expected to increase from 2017. Specifically, we anticipate selling and administrative expenses as a percentage of net sales will increase due to utilizing savings from U.S. federal tax reform to reinvest in our associate-related costs, including wages, and an increase in costs to support our investments in our Store of the Future initiative and our new corporate headquarters.
Depreciation Expense
Depreciation expense decreased $3.4 million to $117.1 million in 2017 compared to $120.5 million in 2016. The decrease was driven by a reduction in new store spending in 2016 and 2017 as compared to 2011 and 2012, as the initial store construction costs on those stores are completing the depreciation cycle. Depreciation expense as a percentage of net sales decreased by 10 basis points compared to 2016.

For 2018, we expect capital expenditures to be approximately $225 million to $230 million, which is an increase compared to 2017 when capital expenditures were approximately $143 million. The increase in expected capital expenditures is driven by our anticipated investments in strategic initiatives to support future growth including our investment in the Store of the Future and equipment for our new distribution center in California. Our 2018 expectations also includes maintenance capital for our stores, distribution centers, and corporate offices, and investments in the construction costs associated with opening 30 new stores. Based on our anticipated level of capital expenditures in 2018 and the run rate of depreciation on our existing property and equipment, we expect 2018 depreciation expense to be approximately $120 million, compared to $117 million in 2017.

Operating Profit
Operating profit was $301.4 million in 2017 as compared to $248.0 million in 2016. The increase in operating profit was primarily driven by the items discussed in the “Net Sales,” “Gross Margin,” “Selling and Administrative Expenses,” and “Depreciation Expense” sections above. In summary, operating profit was driven by increases in sales and gross margin, coupled with decreases in selling and administrative expenses and depreciation expense. Additionally, our operating profit increased by approximately $7 million as a result of the addition of the 53rd week in fiscal 2017.

Interest Expense
Interest expense increased $1.6 million to $6.7 million in 2017 compared to $5.1 million in 2016. The increase was primarily driven by an increase in our average interest rate on our revolving debt, as our revolving debt was impacted by increases in the LIBOR rate. Additionally, we maintained a slightly higher average borrowings under the 2011 Credit Agreement. We had total average borrowings (including capital leases) of $241.5 million in 2017 compared to total average borrowings of $240.7 million in 2016. The slight increase in our average borrowings (including capital leases) was driven by increases in our capital lease liabilities.

Other Income (Expense)
Other income (expense) was $0.7 million in 2017, compared to $1.4 million in 2016. The change from 2016 to 2017 was related to our diesel fuel hedging contracts, driven by a change in pricing trends for diesel fuel.

Income Taxes
The effective income tax rate in 2017 and 2016 was 35.7% and 37.4%, respectively. The decrease in our effective rate was principally driven by the following:
- The net excess tax benefits associated with settlement of share-based payment awards due to the adoption of ASU 2016-09;
- The lower rate on 2017 current taxable income due to enactment of federal legislation on December 22, 2017 commonly referred to as the Tax Cut and Jobs Act (“TCJA”) that resulted in a lower blended 2017 rate (prorated based on a January 1, 2018 effective date for the rate reduction); and
- A decrease in the nondeductible expenses.

The rate decreases were offset by the estimated effects of the TCJA corporate income tax rate reduction on our net deferred tax assets resulting in the provisional recognition of income tax expense.
**2016 COMPARED TO 2015**

**Net Sales**

Net sales by merchandise category, in dollars and as a percentage of total net sales, net sales change in dollars and percentage, and comps from 2016 compared to 2015 were as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2016</th>
<th>2015</th>
<th>Change</th>
<th>Comps</th>
</tr>
</thead>
<tbody>
<tr>
<td>Furniture</td>
<td>$1,195,365</td>
<td>$1,135,757</td>
<td>$59,608</td>
<td>5.2%</td>
</tr>
<tr>
<td>Food</td>
<td>830,508</td>
<td>845,541</td>
<td>(15,033)</td>
<td>(1.8%)</td>
</tr>
<tr>
<td>Consumables</td>
<td>817,747</td>
<td>826,530</td>
<td>(8,783)</td>
<td>(1.1%)</td>
</tr>
<tr>
<td>Soft Home</td>
<td>750,814</td>
<td>718,666</td>
<td>32,148</td>
<td>4.5%</td>
</tr>
<tr>
<td>Seasonal</td>
<td>739,106</td>
<td>725,238</td>
<td>13,868</td>
<td>1.9%</td>
</tr>
<tr>
<td>Hard Home</td>
<td>437,575</td>
<td>477,451</td>
<td>(39,876)</td>
<td>(8.4%)</td>
</tr>
<tr>
<td>Electronics, Toys, &amp; Accessories</td>
<td>429,324</td>
<td>461,399</td>
<td>(32,075)</td>
<td>(7.0%)</td>
</tr>
</tbody>
</table>

| Net sales                    | $5,200,439 | $5,190,582 | $9,857   | 0.2%    |

Net sales increased $9.9 million, or 0.2% to $5,200.4 million in 2016, compared to $5,190.6 million in 2015. The increase in net sales was principally due to a 0.9% increase in comps, which increased net sales by $45.8 million, partially offset by the net decrease of 17 stores since the end of 2015, which decreased net sales by $35.9 million.

Our Furniture, Soft Home, and Seasonal merchandise categories generated positive comps:

- The **Furniture** category experienced positive net sales and comps during 2016, primarily driven by strength in our mattress, case goods, and upholstery departments, which were positively impacted by an expansion of allocated square footage in approximately 50% of our stores during the first quarter of 2016, the performance of our Easy Leasing lease-to-own program, and the introduction of a third party, private label credit card offering.
- The **Soft Home** category experienced increases in net sales and comps which were primarily driven by continued broad-based improvement in the product assortment, quality and perceived value by our customers.
- The positive net sales and comps in our **Seasonal** category were driven by strength in our lawn & garden and summer departments. The strength in our lawn & garden and summer departments was primarily a result of improved product assortment and a favorable weather pattern in the first quarter of 2016 as compared to the first quarter of 2015, which experienced an extended winter.

The net sales and comp increases in Furniture, Soft Home, and Seasonal were partially offset by slightly negative net sales and comps in Consumables and Food and larger negative net sales and comps in our Hard Home and Electronics, Toys, & Accessories categories:

- The **Consumables** category experienced slightly negative comps and negative net sales, driven by negative comps in our paper department, due to fewer closeout opportunities. This was partially offset by positive comps in our pet department where we introduced an exclusive label offering in 2015 that has continued to grow, coupled with positive performance in our health, beauty, and cosmetics department due to the introduction of an everyday, branded product program.
- The **Food** category experienced a slight decrease in net sales and comps due to merchandising execution, such as product mix imbalances, and the timing of closeout inventory purchases.
- The negative net sales and comps in **Electronics, Toys, & Accessories** were a result of a reduced product offerings from our “edit” activities in the electronics department, as we continue to refine our understanding of where we can be successful in this category.
- The **Hard Home** category experienced negative net sales and comps as a result of an intentionally narrowed assortment, primarily from a reduction in allocated space executed in the first quarter of 2016.

**Gross Margin**

Gross margin dollars increased $32.3 million, or 1.6%, to $2,099.4 million in 2016, compared to $2,067.1 million in 2015. The increase in gross margin dollars was principally due to a higher gross margin rate, which increased gross margin dollars by approximately $28.4 million along with an increase in net sales, which increased gross margin dollars by approximately $3.9 million. Gross margin as a percentage of net sales increased 60 basis points to 40.4% in 2016 compared to 39.8% in 2015. The gross margin rate increase was principally due to the impact of a higher initial mark-up. The higher initial mark-up was a product of lower inbound freight costs, increased sales of higher margin products, and slightly favorable merchandise costs.
Selling and Administrative Expenses
Selling and administrative expenses were $1,731.0 million in 2016, compared to $1,708.5 million in 2015. The increase of $22.5 million, or 1.3%, was primarily due to increases in share-based compensation of $19.6 million, pension termination related expenses of $14.9 million, administrative costs to support our e-commerce platform of $10.0 million, and accruals for legal settlements of $5.1 million, partially offset by decreases in distribution and outbound transportation costs of $7.5 million, a gain on the sale of real estate of $3.8 million, a decrease in self-insurance costs of $3.8 million, and the absence of a $4.5 million loss contingency associated with a merchandise related legal matter, which occurred during the second quarter of 2015. The increase in share-based compensation expense was driven by performance share units (“PSUs”), which had not met the accounting requirements for expensing prior to the first quarter of 2016. The increase in pension expense includes all costs associated with the termination of our pension plan including settlement charges and professional fees. The increase in administrative costs to support our e-commerce platform was attributable to the launch of our e-commerce platform during the first quarter of 2016 and, as a result, many of these costs were not incurred in 2015. In 2016, we incurred $4.8 million in charges related to wage and hour claims brought against us in the State of California associated with both our stores and our distribution center as well as for an action related to our handling of hazardous materials and hazardous waste in California. The decrease in distribution and outbound transportation costs was driven by operational efficiencies generated at our distribution centers and through our outbound transportation initiatives, as well as lower diesel fuel prices, during 2016 as compared to 2015. The gain on the sale of real estate resulted from the sale of an owned store location in the fourth quarter of 2016. The decrease in self-insurance costs was due to a decrease in the occurrence of high cost claims within our general liability program.

As a percentage of net sales, selling and administrative expenses increased by 40 basis points to 33.3% in 2016 compared to 32.9% in 2015. Our future selling and administrative expense as a percentage of net sales depends on many factors, including our level of net sales, our ability to implement additional efficiencies, principally in our store and distribution center operations, and fluctuating commodity prices, such as diesel fuel, which directly affects our outbound transportation cost.

Depreciation Expense
Depreciation expense decreased $2.4 million to $120.5 million in 2016 compared to $122.9 million in 2015. The decrease was driven by a reduction in new store spending in 2014 and 2015 as compared to 2010 and 2011, as the initial store construction costs on those stores are completing the depreciation cycle. This decrease was partially offset by the depreciation of our e-commerce platform, which was placed into service in the first quarter of 2016. Depreciation expense as a percentage of net sales decreased by 10 basis points compared to 2015.

Operating Profit
Operating profit was $248.0 million in 2016 as compared to $235.8 million in 2015. The increase in operating profit was primarily driven by the items discussed in the “Net Sales”, “Gross Margin”, “Selling and Administrative Expenses”, and “Depreciation Expense” sections above. In summary, the increase in our comps and gross margin rate coupled with a decrease in depreciation expense was partially offset by an increase in selling and administrative expenses.

Interest Expense
Interest expense increased $1.4 million to $5.1 million in 2016 compared to $3.7 million in 2015. The increase was driven by higher average borrowings under the 2011 Credit Agreement. We had total average borrowings (including capital leases) of $240.7 million in 2016 compared to total average borrowings of $177.2 million in 2015. The increase in our average revolving debt balance was primarily the result of year-over-year changes in the timing and amount of our share repurchase activity.

Other Income (Expense)
Other income (expense) was $1.4 million in 2016, compared to $(5.3) million in 2015. We recognized unrealized gains of $3.7 million partially offset by realized losses of $2.3 million in 2016 related to our diesel fuel hedging contracts, driven by an increase in current and future projected diesel fuel prices, which positively impacted valuation. We recognized unrealized losses of $4.7 million along with realized losses of $0.5 million in 2015 related to our diesel fuel hedging contracts, driven by a decrease in current and future projected diesel fuel prices which negatively impacted valuation.

Income Taxes
The effective income tax rate in 2016 and 2015 was 37.4% and 37.0%, respectively. The increase in our effective rate was principally driven by an increase in nondeductible expenses and a net decrease in settlements and lapses of the statute of limitations.
Capital Resources and Liquidity

On July 22, 2011, we entered into a $700 million five-year unsecured credit facility. On May 28, 2015, we entered into a second amendment of the credit facility that among other things extended its term to May 30, 2020 (as amended, the “2011 Credit Agreement”). In connection with our original entry into the 2011 Credit Agreement, we paid bank fees and other expenses in the aggregate amount of $3.0 million, which are being amortized over the term of the agreement. In connection with the second amendment of the 2011 Credit Agreement, we paid bank fees and other expenses in the amount of $0.8 million, which are being amortized over the term of the agreement. Borrowings under the 2011 Credit Agreement are available for general corporate purposes and working capital. The 2011 Credit Agreement includes a $30 million swing loan sublimit and a $150 million letter of credit sublimit. The interest rates, pricing and fees under the 2011 Credit Agreement fluctuate based on our debt rating. The 2011 Credit Agreement allows us to select our interest rate for each borrowing from multiple interest rate options. The interest rate options are generally derived from the prime rate or LIBOR. We may prepay revolving loans made under the 2011 Credit Agreement. The 2011 Credit Agreement contains financial and other covenants, including, but not limited to, limitations on indebtedness, liens and investments, as well as the maintenance of two financial ratios – a leverage ratio and a fixed charge coverage ratio. Additionally, we are subject to cross-default provisions associated with the Synthetic Lease. A violation of any of the covenants could result in a default under the 2011 Credit Agreement that would permit the lenders to restrict our ability to further access the 2011 Credit Agreement for loans and letters of credit and require the immediate repayment of any outstanding loans under the 2011 Credit Agreement. At February 3, 2018, we were in compliance with the covenants of the 2011 Credit Agreement.

We use the 2011 Credit Agreement, as necessary, to provide funds for ongoing and seasonal working capital, capital expenditures, share repurchase programs, and other expenditures. In addition, we use the 2011 Credit Agreement to provide letters of credit for various operating and regulatory requirements, and if needed, letters of credit required to cover our self-funded insurance programs. Given the seasonality of our business, the amount of borrowings under the 2011 Credit Agreement may fluctuate materially depending on various factors, including our operating financial performance, the time of year, and our need to increase merchandise inventory levels prior to the peak selling season. Generally, our working capital requirements peak late in our third fiscal quarter or early in our fourth fiscal quarter. We have typically funded those requirements with borrowings under our credit facility. In 2017, our total indebtedness (outstanding borrowings and letters of credit) under the 2011 Credit Agreement peaked at approximately $425 million in November. At February 3, 2018, we had $199.8 million in outstanding borrowings under the 2011 Credit Agreement and $495.2 million in borrowings available under the 2011 Credit Agreement, after taking into account the reduction in availability resulting from outstanding letters of credit totaling $5.0 million. Working capital was $432.4 million at February 3, 2018.

The primary source of our liquidity is cash flows from operations and, as necessary, borrowings under the 2011 Credit Agreement. Our net income and, consequently, our cash provided by operations are impacted by net sales volume, seasonal sales patterns, and operating profit margins. Our net sales are typically highest during the nine-week Christmas selling season in our fourth fiscal quarter.

Whenever our liquidity position requires us to borrow funds under the 2011 Credit Agreement, we typically repay and/or borrow on a daily basis. The daily activity is a net result of our liquidity position, which is generally driven by the following components of our operations: (1) cash inflows such as cash or credit card receipts collected from stores for merchandise sales and other miscellaneous deposits; and (2) cash outflows such as check clearings, wire transfers and other electronic transactions for the acquisition of merchandise, for payment of capital expenditures, and for payment of payroll and other operating expenses, income and other taxes, employee benefits, and other miscellaneous disbursements.

On February 28, 2017, our Board of Directors authorized a share repurchase program providing for the repurchase of $150 million of our common shares (“2017 Repurchase Program”). During 2017, we exhausted this program by purchasing approximately 3.1 million of our outstanding common shares at an average price of $48.04.

On March 7, 2018, our Board of Directors authorized a share repurchase program providing for the repurchase of $100 million of our common shares (the “2018 Repurchase Program”). Pursuant to the 2018 Repurchase Program, we are authorized to repurchase shares in the open market and/or in privately negotiated transactions at our discretion, subject to market conditions and other factors. Common shares acquired through the 2018 Repurchase Program will be available to meet obligations under our equity compensation plans and for general corporate purposes. The 2018 Repurchase Program has no scheduled termination date and will be funded with cash and cash equivalents, cash generated from operations and by drawing on the 2011 Credit Agreement.
In 2017, we declared and paid four quarterly cash dividends of $0.25 per common share for a total paid amount of approximately $44.7 million.

In March 2018, our Board increased our quarterly dividend payment rate by approximately 20% by declaring a quarterly cash dividend of $0.30 per common share payable on April 6, 2018 to shareholders of record as of the close of business on March 23, 2018.

The following table compares the primary components of our cash flows from 2017 to 2016:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net cash provided by operating activities</td>
<td>$250,368</td>
<td>$311,925</td>
<td>$(61,557)</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>$(156,508)</td>
<td>$(84,701)</td>
<td>$(71,807)</td>
</tr>
<tr>
<td>Net cash used in financing activities</td>
<td>$(93,848)</td>
<td>$(230,204)</td>
<td>136,356</td>
</tr>
</tbody>
</table>

Cash provided by operating activities decreased by $61.6 million to $250.4 million in 2017 compared to $311.9 million in 2016. The decrease was driven by a decrease to accounts payable, which decreased our cash provided by operating activities by $67.5 million in 2017 compared to 2016. The decrease to accounts payable was primarily driven by partnering with our vendor community, through changes in certain payment terms, which accounted for approximately $40 million of the decrease, and the timing of purchases of inventory while we prepare for our Spring selling season. The decrease in accounts payable was coupled with increases in other current assets and a decrease in other current liabilities. The increase in other current assets, which decreased our cash provided by operating activities by $12.1 million was driven by increases in various receivables, primarily from landlords and vendors. The decrease in other current liabilities, which decreased our cash provided by operating activities by $10.5 million was primarily driven by payments related to the termination of our pension plan in 2016, partially offset by a decrease in bonus accruals. As discussed in our "Selling and Administrative Expenses" section, the decrease in bonus accruals year over year was driven by performance relative to our operating plan. Partially offsetting the decrease in cash provided by operating activities was an increase in net income of $37.0 million, which was primarily driven by the increase in comparable stores sales and an improved operating profit rate in 2017. Additionally, a change in our income tax position (current and deferred) and a lower effective tax rate, increased our net cash provided by operating activities by $3.0 million. The shift from deferred to current taxes payable was primarily driven by significant favorable deductible temporary differences for 2017, and by tax planning activities.

Cash used in investing activities increased by $71.8 million to $156.5 million in 2017 compared to $84.7 million in 2016. The increase was primarily driven by a $52.9 million increase in capital expenditures to $142.7 million in 2017 compared to $89.8 million in 2016. The increase in capital expenditures was driven by our increased investment in our new store openings and our Store of the Future remodels at twenty-seven of our locations in 2017, and fixtures and equipment for our new corporate office and new California distribution center. The increase in capital expenditures was coupled with an increase in assets acquired under synthetic lease of $15.6 million and a decrease in cash proceeds of $3.2 million. The increase in assets acquired under synthetic lease was driven by the Synthetic Lease for our new distribution center in Apple Valley, California during the fourth quarter of 2017. The decrease in cash proceeds of $3.2 million was driven by the sale of property in the fourth quarter of 2016, while no similar transaction occurred in 2017.

Cash used in financing activities decreased by $136.4 million to $93.8 million in 2017 compared to $230.2 million in 2016. The primary driver of this decrease was an $88.5 million decrease in payments for treasury shares acquired to $165.8 million in 2017 from $254.3 million in 2016, coupled with an increase of $49.3 million in net borrowings under our bank credit facility to $93.4 million in 2017 compared to $44.1 million in 2016, and an increase of $15.6 million for proceeds from the Synthetic Lease. The increase in net borrowings was principally driven by the changes in our accounts payable position, discussed in cash provided by operating activities above. Partially offsetting these decreases were a decrease of $10.0 million in proceeds from stock option exercises and an increase in dividends paid of $6.2 million.

Based on historical and expected financial results, we believe that we have or, if necessary, have the ability to obtain, adequate resources to fund ongoing and seasonal working capital requirements, proposed capital expenditures, new projects, and currently maturing obligations. On a consolidated basis, we expect cash provided by operating activities less capital expenditures to be approximately $120 to $130 million in 2018; and we intend to distribute approximately $150 million to shareholders through the 2018 Repurchase Program and quarterly dividend payments.
Contractual Obligations

The following table summarizes payments due under our contractual obligations at February 3, 2018:

<table>
<thead>
<tr>
<th>Payments Due by Period (1)</th>
<th>Total</th>
<th>Less than 1 year</th>
<th>1 to 3 years</th>
<th>3 to 5 years</th>
<th>More than 5 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations under bank credit facility (2)</td>
<td>$200,088</td>
<td>$288</td>
<td>—</td>
<td>$199,800</td>
<td>—</td>
</tr>
<tr>
<td>Operating lease obligations (3)(4)</td>
<td>$1,412,258</td>
<td>$344,041</td>
<td>$532,241</td>
<td>$289,736</td>
<td>$246,240</td>
</tr>
<tr>
<td>Capital lease obligations (4)</td>
<td>$17,519</td>
<td>$4,760</td>
<td>$8,812</td>
<td>$3,860</td>
<td>87</td>
</tr>
<tr>
<td>Purchase obligations (4)(5)</td>
<td>$812,094</td>
<td>$705,115</td>
<td>$96,313</td>
<td>$8,705</td>
<td>$1,961</td>
</tr>
<tr>
<td>Other long-term liabilities (6)</td>
<td>$84,106</td>
<td>$8,355</td>
<td>$10,497</td>
<td>$10,107</td>
<td>$55,147</td>
</tr>
<tr>
<td>Total contractual obligations</td>
<td>$2,526,065</td>
<td>$1,062,559</td>
<td>$647,863</td>
<td>$512,208</td>
<td>$303,435</td>
</tr>
</tbody>
</table>

(1) The disclosure of contractual obligations in this table is based on assumptions and estimates that we believe to be reasonable as of the date of this report. Those assumptions and estimates may prove to be inaccurate; consequently, the amounts provided in the table may differ materially from those amounts that we ultimately incur. Variables that may cause the stated amounts to vary from the amounts actually incurred include, but are not limited to: the termination of a contractual obligation prior to its stated or anticipated expiration; fees or damages incurred as a result of the premature termination or breach of a contractual obligation; the acquisition of more or less services or goods under a contractual obligation than are anticipated by us as of the date of this report; fluctuations in third party fees, governmental charges, or market rates that we are obligated to pay under contracts we have with certain vendors; and the exercise of renewal options under, or the automatic renewal of, contracts that provide for the same.

(2) Obligations under the bank credit facility consist of the borrowings outstanding under the 2011 Credit Agreement, and the associated accrued interest of $0.3 million. In addition, we had outstanding letters of credit totaling $59.6 million at February 3, 2018. Approximately $57.6 million of the outstanding letters of credit represent stand-by letters of credit and we do not expect to meet the conditions requiring significant cash payments on these letters of credit; accordingly, they have been excluded from this table. For a further discussion, see note 3 to the accompanying consolidated financial statements. The remaining $2.0 million of outstanding letters of credit represent commercial letters of credit whereby the related obligation is included in the purchase obligation.

(3) Operating lease obligations include, among other items, leases for retail stores, offices, and certain computer and other business equipment. The future minimum commitments for retail store and office operating leases are $1,118.8 million. For a further discussion of leases, see note 5 to the accompanying consolidated financial statements. Many of the store lease obligations require us to pay for our applicable portion of CAM, real estate taxes, and property insurance. In connection with our store lease obligations, we estimated that future obligations for CAM, real estate taxes, and property insurance were $293.4 million at February 3, 2018. We have made certain assumptions and estimates in order to account for our contractual obligations relative to CAM, real estate taxes, and property insurance. Those assumptions and estimates include, but are not limited to: use of historical data to estimate our future obligations; calculation of our obligations based on comparable store averages where no historical data is available for a particular leasehold; and assumptions related to average expected increases over historical data.

(4) For purposes of the lease and purchase obligation disclosures, we have assumed that we will make all payments scheduled or reasonably estimated to be made under those obligations that have a determinable expiration date, and we disregarded the possibility that such obligations may be prematurely terminated or extended, whether automatically by the terms of the obligation or by agreement between us and the counterparty, due to the speculative nature of premature termination or extension. Where an operating lease or purchase obligation is subject to a month-to-month term or another automatically renewing term, we included in the table our minimum commitment under such obligation, such as one month in the case of a month-to-month obligation and the then-current term in the case of another automatically renewing term, due to the uncertainty of future decisions to exercise options to extend or terminate any existing leases.
(5) Purchase obligations include outstanding purchase orders for merchandise issued in the ordinary course of our business that are valued at $415.3 million, the entirety of which represents obligations due within one year of February 3, 2018. In addition, we have purchase commitments for future inventory purchases totaling $11.5 million at February 3, 2018. While we are not required to meet any periodic minimum purchase requirements under this commitment, we have included, for purposes of this tabular disclosure, the value of the purchases that we anticipate making during each of the reported periods as purchases that will count toward our fulfillment of the aggregate obligation. The remaining $385.3 million of purchase obligations is primarily related to distribution and transportation, information technology, print advertising, energy procurement, and other store security, supply, and maintenance commitments.

(6) Other long-term liabilities include $33.4 million for obligations related to our nonqualified deferred compensation plan, $30.9 million for a charitable commitment, $15.6 million for the Synthetic Lease, and $2.8 million for unrecognized tax benefits. We have estimated the payments due by period for the nonqualified deferred compensation plan based on an average of historical distributions. We have committed to make a $40.0 million charitable donation over a 10-year period, and we have a remaining obligation of $30.9 million over the next nine years. We have entered into the Synthetic Lease for our new distribution center in California. We have included unrecognized tax benefits of $2.2 million for payments expected in 2017 and $0.6 million of timing-related income tax uncertainties anticipated to reverse in 2018. Unrecognized tax benefits in the amount of $14.4 million have been excluded from the table because we are unable to make a reasonably reliable estimate of the timing of future payments.

Off-Balance Sheet Arrangements

Not applicable.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (“GAAP”) requires management to make estimates, judgments, and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period, as well as the related disclosure of contingent assets and liabilities at the date of the financial statements. The use of estimates, judgments, and assumptions creates a level of uncertainty with respect to reported or disclosed amounts in our consolidated financial statements or accompanying notes. On an ongoing basis, management evaluates its estimates, judgments, and assumptions, including those that management considers critical to the accurate presentation and disclosure of our consolidated financial statements and accompanying notes. Management bases its estimates, judgments, and assumptions on historical experience, current trends, and various other factors that management believes are reasonable under the circumstances. Because of the inherent uncertainty in using estimates, judgments, and assumptions, actual results may differ from these estimates.

Our significant accounting policies, including the recently adopted accounting standards and recent accounting standards - future adoptions, if any, are described in note 1 to the accompanying consolidated financial statements. We believe the following estimates, assumptions, and judgments are the most critical to understanding and evaluating our reported financial results. Management has reviewed these critical accounting estimates and related disclosures with the Audit Committee of our Board of Directors.

Merchandise Inventories

Merchandise inventories are valued at the lower of cost or market using the average cost retail inventory method. Market is determined based on the estimated net realizable value, which generally is the merchandise selling price at or near the end of the reporting period. The average cost retail inventory method requires management to make judgments and contains estimates, such as the amount and timing of markdowns to clear slow-moving inventory and the estimated allowance for shrinkage, which may impact the ending inventory valuation and prior or future gross margin. These estimates are based on historical experience and current information.

When management determines the salability of merchandise inventories is diminished, markdowns for clearance activity and the related cost impact are recorded at the time the price change decision is made. Factors considered in the determination of markdowns include current and anticipated demand, customer preferences, the age of merchandise, and seasonal trends. Timing of holidays within fiscal periods, weather, and customer preferences could cause material changes in the amount and timing of markdowns from year to year.
The inventory allowance for shrinkage is recorded as a reduction to inventories, charged to cost of sales, and calculated as a percentage of sales for the period from the last physical inventory date to the end of the reporting period. Such estimates are based on both our current year and historical inventory results. Independent physical inventory counts are taken at each store once a year. During calendar 2018, the majority of these counts will occur between January and June. As physical inventories are completed, actual results are recorded and new go-forward shrink accrual rates are established based on historical results at the individual store level. Thus, the shrink accrual rates will be adjusted throughout the January to June inventory cycle based on actual results. At February 3, 2018, a 10% difference in our shrink reserve would have affected gross margin, operating profit and income before income taxes by approximately $3.2 million. While it is not possible to quantify the impact from each cause of shrinkage, we have asset protection programs and policies aimed at minimizing shrinkage.

Long-Lived Assets
Our long-lived assets primarily consist of property and equipment. We perform impairment reviews of our long-lived assets at the store level on an annual basis, or when other impairment indicators are present. Generally, all other property and equipment is reviewed for impairment at the enterprise level. When we perform our annual impairment reviews, we first determine which stores had impairment indicators present. We use actual historical cash flows to determine which stores had negative cash flows within the past two years. For each store with negative cash flows or other impairment indicators, we obtain undiscounted future cash flow estimates based on operating performance estimates specific to each store’s operations that are based on assumptions currently being used to develop our company level operating plans. If the net book value of a store’s long-lived assets is not recoverable through the expected undiscounted future cash flows of the store, we estimate the fair value of the store’s assets and recognize an impairment charge for the excess net book value of the store’s long-lived assets over their fair value. The fair value of store assets is estimated based on expected cash flows, including salvage value, which is based on information available in the marketplace for similar assets.

We identified one store in 2016 and two stores in 2015, respectively, with impairment indicators as a result of our annual store impairment tests. For these stores, we recognized impairment charges of $0.1 million and $0.4 million in 2016, and 2015, respectively. In 2017, we did not identify any stores with impairment indicators during our annual review and therefore, did not recognize any impairment charges. We do not believe that varying the assumptions used to test for recoverability to estimate fair value of our long-lived assets would have a material impact on the impairment charges we incurred in 2016 or 2015.

If our future operating results decline significantly, we may be exposed to impairment losses that could be material (for additional discussion of this risk, see “Item 1A. Risk Factors - A significant decline in our operating profit and taxable income may impair our ability to realize the value of our long-lived assets and deferred tax assets.”).

In addition to our annual store impairment reviews, we evaluate our other long-lived assets at each reporting period to determine whether impairment indicators are present.

Share-Based Compensation
We currently grant non-vested restricted stock units and PSUs to our employees under shareholder approved incentive plans. Additionally, we have granted stock options and non-vested restricted stock awards in prior years. Share-based compensation expense was $27.8 million, $33.0 million, and $13.5 million in 2017, 2016, and 2015, respectively. Future share-based compensation expense for non-vested restricted stock units depends on the future number of awards, fair value of our common shares on the grant date, and the estimated vesting period. Future share-based compensation expense for PSUs is dependent upon the future number of awards, the estimated vesting period, the grant date of the award which may vary from the issuance date, financial results relative to the targets established for each fiscal year within the three-year performance period, and potentially other estimates, judgments and assumptions used in arriving at the fair value of PSUs. Future share-based compensation expense related to non-vested restricted stock units and PSUs may vary materially from the currently amortizing awards.

Compensation expense for non-vested restricted stock units is recorded over the contractual vesting period based on our expectation of achieving the performance criteria. We monitor the achievement of the performance criteria at each reporting period.
We issued PSUs to certain employees in 2015, 2016, and 2017. The PSUs issued in 2015, 2016 and 2017 were structured to reflect specific shareholder feedback and are based on a three-year financial performance period and are payable to associates at the end of the third year assuming certain financial performance metrics are achieved. Those financial metrics include earnings per share ("EPS") and return on invested capital ("ROIC"). Financial performance targets (for both EPS and ROIC) are established by the Compensation Committee of our Board of Directors at the beginning of each fiscal year based on our approved operating plan. From an accounting perspective, a grant date will be deemed to be established when all financial targets are determined, which occurred in March 2017 for the PSUs issued in 2015, and is estimated to occur in March 2018 and March 2019 for the PSUs issued in 2016 and 2017, respectively. Compensation expense for the PSUs will be recorded (1) based on fair value of the award on the grant date and the estimated achievement of financial performance objectives, and (2) on a straight-line basis from the grant date, which may vary from the issuance date, through the vesting date. Accordingly, based on this accounting treatment, there was no expense recognized in fiscal 2015 or fiscal 2016 related to the PSUs issued in 2015. On March 7, 2017, the Compensation Committee established the 2017 performance targets, which established the grant date, and, therefore, the fair value of the PSUs issued in 2015. We monitored the estimated achievement of the financial performance objectives at each reporting period end and adjusted the estimated expense on a cumulative basis. In 2017, we recognized $15.4 million in share-based compensation expense related to the PSUs issued in 2015. In 2016, we recognized $17.5 million in share-based compensation expense related to the PSUs issued in 2014.

At February 3, 2018, PSUs issued and outstanding were as follows:

<table>
<thead>
<tr>
<th>Issue Year</th>
<th>Outstanding PSUs at February 3, 2018</th>
<th>Actual Grant Date</th>
<th>Expected Valuation (Grant) Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>249,324</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td>337,421</td>
<td>March 2017</td>
<td>March 2018</td>
</tr>
<tr>
<td>2017</td>
<td>268,296</td>
<td></td>
<td>March 2019</td>
</tr>
<tr>
<td>Total</td>
<td>855,041</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Income Taxes**

The determination of our income tax expense, refunds receivable, income taxes payable, deferred tax assets and liabilities and financial statement recognition, de-recognition and/or measurement of uncertain tax benefits (for positions taken or to be taken on income tax returns) requires significant judgment, the use of estimates, and the interpretation and application of complex accounting and multi-jurisdictional income tax laws.

The effective income tax rate in any period may be materially impacted by the overall level of income (loss) before income taxes, the jurisdictional mix and magnitude of income (loss), changes in the income tax laws (which may be retroactive to the beginning of the fiscal year), subsequent recognition, de-recognition and/or measurement of an uncertain tax benefit, changes in deferred tax asset valuation allowances and adjustments of a deferred tax asset or liability for enacted changes in tax laws or rates, such as the Tax Cuts and Jobs Act. Although we believe that our estimates are reasonable, actual results could differ from these estimates resulting in a final tax outcome that may be materially different from that which is reflected in our consolidated financial statements.

We evaluate our ability to recover our deferred tax assets within the jurisdiction from which they arise. We consider all available positive and negative evidence including recent financial results, projected future pretax accounting income and tax planning strategies (when necessary). This evaluation requires us to make assumptions that require significant judgment about the forecasts of future pretax accounting income. The assumptions that we use in this evaluation are consistent with the assumptions and estimates used to develop our consolidated operating financial plans. If we determine that a portion of our deferred tax assets, which principally represent expected future deductions or benefits, are not likely to be realized, we recognize a valuation allowance for our estimate of these benefits which we believe are not likely recoverable. Additionally, changes in tax laws, apportionment of income for state and local tax purposes, and rates could also affect recorded deferred tax assets.

We evaluate the uncertainty of income tax positions taken or to be taken on income tax returns. When a tax position meets the more-likely-than-not threshold, we recognize economic benefits associated with the position on our consolidated financial statements. The more-likely-than-not recognition threshold is a positive assertion that an enterprise believes it is entitled to economic benefits associated with a tax position. When a tax position does not meet the more-likely-than-not threshold, or in the case of those positions that do meet the threshold but are measured at less than the full benefit taken on the return, we recognize tax liabilities (or de-recognize tax assets, as the case may be). A number of years may elapse before a particular matter, for which we have de-recognized a tax benefit, is audited and fully resolved or clarified. We adjust unrecognized tax benefits and the income tax provision in the period in which an uncertain tax position is effectively or ultimately settled, the
statute of limitations expires for the relevant taxing authority to examine the tax position, or as a result of the evaluation of new information that becomes available.

Insurance and Insurance-Related Reserves
We are self-insured for certain losses relating to property, general liability, workers’ compensation, and employee medical, dental, and prescription drug benefit claims, a portion of which is funded by employees. We purchase stop-loss coverage from third party insurance carriers to limit individual or aggregate loss exposures in these areas. Accrued insurance liabilities and related expenses are based on actual claims reported and estimates of claims incurred but not reported. The estimated loss accruals for claims incurred but not paid are determined by applying actuarially-based calculations taking into account historical claims payment results and known trends such as claims frequency and claims severity. Management makes estimates, judgments, and assumptions with respect to the use of these actuarially-based calculations, including but not limited to, estimated health care cost trends, estimated lag time to report and pay claims, average cost per claim, network utilization rates, network discount rates, and other factors. A 10% change in our self-insured liabilities at February 3, 2018 would have affected selling and administrative expenses, operating profit, and income before income taxes by approximately $7 million.

General liability and workers’ compensation liabilities are recorded at our estimate of their net present value, using a 3.5% discount rate, while other liabilities for insurance reserves are not discounted. A 1.0% change in the discount rate on these liabilities would have affected selling and administrative expenses, operating profit, and income before income taxes by approximately $2.2 million.

Lease Accounting
In order to recognize rent expense on our leases, we evaluate many factors to identify the lease term such as the contractual term of the lease, our assumed possession date of the property, renewal option periods, and the estimated value of leasehold improvement investments that we are required to make. Based on this evaluation, our lease term is typically the minimum contractually obligated period over which we have control of the property. This term is used because although many of our leases have renewal options, we typically do not incur an economic or contractual penalty in the event of non-renewal. Therefore, we typically use the initial minimum lease term for purposes of calculating straight-line rent, amortizing deferred rent, and recognizing depreciation expense on our leasehold improvements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk
We are subject to market risk from exposure to changes in interest rates on investments and on borrowings under the 2011 Credit Agreement that we make from time to time. We had borrowings of $199.8 million under the 2011 Credit Agreement at February 3, 2018. An increase of 1% in our variable interest rate on our investments and expected future borrowings could affect our financial condition, results of operations, or liquidity through higher interest expense by approximately $2.4 million.

We are subject to market risk from exposure to changes in our derivative instruments, associated with diesel fuel. At February 3, 2018, we had outstanding derivative instruments, in the form of collars, covering 3.6 million gallons of diesel fuel. The below table provides further detail related to our current derivative instruments, associated with diesel fuel:

<table>
<thead>
<tr>
<th>Calendar Year of Maturity</th>
<th>Diesel Fuel Derivatives</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Puts (Gallons, in thousands)</td>
<td>Calls (In thousands)</td>
</tr>
<tr>
<td>2018</td>
<td>2,400</td>
<td>2,400</td>
</tr>
<tr>
<td>2019</td>
<td>1,200</td>
<td>1,200</td>
</tr>
<tr>
<td>2020</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>3,600</td>
<td>3,600</td>
</tr>
</tbody>
</table>

Additionally, at February 3, 2018, a 10% difference in the forward curve for diesel fuel prices could affect unrealized gains (losses) in other income (expense) by approximately $1.1 million.
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of Big Lots, Inc.

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of Big Lots, Inc. and subsidiaries (the “Company”) as of February 3, 2018, based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of February 3, 2018, based on criteria established in Internal Control - Integrated Framework (2013) issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the consolidated financial statements as of and for the year ended February 3, 2018, of the Company and our report dated April 3, 2018 expressed an unqualified opinion on those financial statements.

Basis for Opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ DELOITTE & TOUCHE LLP

Columbus, Ohio
April 3, 2018
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of Big Lots, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Big Lots, Inc. and subsidiaries (the “Company”) as of February 3, 2018 and January 28, 2017, the related consolidated statements of operations, comprehensive income, shareholders’ equity, and cash flows, for each of the three years in the period ended February 3, 2018, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of February 3, 2018 and January 28, 2017, and the results of its operations and its cash flows for each of the three years in the period ended February 3, 2018, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the Company’s internal control over financial reporting as of February 3, 2018, based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated April 3, 2018, expressed an unqualified opinion on the Company’s internal control over financial reporting.

Basis for Opinion

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ DELOITTE & TOUCHE LLP

Columbus, Ohio
April 3, 2018

We have served as the Company’s auditor since 1989.
### BIG LOTS, INC. AND SUBSIDIARIES

#### Consolidated Statements of Operations

(In thousands, except per share amounts)

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net sales</strong></td>
<td>$5,270,980</td>
<td>$5,200,439</td>
<td>$5,190,582</td>
</tr>
<tr>
<td><strong>Cost of sales</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(exclusive of depreciation expense shown separately below)</td>
<td>3,128,538</td>
<td>3,101,020</td>
<td>3,123,442</td>
</tr>
<tr>
<td><strong>Gross margin</strong></td>
<td>2,142,442</td>
<td>2,099,419</td>
<td>2,067,140</td>
</tr>
<tr>
<td><strong>Selling and administrative expenses</strong></td>
<td>1,723,996</td>
<td>1,730,956</td>
<td>1,708,499</td>
</tr>
<tr>
<td><strong>Depreciation expense</strong></td>
<td>117,093</td>
<td>120,460</td>
<td>122,854</td>
</tr>
<tr>
<td><strong>Operating profit</strong></td>
<td>301,353</td>
<td>248,003</td>
<td>235,787</td>
</tr>
<tr>
<td><strong>Interest expense</strong></td>
<td>(6,711)</td>
<td>(5,091)</td>
<td>(3,683)</td>
</tr>
<tr>
<td><strong>Other income (expense)</strong></td>
<td>712</td>
<td>1,387</td>
<td>(5,254)</td>
</tr>
<tr>
<td><strong>Income before income taxes</strong></td>
<td>295,354</td>
<td>244,299</td>
<td>226,850</td>
</tr>
<tr>
<td><strong>Income tax expense</strong></td>
<td>105,522</td>
<td>91,471</td>
<td>83,977</td>
</tr>
<tr>
<td><strong>Net income</strong></td>
<td>$189,832</td>
<td>$152,828</td>
<td>$142,873</td>
</tr>
</tbody>
</table>

**Earnings per common share:**

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Basic</strong></td>
<td>$4.43</td>
<td>$3.37</td>
<td>2.83</td>
</tr>
<tr>
<td><strong>Diluted</strong></td>
<td>$4.38</td>
<td>$3.32</td>
<td>2.80</td>
</tr>
</tbody>
</table>

**Cash dividends declared per common share**

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$1.00</td>
<td>0.84</td>
<td>0.76</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net income</td>
<td>$189,832</td>
<td>$152,828</td>
<td>$142,873</td>
</tr>
<tr>
<td>Other comprehensive income (loss):</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amortization of pension, net of tax benefit of $0, $(886), and $(702), respectively</td>
<td>—</td>
<td>1,355</td>
<td>1,119</td>
</tr>
<tr>
<td>Valuation adjustment of pension, net of tax (benefit) expense of $0, $(9,556), and $1,530, respectively</td>
<td>—</td>
<td>14,622</td>
<td>(2,440)</td>
</tr>
<tr>
<td>Total other comprehensive income (loss)</td>
<td>—</td>
<td>15,977</td>
<td>(1,321)</td>
</tr>
<tr>
<td>Comprehensive income</td>
<td>$189,832</td>
<td>$168,805</td>
<td>$141,552</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
### BIG LOTS, INC. AND SUBSIDIARIES
**Consolidated Balance Sheets**
(In thousands, except par value)

#### February 3, 2018

<table>
<thead>
<tr>
<th>ASSETS</th>
<th></th>
<th>January 28, 2017</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current assets:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 51,176</td>
<td>$ 51,164</td>
<td></td>
</tr>
<tr>
<td>Inventories</td>
<td>872,790</td>
<td>858,689</td>
<td></td>
</tr>
<tr>
<td>Other current assets</td>
<td>98,007</td>
<td>84,526</td>
<td></td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td>1,021,973</td>
<td>994,379</td>
<td></td>
</tr>
<tr>
<td>Property and equipment - net</td>
<td>565,977</td>
<td>525,851</td>
<td></td>
</tr>
<tr>
<td>Deferred income taxes</td>
<td>13,986</td>
<td>46,469</td>
<td></td>
</tr>
<tr>
<td>Other assets</td>
<td>49,790</td>
<td>41,008</td>
<td></td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>$ 1,651,726</td>
<td>$ 1,607,707</td>
<td></td>
</tr>
</tbody>
</table>

#### LIABILITIES AND SHAREHOLDERS’ EQUITY

<table>
<thead>
<tr>
<th>Current liabilities:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts payable</td>
<td>$ 351,226</td>
<td>$ 400,495</td>
</tr>
<tr>
<td>Property, payroll, and other taxes</td>
<td>80,863</td>
<td>81,306</td>
</tr>
<tr>
<td>Accrued operating expenses</td>
<td>72,013</td>
<td>71,251</td>
</tr>
<tr>
<td>Insurance reserves</td>
<td>38,517</td>
<td>40,269</td>
</tr>
<tr>
<td>Accrued salaries and wages</td>
<td>39,321</td>
<td>54,009</td>
</tr>
<tr>
<td>Income taxes payable</td>
<td>7,668</td>
<td>31,265</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td>589,608</td>
<td>678,595</td>
</tr>
<tr>
<td>Long-term obligations</td>
<td>199,800</td>
<td>106,400</td>
</tr>
<tr>
<td>Deferred rent</td>
<td>58,246</td>
<td>56,035</td>
</tr>
<tr>
<td>Insurance reserves</td>
<td>55,015</td>
<td>56,593</td>
</tr>
<tr>
<td>Unrecognized tax benefits</td>
<td>14,929</td>
<td>15,853</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>64,541</td>
<td>43,601</td>
</tr>
<tr>
<td><strong>Shareholders’ equity:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred shares - authorized 2,000 shares;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$0.01 par value; none issued</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Common shares - authorized 298,000 shares;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$0.01 par value; issued 117,495 shares;</td>
<td>1,175</td>
<td>1,175</td>
</tr>
<tr>
<td>outstanding 41,925 shares and 44,259 shares, respectively</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treasury shares - 75,570 shares and 73,236 shares, respectively, at cost</td>
<td>(2,422,396)</td>
<td>(2,291,379)</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>622,550</td>
<td>617,516</td>
</tr>
<tr>
<td>Retained earnings</td>
<td>2,468,258</td>
<td>2,323,318</td>
</tr>
<tr>
<td><strong>Accumulated other comprehensive loss</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total shareholders’ equity</strong></td>
<td>669,587</td>
<td>650,630</td>
</tr>
<tr>
<td><strong>Total liabilities and shareholders’ equity</strong></td>
<td>$ 1,651,726</td>
<td>$ 1,607,707</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.

40
## BIG LOTS, INC. AND SUBSIDIARIES

### Consolidated Statements of Shareholders’ Equity

(In thousands)

<table>
<thead>
<tr>
<th></th>
<th>Common</th>
<th>Treasury</th>
<th>Additional Paid-In Capital</th>
<th>Retained Earnings</th>
<th>Accumulated Other Comprehensive Loss</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Shares</td>
<td>Amount</td>
<td>Shares</td>
<td>Amount</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Balance - January 31, 2015</td>
<td>52,912</td>
<td>$1,175</td>
<td>64,583</td>
<td>(1,878,523)</td>
<td>574,454</td>
<td>$2,107,100</td>
</tr>
<tr>
<td>Comprehensive income</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>142,873</td>
</tr>
<tr>
<td>Dividends declared ($0.76 per share)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(39,734)</td>
</tr>
<tr>
<td>Purchases of common shares</td>
<td>(4,403)</td>
<td>—</td>
<td>4,403</td>
<td>(201,867)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Exercise of stock options</td>
<td>450</td>
<td>—</td>
<td>(450)</td>
<td>13,149</td>
<td>3,134</td>
<td>—</td>
</tr>
<tr>
<td>Restricted shares vested</td>
<td>128</td>
<td>—</td>
<td>(128)</td>
<td>3,747</td>
<td>(3,747)</td>
<td>—</td>
</tr>
<tr>
<td>Performance shares vested</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Tax benefit from share-based awards</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>687</td>
<td>—</td>
</tr>
<tr>
<td>Share activity related to deferred compensation plan</td>
<td>1</td>
<td>—</td>
<td>(1)</td>
<td>19</td>
<td>4</td>
<td>—</td>
</tr>
<tr>
<td>Other</td>
<td>13</td>
<td>—</td>
<td>(13)</td>
<td>384</td>
<td>113</td>
<td>—</td>
</tr>
<tr>
<td>Share-based employee compensation expense</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>13,479</td>
<td>—</td>
</tr>
<tr>
<td>Balance - January 30, 2016</td>
<td>49,101</td>
<td>$1,175</td>
<td>68,394</td>
<td>(2,063,091)</td>
<td>588,124</td>
<td>$2,210,239</td>
</tr>
<tr>
<td>Comprehensive income</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>152,828</td>
</tr>
<tr>
<td>Dividends declared ($0.84 per share)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(39,749)</td>
</tr>
<tr>
<td>Purchases of common shares</td>
<td>(5,685)</td>
<td>—</td>
<td>5,685</td>
<td>(254,304)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Exercise of stock options</td>
<td>573</td>
<td>—</td>
<td>(573)</td>
<td>17,834</td>
<td>3,822</td>
<td>—</td>
</tr>
<tr>
<td>Restricted shares vested</td>
<td>252</td>
<td>—</td>
<td>(252)</td>
<td>7,649</td>
<td>(7,649)</td>
<td>—</td>
</tr>
<tr>
<td>Performance shares vested</td>
<td>13</td>
<td>—</td>
<td>(13)</td>
<td>394</td>
<td>(394)</td>
<td>—</td>
</tr>
<tr>
<td>Tax benefit from share-based awards</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>510</td>
<td>—</td>
</tr>
<tr>
<td>Share activity related to deferred compensation plan</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
<td>—</td>
<td>(5)</td>
<td>136</td>
<td>68</td>
<td>—</td>
</tr>
<tr>
<td>Share-based employee compensation expense</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>33,029</td>
<td>—</td>
</tr>
<tr>
<td>Balance - January 28, 2017</td>
<td>44,259</td>
<td>$1,175</td>
<td>73,236</td>
<td>(2,291,379)</td>
<td>617,516</td>
<td>$2,323,318</td>
</tr>
<tr>
<td>Comprehensive income</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>189,832</td>
</tr>
<tr>
<td>Dividends declared ($1.00 per share)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(44,746)</td>
</tr>
<tr>
<td>Adjustment for ASU 2016-09</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>241</td>
<td>(146)</td>
</tr>
<tr>
<td>Purchases of common shares</td>
<td>(3,437)</td>
<td>—</td>
<td>3,437</td>
<td>(165,757)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Exercise of stock options</td>
<td>304</td>
<td>—</td>
<td>(304)</td>
<td>9,659</td>
<td>2,053</td>
<td>—</td>
</tr>
<tr>
<td>Restricted shares vested</td>
<td>368</td>
<td>—</td>
<td>(368)</td>
<td>11,562</td>
<td>(11,562)</td>
<td>—</td>
</tr>
<tr>
<td>Performance shares vested</td>
<td>431</td>
<td>—</td>
<td>(431)</td>
<td>13,523</td>
<td>(13,523)</td>
<td>—</td>
</tr>
<tr>
<td>Share activity related to deferred compensation plan</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(4)</td>
<td>—</td>
</tr>
<tr>
<td>Other</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Share-based employee compensation expense</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>27,825</td>
<td>—</td>
</tr>
<tr>
<td>Balance - February 3, 2018</td>
<td>41,925</td>
<td>$1,175</td>
<td>75,570</td>
<td>(2,422,396)</td>
<td>622,550</td>
<td>$2,468,258</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
BIG LOTS, INC. AND SUBSIDIARIES  
Consolidated Statements of Cash Flows  
(In thousands)  

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net income</strong></td>
<td>$189,832</td>
<td>$152,828</td>
<td>$142,873</td>
</tr>
<tr>
<td><strong>Depreciation and amortization expense</strong></td>
<td>106,004</td>
<td>108,315</td>
<td>108,054</td>
</tr>
<tr>
<td><strong>Deferred income taxes</strong></td>
<td>32,578</td>
<td>(9,171)</td>
<td>(617)</td>
</tr>
<tr>
<td><strong>Non-cash share-based compensation expense</strong></td>
<td>27,825</td>
<td>33,029</td>
<td>13,479</td>
</tr>
<tr>
<td><strong>Excess tax benefit from share-based awards</strong></td>
<td>—</td>
<td>(1,111)</td>
<td>(1,330)</td>
</tr>
<tr>
<td><strong>Non-cash impairment charge</strong></td>
<td>—</td>
<td>100</td>
<td>386</td>
</tr>
<tr>
<td><strong>Loss (gain) on disposition of property and equipment</strong></td>
<td>483</td>
<td>(2,899)</td>
<td>1,464</td>
</tr>
<tr>
<td><strong>Unrealized (gain) loss on fuel derivatives</strong></td>
<td>(1,398)</td>
<td>(3,657)</td>
<td>4,665</td>
</tr>
<tr>
<td><strong>Pension expense, net of contributions</strong></td>
<td>—</td>
<td>6,644</td>
<td>(5,312)</td>
</tr>
<tr>
<td><strong>Net cash provided by operating activities</strong></td>
<td>250,368</td>
<td>311,925</td>
<td>342,352</td>
</tr>
<tr>
<td><strong>Capital expenditures</strong></td>
<td>(142,745)</td>
<td>(89,782)</td>
<td>(125,989)</td>
</tr>
<tr>
<td><strong>Cash proceeds from sale of property and equipment</strong></td>
<td>1,854</td>
<td>5,061</td>
<td>12,773</td>
</tr>
<tr>
<td><strong>Assets acquired under synthetic lease</strong></td>
<td>(15,606)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Net cash used in investing activities</strong></td>
<td>(156,508)</td>
<td>(84,701)</td>
<td>(113,193)</td>
</tr>
<tr>
<td><strong>Net proceeds from borrowings under bank credit facility</strong></td>
<td>93,400</td>
<td>44,100</td>
<td>200</td>
</tr>
<tr>
<td><strong>Dividends paid</strong></td>
<td>(44,671)</td>
<td>(38,466)</td>
<td>(38,530)</td>
</tr>
<tr>
<td><strong>Proceeds from the exercise of stock options</strong></td>
<td>11,712</td>
<td>21,656</td>
<td>16,283</td>
</tr>
<tr>
<td><strong>Payment for treasury shares acquired</strong></td>
<td>(165,757)</td>
<td>(254,304)</td>
<td>(201,867)</td>
</tr>
<tr>
<td><strong>Proceeds from synthetic lease</strong></td>
<td>15,606</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Deferred bank credit facility fees paid</strong></td>
<td>—</td>
<td>—</td>
<td>(779)</td>
</tr>
<tr>
<td><strong>Net cash used in financing activities</strong></td>
<td>(93,848)</td>
<td>(230,204)</td>
<td>(227,276)</td>
</tr>
</tbody>
</table>

| Increase (decrease) in cash and cash equivalents | 12       | (2,980)  | 1,883    |

**Cash and cash equivalents:**

| Beginning of year | 51,164 | 54,144 | 52,261 |

| End of year       | $51,176| $51,164| $54,144|

The accompanying notes are an integral part of these consolidated financial statements.
Description of Business
We are a community retailer in the United States (“U.S.”). At February 3, 2018, we operated 1,416 stores in 47 states and an e-commerce platform. We are dedicated to friendly service, trustworthy value, and affordable solutions in every season and category – furniture, food, décor, and more. We exist to serve everyone like family, providing a better shopping experience for our customers by providing great savings on value-priced merchandise, which includes tasteful and “trend-right” import merchandise, consistent and replenishable “never out” offerings, and brand-name closeouts that are meaningful, combined with the quality and ease of the shopping experience.

Basis of Presentation
The consolidated financial statements include Big Lots, Inc. and all of its subsidiaries, have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”), and include all of our accounts. We consolidate all majority-owned and controlled subsidiaries. All intercompany accounts and transactions have been eliminated.

Management Estimates
The preparation of financial statements in conformity with GAAP requires management to make estimates, judgments, and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period, as well as the related disclosure of contingent assets and liabilities at the date of the financial statements. The use of estimates, judgments, and assumptions creates a level of uncertainty with respect to reported or disclosed amounts in our consolidated financial statements and accompanying notes. On an ongoing basis, management evaluates its estimates, judgments, and assumptions, including those that management considers critical to the accurate presentation and disclosure of our consolidated financial statements and accompanying notes. Management bases its estimates, judgments, and assumptions on historical experience, current trends, and various other factors that it believes are reasonable under the circumstances. Because of the inherent uncertainty in using estimates, judgments, and assumptions, actual results may differ from these estimates.

Fiscal Periods
Our fiscal year ends on the Saturday nearest to January 31, which results in fiscal years consisting of 52 or 53 weeks. Unless otherwise stated, references to years in this report relate to fiscal years rather than calendar years. Fiscal year 2017 (“2017”) was comprised of the 53 weeks that began on January 29, 2017 and ended on February 3, 2018. Fiscal year 2016 (“2016”) was comprised of the 52 weeks that began on January 31, 2016 and ended on January 28, 2017. Fiscal year 2015 (“2015”) was comprised of the 52 weeks that began on February 1, 2015 and ended on January 30, 2016.

Segment Reporting
We manage our business based on one segment, discount retailing. Our entire operation is located in the U.S.

Cash and Cash Equivalents
Cash and cash equivalents primarily consist of amounts on deposit with financial institutions, outstanding checks, credit and debit card receivables, and highly liquid investments, including money market funds, which are unrestricted to withdrawal or use and which have an original maturity of three months or less. We review cash and cash equivalent balances on a bank by bank basis in order to identify book overdrafts. Book overdrafts occur when the amount of outstanding checks exceed the cash deposited at a given bank. We reclassify book overdrafts, if any, to accounts payable on our consolidated balance sheets. Amounts due from banks for credit and debit card transactions are typically settled in less than five days, and at February 3, 2018 and January 28, 2017, totaled $27.0 million and $26.9 million, respectively.

Investments
Investment securities are classified as available-for-sale, held-to-maturity, or trading at the date of purchase. Investments are recorded at fair value as either current assets or non-current assets based on the stated maturity or our plans to either hold or sell the investment. Unrealized holding gains and losses on trading securities are recognized in earnings. Unrealized holding gains and losses on available-for-sale securities are recognized in other comprehensive income, until realized. We did not own any held-to-maturity or available-for-sale securities as of February 3, 2018 and January 28, 2017.
Merchandise Inventories
Merchandise inventories are valued at the lower of cost or market using the average cost retail inventory method. Cost includes any applicable inbound shipping and handling costs associated with the receipt of merchandise into our distribution centers (see the discussion below under the caption “Selling and Administrative Expenses” for additional information regarding outbound shipping and handling costs to our stores). Market is determined based on the estimated net realizable value, which generally is the merchandise selling price. Under the average cost retail inventory method, inventory is segregated into classes of merchandise having similar characteristics at its current retail selling value. Current retail selling values are converted to a cost basis by applying an average cost factor to each specific merchandise class’s retail selling value. Cost factors represent the average cost-to-retail ratio computed using beginning inventory and all fiscal year-to-date purchase activity specific to each merchandise class.

Under the average cost retail inventory method, permanent sales price markdowns result in cost reductions in inventory. Our permanent sales price markdowns are typically related to end of season clearance events and are recorded as a charge to cost of sales in the period of management’s decision to initiate sales price reductions with the intent not to return the price to regular retail. Promotional markdowns are recorded as a charge to net sales in the period the merchandise is sold. Promotional markdowns are typically related to specific marketing efforts with respect to products maintained continuously in our stores or products that are only available in limited quantities but represent substantial value to our customers. Promotional markdowns are principally used to drive higher sales volume during a defined promotional period.

We record a reduction to inventories and charge to cost of sales for a shrinkage inventory allowance. The shrinkage allowance is calculated as a percentage of sales for the period from the last physical inventory date to the end of the reporting period. Such estimates are based on a combination of our historical experience and current year physical inventory results.

We record a reduction to inventories and charge to cost of sales for any excess or obsolete inventory. The excess or obsolete inventory is estimated based on a review of our aged inventory and takes into account any items that have already received a cost reduction as a result of the permanent markdown process discussed above. We estimate the reduction for excess or obsolete inventory based on historical sales trends, age and quantity of product on hand, and anticipated future sales.

Payments Received from Vendors
Payments received from vendors relate primarily to rebates and reimbursement for markdowns and are recognized in our consolidated statements of operations as a reduction to cost of inventory purchases in the period that the rebate or reimbursement is earned or realized and, consequently, result in a reduction in cost of sales when the related inventory is sold.

Store Supplies
When opening a new store, a portion of the initial shipment of supplies (which primarily includes display materials, signage, security-related items, and miscellaneous store supplies) is capitalized at the store opening date. These capitalized supplies represent more durable types of items for which we expect to receive future economic benefit. Subsequent replenishments of capitalized store supplies are expensed. The consumable/non-durable type items for which the future economic benefit is less measurable are expensed upon shipment to the store. Capitalized store supplies are adjusted periodically for changes in estimated quantities or costs and are included in other current assets in our consolidated balance sheets.

Property and Equipment - Net
Depreciation and amortization expense of property and equipment are recorded on a straight-line basis using estimated service lives. The estimated service lives of our depreciable property and equipment by major asset category were as follows:

<table>
<thead>
<tr>
<th>Asset Category</th>
<th>Service Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land improvements</td>
<td>15 years</td>
</tr>
<tr>
<td>Buildings</td>
<td>40 years</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>5 years</td>
</tr>
<tr>
<td>Store fixtures and equipment</td>
<td>5 - 7 years</td>
</tr>
<tr>
<td>Distribution and transportation fixtures and equipment</td>
<td>5 - 15 years</td>
</tr>
<tr>
<td>Office and computer equipment</td>
<td>5 years</td>
</tr>
<tr>
<td>Computer software costs</td>
<td>5 - 8 years</td>
</tr>
<tr>
<td>Company vehicles</td>
<td>3 years</td>
</tr>
</tbody>
</table>
Leasehold improvements are amortized on a straight-line basis using the shorter of their estimated service lives or the lease term. Because many initial lease terms range from five to ten years and the majority of our lease options have a term of five years, we estimate the useful life of leasehold improvements at five years. This amortization period is consistent with the amortization period for any lease incentives that we would typically receive when initially entering into a new lease that are recognized as deferred rent and amortized over the initial lease term.

Assets acquired under noncancellable leases, which meet the criteria of a capital lease, are capitalized in property and equipment - net and amortized over the estimated service life of the asset or the applicable lease term, whichever is shorter.

Depreciation estimates are revised prospectively to reflect the remaining depreciation or amortization of the asset over the shortened estimated service life when a decision is made to dispose of property and equipment prior to the end of its previously estimated service life. The cost of assets sold or retired and the related accumulated depreciation are removed from the accounts with any resulting gain or loss included in selling and administrative expenses. Major repairs that extend service lives are capitalized. Maintenance and repairs are charged to expense as incurred. Capitalized interest was not significant in any period presented.

Long-Lived Assets

Our long-lived assets primarily consist of property and equipment - net. In order to determine if impairment indicators are present for store property and equipment, we review historical operating results at the store level on an annual basis, or when other impairment indicators are present. Generally, all other property and equipment is reviewed for impairment at the enterprise level. If the net book value of a store’s long-lived assets is not recoverable by the expected undiscounted future cash flows of the store, we estimate the fair value of the store’s assets and recognize an impairment charge for the excess net book value of the store’s long-lived assets over their fair value. Our assumptions related to estimates of undiscounted future cash flows are based on historical results of cash flows adjusted for management projections for future periods. We estimate the fair value of our long-lived assets using expected cash flows, including salvage value, which is based on readily available market information for similar assets.

Closed Store Accounting

We recognize an obligation for the fair value of lease termination costs when we cease using the leased property in our operations. In measuring fair value of these lease termination obligations, we consider the remaining minimum lease payments, estimated sublease rentals that could be reasonably obtained, and other potentially mitigating factors. We discount the estimated obligation using the applicable credit adjusted interest rate, which results in accretion expense in periods subsequent to the period of initial measurement. We monitor the estimated obligation for lease termination liabilities in subsequent periods and revise our estimated liabilities, if necessary. Severance and benefits associated with terminating employees from employment are recognized ratably from the communication date through the estimated future service period, unless the estimated future service period is less than 60 days, in which case we recognize the impact at the communication date. Generally all other store closing costs are recognized when incurred.

Income Taxes

We account for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the consolidated financial statements. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial statement basis and tax basis of assets and liabilities using enacted law and tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

We assess the adequacy and need for a valuation allowance for deferred tax assets. In making such assessment, we consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies and recent financial operations. We have established a valuation allowance to reduce our deferred tax assets to the balance that is more likely than not to be realized.
We recognize interest and penalties related to unrecognized tax benefits within the income tax expense line in the accompanying consolidated statements of operations. Accrued interest and penalties are included within the related tax liability line in the accompanying consolidated balance sheets.

The effective income tax rate in any period may be materially impacted by the overall level of income (loss) before income taxes, the jurisdictional mix and magnitude of income (loss), changes in the income tax laws (which may be retroactive to the beginning of the fiscal year), subsequent recognition, de-recognition and/or measurement of an uncertain tax benefit, changes in a deferred tax valuation allowance, and adjustments of a deferred tax asset or liability for enacted changes in tax laws or rates.

Pension
As of January 28, 2017, our pension plans were frozen, terminated and fully distributed. Accordingly, we no longer evaluate pension assumptions or calculate expenses and obligations related to our pension plans, as further discussed in note 8. In prior years, we evaluated pension assumptions and used actuarial valuations to calculate the estimated expenses and obligations related to our pension plans. We reviewed external data and historical trends to help determine the discount rate and expected long-term rate of return. Our objective in selecting a discount rate was to identify the best estimate of the rate at which the benefit obligations would be settled on the measurement date. In making this estimate, we reviewed rates of return on high-quality, fixed-income investments available at the measurement date and expected to be available during the period to maturity of the benefits. This process included a review of the bonds available on the measurement date with a quality rating of Aa or better. The expected long-term rate of return on assets was derived from detailed periodic studies, which included a review of asset allocation strategies, anticipated future long-term performance of individual asset classes, risks (standard deviations), and correlations of returns among the asset classes that comprised the plan’s asset mix. While the studies gave appropriate consideration to recent plan performance and historical returns, the assumption for the expected long-term rate of return was primarily based on our expectation of a long-term, prospective rate of return.

Insurance and Insurance-Related Reserves
We are self-insured for certain losses relating to property, general liability, workers' compensation, and employee medical, dental, and prescription drug benefit claims, a portion of which is paid by employees. We purchase stop-loss coverage to limit significant exposure in these areas. Accrued insurance-related liabilities and related expenses are based on actual claims filed and estimates of claims incurred but not reported and are reliably determinable. The accruals are determined by applying actuarially-based calculations. General liability and workers' compensation liabilities are recorded at our estimate of their net present value, using a 3.5% discount rate, while other liabilities for insurance-related reserves are not discounted.

Fair Value of Financial Instruments
The fair value hierarchy prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy, as defined below, gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities and the lowest priority to unobservable inputs.

- Level 1, defined as observable inputs such as unadjusted quoted prices in active markets for identical assets or liabilities.
- Level 2, defined as observable inputs other than Level 1 inputs. These include quoted prices for similar assets or liabilities in an active market, quoted prices for identical assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

The carrying value of cash equivalents, accounts receivable, accounts payable, and accrued expenses approximates fair value because of the relatively short maturity of these items.

Commitments and Contingencies
We are subject to various claims and contingencies including legal actions and other claims arising out of the normal course of business. In connection with such claims and contingencies, we estimate the likelihood and amount of any potential obligation, where it is possible to do so, using management's judgment. Management uses various internal and external specialists to assist in the estimating process. We accrue, if material, a liability if the likelihood of a loss is probable and the amount is estimable. If the likelihood of a loss is only reasonably possible (as opposed to probable), or if it is probable but an estimate is not determinable, disclosure of a material claim or contingency is made in the notes to our consolidated financial statements and no accrual is made.
Revenue Recognition
We recognize sales at the time the customer takes possession of the merchandise. Sales are recorded net of discounts and estimated returns and exclude any sales tax. The reserve for merchandise returns is estimated based on our prior return experience.

We sell gift cards in our stores and issue merchandise credits, typically as a result of customer returns, on stored value cards. We do not charge administrative fees on unused gift card or merchandise credit balances and our gift cards and merchandise credits do not expire. We recognize sales revenue related to gift cards and merchandise credits when (1) the gift card or merchandise credit is redeemed in a sales transaction by the customer or (2) breakage occurs. We recognize gift card and merchandise credit breakage when we estimate that the likelihood of the card or credit being redeemed by the customer is remote and we determine that we do not have a legal obligation to remit the value of unredeemed cards or credits to the relevant regulatory authority. We estimate breakage based upon historical redemption patterns, and record breakage when a gift card or merchandise credit has aged at least four years beyond the end of their original issuance month. The liability for the unredeemed cash value of gift cards and merchandise credits is recorded in accrued operating expenses.

We offer price hold contracts on merchandise. Revenue for price hold contracts is recognized when the customer makes the final payment and takes possession of the merchandise. Amounts paid by customers under price hold contracts are recorded in accrued operating expenses until a sale is consummated.

Cost of Sales
Cost of sales includes the cost of merchandise, net of cash discounts and rebates, markdowns, and inventory shrinkage. Cost of merchandise includes related inbound freight to our distribution centers, duties, and commissions. We classify warehousing and outbound distribution and transportation costs as selling and administrative expenses. Due to this classification, our gross margin rates may not be comparable to those of other retailers that include warehousing and outbound distribution and transportation costs in cost of sales.

Selling and Administrative Expenses
Selling and administrative expenses include store expenses (such as payroll and occupancy costs) and costs related to warehousing, distribution, outbound transportation to our stores, advertising, purchasing, insurance, non-income taxes, accepting credit/debit cards, and overhead. Selling and administrative expense rates may not be comparable to those of other retailers that include warehousing, distribution, and outbound transportation costs in cost of sales. Distribution and outbound transportation costs included in selling and administrative expenses were $161.5 million, $151.9 million, and $159.4 million for 2017, 2016, and 2015, respectively.

Rent Expense
Rent expense is recognized over the term of the lease and is included in selling and administrative expenses. We recognize minimum rent starting when possession of the property is taken from the landlord, which normally includes a construction or set-up period prior to store opening. When a lease contains a predetermined fixed escalation of the minimum rent, we recognize the related rent expense on a straight-line basis and record the difference between the recognized rental expense and the amounts payable under the lease as deferred rent. We also receive tenant allowances, which are recorded in deferred incentive rent and are amortized as a reduction to rent expense over the term of the lease.

Our leases generally obligate us for our applicable portion of real estate taxes, CAM, and property insurance that has been incurred by the landlord with respect to the leased property. We maintain accruals for our estimated applicable portion of real estate taxes, CAM, and property insurance incurred but not settled at each reporting date. We estimate these accruals based on historical payments made and take into account any known trends. Inherent in these estimates is the risk that actual costs incurred by landlords and the resulting payments by us may be higher or lower than the amounts we have recorded on our books.

Certain of our leases provide for contingent rents that are not measurable at the lease inception date. Contingent rent includes rent based on a percentage of sales that are in excess of a predetermined level. Contingent rent is excluded from minimum rent but is included in the determination of total rent expense when it is probable that the expense has been incurred and the amount is reasonably estimable.
Advertising Expense
Advertising costs, which are expensed as incurred, consist primarily of television and print advertising, internet and social media marketing and advertising, e-mail, and in-store point-of-purchase presentations. Advertising expenses are included in selling and administrative expenses. Advertising expenses were $92.0 million, $92.3 million, and $91.5 million for 2017, 2016, and 2015, respectively.

Store Pre-opening Costs
Pre-opening costs incurred during the construction periods for new store openings are expensed as incurred and included in our selling and administrative expenses.

Share-Based Compensation
Share-based compensation expense is recognized in selling and administrative expense in our consolidated statements of operations for all awards that we expect to vest.

Non-vested Restricted Stock Awards
Compensation expense for our performance-based non-vested restricted stock awards is recorded based on fair value of the award on the grant date and the estimated achievement date of the performance criteria. An estimated target achievement date is determined at the time of the award grant based on historical and forecasted performance of similar measures. We monitor the projected achievement of the performance targets at each reporting period and make prospective adjustments to the estimated vesting period when our internal models indicate that the estimated achievement date differs from the date being used to amortize expense.

Non-vested Restricted Stock Units
We expense our non-vested restricted stock units with graded vesting as a single award with an average estimated life over the entire term of the award. The expense for the non-vested restricted stock units is recorded on a straight-line basis over the vesting period.

Performance Share Units
Compensation expense for performance share units (“PSUs”) is recorded based on fair value of the award on the grant date and the estimated achievement of financial performance objectives. From an accounting perspective, the grant date is established once all financial performance targets have been set. We monitor the estimated achievement of the financial performance objectives at each reporting period and will potentially adjust the estimated expense on a cumulative basis. The expense for the PSUs is recorded on a straight-line basis from the grant date through the vesting date.

CEO Performance Share Units
For the PSUs granted to our CEO during 2013, compensation expense was recorded based on fair value of the award on the grant date and the estimated achievement date of the performance criteria. An estimated target achievement date for each tranche of the award was determined at the time of the award grant based on a Monte Carlo simulation.

Stock Options
We valued and expensed stock options with graded vesting as a single award with an average estimated life over the entire term of the award. The expense for options with graded vesting was recorded on a straight-line basis over the vesting period. Historically, we estimated the fair value of stock options using a binomial model. The binomial model takes into account variables such as volatility, dividend yield rate, risk-free rate, contractual term of the option, the probability that the option will be exercised prior to the end of its contractual life, and the probability of retirement of the option holder in computing the value of the option. Expected volatility was based on historical implied volatilities from traded options on our common shares. The dividend yield on our common shares was assumed to be zero, since we had not paid dividends at the time of our most recent stock option grants in 2013, nor did we have intentions of doing so at that time. The risk-free rate was based on U.S. Treasury security yields at the time of the grant. The expected life was determined from the binomial model, which incorporates exercise and post-vesting forfeiture assumptions based on analysis of historical data.

Earnings per Share
Basic earnings per share is based on the weighted-average number of shares outstanding during each period. Diluted earnings per share is based on the weighted-average number of shares outstanding during each period and the additional dilutive effect of stock options, restricted stock awards, restricted stock units, and PSUs, calculated using the treasury stock method.
Derivative Instruments
We use derivative instruments to mitigate the risk of market fluctuations in diesel fuel prices. We do not enter into derivative instruments for speculative purposes. Our derivative instruments may consist of collar or swap contracts. Our current derivative instruments do not meet the requirements for cash flow hedge accounting. Instead, our derivative instruments are marked-to-market to determine their fair value and any gains or losses are recognized currently in other income (expense) on our consolidated statements of operations.

Other Comprehensive Income
Our other comprehensive income included the impact of the amortization of our pension actuarial loss, net of tax, and the revaluation of our pension actuarial loss, net of tax.

Supplemental Cash Flow Disclosures
The following table provides supplemental cash flow information for 2017, 2016, and 2015:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplemental disclosure of cash flow information:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash paid for interest, including capital leases</td>
<td>$5,991</td>
<td>$4,486</td>
<td>$3,204</td>
</tr>
<tr>
<td>Cash paid for income taxes, excluding impact of refunds</td>
<td>$99,693</td>
<td>$103,323</td>
<td>$56,158</td>
</tr>
<tr>
<td>Gross proceeds from borrowings under the bank credit facility</td>
<td>$1,656,100</td>
<td>$1,673,700</td>
<td>$1,588,200</td>
</tr>
<tr>
<td>Gross repayments of borrowings under the bank credit facility</td>
<td>$1,562,700</td>
<td>$1,629,600</td>
<td>$1,588,000</td>
</tr>
<tr>
<td>Non-cash activity:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assets acquired under capital leases</td>
<td>$238</td>
<td>$286</td>
<td>$10,180</td>
</tr>
<tr>
<td>Accrued property and equipment</td>
<td>$11,236</td>
<td>$9,295</td>
<td>$9,808</td>
</tr>
</tbody>
</table>

Reclassifications
Merchandise Categories
We periodically assess, and make minor adjustments to, our product hierarchy, which can impact the roll-up of our merchandise categories. Our financial reporting process utilizes the most current product hierarchy in reporting net sales by merchandise category for all periods presented. Therefore, there may be minor reclassifications of net sales by merchandise category compared to previously reported amounts.

Recent Accounting Pronouncements
In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2014-09, Revenue from Contracts with Customers (Topic 606). This update provides a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. Additionally, this guidance expands related disclosure requirements. The pronouncement was originally set to be effective for annual and interim reporting periods beginning after December 15, 2016. In July 2015, the FASB approved a one-year deferral of the effective date from December 15, 2016 to December 15, 2017. This ASU permits the use of either the retrospective or cumulative effect transition method. We have evaluated the impact this guidance will have on our consolidated financial statements and our adoption method. Our adoption of this standard will not significantly change the timing of the recognition of our revenue or costs although our principal versus agent presentation of an immaterial portion of our vendor relationships will be impacted. We will adopt the new standard effective February 4, 2018, using the full retrospective method.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842). The update requires a lessee to recognize, on the balance sheet, a liability to make lease payments and a right-of-use asset representing a right to use the underlying asset for the lease term. The ASU is effective for fiscal years, and interim periods within those years, beginning after December 15, 2018, with early adoption permitted. We are currently evaluating both the impact that this standard will have on our consolidated financial statements and which practical expedients to employ during adoption. We will not early adopt this standard.
Recently Adopted Accounting Standards
In March 2016, the FASB issued ASU 2016-09, Compensation-Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting. This update makes several modifications to the accounting for employee share-based payment transactions, including the requirement to recognize the income tax deduction excess or deficiency attributable to awards that vest or settle as income tax expense in the reporting period they vest or settle. Additionally, this update clarifies the presentation of certain components of share-based awards in the statement of cash flows. The ASU was effective for annual reporting periods beginning after December 15, 2016, and interim periods within those annual periods.

We selected a modified retrospective method for the recognition of the cumulative income tax effects and a prospective method for cash flow presentations. For 2017, we recorded a $4.5 million benefit to income tax expense attributable to excess tax benefits. For 2016 and 2015, $0.5 million and $0.7 million, respectively, of excess tax benefits were recorded to additional paid-in capital that would have been recorded as a reduction to the provision for income taxes if this new guidance had been adopted on a full retrospective basis. Additionally, we recorded an insignificant adjustment to retained earnings to change our accounting method from an estimated forfeiture rate approach to actual forfeiture approach, which accounts for forfeitures as they occur.

Subsequent Events
We have evaluated events and transactions subsequent to the balance sheet date. Based on this evaluation, we are not aware of any events or transactions (other than those disclosed in notes 10, if applicable, and 16) that occurred subsequent to the balance sheet date but prior to filing that would require recognition or disclosure in our consolidated financial statements.

NOTE 2 – PROPERTY AND EQUIPMENT - NET
Property and equipment - net consist of:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>February 3, 2018</th>
<th>January 28, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land and land improvements</td>
<td>$60,416</td>
<td>50,906</td>
</tr>
<tr>
<td>Buildings and leasehold improvements</td>
<td>881,077</td>
<td>853,324</td>
</tr>
<tr>
<td>Fixtures and equipment</td>
<td>772,711</td>
<td>743,212</td>
</tr>
<tr>
<td>Computer software costs</td>
<td>172,539</td>
<td>165,209</td>
</tr>
<tr>
<td>Construction-in-progress</td>
<td>35,084</td>
<td>18,653</td>
</tr>
</tbody>
</table>

| Property and equipment - cost         | 1,921,827        | 1,831,304        |
| Less accumulated depreciation and amortization | 1,355,850        | 1,305,453        |
| Property and equipment - net          | $565,977         | $525,851         |

Property and equipment - cost includes $28.6 million and $31.0 million at February 3, 2018 and January 28, 2017, respectively, to recognize assets from capital leases. Accumulated depreciation and amortization includes $13.2 million and $11.1 million at February 3, 2018 and January 28, 2017, respectively, related to capital leases. Additionally, we had $15.6 million in assets from a synthetic lease for our distribution center in Apple Valley, California at February 3, 2018. We did not have any synthetic leases in 2016.

During 2017, 2016, and 2015, respectively, we invested $142.7 million, $89.8 million, and $126.0 million of cash in capital expenditures and we recorded $117.1 million, $120.5 million, and $122.9 million of depreciation expense.

We incurred $0.0 million, $0.1 million, and $0.4 million in asset impairment charges in 2017, 2016, and 2015, respectively. During 2017, we did not impair the value of long-lived assets at any stores as a result of our annual store impairment review. In 2016, we wrote down the value of long-lived assets at one store identified as part of our annual store impairment review. In 2015, we wrote down the value of long-lived assets at two stores identified as part of our annual store impairment review.
Asset impairment charges are included in selling and administrative expenses in our accompanying consolidated statements of operations. We perform annual impairment reviews of our long-lived assets at the store level. When we perform the annual impairment reviews, we first determine which stores had impairment indicators present. We generally use actual historical cash flows to determine if stores had negative cash flows within the past two years. For each store with negative cash flows, we estimate future cash flows based on operating performance estimates specific to each store’s operations that are based on assumptions currently being used to develop our company level operating plans. If the net book value of a store’s long-lived assets is not recoverable by the expected future cash flows of the store, we estimate the fair value of the store’s assets and recognize an impairment charge for the excess net book value of the store’s long-lived assets over their fair value.

NOTE 3 – BANK CREDIT FACILITY

On July 22, 2011, we entered into a $700 million five-year unsecured credit facility, which was first amended on May 30, 2013. On May 28, 2015, we entered into a second amendment of the credit facility that, among other things, extended its term to May 30, 2020 (as amended, the “2011 Credit Agreement”). In connection with our original entry into the 2011 Credit Agreement, we paid bank fees and other expenses in the aggregate amount of $3.0 million, which are being amortized over the term of the agreement. In connection with the 2015 amendment of the 2011 Credit Agreement, we paid additional bank fees and other expenses in the aggregate amount of $0.8 million, which are being amortized over the term of the amended agreement.

Borrowings under the 2011 Credit Agreement are available for general corporate purposes and working capital. The 2011 Credit Agreement includes a $30 million swing loan sublimit and a $150 million letter of credit sublimit. The interest rates, pricing and fees under the 2011 Credit Agreement fluctuate based on our debt rating. The 2011 Credit Agreement allows us to select our interest rate for each borrowing from multiple interest rate options. The interest rate options are generally derived from the prime rate or LIBOR. We may prepay revolving loans made under the 2011 Credit Agreement. The 2011 Credit Agreement contains financial and other covenants, including, but not limited to, limitations on indebtedness, liens and investments, as well as the maintenance of two financial ratios – a leverage ratio and a fixed charge coverage ratio. A violation of any of the covenants could result in a default under the 2011 Credit Agreement that would permit the lenders to restrict our ability to further access the 2011 Credit Agreement for loans and letters of credit and require the immediate repayment of any outstanding loans under the 2011 Credit Agreement. At February 3, 2018, we had $199.8 million of borrowings outstanding under the 2011 Credit Agreement and $5.0 million was committed to outstanding letters of credit, leaving $495.2 million available under the 2011 Credit Agreement.

NOTE 4 – FAIR VALUE MEASUREMENTS

In connection with our nonqualified deferred compensation plan, we had mutual fund investments of $33.0 million and $24.1 million at February 3, 2018 and January 28, 2017, respectively, which were recorded in other assets. These investments were classified as trading securities and were recorded at their fair value. The fair values of mutual fund investments were Level 1 valuations under the fair value hierarchy because each fund’s quoted market value per share was available in an active market.

The fair values of our long-term obligations under our bank credit facility are estimated based on the quoted market prices for the same or similar issues and the current interest rates offered for similar instruments. These fair value measurements are classified as Level 2 within the fair value hierarchy. Given the variable rate features and relatively short maturity of the instruments underlying our long-term obligations, the carrying value of these instruments approximates the fair value.
NOTE 5 – LEASES

Leased property consisted primarily of 1,363 of our retail stores, our new corporate office, our new California distribution center, and certain transportation, information technology and other office equipment. In 2016, we entered into a lease for our new corporate office and expect to move into the new office in the first half of 2018. In late 2017, we entered into a synthetic lease arrangement for a new distribution center in California. We are the construction agent for the new distribution center in California and we expect the lease term to commence and to begin operations in 2019. Many of the store leases obligate us to pay for our applicable portion of real estate taxes, CAM, and property insurance. Certain store leases provide for contingent rents, have rent escalations, and have tenant allowances or other lease incentives. Many of our leases contain provisions for options to renew or extend the original term for additional periods.

Total rent expense, including real estate taxes, CAM, and property insurance for operating leases consisted of the following:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum rents</td>
<td>$330,229</td>
<td>$321,248</td>
<td>$314,605</td>
</tr>
<tr>
<td>Contingent rents</td>
<td>469</td>
<td>607</td>
<td>637</td>
</tr>
<tr>
<td>Total rent expense</td>
<td>$330,698</td>
<td>$321,855</td>
<td>$315,242</td>
</tr>
</tbody>
</table>

Future minimum rental commitments for leases, excluding closed store leases, real estate taxes, CAM, and property insurance, at February 3, 2018, were as follows:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>(In thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>$268,500</td>
</tr>
<tr>
<td>2019</td>
<td>228,709</td>
</tr>
<tr>
<td>2020</td>
<td>185,332</td>
</tr>
<tr>
<td>2021</td>
<td>139,050</td>
</tr>
<tr>
<td>2022</td>
<td>89,990</td>
</tr>
<tr>
<td>Thereafter</td>
<td>207,254</td>
</tr>
<tr>
<td>Total leases</td>
<td>$1,118,835</td>
</tr>
</tbody>
</table>

We have obligations for capital leases primarily for store asset protection equipment and office equipment, included in accrued operating expenses and other liabilities on our consolidated balance sheet. Scheduled payments for all capital leases at February 3, 2018, were as follows:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>(In thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>$4,760</td>
</tr>
<tr>
<td>2019</td>
<td>4,406</td>
</tr>
<tr>
<td>2020</td>
<td>4,406</td>
</tr>
<tr>
<td>2021</td>
<td>3,352</td>
</tr>
<tr>
<td>2022</td>
<td>508</td>
</tr>
<tr>
<td>Thereafter</td>
<td>87</td>
</tr>
<tr>
<td>Total lease payments</td>
<td>$17,519</td>
</tr>
<tr>
<td>Less amount to discount to present value</td>
<td>(1,539)</td>
</tr>
<tr>
<td>Capital lease obligation per balance sheet</td>
<td>$15,980</td>
</tr>
</tbody>
</table>

NOTE 6 – SHAREHOLDERS’ EQUITY

Earnings per Share

There were no adjustments required to be made to weighted-average common shares outstanding for purposes of computing basic and diluted earnings per share and there were no securities outstanding in any year presented, which were excluded from the computation of earnings per share other than antidilutive stock options, restricted stock awards, restricted stock units, and PSUs. Stock options outstanding that were excluded from the diluted share calculation because their impact was antidilutive at the end of 2017, 2016, and 2015 were as follows:
Antidilutive stock options excluded from dilutive share calculation — — 0.1

Antidilutive options are excluded from the calculation because they decrease the number of diluted shares outstanding under the treasury stock method. Antidilutive stock options are generally outstanding options where the exercise price per share is greater than the weighted-average market price per share for our common shares for each period. The restricted stock awards, restricted stock units, and PSUs that were antidilutive, as determined under the treasury stock method, were immaterial for all years presented.

A reconciliation of the number of weighted-average common shares outstanding used in the basic and diluted earnings per share computations is as follows:

<table>
<thead>
<tr>
<th>Weighted-average common shares outstanding:</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic</td>
<td>42,818</td>
<td>45,316</td>
<td>50,517</td>
</tr>
<tr>
<td>Diluted effect of share-based awards</td>
<td>482</td>
<td>658</td>
<td>447</td>
</tr>
<tr>
<td>Diluted</td>
<td>43,300</td>
<td>45,974</td>
<td>50,964</td>
</tr>
</tbody>
</table>

Share Repurchase Programs
On February 28, 2017, our Board of Directors authorized a share repurchase program providing for the repurchase of up to $150 million of our common shares (“2017 Repurchase Program”). The 2017 Repurchase Program was exhausted during the third quarter of 2017. During 2017, we acquired approximately 3.1 million of our outstanding common shares for $150 million under the 2017 Repurchase Program.

Common shares acquired through repurchase programs are held in treasury at cost and are available to meet obligations under equity compensation plans and for general corporate purposes.

Dividends
The Company declared and paid cash dividends per common share during the periods presented as follows:

<table>
<thead>
<tr>
<th>Dividends</th>
<th>Amount Declared</th>
<th>Amount Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Share</td>
<td>(In thousands)</td>
<td>(In thousands)</td>
</tr>
<tr>
<td>2016:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First quarter</td>
<td>$0.21</td>
<td>$10,616</td>
</tr>
<tr>
<td>Second quarter</td>
<td>0.21</td>
<td>9,674</td>
</tr>
<tr>
<td>Third quarter</td>
<td>0.21</td>
<td>9,699</td>
</tr>
<tr>
<td>Fourth quarter</td>
<td>0.21</td>
<td>9,760</td>
</tr>
<tr>
<td>Total</td>
<td>$0.84</td>
<td>$39,749</td>
</tr>
<tr>
<td>2017:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First quarter</td>
<td>$0.25</td>
<td>$11,547</td>
</tr>
<tr>
<td>Second quarter</td>
<td>0.25</td>
<td>11,289</td>
</tr>
<tr>
<td>Third quarter</td>
<td>0.25</td>
<td>11,007</td>
</tr>
<tr>
<td>Fourth quarter</td>
<td>0.25</td>
<td>10,903</td>
</tr>
<tr>
<td>Total</td>
<td>$1.00</td>
<td>$44,746</td>
</tr>
</tbody>
</table>

The amount of dividends declared may vary from the amount of dividends paid in a period based on certain instruments with restrictions on payment, including restricted stock awards, restricted stock units, and PSUs. The payment of future dividends will be at the discretion of our Board of Directors and will depend on our financial condition, results of operations, capital requirements, compliance with applicable laws and agreements and any other factors deemed relevant by our Board of Directors.
Our shareholders approved the Big Lots 2017 Long-Term Incentive Plan (“2017 LTIP”) in May 2017. The 2017 LTIP authorizes the issuance of incentive and nonqualified stock options, restricted stock, restricted stock units, deferred stock awards, PSUs, stock appreciation rights, cash-based awards, and other share-based awards. We have issued restricted stock units and PSUs under the 2017 LTIP. The number of common shares available for issuance under the 2017 LTIP consists of an initial allocation of 5,500,000 common shares plus any common shares subject to the 1,743,116 outstanding awards as of January 28, 2017 under the Big Lots 2012 Long-Term Incentive Plan (“2012 LTIP”) that, on or after January 28, 2017, cease for any reason to be subject to such awards (other than by reason of exercise or settlement). The Compensation Committee of our Board of Directors (“Committee”), which is charged with administering the 2017 LTIP, has the authority to determine the terms of each award.

Our former equity compensation plan, the 2012 LTIP, approved by our shareholders in May 2012, expired on May 24, 2017. The 2012 LTIP authorized the issuance of incentive and nonqualified stock options, restricted stock, restricted stock units, deferred stock awards, PSUs, stock appreciation rights, cash-based awards, and other share-based awards. We issued nonqualified stock options, restricted stock, restricted stock units, and PSUs under the 2012 LTIP. The Committee, which was charged with administering the 2012 LTIP, had the authority to determine the terms of each award. Nonqualified stock options granted to employees under the 2012 LTIP, the exercise price of which was not less than the fair market value of the underlying common shares on the grant date, generally expire on the earlier of: (1) the seven year term set by the Committee; or (2) one year following termination of employment, death, or disability. The nonqualified stock options generally vest ratably over a four-year period; however, upon a change in control, all awards outstanding automatically vest.

Our other former equity compensation plan, the 2005 LTIP, approved by our shareholders in May 2005, expired on May 16, 2012. The 2005 LTIP authorized the issuance of nonqualified stock options, restricted stock, and other award types. We issued only nonqualified stock options and restricted stock under the 2005 LTIP. The Committee, which was charged with administering the 2005 LTIP, had the authority to determine the terms of each award. Nonqualified stock options granted to employees under the 2005 LTIP, the exercise price of which was not less than the fair market value of the underlying common shares on the grant date, generally expire on the earlier of: (1) the seven year term set by the Committee; or (2) one year following termination of employment, death, or disability. The nonqualified stock options generally vest ratably over a four-year period; however, upon a change in control, all awards outstanding automatically vest.

Share-based compensation expense was $27.8 million, $33.0 million and $13.5 million in 2017, 2016, and 2015, respectively.
Non-vested Restricted Stock

The following table summarizes the non-vested restricted stock awards and restricted stock units activity for fiscal years 2015, 2016, and 2017:

<table>
<thead>
<tr>
<th></th>
<th>Number of Shares</th>
<th>Weighted Average Grant-Date Fair Value Per Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding non-vested restricted stock at January 31, 2015</td>
<td>744,805</td>
<td>$38.13</td>
</tr>
<tr>
<td>Granted</td>
<td>217,767</td>
<td>49.00</td>
</tr>
<tr>
<td>Vested</td>
<td>(128,140)</td>
<td>38.42</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(49,283)</td>
<td>40.28</td>
</tr>
<tr>
<td>Outstanding non-vested restricted stock at January 30, 2016</td>
<td>785,149</td>
<td>$40.96</td>
</tr>
<tr>
<td>Granted</td>
<td>261,792</td>
<td>45.62</td>
</tr>
<tr>
<td>Vested</td>
<td>(252,156)</td>
<td>42.03</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(23,264)</td>
<td>43.63</td>
</tr>
<tr>
<td>Outstanding non-vested restricted stock at January 28, 2017</td>
<td>771,521</td>
<td>$42.12</td>
</tr>
<tr>
<td>Granted</td>
<td>205,819</td>
<td>51.16</td>
</tr>
<tr>
<td>Vested</td>
<td>(368,408)</td>
<td>42.84</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(19,089)</td>
<td>44.02</td>
</tr>
<tr>
<td>Outstanding non-vested restricted stock at February 3, 2018</td>
<td>589,843</td>
<td>$44.77</td>
</tr>
</tbody>
</table>

The non-vested restricted stock units granted in 2015, 2016 and 2017 generally vest, and are expensed, on a ratable basis over three years from the grant date of the award, if certain threshold financial performance objectives are achieved and the grantee remains employed by us through the vesting dates.

The non-vested restricted stock awards granted to employees in 2013 have met the applicable threshold financial performance objective and will vest in 2018.

Performance Share Units

In 2013, in connection with his appointment as CEO and President, Mr. Campisi was awarded 37,800 PSUs, which vest based on the achievement of share price performance goals and had a weighted average grant-date fair value per share of $34.68. The PSUs have a contractual term of seven years. In 2014, Mr. Campisi’s first two tranches for a total of 25,200 PSUs vested. In 2016, Mr. Campisi's third and final tranche of 12,600 PSUs vested.

In 2015, 2016, and 2017, we issued PSUs to certain members of management, which vest if certain financial performance objectives are achieved over a three-year performance period and the grantee remains employed by us through that performance period. At February 3, 2018, 855,041 non-vested PSUs were outstanding in the aggregate. The financial performance objectives for each fiscal year within the three-year performance period are approved by the Compensation Committee of our Board of Directors during the first quarter of the respective fiscal year.

As a result of the process used to establish the financial performance objectives, we will only meet the requirements of establishing a grant date for the PSUs when we communicate the financial performance objectives for the third fiscal year of the award to the award recipients, which will then trigger the service inception date, the fair value of the awards, and the associated expense recognition period. If we meet the applicable threshold financial performance objectives over the three-year performance period and the grantee remains employed by us through the end of the performance period, the PSUs will vest on the first trading day after we file our Annual Report on Form 10-K for the last fiscal year in the performance period.
We have begun or expect to begin recognizing expense related to PSUs as follows:

<table>
<thead>
<tr>
<th>Issue Year</th>
<th>Outstanding PSUs at February 3, 2018</th>
<th>Actual Grant Date</th>
<th>Expected Valuation (Grant) Date</th>
<th>Actual or Expected Expense Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>249,324</td>
<td>March 2017</td>
<td>Fiscal 2017</td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td>337,421</td>
<td>March 2018</td>
<td>Fiscal 2018</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>268,296</td>
<td>March 2019</td>
<td>Fiscal 2019</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>855,041</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The number of shares to be distributed upon vesting of the PSUs depends on our average performance attained during the three-year performance period as compared to the targets defined by the Compensation Committee, and may result in the distribution of an amount of shares that is greater or less than the number of PSUs granted, as defined in the award agreement. The PSUs issued in 2015 performed above target and more shares will be distributed than initially granted. At February 3, 2018, we estimate the attainment of an average performance that is greater than the targets established for the PSUs issued in 2016. In 2017 and 2016, we recognized $15.4 million and $17.5 million, respectively, in share-based compensation expense related to PSUs.

The following table summarizes the activity related to PSUs for fiscal years 2016 and 2017:

<table>
<thead>
<tr>
<th>PSUs, excluding 2013 CEO PSUs</th>
<th>Number of Shares</th>
<th>Weighted Average Grant-Date Fair Value Per Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding PSUs at January 30, 2016</td>
<td>—</td>
<td>$</td>
</tr>
<tr>
<td>Granted</td>
<td>379,794</td>
<td>41.04</td>
</tr>
<tr>
<td>Vested</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(19,437)</td>
<td>41.04</td>
</tr>
<tr>
<td>Outstanding PSUs at January 28, 2017</td>
<td>360,357</td>
<td>$</td>
</tr>
<tr>
<td>Granted</td>
<td>259,042</td>
<td>51.49</td>
</tr>
<tr>
<td>Vested</td>
<td>(360,357)</td>
<td>41.04</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(9,718)</td>
<td>51.49</td>
</tr>
<tr>
<td>Outstanding PSUs at February 3, 2018</td>
<td>249,324</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>51.49</td>
<td></td>
</tr>
</tbody>
</table>

Board of Directors’ Awards
In 2016 and 2015, we granted to each non-employee member of our Board of Directors a restricted stock award. In 2017, we granted (1) the chairman of our Board of Directors an annual restricted stock unit award having a grant date fair value of approximately $200,000, and (2) the remaining non-employees elected to our Board of Directors at our 2017 Annual Meeting of Shareholders an annual restricted stock unit award having a grant date fair value of approximately $135,000. These awards vest on the earlier of (1) the trading day immediately preceding the next annual meeting of our shareholders or (2) the death or disability of the grantee. However, the restricted stock units will not vest if the non-employee director ceases to serve on our Board of Directors before either vesting event occurs. Additionally, we allow our non-employee directors to defer all or a portion of their restricted stock unit award and by such election, the non-employee director can defer receipt of the restricted stock units until the earlier of the first to occur; (1) the specified date by the non-employee director in the deferral agreement, (2) the non-employee director’s death or disability, or (3) the date the non-employee director ceases to serve as a member of the Board of Directors.
Stock Options
The following table summarizes information about our stock options outstanding and exercisable at February 3, 2018:

<table>
<thead>
<tr>
<th>Range of Prices</th>
<th>Options Outstanding</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th>Options Exercisable</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Weighted-Average</td>
<td>Remaining</td>
<td>Weighted-</td>
<td>Average</td>
<td>Average</td>
<td>Options</td>
<td>Weighted-</td>
<td>Average</td>
<td>Options</td>
</tr>
<tr>
<td>Greater Than</td>
<td>Life (Years)</td>
<td>Exercise Price</td>
<td>Outstanding</td>
<td>Out exercisable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ 30.01 $ 40.00</td>
<td>2.1 $ 35.58</td>
<td>163,126</td>
<td>163,126</td>
<td>$ 35.58</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ 40.01 $ 50.00</td>
<td>1.1 $ 43.85</td>
<td>117,500</td>
<td>117,500</td>
<td>$ 43.85</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1.7 $ 39.04</td>
<td>280,626</td>
<td>280,626</td>
<td>$ 39.04</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A summary of the annual stock option activity for fiscal years 2015, 2016, and 2017 is as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fiscal Year</th>
<th>Number of Options</th>
<th>Weighted Average Exercise Price Per Share</th>
<th>Weighted Average Remaining Contractual Term (years)</th>
<th>Aggregate Intrinsic Value (000's)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding stock options at January 31, 2015</td>
<td>1,703,213</td>
<td>$37.59</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exercised</td>
<td>(450,136)</td>
<td>36.17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forfeited</td>
<td>(78,175)</td>
<td>35.84</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outstanding stock options at January 30, 2016</td>
<td>1,174,902</td>
<td>$38.26</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exercised</td>
<td>(572,727)</td>
<td>37.81</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forfeited</td>
<td>(12,500)</td>
<td>35.83</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outstanding stock options at January 28, 2017</td>
<td>589,675</td>
<td>$38.75</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exercised</td>
<td>(304,049)</td>
<td>38.51</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forfeited</td>
<td>(5,000)</td>
<td>36.93</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outstanding stock options at February 3, 2018</td>
<td>280,626</td>
<td>$39.04</td>
<td>1.7 $ 5,247</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vested or expected to vest at February 3, 2018</td>
<td>280,626</td>
<td>$39.04</td>
<td>1.7 $ 5,247</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The stock options granted in prior years vest in equal amounts on the first four anniversaries of the grant date and have a contractual term of seven years. With the adoption of ASU 2016-09, we have eliminated our annual forfeiture rate assumption.

During 2017, 2016, and 2015, the following activity occurred under our share-based compensation plans:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total intrinsic value of stock options exercised</td>
<td>$0</td>
<td>$4,423</td>
<td>$7,392</td>
</tr>
<tr>
<td>Total fair value of restricted stock vested</td>
<td>$19,015</td>
<td>$11,510</td>
<td>$6,259</td>
</tr>
<tr>
<td>Total fair value of performance shares vested</td>
<td>$21,026</td>
<td>$621</td>
<td>—</td>
</tr>
</tbody>
</table>

The total unearned compensation cost related to all share-based awards outstanding, excluding PSUs issued in 2016 and 2017, at February 3, 2018 was approximately $11.0 million. This compensation cost is expected to be recognized through January 2021 based on existing vesting terms with the weighted-average remaining expense recognition period being approximately 1.7 years from February 3, 2018.
NOTE 8 – EMPLOYEE BENEFIT PLANS

Pension Benefits
In prior years, we maintained the Pension Plan and Supplemental Pension Plan covering certain employees whose hire date was on or before April 1, 1994. Benefits under each plan were based on credited years of service and the employee’s compensation during the last five years of employment.

On October 31, 2015, our Board of Directors approved amendments to freeze benefits and terminate the Pension Plan. The Pension Plan discontinued accruing benefits on December 31, 2015, and the termination was effective January 31, 2016. On December 2, 2015, our Board of Directors approved amendments to freeze benefits and terminate the Supplemental Pension Plan. The Supplemental Pension Plan discontinued accruing benefits on December 31, 2015, and the termination was effective December 31, 2015. During 2016, we completed the termination proceedings for the Pension Plan, including seeking and receiving a favorable IRS determination letter, conducting a lump sum offering to our active and terminated vested participants, and conducting an insurance placement for the annuity purchasers. Additionally, we funded the Pension Plan and reduced our liability thereunder to zero. In January 2017, we completed the termination proceedings for the Supplemental Pension Plan and paid all accrued balances to participants through lump sum settlements.

In addition, in the fourth quarter of 2015, when we communicated the approved amendments to the participants of the Pension Plan, we informed Pension Plan participants that we would provide for a one-time transition benefit to participants who were actively employed on December 31, 2015. We recorded a charge in selling and administrative expenses for this one-time transition benefit of $7.0 million, which was contributed to participants’ savings plan accounts in 2016.

The components of net periodic pension expense were comprised of the following:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service cost - benefits earned in the period</td>
<td>$</td>
<td>— $ 1,923</td>
</tr>
<tr>
<td>Interest cost on projected benefit obligation</td>
<td>879</td>
<td>2,444</td>
</tr>
<tr>
<td>Expected investment return on plan assets</td>
<td>(1,536)</td>
<td>(2,628)</td>
</tr>
<tr>
<td>Amortization of prior service cost</td>
<td>—</td>
<td>4</td>
</tr>
<tr>
<td>Amortization of actuarial loss</td>
<td>2,241</td>
<td>1,817</td>
</tr>
<tr>
<td>Curtailment loss</td>
<td>—</td>
<td>191</td>
</tr>
<tr>
<td>Settlement loss</td>
<td>24,483</td>
<td>1,912</td>
</tr>
<tr>
<td>Net periodic pension cost</td>
<td>$</td>
<td>26,067 $ 5,663</td>
</tr>
</tbody>
</table>

The weighted-average assumptions used to determine net periodic pension expense were:

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discount rate</td>
<td>1.2%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Rate of increase in compensation levels</td>
<td>—%</td>
<td>2.8%</td>
</tr>
<tr>
<td>Expected long-term rate of return</td>
<td>2.8%</td>
<td>5.2%</td>
</tr>
</tbody>
</table>

Savings Plans
We have a savings plan with a 401(k) deferral feature and a nonqualified deferred compensation plan with a similar deferral feature for eligible employees. We contribute a matching percentage of employee contributions. Our matching contributions are subject to Internal Revenue Service (“IRS”) regulations. For 2017, 2016, and 2015, we expensed $7.7 million, $6.6 million, and $6.3 million, respectively, related to our matching contributions. In connection with our nonqualified deferred compensation plan, we had liabilities of $33.4 million and $24.4 million at February 3, 2018 and January 28, 2017, respectively, which are recorded in other liabilities.
NOTE 9 – INCOME TAXES

On December 22, 2017, the President of the United States signed into law legislation commonly referred to as the Tax Cut and Jobs Act (“TCJA”). The legislation significantly changed U.S. tax law, including permanently lowering the U.S. corporate income tax rate from 35% to 21%, effective January 1, 2018 and accelerating tax depreciation for certain assets placed in service after September 27, 2017. Since the rate reduction was effective on January 1, 2018, our 2017 federal statutory tax rate is a blended rate of 33.7%. Also, we estimated the effects of the corporate income tax rate reduction on our net deferred tax assets resulting in the provisional recognition of an additional $4.5 million of income tax expense in our consolidated statement of operations for 2017.

On December 22, 2017, the SEC staff issued Staff Accounting Bulletin No. 118 (“SAB 118”) to address the application of U.S. GAAP in situations when a registrant does not have the necessary information available, prepared, or analyzed (including computations) in reasonable detail to complete the accounting for certain income tax effects of the TCJA. We have recorded the provisional tax impacts of the TCJA on existing current and deferred tax amounts for 2017. The ultimate impact may differ from these provisional amounts due to, among other things, additional analysis, changes in interpretations and assumptions we have made, and additional regulatory guidance that may be issued. The accounting is expected to be complete in the fourth quarter of 2018 in light of the filing of our 2017 U.S. corporate income tax return and anticipated regulatory guidance.

The provision for income taxes was comprised of the following:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Federal</td>
<td>$63,743</td>
<td>$87,521</td>
<td>$73,817</td>
</tr>
<tr>
<td>U.S. State and local</td>
<td>$9,201</td>
<td>$13,122</td>
<td>$10,783</td>
</tr>
<tr>
<td>Total current tax expense</td>
<td>$72,944</td>
<td>$100,643</td>
<td>$84,600</td>
</tr>
<tr>
<td>Deferred:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Federal</td>
<td>$28,336</td>
<td>$(7,965)</td>
<td>$(348)</td>
</tr>
<tr>
<td>U.S. State and local</td>
<td>$4,242</td>
<td>$(1,207)</td>
<td>$(275)</td>
</tr>
<tr>
<td>Total deferred tax expense</td>
<td>$32,578</td>
<td>$(9,172)</td>
<td>$(623)</td>
</tr>
<tr>
<td>Income tax provision</td>
<td>$105,522</td>
<td>$91,471</td>
<td>$83,977</td>
</tr>
</tbody>
</table>

Net deferred tax assets fluctuated by items that are not reflected in deferred tax expense in the above table. In 2017, net deferred tax assets increased by $0.1 million as a result of ASU 2016-09. Net deferred tax assets decreased by $10.4 million in 2016, and increased by $0.8 million in 2015, principally from pension-related charges recorded in accumulated other comprehensive loss.

Reconciliation between the statutory federal income tax rate and the effective income tax rate was as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory federal income tax rate</td>
<td>33.7%</td>
<td>35.0%</td>
<td>35.0%</td>
</tr>
<tr>
<td>Effect of:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State and local income taxes, net of federal tax benefit</td>
<td>3.0</td>
<td>3.2</td>
<td>3.0</td>
</tr>
<tr>
<td>Provisional effect of the TCJA</td>
<td>1.5</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Work opportunity tax and other employment tax credits</td>
<td>(1.0)</td>
<td>(1.1)</td>
<td>(1.1)</td>
</tr>
<tr>
<td>Excess tax benefit from share-based compensation</td>
<td>(1.3)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other, net</td>
<td>(0.2)</td>
<td>0.3</td>
<td>0.1</td>
</tr>
<tr>
<td>Effective income tax rate</td>
<td>35.7%</td>
<td>37.4%</td>
<td>37.0%</td>
</tr>
</tbody>
</table>
In 2017, we adopted ASU 2016-09. Prior to the adoption of ASU 2016-09, differences between the tax deduction ultimately realized from an equity award and the deferred tax asset recognized as compensation cost were generally credited ("excess tax benefits") or charged ("deficiencies") to equity. Under ASU 2016-09, all tax effects of share-based compensation, including excess tax benefits and tax deficiencies, are recognized in income tax expense. In 2017, we recognized excess tax benefits which reduced income tax expense by $4.3 million. Tax benefits of $0.5 million and $0.7 million in 2016 and 2015, respectively, were credited directly to additional paid-in capital within shareholders’ equity.

Income tax payments and refunds were as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income taxes paid</td>
<td>$ 99,693</td>
<td>$103,323</td>
<td>$ 56,158</td>
</tr>
<tr>
<td>Income taxes refunded</td>
<td>(888)</td>
<td>(16,187)</td>
<td>(818)</td>
</tr>
<tr>
<td>Net income taxes paid</td>
<td>$ 98,805</td>
<td>$ 87,136</td>
<td>$ 55,340</td>
</tr>
</tbody>
</table>

Deferred taxes reflect the net tax effects of temporary differences between carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax, including income tax uncertainties. Significant components of our deferred tax assets and liabilities were as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>February 3, 2018</th>
<th>January 28, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred tax assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers’ compensation and other insurance reserves</td>
<td>$ 21,106</td>
<td>$ 32,194</td>
</tr>
<tr>
<td>Accrued rent</td>
<td>15,292</td>
<td>22,259</td>
</tr>
<tr>
<td>Compensation related</td>
<td>14,308</td>
<td>39,616</td>
</tr>
<tr>
<td>Uniform inventory capitalization</td>
<td>13,591</td>
<td>18,648</td>
</tr>
<tr>
<td>Depreciation and fixed asset basis differences</td>
<td>8,435</td>
<td>10,095</td>
</tr>
<tr>
<td>State tax credits, net of federal tax benefit</td>
<td>4,246</td>
<td>3,844</td>
</tr>
<tr>
<td>Accrued state taxes</td>
<td>3,749</td>
<td>7,157</td>
</tr>
<tr>
<td>Accrued operating liabilities</td>
<td>537</td>
<td>2,056</td>
</tr>
<tr>
<td>Other</td>
<td>11,623</td>
<td>17,138</td>
</tr>
<tr>
<td>Valuation allowances</td>
<td>(2,311)</td>
<td>(2,087)</td>
</tr>
<tr>
<td>Total deferred tax assets</td>
<td>90,576</td>
<td>150,920</td>
</tr>
</tbody>
</table>

Deferred tax liabilities:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>February 3, 2018</th>
<th>January 28, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accelerated depreciation and fixed asset basis differences</td>
<td>51,310</td>
<td>71,155</td>
</tr>
<tr>
<td>Lease construction reimbursements</td>
<td>11,542</td>
<td>15,682</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>5,559</td>
<td>6,553</td>
</tr>
<tr>
<td>Workers’ compensation and other insurance reserves</td>
<td>2,424</td>
<td>3,482</td>
</tr>
<tr>
<td>Other</td>
<td>5,755</td>
<td>7,579</td>
</tr>
<tr>
<td>Total deferred tax liabilities</td>
<td>76,590</td>
<td>104,451</td>
</tr>
</tbody>
</table>

Net deferred tax assets

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 13,986</td>
<td>$ 46,469</td>
<td></td>
</tr>
</tbody>
</table>

60
We have the following income tax loss and credit carryforwards at February 3, 2018 (amounts are shown net of tax excluding the federal income tax effect of the state and local items):

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. State and local:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State net operating loss carryforwards</td>
<td>$17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expires fiscal years 2020 through 2025</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>California enterprise zone credits</td>
<td>4,976</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Predominately expires fiscal year 2023</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other state credits</td>
<td>399</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expires fiscal years through 2025</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total income tax loss and credit carryforwards</td>
<td>$5,392</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The following is a tabular reconciliation of the total amounts of unrecognized tax benefits for 2017, 2016, and 2015:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrecognized tax benefits - beginning of year</td>
<td>$13,121</td>
<td>$13,772</td>
<td>$14,922</td>
</tr>
<tr>
<td>Gross increases - tax positions in current year</td>
<td>361</td>
<td>822</td>
<td>939</td>
</tr>
<tr>
<td>Gross increases - tax positions in prior period</td>
<td>1,329</td>
<td>171</td>
<td>872</td>
</tr>
<tr>
<td>Gross decreases - tax positions in prior period</td>
<td>(1,385)</td>
<td>(80)</td>
<td>(430)</td>
</tr>
<tr>
<td>Settlements</td>
<td>(319)</td>
<td>(236)</td>
<td>(732)</td>
</tr>
<tr>
<td>Lapse of statute of limitations</td>
<td>(1,434)</td>
<td>(1,328)</td>
<td>(1,799)</td>
</tr>
<tr>
<td>Unrecognized tax benefits - end of year</td>
<td>$11,673</td>
<td>$13,121</td>
<td>$13,772</td>
</tr>
</tbody>
</table>

At the end of 2017 and 2016, the total amount of unrecognized tax benefits that, if recognized, would affect the effective income tax rate is $9.2 million and $8.4 million, respectively, after considering the federal tax benefit of state and local income taxes of $2.1 million and $4.1 million, respectively. Unrecognized tax benefits of $0.6 million and $0.6 million in 2017 and 2016, respectively, relate to tax positions for which the ultimate deductibility is highly certain but for which there is uncertainty about the timing of such deductibility. The uncertain timing items could result in the acceleration of the payment of cash to the taxing authority to an earlier period.

We recognized an expense associated with interest and penalties on unrecognized tax benefits of approximately $0.1 million, $0.2 million, and $0.1 million during 2017, 2016, and 2015, respectively, as a component of income tax expense. The amount of accrued interest and penalties recognized in the accompanying consolidated balance sheets at February 3, 2018 and January 28, 2017 was $6.1 million and $6.3 million, respectively.

We are subject to U.S. federal income tax, and income tax of multiple state and local jurisdictions. The statute of limitations for assessments on our federal income tax returns for periods prior to 2014 has lapsed. In addition, the state income tax returns filed by us are subject to examination generally for periods beginning with 2006, although state income tax carryforward attributes generated prior to 2006 and non-filing positions may still be adjusted upon examination. We have various state returns in the process of examination or administrative appeal. After acquiring Canadian operations on July 18, 2011 and prior to dissolution on June 10, 2014, we also were subject to Canadian and provincial taxes. Generally, the time limit for reassessing returns for Canadian and provincial income taxes for periods prior to the short fiscal period ended January 28, 2012 have lapsed.

We have estimated the reasonably possible expected net change in unrecognized tax benefits through February 2, 2019, based on expected cash and noncash settlements or payments of uncertain tax positions and lapses of the applicable statutes of limitations for unrecognized tax benefits. The estimated net decrease in unrecognized tax benefits for the next 12 months is approximately $5.0 million. Actual results may differ materially from this estimate.
NOTE 10 – COMMITMENTS, CONTINGENCIES AND LEGAL PROCEEDINGS

Shareholder and Derivative Matters

On May 21, May 22 and July 2, 2012, three shareholder derivative lawsuits were filed in the U.S. District Court for the Southern District of Ohio against us and certain of our current and former outside directors and executive officers. The lawsuits were consolidated, and, on August 13, 2012, plaintiffs filed a consolidated complaint captioned In re Big Lots, Inc. Shareholder Litigation, No. 2:12-cv-00445 (S.D. Ohio) (the “Consolidated Derivative Action”), which generally alleged that the individual defendants traded in our common shares based on material, nonpublic information concerning our guidance for fiscal 2012 and the first quarter of fiscal 2012 and the director defendants failed to suspend our share repurchase program during such trading activity. The consolidated complaint asserted claims under Ohio law for breach of fiduciary duty, unjust enrichment, misappropriation of trade secrets and corporate waste and sought declaratory relief and disgorgement to us of proceeds from any wrongful sales of our common shares, plus attorneys’ fees and expenses.

The defendants filed a motion to dismiss the consolidated complaint, which was granted by the Court in an Opinion and Order dated April 14, 2015, pursuant to which plaintiffs’ claims were all dismissed with prejudice, with the exception of their claim for corporate waste, which was dismissed without prejudice. On May 5, 2015, plaintiffs filed a Motion for Leave to File Verified Consolidated Amended Shareholder Derivative Complaint, which sought to replead the claim for corporate waste that was dismissed without prejudice by the Court, as well as a Motion for Reconsideration and, in the Alternative, for Certification of Question of State Law to the Supreme Court of Ohio. Defendants’ responses to both motions were filed on May 29, 2015. On August 3, 2015, the Court granted Plaintiffs’ Motion for Leave to File Verified Consolidated Amended Shareholder Derivative Complaint, and Plaintiffs filed the amended complaint on the same date, asserting a claim for corporate waste against Jeffrey Berger, Steven Fishman, David Kollat, Brenda Lauderback, Philip Mallott, Russell Solt, and Dennis Tishkoff. On September 30, 2015, defendants filed an answer to the amended complaint.

We received a letter dated January 28, 2013, sent on behalf of a shareholder demanding that our Board of Directors investigate and take action in connection with the allegations made in the derivative and securities lawsuits described here within. The shareholder indicated that he would commence a derivative lawsuit if our Board of Directors failed to take the demanded action. On March 6, 2013, our Board of Directors referred the shareholder’s letter to a committee of independent directors to investigate the matter. That committee, with the assistance of independent outside counsel, investigated the allegations in the shareholder’s demand letter and, on August 28, 2013, reported its findings to our Board of Directors along with its recommendation that the Board reject the shareholder’s demand. Our Board of Directors unanimously accepted the recommendation of the demand investigation committee and, on September 9, 2013, outside counsel for the committee sent a letter to counsel for the shareholder informing the shareholder of the Board’s determination. On October 18, 2013, the shareholder filed a derivative lawsuit captioned Brosz v. Fishman et al., No. 1:13-cv-00753 (S.D. Ohio) (the “Brosz Action”) in the U.S. District Court for the Southern District of Ohio against us and each of the current and former outside directors and executive officers originally named in the 2012 shareholder derivative lawsuit. The plaintiff’s complaint generally alleged that the individual defendants traded in our common shares based on material, nonpublic information concerning our guidance for fiscal 2012 and the first quarter of fiscal 2012 and the director defendants failed to suspend our share repurchase program during such trading activity. The complaint asserted claims under Ohio law for breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, corporate waste and misappropriation of trade secrets and sought damages, injunctive relief and disgorgement to us of proceeds from any wrongful sales of our common shares, plus attorneys’ fees and expenses.

The defendants filed a motion to dismiss the complaint, which was granted by the Court in an Opinion and Order dated April 14, 2015, which dismissed the plaintiff’s claims with prejudice with the exception of his claim for corporate waste and his assertion that our Board of Directors wrongfully rejected his demand to take action against the individually named defendants. On May 5, 2015, the Court so ordered the parties’ stipulation, staying plaintiff’s time to seek leave to amend his complaint in order to make a request to inspect the Company’s books and records pursuant to Ohio Revised Code §1701.37, and plaintiff served that request for inspection on May 8, 2015. On August 17, 2015, plaintiff filed an Amended Verified Shareholder Derivative Complaint. On May 5, 2015, plaintiffs filed a Motion for Leave to File Verified Consolidated Amended Shareholder Derivative Complaint, which sought to replead the claim for corporate waste that was dismissed without prejudice by the Court, as well as a Motion for Reconsideration and, in the Alternative, for Certification of Question of State Law to the Supreme Court of Ohio. Defendants’ responses to both motions were filed on May 29, 2015. On August 3, 2015, the Court granted Plaintiffs’ Motion for Leave to File Verified Consolidated Amended Shareholder Derivative Complaint, and Plaintiffs filed the amended complaint on the same date, asserting a claim for corporate waste against Jeffrey Berger, Steven Fishman, David Kollat, Brenda Lauderback, Philip Mallott, Russell Solt, and Dennis Tishkoff. On September 30, 2015, defendants filed an answer to the amended complaint.

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The defendants filed a motion to dismiss the consolidated complaint, which was granted by the Court in an Opinion and Order dated April 14, 2015, pursuant to which plaintiffs’ claims were all dismissed with prejudice, with the exception of their claim for corporate waste, which was dismissed without prejudice. On May 5, 2015, plaintiffs filed a Motion for Leave to File Verified Consolidated Amended Shareholder Derivative Complaint, which sought to replead the claim for corporate waste that was dismissed without prejudice by the Court, as well as a Motion for Reconsideration and, in the Alternative, for Certification of Question of State Law to the Supreme Court of Ohio. Defendants’ responses to both motions were filed on May 29, 2015. On August 3, 2015, the Court granted Plaintiffs’ Motion for Leave to File Verified Consolidated Amended Shareholder Derivative Complaint, and Plaintiffs filed the amended complaint on the same date, asserting a claim for corporate waste against Jeffrey Berger, Steven Fishman, David Kollat, Brenda Lauderback, Philip Mallott, Russell Solt, and Dennis Tishkoff. On September 30, 2015, defendants filed an answer to the amended complaint.
On February 10, 2014, a shareholder derivative lawsuit was filed in the Franklin County Common Pleas Court in Columbus, Ohio, captioned *Tremblay v. Campisi et al.*, No. 14CV-02-1421 (Ohio Ct. Com. Pl., Franklin Cnty.) (the “Tremblay Action”), against us and certain of our current and former outside directors and executive officers (David Campisi, Steven Fishman, Joe Cooper, Charles Haubiel, Timothy Johnson, Robert Claxton, John Martin, Norman Rankin, Paul Schroeder, Robert Segal, Steven Smart, David Kollat, Jeffrey Berger, James Chambers, Peter Hayes, Brenda Lauderback, Philip Mallott, Russell Solt, James Tener and Dennis Tishkoff). The plaintiff’s complaint generally alleges that the individual defendants traded in our common shares based on material, nonpublic information concerning our guidance for fiscal 2012 and the first quarter of fiscal 2012 and the director defendants failed to suspend our share repurchase program during such trading activity. The complaint also alleges that we and various individual defendants made false and misleading statements regarding our Canadian operations prior to our announcement on December 5, 2013 that we were exiting the Canadian market. The complaint asserts claims under Ohio law for breach of fiduciary duty, unjust enrichment, waste of corporate assets and misappropriation of insider information and seeks damages, injunctive relief and disgorgement to us of proceeds from any wrongful sales of our common shares, plus attorneys’ fees and expenses. At the parties’ request, the Court stayed this lawsuit until after the judge in the federal derivative lawsuits discussed in the preceding paragraphs ruled on the motions to dismiss pending in those actions. On January 12, 2017, the Tremblay Action was voluntarily dismissed by the plaintiffs, without prejudice to refiling.

On August 1, 2016, our Board of Directors passed a resolution creating a special litigation committee (“SLC”) to conduct an independent investigation and determine, in its sole discretion, whether it is in the best interests of the Company to pursue, settle, or seek dismissal of, the claims asserted in the Consolidated Derivative Action, the Brosz Action, and the Tremblay Action. The SLC is composed of three members, each of whom is a director that is not a party to any of the derivative actions and was not a member of the Board until well after the relevant time period. The SLC retained independent counsel and conducted an investigation. On October 20, 2016, the Company filed motions to stay all proceedings in the Consolidated Derivative Action and the Brosz Action pending the completion of the SLC’s investigation. The Court granted the motion to stay all proceedings on December 15, 2016. As noted above, the Brosz action was consolidated with the Consolidated Derivative Action on December 29, 2016, and the Tremblay Action was voluntarily dismissed on January 12, 2017. On May 18, 2017, after concluding its investigation, the SLC filed a motion to dismiss the Consolidated Derivative Action. On May 19, 2017, the Court issued an order providing for discovery and briefing in connection with the SLC’s motion to dismiss and setting a schedule for further litigation of the merits of the lawsuit. On December 14, 2017, the parties entered into a Stipulation and Agreement of Settlement and Plaintiff filed an Unopposed Motion for Preliminary Approval of Derivative Settlement with the Court. That motion remains pending with the Court.

On July 9, 2012, a putative securities class action lawsuit captioned *Willis, et al. v. Big Lots, Inc., et al.*, 2:12-cv-00604 (S.D. Ohio) was filed in the U.S. District Court for the Southern District of Ohio on behalf of persons who acquired our common shares between February 2, 2012 and April 23, 2012. This lawsuit was filed against us, Lisa Bachmann, Mr. Cooper, Mr. Fishman and Mr. Haubiel. The complaint in the putative class action generally alleges that the defendants made statements concerning our financial performance that were false or misleading. The complaint asserts claims under sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 and seeks damages in an unspecified amount, plus attorneys’ fees and expenses. The lead plaintiff filed an amended complaint on April 4, 2013, which added Mr. Johnson as a defendant, removed Ms. Bachmann as a defendant, and extended the putative class period to August 23, 2012. On May 6, 2013, the defendants filed a motion to dismiss the putative class action complaint. On January 21, 2016, the Court granted in part and denied in part the defendants’ motion to dismiss, allowing some claims to move forward. On May 27, 2016, the lead plaintiff moved for class certification (requesting a class period from March 2, 2012 through August 23, 2012) and to appoint class representatives and class counsel. Defendants opposed the motion. On March 17, 2017, the Court granted plaintiffs’ motion, certifying the class and appointing class representatives and class counsel. On March 31, 2017, defendants filed a petition pursuant to Federal Rule of Civil Procedure 23(f) for appeal of the Court's ruling with the U.S. Court of Appeals for the Sixth Circuit. Defendant’s petition was granted on August 23, 2017, and briefing on the appeal was completed January 12, 2018. On August 28, 2017, defendants filed a motion in the District Court to stay all further proceedings pending the resolution of defendants’ appeal of class certification. On September 19, 2017, the District Court granted defendants’ motion and stayed all proceedings, except for the exchange of expert reports, pending the resolution of defendants’ appeal. Fact discovery in the District Court was substantially completed on May 26, 2017.

We believe that the shareholder derivative and putative class action lawsuits are without merit, and we intend to defend ourselves vigorously against the allegations levied in these lawsuits. While a loss from these lawsuits is reasonably possible, at this time, we cannot reasonably estimate the amount of any loss that may result or whether the lawsuits will have a material impact on our financial statements.
California Hazardous Materials Matter
On October 1, 2013, we received a subpoena from the District Attorney for the County of Alameda, State of California, seeking information concerning our handling of hazardous materials and hazardous waste in the State of California. We provided information and cooperated with the authorities from multiple counties and cities in California in connection with this matter. In the first quarter of 2016, we entered into settlement negotiations related to this matter. We settled this matter in the first quarter of 2017.

During the first quarter of 2016, we recorded accruals totaling $4.7 million associated with pending legal and regulatory matters, including this matter related to hazardous materials and hazardous waste.

Tabletop Torches Matter
In 2013, we sold certain tabletop torch and citronella products manufactured by third parties. In August 2013, we recalled the tabletop torches and discontinued their sale in our stores. In 2014, we were named as a defendant in a number of lawsuits relating to these products alleging personal injuries suffered as a result of negligent shelving and pairing of the products, product design, manufacturing and marketing defects and/or breach of warranties. Although we believe that we are entitled to indemnification from the third-party manufacturers of the products and the company that tested the tabletop torches for all of the expenses that we have incurred with respect to these matters and that these expenses are covered by our insurance (subject to a $1 million deductible), in the second quarter of 2015, we (1) determined that our ability to obtain any recovery from the manufacturer of the tabletop torches may be limited because, among other things, the manufacturer has exhausted its applicable insurance coverage, is domiciled outside the United States and has been dissolved by its parent and (2) became engaged in litigation with our excess insurance carrier regarding the scope of our coverage. In the second quarter of 2015, we settled one of the lawsuits and settled another lawsuit in the third quarter of 2015. We settled an additional lawsuit in the first quarter of 2017. In the second quarter of 2017, we reached a settlement with the plaintiff in the final lawsuit. Additionally, we have brought a separate lawsuit in the United States District Court of Massachusetts against the company that tested the tabletop torch and an additional lawsuit in the United States District Court for the Southern District of Ohio against the third-party manufacturers and the company that tested the tabletop torch. In the second quarter of 2017, we reached a settlement in principle with our primary and excess insurance carriers. In the third quarter of 2017, we finalized the settlement with our insurance carriers and collected the associated settlement funds, which resulted in a $3.0 million gain. In addition, our excess insurance carrier has negotiated a settlement with each of the third-party manufacturers and the company that tested the tabletop torch. All pending actions have now been dismissed. During the second quarter of 2015, we recorded a $4.5 million charge related to these matters.

Other Matters
We are involved in other legal actions and claims arising in the ordinary course of business. We currently believe that each such action and claim will be resolved without a material effect on our financial condition, results of operations, or liquidity. However, litigation involves an element of uncertainty. Future developments could cause these actions or claims to have a material effect on our financial condition, results of operations, and liquidity.

We are self-insured for certain losses relating to property, general liability, workers' compensation, and employee medical, dental, and prescription drug benefit claims, a portion of which is paid by employees, and we have purchased stop-loss coverage in order to limit significant exposure in these areas. Accrued insurance liabilities are actuarially determined based on claims filed and estimates of claims incurred but not reported. We use letters of credit, which amounted to $57.7 million at February 3, 2018, as collateral to back certain of our self-insured losses with our claims administrators.

We have purchase obligations for outstanding purchase orders for merchandise issued in the ordinary course of our business that are valued at $415.3 million, the entirety of which represents obligations due within one year of February 3, 2018. In addition, we have purchase commitments for future inventory purchases totaling $115.0 million at February 3, 2018. We paid $11.0 million, $18.2 million, and $11.3 million related to these commitments during 2017, 2016, and 2015, respectively. We are not required to meet any periodic minimum purchase requirements under this commitment. The term of the commitment extends until the purchase requirement is satisfied. We have additional purchase obligations in the amount of $385.3 million primarily related to distribution and transportation, information technology, print advertising, energy procurement, and other store security, supply, and maintenance commitments.
NOTE 11 – DERIVATIVE INSTRUMENTS

In the first quarter of 2015, our Board of Directors authorized our management to enter into derivative instruments designed to mitigate certain risks; and we entered into collar contracts to mitigate our risk associated with market fluctuations in diesel fuel prices. These contracts are used strictly to limit our risk exposure and not as speculative transactions. Our derivative instruments associated with diesel fuel do not meet the requirements for cash flow hedge accounting. Therefore, our derivative instruments associated with diesel fuel will be marked-to-market to determine their fair value, and the associated gains and losses will be recognized currently in other income (expense) on our consolidated statements of operations.

Our outstanding derivative instrument contracts were comprised of the following:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>February 3, 2018</th>
<th>January 28, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diesel fuel collars (in gallons)</td>
<td>3,600</td>
<td>4,425</td>
</tr>
</tbody>
</table>

The fair value of our outstanding derivative instrument contracts was as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Assets (Liabilities)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diesel fuel collars</td>
<td>Other current assets $312 $135</td>
</tr>
<tr>
<td></td>
<td>Other assets 262 180</td>
</tr>
<tr>
<td></td>
<td>Accrued operating expenses (77) (1,001)</td>
</tr>
<tr>
<td></td>
<td>Other liabilities (107) (322)</td>
</tr>
<tr>
<td>Total derivative instruments</td>
<td>$390 $(1,008)</td>
</tr>
</tbody>
</table>

The effect of derivative instruments on the consolidated statements of operations was as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Amount of Gain (Loss)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diesel fuel collars</td>
<td>Other income (expense) $ (756) $ (2,299) $ (535)</td>
</tr>
<tr>
<td>Unrealized</td>
<td>Other income (expense) 1,398 3,657 (4,665)</td>
</tr>
<tr>
<td>Total derivative instruments</td>
<td>$642 $1,358 $ (5,200)</td>
</tr>
</tbody>
</table>

The fair values of our derivative instruments are determined using observable inputs from commonly quoted markets. These fair value measurements are classified as Level 2 within the fair value hierarchy.

NOTE 12 – COMPONENTS OF ACCUMULATED OTHER COMPREHENSIVE LOSS

The following table summarizes the components of accumulated other comprehensive loss, net of tax, during 2015 and 2016:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beginning of Period</td>
<td>$ (15,977)</td>
<td>$ (14,656)</td>
</tr>
<tr>
<td>Other comprehensive income before reclassifications</td>
<td>(185)</td>
<td>(3,730)</td>
</tr>
<tr>
<td>Amounts reclassified from accumulated other comprehensive loss</td>
<td>16,162</td>
<td>2,409</td>
</tr>
<tr>
<td>Net period change</td>
<td>15,977</td>
<td>(1,321)</td>
</tr>
<tr>
<td>End of Period</td>
<td>—</td>
<td>(15,977)</td>
</tr>
</tbody>
</table>

The amounts reclassified from accumulated other comprehensive loss associated with our pension plans have been reclassified to selling and administrative expenses in our statements of operations. Please see note 8 to the consolidated financial statements for further information on our pension plans.
NOTE 13 - SALE OF REAL ESTATE

In January 2017, we sold real property in California, on a component of which we operated a store, for $4.6 million. Based on the terms of the transaction, we recognized a pre-tax gain of $3.8 million during the fourth quarter of 2016.

NOTE 14 – BUSINESS SEGMENT DATA

We use the following seven merchandise categories, which match our internal management and reporting of merchandise net sales: Furniture, Seasonal, Soft Home, Food, Consumables, Hard Home, and Electronics, Toys, & Accessories. The Furniture category includes our upholstery, mattress, case goods, and ready-to-assemble departments. The Seasonal category includes our Christmas trim, lawn & garden, summer, and other holiday departments. The Soft Home category includes our fashion bedding, utility bedding, bath, window, decorative textile, home organization, area rugs, home décor, and frames departments. The Food category includes our beverage & grocery, candy & snacks, and specialty foods departments. The Consumables category includes our health, beauty and cosmetics, plastics, paper, chemical, and pet departments. The Hard Home category includes our small appliances, table top, food preparation, stationery, greeting cards, and home maintenance departments. The Electronics, Toys, & Accessories category includes our electronics, toys, jewelry, and hosiery departments.

We periodically assess, and potentially enact minor adjustments to, our product hierarchy, which can impact the roll-up of our merchandise categories. Our financial reporting process utilizes the most current product hierarchy in reporting net sales by merchandise category for all periods presented. Therefore, there may be minor reclassifications of net sales by merchandise category compared to previously reported amounts.

The following table presents net sales data by merchandise category:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Furniture</td>
<td>$1,237,022</td>
<td>$1,195,365</td>
<td>$1,135,757</td>
</tr>
<tr>
<td>Food</td>
<td>824,487</td>
<td>830,508</td>
<td>845,541</td>
</tr>
<tr>
<td>Consumables</td>
<td>822,533</td>
<td>817,747</td>
<td>826,530</td>
</tr>
<tr>
<td>Soft Home</td>
<td>789,596</td>
<td>750,814</td>
<td>718,666</td>
</tr>
<tr>
<td>Seasonal</td>
<td>765,907</td>
<td>739,106</td>
<td>725,238</td>
</tr>
<tr>
<td>Hard Home</td>
<td>428,788</td>
<td>437,575</td>
<td>477,451</td>
</tr>
<tr>
<td>Electronics, Toys, &amp; Accessories</td>
<td>402,647</td>
<td>429,324</td>
<td>461,399</td>
</tr>
<tr>
<td><strong>Net sales</strong></td>
<td>$5,270,980</td>
<td>$5,200,439</td>
<td>$5,190,582</td>
</tr>
</tbody>
</table>

66
NOTE 15 – SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)

Summarized fiscal quarterly financial data for 2017 and 2016 is as follows:

<table>
<thead>
<tr>
<th>Fiscal Year 2017</th>
<th>First</th>
<th>Second</th>
<th>Third</th>
<th>Fourth</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>(In thousands, except per share amounts) (a)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net sales</td>
<td>$1,296,787</td>
<td>$1,221,301</td>
<td>$1,110,824</td>
<td>$1,642,068</td>
<td>$5,270,980</td>
</tr>
<tr>
<td>Gross margin</td>
<td>524,275</td>
<td>492,500</td>
<td>443,626</td>
<td>682,041</td>
<td>2,142,442</td>
</tr>
<tr>
<td>Net income</td>
<td>51,512</td>
<td>29,120</td>
<td>4,372</td>
<td>104,828</td>
<td>189,832</td>
</tr>
</tbody>
</table>

Earnings per share:

<table>
<thead>
<tr>
<th></th>
<th>Basic</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$1.16</td>
<td>$0.68</td>
<td>$0.10</td>
<td>$2.50</td>
<td>$4.43</td>
</tr>
<tr>
<td>Diluted</td>
<td>1.15</td>
<td>0.67</td>
<td>0.10</td>
<td>2.46</td>
<td>4.38</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fiscal Year 2016</th>
<th>First</th>
<th>Second</th>
<th>Third</th>
<th>Fourth</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>(In thousands, except per share amounts) (a)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net sales</td>
<td>$1,312,575</td>
<td>$1,203,155</td>
<td>$1,105,498</td>
<td>$1,579,211</td>
<td>$5,200,439</td>
</tr>
<tr>
<td>Gross margin</td>
<td>517,681</td>
<td>486,423</td>
<td>441,992</td>
<td>653,323</td>
<td>2,099,419</td>
</tr>
<tr>
<td>Net income</td>
<td>38,659</td>
<td>22,715</td>
<td>1,376</td>
<td>90,078</td>
<td>152,828</td>
</tr>
</tbody>
</table>

Earnings per share:

<table>
<thead>
<tr>
<th></th>
<th>Basic</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$0.80</td>
<td>$0.51</td>
<td>$0.03</td>
<td>$2.04</td>
<td>$3.37</td>
</tr>
<tr>
<td>Diluted</td>
<td>0.79</td>
<td>0.50</td>
<td>0.03</td>
<td>1.99</td>
<td>3.32</td>
</tr>
</tbody>
</table>

(a) Earnings per share calculations for each fiscal quarter are based on the applicable weighted-average shares outstanding for each period, and the sum of the earnings per share for the four fiscal quarters may not necessarily be equal to the full year earnings per share amount.

NOTE 16 – SUBSEQUENT EVENT

On March 7, 2018, our Board of Directors authorized the repurchase of up to $100.0 million of our common shares (“2018 Repurchase Program”). Pursuant to the 2018 Repurchase Program, we may repurchase shares in the open market and/or in privately negotiated transactions at our discretion, subject to market conditions and other factors. Common shares acquired through the 2018 Repurchase Program will be available to meet obligations under our equity compensation plans and for general corporate purposes. The 2018 Repurchase Program has no scheduled termination date and will be funded with cash and cash equivalents, cash generated from operations or, if needed, by drawing on the 2011 Credit Agreement.
Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures
Our management, with the participation of our Principal Executive Officers and Principal Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures, as that term is defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), as of the end of the period covered by this report. Based on that evaluation, our Principal Executive Officers and Principal Financial Officer have each concluded that such disclosure controls and procedures were effective as of the end of the period covered by this report.

Management's Report on Internal Control over Financial Reporting
Management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) for us. Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with accounting principles generally accepted in the United States of America.

Management assessed the effectiveness of our internal control over financial reporting as of February 3, 2018. In making its assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control - Integrated Framework (2013 Framework). Based on this assessment, management, including our Principal Executive Officers and Principal Financial Officer, concluded that we maintained effective internal control over financial reporting as of February 3, 2018.

Our independent registered public accounting firm, Deloitte & Touche LLP, has issued an attestation report on our internal control over financial reporting. The report appears in the Financial Statements and Supplementary Data section of this Form 10-K.

Changes in Internal Control over Financial Reporting
There were no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.
Item 10. Directors, Executive Officers and Corporate Governance

The information contained under the captions “Proposal One: Election of Directors,” “Governance,” and “Stock Ownership” in the 2018 Proxy Statement, with respect to directors, shareholder nomination procedures, the code of ethics, the Audit Committee, our audit committee financial experts, and Section 16(a) beneficial ownership reporting compliance, is incorporated herein by reference in response to this item. The information contained in Part I of this Form 10-K under the caption “Supplemental Item. Executive Officers of the Registrant,” with respect to executive officers, is incorporated herein by reference in response to this item.

Item 11. Executive Compensation

The information contained under the captions “Governance,” “Director Compensation,” and “Executive Compensation” in the 2018 Proxy Statement, with respect to corporate Compensation Committee interlocks and insider participation, director compensation, the Compensation Committee Report, and executive compensation, is incorporated herein by reference in response to this item.


Equity Compensation Plan Information

The following table summarizes information as of February 3, 2018, relating to our equity compensation plans pursuant to which our common shares may be issued.

<table>
<thead>
<tr>
<th>Plan Category</th>
<th>Number of securities to be issued upon exercise of outstanding options, warrants, and rights (#)</th>
<th>Weighted-average exercise price of outstanding options, warrants, and rights ($)</th>
<th>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (#)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity compensation plans approved by security holders</td>
<td>1,544,185 (1)/(2)</td>
<td>39.04 (3)</td>
<td>5,506,484 (4)</td>
</tr>
<tr>
<td>Equity compensation plans not approved by security holders</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>1,544,185</td>
<td>39.04 (3)</td>
<td>5,506,484</td>
</tr>
</tbody>
</table>

(1) Includes stock options, PSUs, and restricted stock units granted under the 2017 LTIP, the 2012 LTIP, and the 2005 LTIP. In addition, we had 181,325 shares of unvested restricted stock outstanding under the 2012 LTIP.

(2) The common shares issuable upon exercise of outstanding stock options granted under each shareholder-approved plan are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Shares Issuable</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012 LTIP</td>
<td>163,126</td>
</tr>
<tr>
<td>2005 LTIP</td>
<td>117,500</td>
</tr>
</tbody>
</table>

(3) The weighted average exercise price only represents stock options and does not take into account the PSUs and the restricted stock units granted under the 2017 LTIP.

(4) The common shares available for issuance under the 2017 LTIP are limited to 5,506,484 common shares. There are no common shares available for issuance under any of the other shareholder-approved plans.

The 2005 LTIP expired on May 16, 2012. The 2012 LTIP was expired on May 24, 2017. The 2017 LTIP was approved in May 2017. See note 7 to the accompanying consolidated financial statements.

The information contained under the caption “Stock Ownership” in the 2018 Proxy Statement, with respect to the security ownership of certain beneficial owners and management, is incorporated herein by reference in response to this item.
Item 13. Certain Relationships and Related Transactions, and Director Independence

The information contained under the caption “Governance - Determination of Director Independence” and “Governance - Related Person Transactions” in the 2018 Proxy Statement, with respect to the review of director independence and transactions with related persons, is incorporated herein by reference in response to this item.

Item 14. Principal Accounting Fees and Services

The information contained under the captions “Audit Committee Disclosure - Audit and Non-Audit Services Pre-Approval Policy” and “Audit Committee Disclosure - Fees Paid to Independent Registered Public Accounting Firm” in the 2018 Proxy Statement, with respect to the Audit Committee's pre-approval policies and procedures and the fees paid to Deloitte & Touche LLP, is incorporated herein by reference in response to this item.
Item 15. Exhibits, Financial Statement Schedules

Index to Consolidated Financial Statements, Financial Statement Schedules and Exhibits

(a) Documents filed as part of this report:

(1) Financial Statements

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Agreement of Merger (incorporated herein by reference to Exhibit 2 to our Form 10-Q for the quarter ended May 5, 2001) (File No. 1-8897).</td>
</tr>
<tr>
<td>3.1</td>
<td>Amended Articles of Incorporation (incorporated herein by reference to Exhibit 3(a) to our Form 10-Q for the quarter ended May 5, 2001) (File No. 1-8897).</td>
</tr>
<tr>
<td>3.2</td>
<td>Amendment to the Amended Articles of Incorporation of Big Lots, Inc. (incorporated herein by reference to Exhibit 3.1 to our Form 8-K dated May 27, 2010) (File No. 1-8897).</td>
</tr>
<tr>
<td>3.3</td>
<td>Code of Regulations (incorporated herein by reference to Exhibit 3(b) to our Form 10-Q for the quarter ended May 5, 2001) (File No. 1-8897).</td>
</tr>
<tr>
<td>4</td>
<td>Specimen Common Share Certificate (incorporated herein by reference to Exhibit 4(a) to our Form 10-K for the year ended February 2, 2002) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.1</td>
<td>Big Lots 2005 Long-Term Incentive Plan, as amended and restated effective May 27, 2010 (incorporated herein by reference to Exhibit 4.4 to our Form 8-K dated March 3, 2011) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.2</td>
<td>Form of Big Lots 2005 Long-Term Incentive Plan Non-Qualified Stock Option Award Agreement (incorporated herein by reference to Exhibit 10.4 to our Form 8-K dated February 21, 2006) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.3</td>
<td>Form of Big Lots 2005 Long-Term Incentive Plan Non-Qualified Stock Option Award Agreement (incorporated herein by reference to Exhibit 10.3 to our Form 8-K dated March 4, 2009) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.4</td>
<td>Form of Big Lots 2005 Long-Term Incentive Plan Restricted Stock Award Agreement (incorporated herein by reference to Exhibit 10.4 to our Form 8-K dated March 4, 2009) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.5</td>
<td>Big Lots 2012 Long-Term Incentive Plan, as amended and restated effective May 29, 2014 (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated May 29, 2014).</td>
</tr>
</tbody>
</table>

All other financial statements not listed in the preceding index are omitted because they are not required or are not applicable or because the information required to be set forth therein either was not material or is included in the consolidated financial statements or notes thereto.

(2) Financial Statement Schedules

All schedules are omitted because they are not required or are not applicable or because the information required to be set forth therein either was not material or is included in the consolidated financial statements or notes thereto.

(3) Exhibits. Exhibits marked with an asterisk (*) are filed herewith. The Exhibit marked with two asterisks (**) is furnished electronically with this Annual Report. Copies of exhibits will be furnished upon written request and payment of our reasonable expenses in furnishing the exhibits. Exhibits 10.1 through 10.42 are management contracts or compensatory plans or arrangements.
<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.6</td>
<td>Form of Big Lots 2012 Long-Term Incentive Plan Non-Qualified Stock Option Award Agreement (incorporated herein by reference to Exhibit 10.2 to our Form 8-K dated May 23, 2012) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.7</td>
<td>Form of Big Lots 2012 Long-Term Incentive Plan Restricted Stock Award Agreement (incorporated herein by reference to Exhibit 10.3 to our Form 8-K dated May 23, 2012) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.8</td>
<td>Form of Big Lots 2012 Long-Term Incentive Plan Restricted Stock Retention Award Agreement (incorporated herein by reference to Exhibit 10.14 to our Form 10-K for the year ended February 2, 2013) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.9</td>
<td>Form of Big Lots 2012 Long-Term Incentive Plan Restricted Stock Award Agreement for Nonemployee Directors (incorporated herein by reference to Exhibit 10.9 to our Form 8-K dated May 23, 2012) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.10</td>
<td>Form of Big Lots 2012 Long-Term Incentive Plan Performance Share Units Award Agreement (incorporated herein by reference to Exhibit 10.9 to our Form 8-K dated April 29, 2013).</td>
</tr>
<tr>
<td>10.11</td>
<td>Form of Big Lots 2012 Long-Term Incentive Plan Performance Share Units Award Agreement (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated April 29, 2013).</td>
</tr>
<tr>
<td>10.12</td>
<td>Form of Big Lots 2012 Long-Term Incentive Plan Restricted Stock Units Award Agreement (incorporated herein by reference to Exhibit 10.2 to our Form 8-K dated March 4, 2015).</td>
</tr>
<tr>
<td>10.13</td>
<td>Form of Big Lots 2012 Long-Term Incentive Plan Deferral Election Form and Deferred Stock Units Award Agreement for Non-Employee Directors (incorporated herein by reference to Exhibit 10.13 to our Form 10-K for the year ended January 28, 2017).</td>
</tr>
<tr>
<td>10.14</td>
<td>Form of Big Lots 2017 Long-Term Incentive Plan (incorporated herein by reference to Appendix A to our definitive proxy statement on Schedule 14A relating to the 2017 Annual Meeting of Shareholders filed April 11, 2017).</td>
</tr>
<tr>
<td>10.15</td>
<td>Form of Big Lots 2017 Long-Term Incentive Plan Restricted Stock Units Award Agreement (incorporated herein by reference to Exhibit 10.1 to our Form 10-Q for the quarter ended April 29, 2017).</td>
</tr>
<tr>
<td>10.16</td>
<td>Form of Big Lots 2017 Long-Term Incentive Plan Performance Share Units Award Agreement (incorporated herein by reference to Exhibit 10.2 to our Form 10-Q for the quarter ended April 29, 2017).</td>
</tr>
<tr>
<td>10.17</td>
<td>Form of Big Lots 2017 Long-Term Incentive Plan Deferral Election Form and Deferred Stock Units Award for Non-Employee Directors (incorporated herein by reference to Exhibit 10.1 to our Form 10-Q for the quarter ended October 28, 2017).</td>
</tr>
<tr>
<td>10.18</td>
<td>Big Lots, Inc. Amended and Restated Director Stock Option Plan (incorporated by reference to Exhibit 10(c)(ii) to Consolidated (Delaware)'s Annual Report on Form 10-K for the fiscal year ended February 1, 1992) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.19</td>
<td>First Amendment to Big Lots, Inc. Amended and Restated Director Stock Option Plan, effective August 20, 2002 (incorporated herein by reference to Exhibit 10.13 to our Form 10-K for the year ended January 28, 2017).</td>
</tr>
<tr>
<td>10.20</td>
<td>Amendment to Big Lots, Inc. Amended and Restated Director Stock Option Plan, effective March 5, 2008 (incorporated herein by reference to Exhibit 10.1 to our Form 10-Q for the quarter ended May 3, 2008) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.21</td>
<td>Form of Option Award Agreement under the Big Lots, Inc. Amended and Restated Director Stock Option Plan (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated September 9, 2004) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.22</td>
<td>Big Lots 2006 Bonus Plan, as amended and restated effective May 29, 2014 (incorporated herein by reference to Exhibit 10.2 to our Form 8-K dated May 29, 2014).</td>
</tr>
<tr>
<td>10.23</td>
<td>Big Lots Savings Plan (incorporated herein by reference to Exhibit 10.8 to our Form 10-K for the year ended January 29, 2005) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.24</td>
<td>Big Lots Supplemental Savings Plan, as amended and restated effective December 31, 2015 (incorporated herein by reference to Exhibit 10.2 to our Form 10-K for the year ended January 30, 2016).</td>
</tr>
<tr>
<td>10.25</td>
<td>Big Lots Executive Benefit Plan (incorporated herein by reference to Exhibit 10(m) to our Form 10-K for the year ended January 31, 2004) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.26</td>
<td>First Amendment to Big Lots Executive Benefit Plan (incorporated herein by reference to Exhibit 10.11 to our Form 10-Q for the quarter ended November 1, 2008) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.27</td>
<td>Executive Employment Agreement with David J. Campisi (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated March 17, 2015).</td>
</tr>
<tr>
<td>10.28</td>
<td>Second Amended and Restated Employment Agreement with Lisa M. Bachmann (incorporated herein by reference to Exhibit 10.2 to our Form 8-K dated April 29, 2013).</td>
</tr>
</tbody>
</table>
### Exhibit No. Document

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Document</th>
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<tbody>
<tr>
<td>10.29</td>
<td>Form of Indemnification Agreement (incorporated herein by reference to Exhibit 10.12 to our Form 10-Q for the quarter ended November 1, 2008) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.30</td>
<td>Form of Executive Severance Agreement (incorporated herein by reference to Exhibit 10.13 to our Form 10-Q for the quarter ended November 1, 2008) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.31</td>
<td>Form of Senior Executive Severance Agreement (incorporated herein by reference to Exhibit 10.14 to our Form 10-Q for the quarter ended November 1, 2008) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.32</td>
<td>Big Lots Executive Severance Plan (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated August 28, 2014).</td>
</tr>
<tr>
<td>10.33</td>
<td>Form of Big Lots Executive Severance Plan Acknowledgment and Agreement (incorporated by reference to Exhibit 10.2 to our Form 8-K dated August 28, 2014).</td>
</tr>
<tr>
<td>10.34</td>
<td>Credit Agreement among Big Lots, Inc., Big Lots Stores, Inc. and Big Lots Canada, Inc., as borrowers, the Guarantors named therein, and the Banks named therein (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated July 22, 2011) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.35</td>
<td>First Amendment to Credit Agreement among Big Lots, Inc., Big Lots Stores, Inc. and Big Lots Canada, Inc., as borrowers, the Guarantors named therein, and the Banks named therein (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated May 30, 2013).</td>
</tr>
<tr>
<td>10.36</td>
<td>Second Amendment to Credit Agreement among Big Lots, Inc., Big Lots Stores, Inc., as borrowers, the Guarantors named therein, and the Banks named therein (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated May 28, 2015).</td>
</tr>
<tr>
<td>10.37</td>
<td>Security Agreement between Big Lots Stores, Inc. and Big Lots Capital, Inc. (incorporated herein by reference to Exhibit 10.2 to our Form 8-K dated October 29, 2004) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.38</td>
<td>Stock Purchase Agreement between KB Acquisition Corporation and Consolidated Stores Corporation (incorporated herein by reference to Exhibit 2(a) to our Form 10-Q for the quarter ended October 28, 2000) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.39</td>
<td>Acquisition Agreement between Big Lots, Inc. and Liquidation World Inc. (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated May 26, 2011) (File No. 1-8897).</td>
</tr>
<tr>
<td>10.40*</td>
<td>AVDC Participation Agreement</td>
</tr>
<tr>
<td>10.41*</td>
<td>AVDC Lease Agreement (Real Property)</td>
</tr>
<tr>
<td>10.42*</td>
<td>AVDC Construction Agency Agreement</td>
</tr>
<tr>
<td>21*</td>
<td>Subsidiaries.</td>
</tr>
<tr>
<td>23*</td>
<td>Consent of Deloitte &amp; Touche LLP.</td>
</tr>
<tr>
<td>31.1*</td>
<td>Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</td>
</tr>
<tr>
<td>31.2*</td>
<td>Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</td>
</tr>
<tr>
<td>32.1*</td>
<td>Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</td>
</tr>
<tr>
<td>32.2*</td>
<td>Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</td>
</tr>
<tr>
<td>101**</td>
<td>XBRL Instance Document.</td>
</tr>
</tbody>
</table>

### Item 16. Form 10-K Summary

None.
Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on this 3rd day of April 2018.

BIG LOTS, INC.

By: /s/ Timothy A. Johnson

Timothy A. Johnson
Executive Vice President, Chief Administrative Officer
and Chief Financial Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated on the 3rd day of April 2018.

By: /s/ Lisa M. Bachmann
Lisa M. Bachmann
Executive Vice President, Chief Merchandising and Operating Officer
(Principal Executive Officer)

/s/ Jeffrey P. Berger *
Jeffrey P. Berger
Director

/s/ James R. Chambers *
James R. Chambers
Director

/s/ Marla C. Gottschalk *
Marla C. Gottschalk
Director

/s/ Cynthia T. Jamison *
Cynthia T. Jamison
Director

/s/ Philip E. Mallott *
Philip E. Mallott
(Principal Executive Officer, Principal Financial Officer, Principal Accounting Officer and Duly Authorized Officer)

/s/ Nancy A. Reardon *
Nancy A. Reardon
Director

/s/ Wendy L. Schoppert *
Wendy L. Schoppert
Director

/s/ Russell E. Solt *
Russell E. Solt
Director

* The above named Directors of the Registrant execute this report by Ronald A. Robins, Jr., their attorney-in-fact, pursuant to the power of attorney executed by the above-named Directors all in the capacities indicated and on the 7th day of March 2018, and filed herewith.

By: /s/ Ronald A. Robins, Jr.
Ronald A. Robins, Jr.
Attorney-in-Fact

74
PARTICIPATION AGREEMENT

Dated as of November 30, 2017

among
AVDC, INC.,
as the Construction Agent and the Lessee,

THE VARIOUS ENTITIES WHICH ARE PARTIES HERETO FROM TIME TO TIME,
as the Guarantors,

WACHOVIA SERVICE CORPORATION,
as the Lessor,

THE VARIOUS BANKS AND OTHER LENDING INSTITUTIONS WHICH ARE PARTIES HERETO FROM TIME TO TIME,
as the Lease Participants,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as the Agent
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>SECTION</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. THE FINANCING</td>
<td></td>
</tr>
<tr>
<td>1.1 General</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Absolute and True Sale; No Fiduciary Duty of the Lessor</td>
<td>2</td>
</tr>
<tr>
<td>2. [RESERVED]</td>
<td>2</td>
</tr>
<tr>
<td>3. SUMMARY OF TRANSACTIONS</td>
<td>2</td>
</tr>
<tr>
<td>3.1 Operative Agreements</td>
<td>2</td>
</tr>
<tr>
<td>3.2 Property Purchase</td>
<td>3</td>
</tr>
<tr>
<td>3.3 Construction of Improvements; Commencement of Basic Rent</td>
<td>3</td>
</tr>
<tr>
<td>3.4 Title to the Property</td>
<td>3</td>
</tr>
<tr>
<td>4. THE CLOSINGS</td>
<td>3</td>
</tr>
<tr>
<td>4.1 Initial Closing Date</td>
<td>3</td>
</tr>
<tr>
<td>4.2 Initial Closing Date; Property Closing Date; Acquisition Advances; Construction Advances</td>
<td>3</td>
</tr>
<tr>
<td>5. FUNDING OF LESSOR ADVANCES; CONDITIONS PRECEDENT; REPORTING REQUIREMENTS ON COMPLETION DATE; THE LESSEE’S DELIVERY OF NOTICES; RESTRICTIONS ON LIENS</td>
<td>4</td>
</tr>
<tr>
<td>5.1 General</td>
<td>4</td>
</tr>
<tr>
<td>5.2 Procedures for Funding</td>
<td>5</td>
</tr>
<tr>
<td>5.3 Conditions Precedent for the Lessor Parties and the Agent Relating to the Initial Closing Date and the Lessor Advances of Funds for the Acquisition of the Property</td>
<td>7</td>
</tr>
<tr>
<td>5.4 Conditions Precedent for the Lessor Parties and the Agent Relating to the Lessor Advances of Funds after the Acquisition Advance</td>
<td>11</td>
</tr>
<tr>
<td>5.5 Additional Reporting and Delivery Requirements on Completion Date</td>
<td>13</td>
</tr>
<tr>
<td>5.6 Restrictions on Liens</td>
<td>14</td>
</tr>
<tr>
<td>5.7 Payments</td>
<td>15</td>
</tr>
<tr>
<td>5.8 Unilateral Right to Increase the Lessor Parties Commitment</td>
<td>15</td>
</tr>
<tr>
<td>5.9 Maintenance of the Lessee as a Wholly-Owned Entity</td>
<td>15</td>
</tr>
<tr>
<td>5.10 Percentage Share</td>
<td>15</td>
</tr>
<tr>
<td>5.11 Final Advance for Punch List Items</td>
<td>16</td>
</tr>
<tr>
<td>5.12 Limitation on Requested Lessor Advances regarding Available Lessor Parties Commitment</td>
<td>16</td>
</tr>
<tr>
<td>5.13 Limitation on Purchase Option under the Lease and the Agency Agreement</td>
<td>16</td>
</tr>
<tr>
<td>5.14 Environmental Closure Reporting</td>
<td>17</td>
</tr>
<tr>
<td>5.15 Final Certificate of Occupancy</td>
<td>17</td>
</tr>
<tr>
<td>5.16 Special Provision Regarding the Funding of Uninsured Force Majeure Losses</td>
<td>17</td>
</tr>
<tr>
<td>5.17 Construction Consultant</td>
<td>17</td>
</tr>
<tr>
<td>5.18 Off-Site Construction Costs</td>
<td>19</td>
</tr>
<tr>
<td>5.19 Notices from the Construction Agent/the Lessee</td>
<td>20</td>
</tr>
<tr>
<td>5.20 Ratable Reduction of Lessor Parties Commitments</td>
<td>20</td>
</tr>
<tr>
<td>5A. LESSOR ADVANCE</td>
<td>20</td>
</tr>
<tr>
<td>5A.1 Procedure for Lessor Advance</td>
<td>20</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>8.7</td>
<td>Collection and Allocation of Payments and Other Amounts</td>
</tr>
<tr>
<td>8.8</td>
<td>Release of Property, etc</td>
</tr>
<tr>
<td>8.9</td>
<td>Sharing of Lessor Expenses After Rent Commencement Date</td>
</tr>
<tr>
<td>9.1</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>9.2</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>9.3</td>
<td>The Construction Agent’s and the Lessee’s Rights under Section 5A of this Agreement</td>
</tr>
<tr>
<td>10.1</td>
<td>Restrictions on Transfer</td>
</tr>
<tr>
<td>10.2</td>
<td>Effect of Transfer</td>
</tr>
<tr>
<td>10.3</td>
<td>Successor Agent</td>
</tr>
<tr>
<td>10.4</td>
<td>Participations</td>
</tr>
<tr>
<td>10.5</td>
<td>Assignments</td>
</tr>
<tr>
<td>10.6</td>
<td>The Register; Disclosure</td>
</tr>
<tr>
<td>11.1</td>
<td>General Indemnity</td>
</tr>
<tr>
<td>11.2</td>
<td>General Tax Indemnity</td>
</tr>
<tr>
<td>11.3</td>
<td>Yield Protection Amount</td>
</tr>
<tr>
<td>11.4</td>
<td>Funding/Contribution Indemnity</td>
</tr>
<tr>
<td>11.5</td>
<td>EXPRESS INDEMNIFICATION FOR ORDINARY NEGLIGENCE, STRICT LIABILITY, ETC</td>
</tr>
<tr>
<td>11.6</td>
<td>Indemnity Prior to Completion Date / Construction Period Termination Date</td>
</tr>
<tr>
<td>11.7</td>
<td>Additional Provisions Regarding Environmental Indemnification</td>
</tr>
<tr>
<td>11.8</td>
<td>Increase of Lessor Advances</td>
</tr>
<tr>
<td>11.9</td>
<td>Survival</td>
</tr>
<tr>
<td>12.1</td>
<td>Survival of Agreements</td>
</tr>
<tr>
<td>12.2</td>
<td>Notices</td>
</tr>
<tr>
<td>12.3</td>
<td>Counterparts</td>
</tr>
<tr>
<td>12.4</td>
<td>Terminations, Amendments, Waivers, Etc; Unanimous Vote Matters</td>
</tr>
<tr>
<td>12.5</td>
<td>Headings, etc</td>
</tr>
<tr>
<td>12.6</td>
<td>Parties in Interest</td>
</tr>
<tr>
<td>12.7</td>
<td>GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL; VENUE</td>
</tr>
<tr>
<td>12.8</td>
<td>Severability</td>
</tr>
<tr>
<td>12.9</td>
<td>Liability Limited</td>
</tr>
<tr>
<td>12.10</td>
<td>Rights of the Credit Parties</td>
</tr>
<tr>
<td>12.11</td>
<td>Further Assurances</td>
</tr>
<tr>
<td>12.12</td>
<td>Calculations under Operative Agreements</td>
</tr>
<tr>
<td>12.13</td>
<td>Confidentiality</td>
</tr>
<tr>
<td>12.14</td>
<td>Financial Reporting/Tax Characterization</td>
</tr>
<tr>
<td>12.15</td>
<td>Set-off</td>
</tr>
<tr>
<td>Paragraph</td>
<td>Description</td>
</tr>
<tr>
<td>-----------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>12.16</td>
<td>Limited Obligation of the Lessee to Pay on behalf of the Lessor</td>
</tr>
<tr>
<td>12.17</td>
<td>Limitation on Commitments</td>
</tr>
<tr>
<td>12.18</td>
<td>USA Patriot Act Notice</td>
</tr>
<tr>
<td>12.19</td>
<td>Acknowledgement and Consent to Bail-In of EEA Financial Institutions</td>
</tr>
<tr>
<td>12.20</td>
<td>UCC Filing Authorization</td>
</tr>
<tr>
<td>12.21</td>
<td>Lessor Party Voting Regarding Covenants, Representations and Warranties and Waivers</td>
</tr>
</tbody>
</table>
EXHIBITS

A  Form of Requisition - Section 4.2
B  Form of Officer’s Certificate - Section 5.3(t)
C  Form of Secretary’s Certificate - Section 5.3(u)
D  Form of Officer’s Certificate - Section 5.3(v)
E  Form of Secretary’s Certificate - Section 5.3(w)
F-1 Form of Officer’s Certificate (Completion - First Certification) – Section 5.5
F-2 Form of Officer’s Certificate (Completion - Second Certification) – Section 5.5
G  Form of Construction Agent Certificate – Section 5.17(b)(i)(A)
H  Form of Guarantor Joinder and Assumption Agreement – Section 6B.9
I  Form of Officer’s Certificate (Permitted Acquisition) – Section 8.3B(e)(iii)(E)
J  Form of Officer’s Certificate (Compliance) – Section 8.3C(c)
K  Form of Intercompany Subordination Agreement – Appendix A definition of “Intercompany Subordination Agreement”
<table>
<thead>
<tr>
<th>Schedule</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Lessor Parties Commitment</td>
</tr>
<tr>
<td>II</td>
<td>Capitalization</td>
</tr>
<tr>
<td>III</td>
<td>Credit Parties</td>
</tr>
<tr>
<td>IV</td>
<td>New York Potential Tax Claim</td>
</tr>
<tr>
<td>V</td>
<td>Owned Real Estate</td>
</tr>
<tr>
<td>VI</td>
<td>Consents and Approvals</td>
</tr>
<tr>
<td>VII</td>
<td>Insurance Policies</td>
</tr>
<tr>
<td>VIII</td>
<td>Employee Benefit Plan Disclosure</td>
</tr>
<tr>
<td>IX</td>
<td>Environmental Disclosure</td>
</tr>
<tr>
<td>X</td>
<td>Permitted Indebtedness</td>
</tr>
<tr>
<td>XI</td>
<td>Existing Guaranties</td>
</tr>
<tr>
<td>XII</td>
<td>Excluded US Active Subsidiaries</td>
</tr>
<tr>
<td>XIII</td>
<td>Excluded US Inactive Subsidiaries</td>
</tr>
<tr>
<td>XIV</td>
<td>Permitted Investments</td>
</tr>
<tr>
<td>XV</td>
<td>Revolving Credit Agreement Permitted Liens</td>
</tr>
<tr>
<td>XVI</td>
<td>Notice Information for Lessor Parties</td>
</tr>
<tr>
<td>XVII</td>
<td>Settlement Amounts</td>
</tr>
</tbody>
</table>
APPENDICES

Appendix A - Rules of Usage and Definitions

vii
PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, this “Agreement”) is by and among AVDC, INC., an Ohio corporation (the “Construction Agent” or “Lessee”); the various entities which are parties hereto from time to time as guarantors (individually, a “Guarantor” and collectively, the “Guarantors”); WACHOVIA SERVICE CORPORATION, a Delaware corporation (the “Lessor”); the various banks and other lending institutions which are parties hereto from time to time as lease participants (individually, a “Lease Participant” and collectively, the “Lease Participants”); and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as the agent for the Lessor Parties and, respecting the Security Documents, as the agent for the Secured Parties (in such capacity, the “Agent”). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings set forth in Appendix A hereto.

WITNESSETH:

A. WHEREAS, subject to the terms and conditions of the Lessor Assignment Agreement (which agreement is effective concurrent with the effectiveness of this Agreement) and the other Operative Agreements, the Lessor shall irrevocably sell and assign to each Lease Participant, and each Lease Participant shall irrevocably purchase and assume from the Lessor, its Lessor Parties Interest;

B. WHEREAS, subject to the terms and conditions of this Agreement, the Agency Agreement and the other Operative Agreements, (i) the Lessor shall purchase a parcel of real property, which will (or may) have existing Improvements thereon, from one (1) or more third parties designated by the Construction Agent and (ii) the Lessor Parties shall fund the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Property by the Construction Agent; and

C. WHEREAS, the Lessor desires to lease to the Lessee, and the Lessee desires to lease from the Lessor, the Property pursuant to this Agreement, the Lease and the other Operative Agreements;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

Section 1.
THE FINANCING.

1.1 General.

Subject to the terms and conditions of the Lessor Assignment Agreement (which agreement is effective concurrent with the effectiveness of this Agreement) and the other Operative Agreements, the Lessor shall irrevocably sell and assign to each Lease Participant, and each Lease Participant shall irrevocably purchase and assume from the Lessor, its Lessor Parties Interest; provided, after the effectiveness of the Lessor Assignment Agreement, the Lessor shall still retain its own Lessor Parties Interest. Subject to the terms and conditions of this Agreement and the other Operative Agreements and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto, (x) each Lessor Party has agreed, respectively, to make its Lessor Advances from time to time in an aggregate amount of up to its Lessor Parties Commitment to permit the Lessor to acquire and develop the Property.
and (y) each Lessor Party has acquired (or in the case of the Lessor, has retained), respectively, its Percentage Share in the aggregate Lessor Parties Ownership Interests of all the Lessor Parties.

1.2 **Absolute and True Sale; No Fiduciary Duty of the Lessor.**

The sale by the Lessor to the Lease Participants of the respective Lessor Parties Interests shall be an absolute and true sale. The obligations of the Lessor Parties are several obligations, not joint obligations. As a clarification and not in limitation of the foregoing, the Credit Parties shall have no recourse to any Lessor Party which funds its Lessor Advances and otherwise performs its obligations pursuant to the Operative Agreements regarding the failure by any other Lessor Party to fund its Lessor Advances or otherwise to perform its obligations pursuant to the Operative Agreements. Further, the Lease Participants shall have (a) no recourse to the Lessor in the event of failure of any Credit Party to pay Rent or any other amounts of any kind or type pursuant to any of the Operative Agreements and (b) no right to require the Lessor to repurchase any Lessor Parties Interest in any event.

Notwithstanding any provision to the contrary in any of the Operative Agreements and notwithstanding that the Lessor is a party to various of the Operative Agreements as the “Lessor” and is the holder of legal title to the Property, the Lessor shall not have any duties or responsibilities, except those expressly set forth in the Operative Agreements, or any fiduciary relationship with any Lease Participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities of the Lessor shall be read into this Agreement or any of the other Operative Agreements, or shall otherwise exist against the Lessor.

Each Lessor Party hereby appoints and authorizes the Lessor to take such action on its behalf and to exercise such powers under the Operative Agreements as are delegated to the Lessor by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. As to any matters not expressly provided for by the Operative Agreements (including, without limitation, enforcement of the Operative Agreements), the Lessor shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Majority Secured Parties, and such instructions shall be binding upon all Lessor Parties; provided, however, that the Lessor shall not be required to take any action which exposes the Lessor to personal liability or which is contrary to the Operative Agreements or Applicable Law.

Regarding its Lessor Parties Ownership Interests, the Lessor shall have the same rights and powers as the other Lessor Parties have regarding their respective Lessor Parties Ownership Interests.

SECTION 2. [RESERVED].

SECTION 3. SUMMARY OF TRANSACTIONS.

3.1 **Operative Agreements.**

On the date hereof, each of the respective parties hereto and thereto shall execute and deliver this Agreement, the Agency Agreement, the Lease, the Lessor Assignment Agreement, each applicable Mortgage Instrument and such other documents, instruments, certificates and opinions of counsel as agreed to by the parties hereto.
3.2 **Property Purchase.**

On the Property Closing Date and subject to the terms and conditions of this Agreement (a) each Lessor Party will make its Lessor Advance in accordance with Sections 1 and 5 of this Agreement, (b) the Lessor will purchase (to the extent not already owned by the Lessor) and acquire good and marketable title to a fee interest in the Property, pursuant to a Deed or Bill of Sale, as the case may be, (c) the Lessee and the Lessor shall execute and deliver the Lease and (d) the Term shall commence with respect to the Property.

3.3 **Construction of Improvements; Commencement of Basic Rent.**

Construction Advances will be made with respect to particular Improvements to be constructed and with respect to ongoing Work regarding the Equipment and construction of particular Improvements, in each case, pursuant to the terms and conditions of this Agreement, the Lessor Assignment Agreement and the Agency Agreement. The Construction Agent will act as a construction agent on behalf of the Lessor respecting the Work regarding the Equipment, the construction of such Improvements and the expenditures of the Construction Advances related to the foregoing. During the Construction Period, the Construction Agent shall have sole management responsibility over, and shall be solely responsible for, the construction, means, methods, sequences and procedures with respect to the Property. The Construction Agent shall promptly notify the Lessor upon Completion of the Improvements and the Lessee shall commence to pay Basic Rent as of the Rent Commencement Date.

3.4 **Title to the Property.**

For the avoidance of doubt, the title of the Lessor in and to the Property shall be held by and in the name of the Lessor and not as trustee or as agent for the Lessor Parties; provided, however, in the event of any sale or other disposition of the Property (including to the Lessee, its designee or a third party, including pursuant to any exercise of remedies pursuant to the Operative Agreements), the Lessor shall provide the proceeds from such sale or other disposition received by the Lessor to the Agent and the Agent shall apply such proceeds in accordance with the applicable provisions of Section 8.7 of the Participation Agreement.

SECTION 4.
THE CLOSINGS.

4.1 **Initial Closing Date.**

All documents and instruments required to be delivered on the Initial Closing Date shall be delivered at the offices of Moore & Van Allen, PLLC, Charlotte, North Carolina, or at such other location as may be determined by the Lessor, the Agent and the Lessee.

4.2 **Initial Closing Date; Property Closing Date; Acquisition Advances; Construction Advances.**

The Construction Agent shall deliver to the Agent a requisition (a “Requisition”), in the form attached hereto as EXHIBIT A, or in such other form as is satisfactory to the Agent, in its reasonable discretion, no later than 12:00 noon (Charlotte, North Carolina time) (a) as of the Initial Closing Date regarding the Initial Closing Date Advance, (b) at least three (3) Business Days prior to the date of any proposed Lessor Advance in connection with each Acquisition Advance pursuant to Section 5.3 (except with respect to any Acquisition Advance made as of the Initial Closing Date, as such shall be subject to the consent of the Lessor Parties, in their reasonable discretion (as such consent from each Lessor Party shall be evidenced by its funding of its portion of the Acquisition Advance on the Initial Closing Date), in which case such Requisition shall be
SECTION 5.
FUNDING OF LESSOR ADVANCES; CONDITIONS PRECEDENT;
REPORTING REQUIREMENTS ON COMPLETION DATE; THE LESSEE’S DELIVERY OF NOTICES; RESTRICTIONS ON LIENS.

5.1 General.

(a) When the Lessor Parties fund their respective Lessor Advances to the Agent pursuant to this Section 5 and Section 5A or if Agent elects to make such Lessor Advances available to the Construction Agent under Section 5A.8(b)(i), then, subject to the final sentence of this Section 5.1(a), the Agent shall distribute the Lessor Advances to the Construction Agent for application by the Construction Agent, in accordance with the Operative Agreements, as follows: (i) from time to time at the direction of the Construction Agent to allow the Lessor to acquire the Property, (ii) to permit the acquisition, testing, engineering, installation, development, construction, modification, design, and renovation, as applicable, of the Property (or components thereof) (including construction of the Improvements and acquisition and installation of the Equipment), (iii) to pay Transaction
Expenses and (iv) otherwise to pay such other amounts payable pursuant to the terms of the Operative Agreements. Notwithstanding the foregoing, if Lessor Advances have been made to the Agent to pay Transaction Expenses (including pursuant to Section 4.2 at a time when no Requisition has been submitted for such items), then (without funding such amounts to the Construction Agent) the Agent may pay such Transaction Expenses as the Agent shall reasonably determine or, if the Agent so desires, as directed by the Majority Secured Parties.

(b) On each Payment Date during the period prior to the Rent Commencement Date, and as long as no Event of Default shall have occurred and be continuing the Lessor Parties’ Lessor Advances shall automatically be increased by the amount of Lessor Yield accrued and unpaid on the Lessor Advances for such period (except to the extent that at any time such increase would cause the Lessor Advances to exceed the Lessor Parties Commitment, in which case the Lessee shall pay such excess amount to the Lessor Parties in immediately available funds on the date the Lessor Parties Commitment was exceeded), and the Property Cost shall be automatically increased by such amount (for the avoidance of doubt, there shall be no such increase in the Property Cost regarding any such amounts otherwise paid by the Lessee in accordance with the foregoing).

5.2 **Procedures for Funding.**

(a) The Construction Agent shall designate the date for Lessor Advances hereunder in accordance with the terms and provisions hereof; provided, however, it is understood and agreed that no more than one (1) Lessor Advance (excluding any conversion and/or continuation of any Lessor Advances) may be requested during any calendar month and that no such designation shall be required for the funding of Transaction Expenses or for the increase of Lessor Advances described in Section 5.1(b); provided, further, except with respect to the Initial Closing Date Advance and any Acquisition Advance concurrent therewith, if any, the funding of Transaction Expenses or the increase of Lessor Advances described in Section 5.1(b), no Lessor Advance shall be requested on a date that is not a Payment Date; provided, further, the Initial Closing Date Advance and any concurrent Acquisition Advance must be approved by the Agent, in its reasonable discretion, which discretion shall include the right to require a funding indemnity letter regarding any such Lessor Advance on the Initial Closing Date based on the LIBOR Rate. The Construction Agent shall deliver a Requisition to the Agent in connection with each Lessor Advance, as specified in more detail in Section 4.2.

(b) Each Requisition shall: (i) be irrevocable, (ii) request funds in an amount that is not in excess of the total aggregate of the Available Lessor Parties Commitment at such time, and (iii) request that the Lessor Parties make Lessor Advances for the payment of Property Costs that (except with respect to the Punchlist Advance (as defined in Section 5.11)), have previously been incurred or are to be incurred on the date of such Lessor Advances to the extent such were not subject to a prior Requisition, in each case as specified in the Requisition.

(c) (i) Subject to the satisfaction of the conditions precedent set forth in Section 5.3 or 5.4, as applicable, unless waived by the Agent (pursuant to instructions from the Majority Secured Parties), and subject to Section 5.16 hereof with respect to the funding of Uninsured Force Majeure Losses, on the Initial Closing Date and on the Property Closing Date or the date on which the Construction Advance (other than as specified in Section 5.2(c)(ii) or, for the avoidance of doubt, such later date as is requested by Agent pursuant to Section 5A.8(b)(ii) is to be made, as applicable, (A) each Lessor Party shall make a Lessor Advance to the Agent based on its Lessor Party Commitment in an amount such that the aggregate of all Lessor Advances at such time shall be one
hundred percent (100%) of the Requested Funds specified in such Requisition plus (to the extent not so specified) any additional amount of Transaction Expenses, and (B) the total amount of the Lessor Advances made on such date shall (x) be advanced by the Agent to the Construction Agent and used to pay Property Costs (including Transaction Expenses) within three (3) Business Days of the receipt by the Construction Agent of such Lessor Advance, (y) be advanced by the Agent on the date of such Lessor Advances to the Construction Agent to pay Property Costs (including Transaction Expenses), as applicable, previously incurred by the Construction Agent or the Lessee or (z) be applied by the Agent in accordance with the last sentence of Section 5.1(a).

(ii) Notwithstanding the foregoing, with respect to the final Construction Advance regarding the Construction Period Property only and subject to the satisfaction of the conditions precedent set forth in Section 5.4, each Lessor Party shall make a Lessor Advance such that the aggregate of its funded Property Cost following such final Construction Advance shall be an amount equal to its Commitment Percentage multiplied by one hundred percent (100%) of the aggregate Property Cost (exclusive of any amount of Property Cost attributable to any Lessor Advance for Transaction Expenses to the extent the funding of such Transaction Expenses was effected pursuant to the increase by any Lessor Party of its Lessor Parties Commitment pursuant to Section 5.8) for the Property, up to an aggregate advance amount equal to the aggregate of the Lessor Parties Commitments (exclusive of any amount of Property Cost attributable to any Lessor Advance for Transaction Expenses to the extent the funding of such Transaction Expenses was effected pursuant to the increase by any Lessor Party of its Lessor Parties Commitment pursuant to Section 5.8); provided, in the event that any Lessor Party shall have previously funded an amount in excess of the amount otherwise required to be funded by such Lessor Party under this Section 5.2(c)(ii) (any such amount, an “Overfunded Amount”), the Construction Agent shall pay (from amounts received in connection with such final Construction Advance) to such Lessor Party an amount equal to such Overfunded Amount.

(d) With respect to a Lessor Advance made to the Construction Agent to pay for Property Costs and not expended for such purpose on the date such Lessor Advance was made by the Lessor Parties to the Agent, such amounts shall be held by the Construction Agent until the applicable Property Closing Date or, if such Property Closing Date does not occur within three (3) Business Days of the date of the Construction Agent’s receipt of such Lessor Advance, the Construction Agent shall return such amounts (together with Breakage Costs, if not returned on the applicable Payment Date) to the Agent and such amounts then shall be applied regarding the applicable Lessor Advances to repay the Lessor Parties and, subject to the terms hereof, thereafter such amounts so returned shall remain available for future Lessor Advances. Any such Lessor Advances held by the Construction Agent shall be subject to the Lien of the Lease and shall accrue Lessor Yield as a Lessor Advance from the date advanced to the Construction Agent until such amounts are repaid to the Lessor Parties. With respect to that portion of the purchase price for the Property constituting the Holdback Amount that is initially funded by Lessor Advances and thereafter disbursed by the escrow holder from time to time to reimburse the Construction Agent for amounts paid by the Construction Agent for ordnance-related matters (as more specifically described in Section 10(b) of the Purchase Agreement), the Construction Agent shall return such amounts (together with Breakage Costs, if not returned on the applicable Payment Date) to the Agent and such amounts then shall be applied regarding the applicable Lessor Advances to repay the Lessor Parties. Thereafter such amounts so returned shall remain available for future Lessor Advances in accordance with the terms of the Operative Agreements. Any such Lessor Advances held by the Construction Agent shall be subject to the Lien of the Lease and shall accrue Lessor Yield as a Lessor Advance from the date advanced.
to the Construction Agent until such amounts are repaid to the Lessor Parties. The foregoing provisions of this Section 5.2(d) shall not impair the right of the Construction Agent, in its final Requisition, to request the Punchlist Advance, as more particularly described in Section 5.11.

(e) All Operative Agreements which are to be delivered to any Lessor Party or the Agent shall be delivered to the Agent, on behalf of the Lessor Parties and the Agent, and such items (except for Bills of Sale, Deeds and chattel paper originals, with respect to which in each case there shall be only one original) shall be delivered with originals sufficient for the Lessor Parties and the Agent. All other items which are to be delivered to any Lessor Party or the Agent shall be delivered to the Agent, on behalf of the Lessor Parties and the Agent, and such other items shall be held by the Agent. To the extent any such other items are requested in writing from time to time by any Lessor Party, the Agent shall provide a copy of such item to the party requesting it.

(f) Notwithstanding the completion of any closing under this Agreement pursuant to Section 5.3 or 5.4, each condition precedent in connection with any such closing may be subsequently enforced by the Agent (unless such has been expressly waived in writing by the Agent (pursuant to instructions from the Majority Secured Parties)).

5.3 Conditions Precedent for the Lessor Parties and the Agent Relating to the Initial Closing Date and the Lessor Advances of Funds for the Acquisition of the Property.

The obligations (i) on the Initial Closing Date of the Lessor Parties and the Agent to enter into the transactions contemplated by this Agreement, including the obligation to execute and deliver the applicable Operative Agreements to which each is a party on the Initial Closing Date, (ii) on the Initial Closing Date of the Lessor Parties to make Lessor Advances in order to pay Property Costs constituted as Transaction Expenses (individually, an “Initial Closing Date Advance”) and (iii) on the Property Closing Date of the Lessor Parties to make Lessor Advances in order to pay (or reimburse the Construction Agent or the Lessee for the payment of) the Property Acquisition Cost of the Property (individually, an “Acquisition Advance”), in each case (with regard to the foregoing Sections 5.3(i), (ii) and (iii)) are subject to the satisfaction or waiver by the Agent (pursuant to instructions from the Majority Secured Parties) of the following conditions precedent on or prior to the Initial Closing Date or the Property Closing Date, as the case may be (to the extent such conditions precedent require the delivery of any agreement, certificate, instrument, memorandum, legal or other opinion, appraisal, commitment, title insurance commitment, Lien report or any other document of any kind or type, such shall be in form and substance satisfactory to the Agent, in its reasonable discretion; notwithstanding the foregoing, the obligations of each party shall not be subject to any conditions contained in this Section 5.3 which are required to be performed by such party):

(a) the correctness in all material respects of the representations and warranties of the parties to this Agreement contained herein, in each of the other Operative Agreements and in each certificate delivered pursuant to any Operative Agreement on each such date (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date);

(b) the performance by the parties to this Agreement of their respective agreements contained herein and in the other Operative Agreements to be performed by them on or prior to each such date;
(c) the Agent shall have received a fully executed counterpart copy of the Requisition, appropriately completed;

(d) with respect to the Property Closing Date only, title to the Property shall conform to the representations and warranties set forth in Section 6.1(ii) hereof;

(e) with respect to the Property Closing Date only, the Construction Agent or the Lessee shall have delivered to the Lessor a copy of the Deed respecting the Land and existing Improvements (if any) as are being acquired on each such date with the proceeds of the Lessor Advances;

(f) there shall not have occurred and be continuing any Default or Event of Default and no Default or Event of Default will have occurred after giving effect to the Lessor Advances requested by each such Requisition;

(g) with respect to the Property Closing Date only, the Construction Agent or the Lessee shall have delivered to the Agent title insurance commitments to issue policies respecting the Property in an amount no less than the Property Cost, with such endorsements as the Agent deems necessary, in its reasonable discretion, and which are customary for transactions of this type and in the applicable state, in favor of the Lessor and the Agent from a title insurance company selected by the Construction Agent or the Lessee and acceptable to the Agent, in its reasonable discretion, but only with such title exceptions thereto that are Permitted Liens, and the Construction Agent or the Lessee shall have delivered to the Agent a current title report;

(h) with respect to the Property Closing Date only, the Construction Agent or the Lessee shall have delivered to the Agent a Phase I environmental site assessment (conducted pursuant to ASTM E1527-13) respecting the Property certified to the Agent and prepared by an independent recognized professional selected by the Construction Agent or the Lessee and acceptable to the Agent, in its reasonable discretion, and evidencing no Environmental Condition with respect to which there is more than a remote risk of loss;

(i) with respect to the Property Closing Date only, (i) the Construction Agent or the Lessee shall have delivered to the Agent an ALTA survey (with a flood hazard certification) respecting the Property certified to the Agent and the Lessor prepared by (A) an independent recognized professional selected by the Construction Agent or the Lessee and acceptable to each of the Agent and the Lessor, in its reasonable discretion, and (B) in a manner and including such information as is required by the Agent and (ii) the Agent shall have obtained the necessary documentation concerning flood hazard certification;

(j) with respect to the Property Closing Date only, counsel for the Lessee or the Construction Agent admitted in the state where the Property is located and otherwise acceptable to the Agent shall have issued to the Lessor Parties and the Agent its legal opinion addressing such issues as identified by the Agent, in such form as is reasonably acceptable to the Agent, with respect to local law real property issues respecting the law where the Property is located;

(k) with respect to the Property Closing Date only, the Lessee shall have caused to be delivered to the Agent a Mortgage Instrument in respect of the Property (in such form as is acceptable to the Agent, with revisions as necessary to conform to statutory recording requirements and customary practice under applicable state law) and UCC Financing Statements respecting the Property, all in recordable form;
with respect to the Property Closing Date only, the Lessee shall have delivered to the Agent the Lease and a memorandum thereof (or short form lease), such memorandum or short form lease to be in the form attached to the Lease as Exhibit B or in such other form as is acceptable to the Agent, with modifications as necessary to conform to applicable state law, and in form suitable for recording;

(m) immediately after and giving effect to the applicable Lessor Advances contemplated hereby, the aggregate outstanding Lessor Advances do not exceed the aggregate Lessor Parties Commitment;

(n) [Reserved];

(o) the Available Lessor Parties Commitment shall be sufficient for Completion of the Construction Period Property on or before the Construction Period Termination Date;

(p) with respect to the Property Closing Date only, the Construction Agent or the Lessee shall have provided to the Agent a certificate of insurance evidencing the insurance with respect to the Property as required by the Lease or the Agency Agreement, as the case may be;

(q) the Agent shall have received (i) Uniform Commercial Code Lien searches regarding the Lessee and Tax Lien searches and judgment Lien searches regarding each of the Credit Parties in such jurisdictions as determined by the Agent by a nationally recognized search company acceptable to the Agent, in its reasonable discretion, (ii) the Liens referenced in such Lien searches which are objectionable to the Agent shall have been either removed or otherwise handled in a manner satisfactory to the Agent, in its reasonable discretion, and (iii) a good standing certificate (or local equivalent) regarding the Lessee from the appropriate office of the respective state where the Property is located;

(r) all Taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Agreements and/or documents related thereto as the parties have agreed to record or file (and in any event all such Taxes, fees and other charges in connection with any and all UCC financing statements and fixture filings) and the payment of the title insurance premiums shall have been paid or provisions for such payment shall have been made to the satisfaction of the Agent, in its reasonable discretion;

(s) each of the Operative Agreements to be entered into on such date shall have been duly authorized, executed and delivered by the parties thereto, enforceable against such parties, and shall be in full force and effect, and the Agent shall have received a fully executed copy of each of the Operative Agreements;

(t) as of the Initial Closing Date only, the Agent shall have received an Officer’s Certificate, dated as of the Initial Closing Date, of the Lessee in the form attached hereto as EXHIBIT B or in such other form as is acceptable to the Agent, in its reasonable discretion, stating that (i) each and every representation and warranty of each Credit Party contained in the Operative Agreements to which it is a party is true and correct in all material respects on and as of the Initial Closing Date; (ii) no Default or Event of Default has occurred and is continuing; (iii) each Operative Agreement to which any Credit Party is a party is in full force and effect with respect to it; and (iv) each Credit Party has duly performed and complied with all covenants, agreements and conditions contained herein or in any Operative Agreement required to be performed or complied with by it on or prior to the Initial Closing Date;

9
as of the Initial Closing Date only, the Agent shall have received (i) a certificate of the Secretary or an Assistant Secretary of each Credit Party, dated as of the Initial Closing Date, in the form attached hereto as EXHIBIT C or in such other form as is acceptable to the Agent, attaching and certifying as to (A) its articles of incorporation or other charter documents, certified as of a recent date by the Secretary of State of its state of formation, (B) its by-laws or other similar document, certified as of a recent date by an appropriate officer of the Credit Party, (C) the resolutions duly authorizing the execution, delivery and performance by it of each of the Operative Agreements to which it is or will be a party and (D) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Agreements to which it is or will be a party and (ii) a good standing certificate (or local equivalent) from the appropriate office of the respective states where such Credit Party is formed and, except for BLC LLC, Industrial Products of New England, Inc., Mac Frugal’s Bargains • Closeouts, Inc., Midwestern Home Products, Inc., Tool and Supply Company of New England, Inc., Big Lots Online LLC, Capital Retail Systems, Inc., Sahara LLC and Sonoran LLC, where the principal place of business of such Credit Party is located as to its good standing in each such state;

as of the Initial Closing Date only, the Agent shall have received an Officer’s Certificate of the Lessor dated as of the Initial Closing Date in the form attached hereto as EXHIBIT D or in such other form as is acceptable to the Agent, stating that (A) each and every representation and warranty of the Lessor contained in the Operative Agreements to which it is a party is true and correct in all material respects on and as of the Initial Closing Date, (B) each Operative Agreement to which the Lessor is a party is in full force and effect with respect to it and (C) the Lessor has duly performed and complied with all covenants, agreements and conditions contained herein or in any Operative Agreement required to be performed or complied with by it on or prior to the Initial Closing Date;

as of the Initial Closing Date only, the Agent shall have received (i) a certificate of the Secretary or an Assistant Secretary of the Lessor in the form attached hereto as EXHIBIT E or in such other form as is acceptable to the Agent, attaching and certifying as to (A) its articles of incorporation or other equivalent charter documents certified as of a recent date by the Secretary of State of its state of formation, (B) its by-laws or other similar document, certified as of a recent date by an appropriate officer of the Lessor, (C) the resolutions duly authorizing the execution, delivery and performance by the Lessor of each of the Operative Agreements to which it is or will be a party, and (D) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Agreements to which it is a party and (ii) a good standing certificate (or local equivalent) from the appropriate office of the state where the Lessor is incorporated and where the principal place of business of the Lessor is located as to good standing in each such state;

as of the Initial Closing Date only, counsel for the Lessor acceptable to the Agent shall have issued (i) to the Lessee, the Guarantors, the Lessor Parties and the Agent its legal opinion addressing such issues as identified by the Agent, in such form as is reasonably acceptable to the Agent and (ii) to the Lessor its legal opinion addressing such true sale issues as identified by the Lessor, in such form as is reasonably acceptable to the Lessor;

as of the Initial Closing Date only, counsel for the Credit Parties acceptable to the Agent shall have issued to the Lessor Parties and the Agent their legal opinion, addressing such issues as identified by the Agent, in such form as is reasonably acceptable to the Agent;
(z) no law or regulation shall prohibit, and no order, judgment or decree of any court or governmental body, agency or instrumentality shall prohibit or enjoin any Lessor Party from making the Lessor Advances;

(aa) immediately after and giving effect to the applicable Lessor Advances contemplated hereby, the aggregate outstanding Lessor Advances do not exceed the Lessor Parties Commitment;

(bb) with respect to the Property Closing Date only, the Lessor shall have arranged to have an RVI Policy issued with respect to the Property from an insurer selected by the Lessor; provided, the premium for such RVI Policy shall not exceed a reasonable and customary amount;

(cc) with respect to the Property Closing Date only, the Agent shall have received an Appraisal regarding the Property certified to the Agent and the Lessor prepared by (i) an independent recognized professional selected by the Agent and (ii) in a manner and including such information as is required by the Agent;

(dd) the Construction Agent shall have delivered to the Agent a copy of the Plans and Specifications for the Improvements respecting the Property, certified by an officer of the Construction Agent; and

(ee) the Construction Agent shall have delivered to the Agent a copy of the Construction Budget respecting the Property, certified by an officer of the Construction Agent;

5.4 Conditions Precedent for the Lessor Parties and the Agent Relating to the Lessor Advances of Funds after the Acquisition Advance.

The obligations of the Lessor Parties to make Lessor Advances to permit the acquisition, testing, engineering, installation, development, construction, modification, design, and renovation, as applicable, of the Property (or components thereof) in accordance with the terms of the Agency Agreement and the other Operative Agreements (including construction of the Improvements and acquisition and installation of the Equipment) and the funding of Off-Site Construction Costs are subject to the satisfaction or waiver of the following conditions precedent (to the extent such conditions precedent require the delivery of any agreement, certificate, instrument, memorandum, legal or other opinion, appraisal, commitment, title insurance commitment, Lien report or any other document of any kind or type, such shall be in form and substance satisfactory to the Agent, in its reasonable discretion; notwithstanding the foregoing, the obligations of each party shall not be subject to any conditions contained in this Section 5.4 which are required to be performed by such party):

(a) the correctness in all material respects on such date (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date) of the representations and warranties of the parties to this Agreement contained herein, in each of the other Operative Agreements and in each certificate delivered pursuant to any Operative Agreement;

(b) the performance by the parties to this Agreement of their respective agreements contained herein and in the other Operative Agreements to be performed by them on or prior to each such date unless waived in accordance with Section 12.4 of this Agreement;
(c) the Agent shall have received a fully executed counterpart of the relevant Requisition, appropriately completed;

(d) (i) the Available Lessor Parties Commitment will be sufficient to finalize Completion of the Construction Period Property and (ii) construction of the Property is on track to be completed in accordance with the Construction Documents on or prior to the Construction Period Termination Date;

(e) there shall not have occurred and be continuing any Default or Event of Default, and no Default or Event of Default will have occurred after giving effect to the Construction Advance requested by the applicable Requisition;

(f) the title insurance policy delivered in connection with the requirements of Section 5.3(g) shall provide for (or shall be endorsed to provide for) insurance in an amount at least equal to the maximum total Property Cost indicated by the Construction Budget (as adjusted from time to time, including with regard to any additional Lessor Advances pursuant to Section 5.16) and there shall be no title change or exception objectionable to the Agent;

(g) all Taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Agreements (and in any event all such Taxes, fees and other charges in connection with any and all UCC financing statements and fixtures filings) and the cost of any title endorsement or update shall have been paid or provisions for such payment shall have been made to the satisfaction of the Agent, in its reasonable discretion;

(h) [Reserved];

(i) [Reserved];

(j) immediately after and giving effect to the applicable Lessor Advances contemplated hereby, the aggregate outstanding Lessor Advances do not exceed the aggregate Lessor Parties Commitment;

(k) no law or regulation shall prohibit, and no order, judgment or decree of any court or governmental body, agency or instrumentality shall prohibit or enjoin any Lessor Party from making the Lessor Advances;

(l) the requirements of Section 5.17 shall have been satisfied;

(m) with respect to any Lessor Advances not contemplated in the original Construction Budget, including by the Lessor pursuant to Section 5.16, the Lessee shall have caused to be delivered to the Agent an amendment to the Mortgage Instrument (as is acceptable to the Agent, with revisions as necessary to conform to statutory recording requirements and customary practice under Applicable Law); and

(n) submission of the Requisition shall constitute a certification by the Construction Agent that, in accordance with the Construction Documents, (i) Completion is on schedule to be effected by the Construction Period Termination Date and (ii) Completion is on schedule to be effected with the remaining Available Lessor Parties Commitment.
5.5 Additional Reporting and Delivery Requirements on Completion Date.

(a) As the Property nears Completion, the Construction Agent shall coordinate with the Agent regarding the date to be designated as the Completion Date, and no later than the Completion Date, the Construction Agent shall notify the Agent of the exact date of the Completion Date.

(b) Within three Business Days after the Completion Date, the Construction Agent shall deliver to the Agent an Officer’s Certificate in the form attached hereto as EXHIBIT F-1 or in such other form as is acceptable to the Agent attaching the temporary certificate of occupancy for the Property and specifying:

(i) the address for the Property;

(ii) the Completion Date;

(iii) the aggregate Property Cost; and

(iv) that all representations and warranties of the Credit Parties in each of the Operative Agreements and each certificate delivered pursuant thereto are true and correct in all material respects as of the Completion Date (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date).

(c) Within thirty (30) days after the Completion Date:

(i) the Construction Agent shall deliver to the Agent an Officer’s Certificate in the form attached hereto as EXHIBIT F-2 or in such other form as is acceptable to the Agent attaching:

(A) detailed, itemized documentation supporting the asserted Property Cost figures; and

(B) unconditional waivers of Lien covering all work and materials regarding the Property by the applicable general contractor or any subcontractors or suppliers;

(ii) the Construction Agent shall deliver or cause to be delivered to the Agent (unless previously delivered to the Agent) originals of the following relating to the Property, each of which shall be in form and substance acceptable to the Agent, in its reasonable discretion:

(A) a title insurance endorsement regarding the title insurance policy delivered in connection with the requirements of Section 5.3(g), but only to the extent such endorsement is necessary to provide for insurance in an amount at least equal to the maximum total Property Cost and, if endorsed, the endorsement shall not include a title change or exception that has or would reasonably be expected to have a Material Adverse Effect;
(B) an as-built survey for the Property;

(C) insurance certificates respecting the Property as required hereunder and under the Lease;

(D) at the Lessor’s prior written request, an Appraisal regarding the Property; and

(E) with respect to any Lessor Advances not contemplated in the original Construction Budget, including by the Lessor pursuant to Section 5.16, the Lessee shall have caused to be delivered to the Agent an amendment to the Mortgage Instrument (as is acceptable to the Agent, with revisions as necessary to conform to statutory recording requirements and customary practice under Applicable Law); and

(iii) the Construction Agent covenants and agrees that the recording fees, documentary stamp taxes or similar amounts required to be paid in connection with the related Mortgage Instrument shall have been paid in an amount required by Applicable Law, subject, however, to the obligations of the Lessor Parties to fund such costs to the extent required pursuant to Section 7.1.

(d) The Agent shall have the right to contest the information contained in either of the foregoing Officer’s Certificate (to be delivered pursuant to Sections 5.5(b) and 5.5(c)(i), as applicable), with any such determination made by the Agent in good faith being determinative, absent manifest error; provided that, the Agent and the Construction Agent shall work in good faith to resolve any such contest and, to the extent that the Agent contests the information contained in either such Officer’s Certificate and the Credit Parties are diligently working in good faith with the Agent to resolve any such contest, notwithstanding anything contained herein or in any other Operative Agreement to the contrary, no Event of Default shall be created solely by any such contest for a period not to exceed thirty (30) days from the date the Agent provides written notice to the Construction Agent of such contest; provided, further, that notwithstanding that any such particular contest has not been resolved in such period of thirty (30) days, if it is reasonable to expect that such contest may be subsequently resolved with additional diligent effort by the Credit Parties and the Agent, and to the extent the Credit Parties continue to work diligently in good faith with the Agent to resolve such contest, then the Credit Parties may continue to work with the Agent to resolve such contest for a period of an additional fifteen (15) days; provided, further, if such contest has not been resolved in the period of the additional fifteen (15) days, then the contested information shall constitute a breach of the Construction Agent’s obligation to have delivered such information to the Agent in accordance with the terms of this Agreement.

5.6 Restrictions on Liens.

On the Property Closing Date, the Construction Agent or the Lessee shall cause the Property acquired by the Lessor to be free and clear of all Liens except those referenced in Section 6.1(cc)(i) and (ii). On the date the Property is either sold to a third party in accordance with the terms of the Operative Agreements or, pursuant to Section 21.1(a) of the Lease, retained by the Lessor, the Lessee shall cause the Property to be free and clear of all Liens (other than Lessor Liens and such other Liens that are expressly set forth as title exceptions on the title commitment issued under Section 5.3(g) with respect to the Property (except to the extent that the Agent, prior to the time of the Property Closing Date, has given written notice to the Lessee that the Agent reasonably believes that any such title exceptions may materially impair the potential resale.
value of the Property), Liens for Taxes that are not yet due and such other Liens on the Property theretofore approved by the required Financing Parties in accordance with the Operative Agreements).

5.7 **Payments.**

Subject to Section 5.1(b), all payments of Lessor Advances, Lessor Yield, Fees and other amounts to be made by the Credit Parties under this Agreement or any other Operative Agreements to any of the Financing Parties (excluding Excepted Payments which shall be paid directly to the party to whom such payments are owed) shall be made to the Agent at the office designated by the Agent from time to time in Dollars and in immediately available funds, without set-off, deduction (except for deduction or withholding of Impositions as required by Applicable Law, but subject to Section 11.2), or counterclaim. Excluding Excepted Payments paid to the party to whom such payments are owed and payments received from the Agent, the Financing Parties agree to pay to the Agent, at the office designated by the Agent from time to time and in the currency received, all other amounts received by any Financing Party from any Credit Party or otherwise with respect to the Property. Subject to the definition of “Lessor Yield Period” in Appendix A attached hereto, whenever any payment under this Agreement or any other Operative Agreements shall be stated to be due on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time in such case shall be included in the computation of Lessor Yield, Fees or other amounts payable pursuant to the Operative Agreements, as applicable and as the case may be.

5.8 **Unilateral Right to Increase the Lessor Parties Commitment.**

Notwithstanding any other provision of any Operative Agreement or any objection by any Person (including any objection by the Lessee or the Construction Agent), each Lessor Party, in its sole discretion, may unilaterally elect to increase its Lessor Parties Commitment in order to fund Transaction Expenses. The Credit Parties shall promptly cause to be taken, executed, acknowledged or delivered, at the sole expense of the Lessee, all such further acts, conveyances, documents and assurances as the Financing Parties may from time to time reasonably request in order to carry out and effectuate the intent and purposes of this Section 5.8 (including the preparation and execution of a Requisition for amounts funded by any of the Lessor Parties as a result of any increase in the Lessor Parties Commitment pursuant to this Section 5.8).

5.9 **Maintenance of the Lessee as a Wholly-Owned Entity.**

From the Initial Closing Date and thereafter until such time as all obligations of all Credit Parties under the Operative Agreements have been satisfied and performed in full, the Parent shall, unless otherwise consented to by the Agent and the Lessor Parties, retain the Lessee as a Wholly-Owned Entity, which, for the avoidance of doubt, shall not prohibit any transaction otherwise permitted under Section 8.3B or Section 10.1 so long as, after giving effect thereto, any successor, transferee or assignee which becomes the Lessee in any such transaction is a Wholly-Owned Entity.

5.10 **Percentage Share.**

The Percentage Share for each Lessor Party shall be determined from time to time by the Agent in good faith, with such determination by the Agent being conclusive and binding on each Lessor Party and the Credit Parties, absent manifest error. The Agent shall maintain records regarding the Percentage Share (which may be set forth in the Register), and promptly upon any such change regarding the Percentage Share of any Lessor Party, the Agent shall provide a report to the Lessor Parties detailing the then current Percentage Shares of all the Lessor Parties.
5.11 **Final Advance for Punch List Items.**

Prior to the Construction Period Termination Date, the Construction Agent in its Requisition for the final Advance may request amounts to pay for punch list items for the Property that have not been completed at such time and that may not be completed until after the Completion Date (such Advance being referred to herein as the “Punchlist Advance”). With regard to such punch list items, the Construction Agent shall reference in Section 1 of the applicable Requisition under “Party to Whom Amount is Owed” the entry “contractors regarding punch list items for the Property” and under “Amount Owed (in U.S. Dollars)” the requested aggregate amount for such punch list items. Concurrent with delivery of such Requisition for the Punchlist Advance, the Construction Agent shall provide to the Agent (for prompt delivery to the Lessor Parties) a listing (in reasonable detail) of the anticipated expense items to be paid with the Punchlist Advance. Funding of the Punchlist Advance for punch list items for the Property will be subject to the conditions precedent referenced in Section 5.4. Prior to the Completion Date, the Construction Agent shall use all such Punchlist Advance amounts only for punch list items for the Property. After the Completion Date, the Lessee shall use all such Punchlist Advance amounts only for punch list items for the Property. All punch list items for the Property so completed shall be completed in accordance with the Plans and Specifications. Not less than five (5) Business Days prior to the Payment Date next occurring after the twelve (12) month anniversary of the Completion Date (the “Punchlist Deadline”), the Lessee shall return to the Agent any and all Advance amounts previously funded for such punch list items for the Property to the extent such amounts have not been used at such time to pay for punch list items for the Property; provided, however, that if the Lessee is unable to complete such punchlist items prior to the Punchlist Deadline despite its diligent efforts to do so, the Lessee, may, by written request to the Agent, extend the Punchlist Deadline by up to three (3) additional months upon the Agent’s written approval, not to be unreasonably withheld, conditioned or delayed. Within thirty (30) days of the Lessee either (x) spending all of the Punchlist Advance or (y) returning any unspent portion of the Punchlist Advance to the Agent (in the case of both subsections (x) and (y), in accordance with this Section 5.11), the Lessee shall provide to the Agent (for prompt delivery to the Lessor Parties) a listing (in reasonable detail) of the actual expense items paid with the Punchlist Advance. On such Payment Date following the Punchlist Deadline, the Agent shall distribute such returned amounts ratably to the Lessor Parties in accordance with Section 8.7(b)(vi).

5.12 **Limitation on Requested Lessor Advances regarding Available Lessor Parties Commitment.**

Lessee shall not submit any Requisition or any other request for funding pursuant to the Operative Agreements requesting any Lessor Advance in excess of the Available Lessor Parties Commitment. No Lessor Party shall be obligated to fund any Lessor Advance in excess of its Lessor Parties Commitment.

5.13 **Limitation on Purchase Option under the Lease and the Agency Agreement.**

The Lessee (or its designee) may purchase the Property from time to time pursuant to the Purchase Option in the Lease to the extent the Lessee (or its designee) pays the Termination Value; provided, that, notwithstanding the foregoing, Lessee may not exercise the Purchase Option to purchase the Property as a Lessee selected cure to an Event of Default while the Property is a Construction Period Property or as a voluntary election by the Lessee while the Property is a Construction Period Property. The limitations imposed pursuant to this Section 5.13 shall also apply with respect to any purchase by the Lessee (or its designee) of the Property while the Property is a Construction Period Property pursuant to Section 17.10 of the Lease or pursuant to the Agency Agreement.
5.14 Environmental Closure Reporting.

On or prior to the Construction Period Termination Date, if the California Department of Toxic Substances Control (the “DTSC”) has not issued a determination letter that no further remedial action is required with respect to known environmental conditions at the Property, or has not provided written confirmation that such letter is not required, then the Lessee shall arrange for issuance by an independent environmental consultant (who has not worked for the Lessee in the past and is reasonably acceptable to the Majority Secured Parties) of an opinion that all known environmental conditions on the Property comply with Acceptable Regulatory Standards, which shall be delivered no later than sixty (60) days after the Construction Period Termination Date. The consultant shall issue to the Lessor Parties and the Agent a reliance letter containing the consultant’s written opinion regarding this matter.

5.15 Final Certificate of Occupancy.

Within thirty (30) of obtaining the same and in any event within six (6) months of the Rent Commencement Date, the Lessee shall provide to the Agent a true and correct copy of the final certificate of occupancy or its equivalent for the Property.

5.16 Special Provision Regarding the Funding of Uninsured Force Majeure Losses.

Notwithstanding any provision herein or in any other Operative Agreement to the contrary, the parties hereto agree that, upon the occurrence of a Force Majeure Event with respect to the Construction Period Property and subject to the satisfaction of the conditions for a Construction Advance set forth in Section 5.4, the Lessor Parties shall make Lessor Advances (in addition to any Lessor Advances otherwise made pursuant to the provisions of Section 5.2(c)) in an amount sufficient to pay any Uninsured Force Majeure Loss attributable to such Force Majeure Event, and such amount so advanced shall be added to the Property Cost for the Construction Period Property.

5.17 Construction Consultant.

(a) The Agent shall be permitted to hire the Construction Consultant to act as the Agent's agent (i) to review the submissions by or on behalf of the Construction Agent in connection with the Requisitions and (ii) to oversee construction of the Property. The Construction Consultant may itself provide any or all such services or, in its discretion, the Construction Consultant may contract with one or more third parties to provide any or all such services. Promptly after the Initial Closing Date, the Agent shall, or shall cause the Construction Consultant to, provide the notice information for the Construction Consultant to the Construction Agent. Upon submission by the Agent (on behalf of the Construction Consultant) to the Construction Agent of invoices (including payment instructions) for the services of the Construction Consultant from time to time, the Construction Agent shall include all such invoiced amounts in its next Requisition, unless any such invoice is submitted less than three (3) Business Days prior to the date of submission of the Requisition to the Agent in which case such invoiced amounts shall be included in the next following Requisition. Without the need for any further action, all such invoiced amounts from the Construction Consultant shall constitute Transaction Expenses and once those invoiced amounts are paid, they shall be added to the Property Cost. From and after the Initial Closing Date Advance and the Acquisition Advance and as otherwise more fully described below, and not in limitation of the other conditions precedent of Section 5.4, the Lessor Parties shall have no obligation to fund a Requisition unless the Construction Consultant has approved the funding of such Requisition, such approval not to be unreasonably withheld or delayed.
(b) As referenced in Section 5.4(l) and in addition to the other requirements of Section 5.4, the obligations of the Lessor Parties to make Lessor Advances to the Construction Agent to permit the acquisition, testing, engineering, installation, development, construction, modification, design, and renovation, as applicable, of the Property (or components thereof) in accordance with the terms of the Agency Agreement and the other Operative Agreements (including construction of the Improvements and acquisition and installation of the Equipment) are subject to the satisfaction or waiver of the following conditions precedent (to the extent such conditions precedent require the delivery of any agreement, certificate, instrument, memorandum, legal or other opinion, appraisal, commitment, title insurance commitment, Lien report or any other document of any kind or type, such shall be in form and substance satisfactory to the Agent, in its reasonable discretion; notwithstanding the foregoing, the obligations of each party shall not be subject to any conditions contained in this Section 5.17 which are required to be performed by such party):

(i) On or prior to the Monthly Notice Date, the Construction Agent shall furnish or cause to be furnished to the Agent and the Construction Consultant the following documents covering each disbursement included in a Requisition and in each case with regard to the Property, in form and substance satisfactory to the Agent (and for this purpose, it is acknowledged that the Agent may consult with the Construction Consultant to determine what is satisfactory), in its reasonable discretion:

   (A) a completed certificate of the Construction Agent in the form attached hereto as EXHIBIT G or in such other form as is satisfactory to the Agent, in its reasonable discretion, (the “Construction Agent Certificate”), and a completed Requisition, each executed by an authorized representative of the Construction Agent;

   (B) a completed standard AIA Form G702 and Form G703 signed by the applicable general contractor and the applicable architect, and sworn statements and conditional waivers of Lien covering all work to be paid with the proceeds of the currently contemplated Lessor Advances, which shall become unconditional upon such payment (provided that the foregoing shall not apply to amounts requested in the Punchlist Advance made pursuant to Section 5.11);

   (C) fully executed copies of any proposed or executed change orders on standard AIA Form G701 form or, if substantively similar, the form used by the general contractor, or other form acceptable in writing to the Agent, in its reasonable discretion, which have not been previously furnished and which require and are not valid without the signatures of the general contractor and the Construction Agent;

   (D) copies of all permits and other Governmental Actions required under Law to be obtained and not delivered to the Agent and the Construction Consultant prior thereto, and in any event copies of all such permits and other Governmental Actions not previously delivered and then needed in connection with the Property;

   (E) within ten (10) days of execution, executed copies of all subcontracts and supplier contracts executed to date between the applicable general contractor and a subcontractor or a supplier, as applicable, in each case that provides for an aggregate contract price equal to or greater than $1,000,000;
such other instruments, documents and information as the Construction Consultant may reasonably request, including unconditional waivers of Lien covering all work by the applicable general contractor or any subcontractors or suppliers (to the extent such subcontractor or suppliers meet the $1,000,000 threshold of the foregoing subsection (E)) paid with the proceeds of the prior Lessor Advances;

(G) an updated Construction Budget, showing the sources and uses by cost category in form acceptable to the Agent, in its reasonable discretion and any modification to the Plans and Specifications; and

(H) regarding each requested disbursement of Transaction Expenses, invoices which (1) are in writing, (2) contain the applicable vendor’s name and address, on letterhead if available, (3) contain the Construction Agent’s name and the location of the project and (4) contain an invoice number and amount (provided that the foregoing shall not apply to amounts requested in the Punchlist Advance made pursuant to Section 5.11).

(ii) In connection with the review of each requested Lessor Advance under the applicable Requisition, the Agent and the Construction Consultant shall have received a report, satisfactory to each of them, in their reasonable discretion, of an inspection consultant to be hired by the Construction Consultant, reflecting such inspection consultant’s periodic site observation and review of the documents substantiating the Property Costs being requested pursuant to the applicable Requisition, including progress and quality of the Improvements, the construction schedule and related Construction Documents.

(iii) On the Business Day next following ten (10) days after receipt by the Agent and the Construction Consultant of all items that the Construction Agent is required to provide pursuant to Section 5.17(b)(i), the Agent shall request the Construction Consultant to provide, respecting a requested Lessor Advance under the applicable Requisition, either a written approval thereof or a written disapproval thereof indicating the reasons for any such disapproval. The Agent shall share, or shall cause the Construction Consultant to share, promptly with the Construction Agent the certificate or other written communication from the Construction Consultant regarding any such approval/disapproval.

5.18 **Off-Site Construction Costs**

The Lessor Parties shall fund the Off-Site Construction Costs subject to the inclusion thereof in a Requisition and satisfaction of the other conditions precedent for funding pursuant to the Operative Agreements, including Section 5.4.
5.19 **Notices from the Construction Agent/the Lessee.**

If the Construction Agent implements any revision, amendment or modification to the Plans and Specifications pursuant to Section 3.2(b) of the Agency Agreement, then the Construction Agent shall provide promptly a copy thereof to the Agent. If the Lessee makes any Modification to the Property, as referenced in Section 11.1 of the Lease, that shall or could reasonably be expected to have a Material Adverse Effect, then the Lessee shall provide prompt notice thereof to the Agent.

5.20 **Ratable Reduction of Lessor Parties Commitments.**

Any reduction in the Lessor Parties Commitments shall be on a ratable basis among all Lessor Parties.

**SECTION 5A.**

**LESSOR ADVANCE.**

5A.1 **Procedure for Lessor Advance.**

(a) Upon receipt from the Construction Agent by the Agent of a Requisition pursuant to Section 4.2, and subject to the terms and conditions of this Agreement, each Lessor Party shall make a Lessor Advance to the Agent under the Lessor Parties Commitment in an amount equal to its Commitment Percentage of the amount requested in such Requisition on the Initial Closing Date or the Property Closing Date, as applicable, or on the date for any Construction Advance, and, unless retained and applied by the Agent pursuant to Section 5.1(a), the Agent shall distribute the funds to the Construction Agent on the same day it receives such funds from the Lessor Parties; provided, that the outstanding Lessor Advances of a Lessor Party shall not exceed its Lessor Parties Commitment. The Lessor Advances shall accrue yield at the Lessor Yield from time to time from the date of advance to the Agent.

(b) The Lessor Parties Commitment of each Lessor Party to make Lessor Advances shall be pro rata based upon the respective Lessor Parties Commitments of the Lessor Parties. The Lessor Advances by the Lessor Parties may from time to time be (i) Eurodollar Lessor Advances, (ii) ABR Lessor Advances, or (iii) a combination thereof, as determined by the Construction Agent and notified to the Agent pursuant to the applicable Requisitions; provided, the Construction Agent shall not have the right to select both Eurodollar Lessor Advances and ABR Lessor Advances in the same Requisition but rather shall be limited under a particular Requisition to select either all Eurodollar Lessor Advances or all ABR Lessor Advances. In the event the Construction Agent fails to provide notice of the intended Lessor Yield type in a Requisition, the Lessor Advances pursuant to such Requisition shall be ABR Lessor Advances. Further, any Lessor Advances on a given date in an aggregate amount less than $100,000 shall be ABR Lessor Advances, unless the remaining Available Lessor Parties Commitment for the Lessor Parties in the aggregate is less than $100,000, in which case, the Construction Agent may elect a Eurodollar Lessor Advance for such remaining amount.

(c) Not later than 10:00a.m. (New York time) (i) at least three (3) Business Day(s) prior to the proposed funding date of any Eurodollar Lessor Advance and (ii) on the proposed funding date of any ABR Lessor Advance, then (in the case of each of the foregoing subsections (i) and (ii)) the Agent shall deliver to the Lessor Parties a copy of the applicable Requisition and a written notification of the amounts to be funded by the Lessor Parties (including, without limitation, the amount of capitalized Lessor Yield and Transaction Expenses to be funded). Each of the Lessor Parties will make the amount of its Pro Rata Share of the Lessor Advances available to the Agent.
as directed by the Agent and at the office specified by the Agent from time to time by 1:00 p.m. (New York time) by wire transfer on the date requested pursuant to the Requisition (or as otherwise requested by the Agent after such date) in funds immediately available to the Agent. Subject to satisfaction of the applicable conditions precedent for the Lessor Advance, such Lessor Advance will then be distributed to the Construction Agent by the Agent crediting an account designated by the Construction Agent or otherwise applying the proceeds of such Lessor Advance in accordance with the requirements of the last sentence of Section 5.1(a).

(d) That portion of Lessor Yield accruing on each Lessor Advance during the Construction Period shall be added to the outstanding Lessor Advances on the relevant Payment Date in accordance with Section 5.1(b). Lessor Yield accruing on the Lessor Advances from the last Payment Date preceding the Rent Commencement Date through the day prior to the Rent Commencement Date shall be added to the outstanding Lessor Advances on the Rent Commencement Date in accordance with Section 5.1(b).

(e) (i) Notwithstanding anything to the contrary contained in this Agreement, if any Lessor Party becomes a Defaulting Lessor Party, then, until such time as that Lessor Party is no longer a Defaulting Lessor Party, to the extent permitted by Applicable Law:

(A) Such Defaulting Lessor Party’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement or any other Operative Agreement shall be restricted as set forth in the definitions of “Majority Secured Parties” and Section 12.4.

(B) Any payment of advance amounts, yield, fees or other amounts received by the Agent for the account of such Defaulting Lessor Party (whether voluntary or mandatory, at maturity or otherwise) or received by the Agent from a Defaulting Lessor Party pursuant to Section 12.15 shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lessor Party to the Agent under any Operative Agreement; second, as the Lessee may request (so long as no Default or Event of Default exists), to the funding of any Lessor Advance in respect of which such Defaulting Lessor Party has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; third, if so determined by the Agent and the Lessee, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lessor Party’s potential future funding obligations with respect to Lessor Advances under this Agreement; fourth, to the payment of any amounts owing to the Non-Defaulting Lessor Parties as a result of any judgment of a court of competent jurisdiction obtained by any Non-Defaulting Lessor Party against such Defaulting Lessor Party as a result of such Defaulting Lessor Party’s breach of its obligations under this Agreement or any other Operative Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Lessee as a result of any judgment of a court of competent jurisdiction obtained by the Lessee against such Defaulting Lessor Party as a result of such Defaulting Lessor Party’s breach of its obligations under this Agreement or any other Operative Agreement; and sixth, to such Defaulting Lessor Party or as otherwise as may be required under the Operative Agreements in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; provided, that if (1) such payment is a payment of any outstanding Lessor Advances in respect of which
such Defaulting Lessor Party has not fully funded its appropriate share, and (2) such Lessor Advances were made at a time when the conditions set forth in Sections 5.3 or 5.4, as applicable, were satisfied or waived, such payment shall be applied solely to pay the Lessor Advances of all Non-Defaulting Lessor Parties on a pro rata basis prior to being applied to the payment of any Lessor Advances of such Defaulting Lessor Party until such time as all Lessor Advances are held by the Lessor Parties pro rata in accordance with the Lessor Parties Commitments. Any payments, repayments, prepayments or other amounts paid or payable to a Defaulting Lessor Party that are applied (or held) to pay amounts owed by a Defaulting Lessor Party shall be deemed paid to and redirected by such Defaulting Lessor Party, and each Lessor Party irrevocably consents hereto.

(C) Unless a replacement Lessor Party has become a party to this Agreement in accordance with the provisions of this Agreement (pursuant to Section 5A.1(e)(iii) or otherwise), all or any part of a Defaulting Lessor Party’s subsequent Lessor Advances shall be reallocated among the Non-Defaulting Lessor Parties in accordance with their respective Available Lessor Parties Commitments (calculated without regard to such Defaulting Lessor Party’s Lessor Parties Commitment) but only to the extent that such reallocation does not cause the aggregate Lessor Advances of any Non-Defaulting Lessor Party to exceed such Non-Defaulting Lessor Party’s Lessor Parties Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lessor Party arising from that Lessor Party having become a Defaulting Lessor Party, including any claim of a Non-Defaulting Lessor Party as a result of such Non-Defaulting Lessor Party’s increased exposure following such reallocation.

(ii) If the Lessee and the Agent agree in writing that a Lessor Party is no longer a Defaulting Lessor Party, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lessor Party will, to the extent applicable, purchase at par that portion of outstanding Lessor Advances of the other Lessor Parties or take such other actions as the Agent may determine to be necessary to cause the Lessor Advances to be held on a pro rata basis by the Lessor Parties in accordance with their applicable percentages of the Lessor Parties Commitments prior to the Lessor Party having been a Defaulting Lessor Party, whereupon such Lessor Party will cease to be a Defaulting Lessor Party; provided, that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of any Credit Party while that Lessor Party was a Defaulting Lessor Party; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lessor Party to Lessor Party will constitute a waiver or release of any claim of any party hereunder arising from that Lessor Party’s having been a Defaulting Lessor Party.

(iii) If any Lessor Party is a Defaulting Lessor Party, then the Lessee may, at its sole expense and effort, upon notice to such Lessor Party and the Agent, require such Lessor Party to assign and delegate, without recourse (in accordance with the requirements of the Operative Agreements), all of its interests, rights and obligations under this Agreement and the related Operative Agreements to an Eligible Assignee pursuant to Section 5A.7.

5A.2 Computation of Lessor Yield; Payment Dates.
(a) The Agent shall as soon as practicable notify the Lessee and the Lessor Parties of each determination of a LIBOR Rate. Any change in the Lessor Yield on a Lessor Advance resulting from a change in the Eurodollar Reserve Requirement or the ABR shall become effective as of the day on which such change becomes effective. The Agent shall as soon as practicable notify the Lessee and the Lessor Parties of the effective date and the amount of each such change in yield rate and shall concurrently furnish a copy of such notification to the Lessee. Lessor Yield and fees shall be calculated on the basis of a year of three hundred sixty (360) days for the actual days elapsed, unless Lessor Yield is calculated on the basis of the ABR. Whenever Lessor Yield is calculated on the basis of the ABR, Lessor Yield shall be calculated on the basis of a year of three hundred sixty-five (365) days or three hundred sixty-six (366) days, as the case may be, for the actual days elapsed.

(b) Each determination of a yield rate by the Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Lessee and the Lessor Parties in the absence of manifest error.

(c) If the LIBOR Rate cannot be determined by the Agent in the manner specified in the definition of the term “LIBOR”, the Agent shall give electronic or telephonic notice thereof to the Lessee and the Lessor Parties as soon as practicable thereafter. Until such time as the LIBOR Rate can be determined by the Agent in the manner specified in the definition of such term, (i) no further Eurodollar Lessor Advances shall be made, (ii) no existing Eurodollar Lessor Advances shall be continued as such at the end of the then current Lessor Yield Period, (iii) the Lessee shall not have the right to convert any ABR Lessor Advances to Eurodollar Lessor Advances and (iv) all subsequent Lessor Advances shall be ABR Lessor Advances.

5A.3 Scheduled Return of Lessor Advance.

Subject to the limitations on the Lessee’s payment obligations in connection with an election of the Sale Option under the Lease, the outstanding amount of the Lessor Advance shall be due in full on the Expiration Date. On the Expiration Date, subject to the terms of this Agreement and the Lease, the Agent on behalf of the Lessor shall receive from the Lessee under the Lease the outstanding amount of the Lessor Advance then due, together with all accrued but unpaid Lessor Yield and all other amounts due to the Lessor Parties under the Operative Agreements.

5A.4 Early Return of Lessor Advances; Maturity Date Payment of Lessor Advances.

(a) Subject to Sections 11.2(e), 11.3 and 11.4 of this Agreement, the Lessor Advances may at any time and from time to time be repaid or prepaid by the Lessee, in whole or in part, without premium or penalty, upon at least three (3) Business Days’ irrevocable notice to the Agent, on behalf of the Lessor Parties, specifying the date and amount of repayment or prepayment of the Lessor Advances. Upon receipt of such notice, the Agent shall promptly notify the Lessor Parties thereof. If such notice is given, the amount of the Lessor Advances specified in such notice shall be due and payable on the date specified therein, together with all accrued but unpaid Lessor Yield and all other amounts due to the Lessor Parties under the Operative Agreements. Amounts of the Lessor Advances repaid or prepaid shall permanently decrease the Lessor Parties Commitment and the Available Lessor Parties Commitment, and such amounts may not be readvanced. Notwithstanding the foregoing, amounts so repaid or prepaid in favor of the Lessor Parties must be distributed in accordance with Section 8.7 of this Agreement.
(b) If on any date any Lessor Party shall receive any payment in respect of the Property or pursuant to the Operative Agreements, then in each case, the Lessor Party shall pay such amount (excluding Excepted Payments which shall be permitted to be retained by the party to whom such payments are owed) to the Agent to be distributed in accordance with Section 8.7 of this Agreement.

(c) Upon the occurrence of any Event of Default (in each case only to the extent arising out of a Lease Event of Default specified in Sections 17.1(n) or (o) of the Lease), the obligation to repay the Lessor Advances shall automatically accelerate and such shall be due and payable in full, together with accrued but unpaid Lessor Yield thereon and all other amounts owing to the Lessor under the Operative Agreements. Upon the occurrence and during the continuance of any other Event of Default, the Majority Secured Parties may determine to accelerate the obligation to repay the Lessor Advances, together with accrued but unpaid Lessor Yield thereon and all other amounts owing to the Secured Parties under the Operative Agreements.

(d) Each repayment or prepayment at the Expiration Date of the Lessor Advances expressly permitted by and effected in accordance with this Agreement shall be allocated to reduce the Property Cost and applied in accordance with Section 8.7.

(e) The outstanding Lessor Advances, the Lessor Yield and all other amounts then due and owing by any of the Credit Parties under this Agreement or any other Operative Agreement shall be due and payable in full on the Expiration Date.

(f) Breakage Costs (payable by the Lessee pursuant to Section 11.4) shall be due and payable in connection with each repayment or prepayment of the Lessor Advances and otherwise in accordance with the Operative Agreements.

5A.5 Lessor Yield Rates and Payment Dates

(a) The Lessor Advances outstanding hereunder from time to time shall bear interest at a rate per annum equal to either (i) with respect to a Eurodollar Lessor Advance, the LIBOR Rate determined for the applicable Lessor Yield Period plus the Applicable Percentage or (ii) with respect to an ABR Lessor Advance, the ABR plus the Applicable Percentage, as selected by the Lessee in accordance with the provisions hereof; provided, however, (A) upon delivery by the Agent of the notice described in Section 5A.2(c), the Lessor Advances of each of the Lessor Parties shall bear interest at the ABR plus the Applicable Percentage from and after the dates and during the periods specified in Section 5A.2(c) and (B) upon the delivery by a Lessor Party of the notice described in Section 11.3(d), the Lessor Advances of such Lessor Party shall bear interest at the ABR plus the Applicable Percentage from and after the dates and during the periods specified in Section 11.3(d).

(b) If all or a portion of (i) any outstanding Lessor Advance, (ii) any Lessor Yield payable thereon or (iii) any other amount payable hereunder or otherwise pursuant to any Operative Agreement to a Lessor Party shall not be paid when due (whether at the stated maturity, by acceleration or otherwise, but subject to the applicable grace period), such overdue amount shall bear interest at the Overdue Rate, in each case from the date of such non-payment until such amount is paid in full (whether after or before judgment). Upon the occurrence and during the continuance of any Event of Default, Lessor Yield on the Lessor Advances shall, at the option of the Majority Secured Parties, be calculated at the Overdue Rate.

(c) Lessor Yield shall be payable in arrears on the applicable Payment Date, provided, that (i) Lessor Yield accruing pursuant to Section 5A.5(b) shall be payable from time to time on
demand and (ii) each repayment or prepayment of the Lessor Advances shall be accompanied by accrued Lessor Yield to the date of such repayment or prepayment on the amount repaid or prepaid (and payment of all Breakage Costs).

5A.6 Termination or Reduction of Lessor Parties Commitments.

(a) Subject to Section 5.20, the Lessee shall have the right, upon not less than three (3) Business Days’ written notice to the Agent, to terminate the Lessor Parties Commitments or, from time to time, to reduce the amount of the Lessor Parties Commitments, provided, that (i) after giving effect to such reduction and any repayment or prepayment of Lessor Advances in connection therewith, the aggregate outstanding Lessor Advances shall not exceed the aggregate Lessor Parties Commitments and (ii) such notice shall be accompanied by a certificate of the Lessee stating that the amount equal to the remaining aggregate unfunded Budgeted Total Property Costs not funded by Lessor Advances as of the date of such reduction does not exceed the aggregate amount of Available Lessor Parties Commitments as of such date after giving effect to such reduction. Any such reduction (A) shall be in an amount equal to the lesser of (1) $1,000,000 (or an even multiple thereof) or (2) the remaining Available Lessor Parties Commitments and (B) shall reduce permanently the Lessor Parties Commitments then in effect.

(b) The Lessor Parties Commitments shall automatically be reduced to zero Dollars ($0) upon the occurrence of the Completion Date.

5A.7 Notice of Amounts Payable; Mandatory Assignment.

(a) In the event that any Lessor Party becomes aware that any amounts are or will be owed to it pursuant to Section 11.2 or 11.3 or that it is unable to make Eurodollar Lessor Advances, then it shall promptly notify the Lessee and the Agent thereof and, as soon as possible thereafter, such Lessor Party shall submit to the Lessee (with a copy to the Agent) a certificate indicating the amount owing to it and the calculation thereof. In addition, such Lessor Party will use commercially reasonable efforts to (x) reduce or eliminate any such claim or (y) to enable itself to continue making Eurodollar Lessor Advances, including a change in the lending office at which its obligations under the Operative Agreements is maintained, so long as such change is not otherwise disadvantageous to such Lessor Party, as determined by such Lessor Party in its sole discretion.

(b) In the event that (i) any Lessor Party delivers to the Lessee a certificate in accordance with Section 5A.7(a) in connection with amounts payable pursuant to Sections 11.2 or 11.3, (ii) such Lessor Party is required to make Lessor Advances as ABR Lessor Advances in accordance with Section 11.3 or (iii) such Lessor Party is a Defaulting Lessor Party or a Non-Consenting Lessor Party, then, subject to Section 10.1 and to the extent such Lessor Party has been unable to eliminate such claim referenced in the foregoing subsections (i) or (ii), the Lessee may, at its own expense, including the payment to the Agent of the assignment fee pursuant to Section 10.5 (provided, such amounts shall be reimbursed or paid entirely (as elected by the Lessee) by the Lessee, as Supplemental Rent, or, prior to the Construction Period Termination Date, shall be paid by the Construction Agent with the proceeds of Advances) and in the discretion of the Lessee, require such Lessor Party to transfer or assign, in whole, without recourse (in accordance with Section 10.1), all of its Lessor Parties Commitment, interests, rights (except for rights to be indemnified for actions taken while a party hereunder) and obligations under this Agreement to an Eligible Assignee if the Lessee (subject to Section 10.1), with the full cooperation of such Lessor Party, can identify an Eligible Assignee who is ready, willing and able to be such replacement bank or lending institution with respect thereto.
and such replacement bank or lending institution (which may be another Lessor Party) shall assume such assigned obligations in accordance with the provisions of Section 10.1; provided, however, that (x) subject to Section 10.1, the Lessee (provided, such amounts shall be reimbursed or paid entirely (as elected by the Lessee) by the Lessee, as Supplemental Rent, or, prior to the Construction Period Termination Date, shall be paid by the Construction Agent with the proceeds of Advances) or such replacement bank or lending institution, as the case may be, shall have paid to such Lessor Party in immediately available funds the outstanding Lessor Advances of such Lessor Party and the Lessor Yield accrued to the date of such payment on such Lessor Advances and all other amounts owed to such Lessor Party pursuant to the Operative Agreements, and (y) such assignment of the Lessor Parties Commitment of such Lessor Party does not conflict with any law, rule or regulation or order of any court or Governmental Authority.

5A.8 Pro Rata Treatment and Payments.

(a) Each Construction Advance and any reduction of the Lessor Parties Commitments shall be made pro rata according to their respective Lessor Parties Commitments. Subject to the provisions of the Operative Agreements, each payment (including each repayment or prepayment) by the Lessee on account of outstanding Lessor Advances and Lessor Yield shall be made pro rata according to the respective outstanding advance amounts on the Lessor Advances then held by the Lessor Parties. All payments (including repayments and prepayments) to be made by the Lessee, whether on account of advance amounts on the Lessor Advances, Lessor Yield or otherwise, shall be made without set-off or counterclaim and shall be made prior to 11:00 a.m., New York, New York time on the due date thereof (and any payment received on any day after such time shall be deemed received on the next Business Day), to the Agent, for the account of the Lessor Parties, at the Agent’s office specified by the Agent from time to time, in Dollars and in immediately available funds. The Agent shall distribute such payments to the Lessor Parties promptly upon receipt in like funds as received. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day; provided, however, if such payment includes an amount of Lessor Yield calculated with reference to the LIBOR Rate and the result of such extension would be to extend such payment into another calendar month, then such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment pursuant to the preceding sentence, Lessor Yield thereon shall be payable at the then applicable rate during such extension.

(b) Unless the Agent shall have been notified in writing by any Lessor Party prior to a requested Lessor Advance that such Lessor Party will not make its share of such Lessor Advance available to the Agent, the Agent may either (i) assume that such Lessor Party is making such amount available to the Agent, and the Agent may, in reliance upon such assumption, make available to the Construction Agent a corresponding amount or (ii) utilize the funding mechanics herein for Lessor Advances. If the Agent utilizes the mechanism described in the foregoing Section 5A.8(b)(i), the Lessor Party which has not funded its Lessor Advance shall forthwith upon demand pay to the Agent all amounts paid by the Agent on behalf of the Lessor Party, together with interest thereon, for each day from the date a payment was made by the Agent until the date the Agent has been paid such amounts in full, at a rate per annum equal to the Federal Funds Effective Rate plus two percent (2%).

5A.9 Conversion and Continuation Options Respecting the Lessor Advances.

(a) The Lessee may elect from time to time to convert Eurodollar Lessor Advances to ABR Lessor Advances by giving the Agent at least three (3) Business Days’ prior irrevocable notice
of such election, provided, that any such conversion of Eurodollar Lessor Advances may only be made on the last day of a Lessor Yield Period with respect thereto, and provided, further, to the extent an Event of Default has occurred and is continuing on the last day of any such Lessor Yield Period, the applicable Eurodollar Lessor Advance shall automatically be converted to an ABR Lessor Advance, and during the continuance of any Event of Default, the Lessee may not elect to convert any Lessor Advance into a Eurodollar Lessor Advance or to continue any Lessor Advance as a Eurodollar Lessor Advance. The Lessee may elect from time to time to convert ABR Lessor Advances to Eurodollar Lessor Advances by giving the Agent at least three (3) Business Days’ prior irrevocable notice of such election. Upon receipt of any such notice, the Agent shall promptly notify each Lessor Party thereof. All or any part of outstanding Eurodollar Lessor Advances or ABR Lessor Advances may be converted as provided herein, provided, that no ABR Lessor Advance may be converted into a Eurodollar Lessor Advance after the date that is one (1) month prior to the Expiration Date.

(b) Subject to the restrictions specified herein, any Eurodollar Lessor Advance may be continued as such upon the expiration of the current Lessor Yield Period with respect thereto by the Lessee giving irrevocable notice to the Agent, in accordance with the applicable notice provision for the conversion of ABR Lessor Advances to Eurodollar Lessor Advances set forth herein, provided, that no Eurodollar Lessor Advance may be continued as such after the date that is one (1) month prior to the Expiration Date, provided, further, no Eurodollar Lessor Advances may be continued as such if an Event of Default has occurred and is continuing as of the last day of the Lessor Yield Period for such Eurodollar Lessor Advance, provided, further, unless a Eurodollar Lessor Advance is not then permitted subject to the terms of this Agreement or the other Operative Agreements, if the Lessee shall fail to give any required notice as described above or otherwise herein, such Lessor Advance (on the last day of such then expiring Lessor Yield Period) shall automatically be continued as a Eurodollar Lessor Advance with a Lessor Yield Period of one (1) month, consistent with the requirements set forth in the definition of the term “Lessor Yield Period”, and provided, further, if such continuation of a Eurodollar Lessor Advance is not permitted pursuant to the terms of this Agreement, such Lessor Advance shall automatically be converted to an ABR Lessor Advance on the last day of such then expiring Lessor Yield Period.

SECTION 6.
REPRESENTATIONS AND WARRANTIES.

6.1 Representations and Warranties of Each Credit Party.

Effective as of the Initial Closing Date or the Property Closing Date, as applicable, the date of each Lessor Advance and the Rent Commencement Date (except to the extent any representation and warranty is otherwise specifically limited to one or more specific dates), each Credit Party represents and warrants to each of the other parties hereto that:

(a) Each Credit Party is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization. Each Credit Party has the lawful power to own or lease its properties and to engage in the business it presently conducts or proposes to conduct. Each Credit Party is duly licensed or qualified and in good standing in each jurisdiction where the property owned or leased by it or the nature of the business transacted by it or both makes such licensing or qualification necessary except to the extent that the failure to be so qualified would not cause a Material Adverse Effect.
(b) All of the authorized capital stock of the Parent, and the shares (referred to herein as the “Shares”) of the Parent that are issued and outstanding have been validly issued and are fully paid and nonassessable. There are no options, warrants or other rights outstanding to purchase any such Shares to be issued after the Initial Closing Date or the Property Closing Date, as applicable, except as indicated on Schedule II.

(c) Schedule III states the name of the Credit Parties, its jurisdiction of incorporation, its principal place of business, its authorized capital stock, the issued and outstanding shares (referred to herein as the “Subsidiary Shares”) and the owners thereof if it is a corporation, its outstanding partnership interests (the (“Partnership Interests”) if it is a partnership and its outstanding limited liability company interests, interests assigned to managers thereof and the voting rights associated therewith (the “LLC Interests”) if it is a limited liability company. Each of the Credit Parties has good and marketable title to all of the Subsidiary Shares, Partnership Interests and LLC Interests it purports to own, free and clear in each case of any Lien. All Subsidiary Shares, Partnership Interests and LLC Interests have been validly issued, and all Subsidiary Shares are fully paid and nonassessable. All capital contributions and other consideration required to be made or paid in connection with the issuance of the Partnership Interests and LLC Interests have been made or paid, as the case may be. There are no options, warrants or other rights outstanding to purchase any such Subsidiary Shares, Partnership Interests or LLC Interests except as indicated on Schedule III.

(d) Each Credit Party has full power to enter into, execute, deliver and carry out this Agreement and the other Operative Agreements to which it is a party and to incur and perform all its obligations, including all payment and performance obligations, under the Operative Agreements to which it is a party, and all such actions have been duly authorized by all necessary proceedings on its part.

(e) This Agreement has been duly and validly executed and delivered by each Credit Party, and each other Operative Agreement which any Credit Party is required to execute and deliver on or after the date hereof will have been duly executed and delivered by such Credit Party on the required date of delivery of such Operative Agreement. This Agreement and each other Operative Agreement constitutes, or will constitute, legal, valid and binding obligations of each Credit Party which is or will be a party thereto on and after its date of delivery thereof, enforceable against such Credit Party in accordance with its terms, except to the extent that enforceability of any of such Operative Agreement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforceability of creditors’ rights generally or limiting the right of specific performance and general concepts of equity.

(f) Neither the execution and delivery of this Agreement or the other Operative Agreements by any Credit Party nor the consummation of the transactions herein or therein contemplated or compliance with the terms and provisions hereof or thereof by any of them will conflict with, constitute a default under or result in any breach of (i) the terms and conditions of the certificate or articles of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other organizational documents of any Credit Party or (ii) any material Law or any material agreement or instrument or order, writ, judgment, injunction or decree to which any Credit Party is a party or by which it is bound or to which it is subject, or result in the creation or enforcement of any Lien, charge or encumbrance whatsoever upon any property (now or hereafter acquired) of any Credit Party except for Liens created by the Operative Agreements.
(g) There are no actions, suits, proceedings or investigations pending or, to the knowledge of any Credit Party, threatened against such Credit Party at law or equity before any Official Body which individually or in the aggregate would reasonably be expected to result in any Material Adverse Effect. None of the Credit Parties or any Subsidiaries of any Credit Party is in violation of any order, writ, injunction or any decree of any Official Body which would reasonably be expected to result in any Material Adverse Effect. Schedule IV correctly describes the New York Potential Tax Claim.

(h) The real property owned by each Credit Party is described on Schedule V. Each Credit Party has good and marketable title to (or ownership of) or valid leasehold interest in all properties, assets and other rights which it purports to own or lease or which are reflected as owned or leased on its books and records, free and clear of all Liens and encumbrances except (i) in the case of all such properties, assets and other rights other than the Collateral, Revolving Credit Agreement Permitted Liens and (ii) in the case of the Collateral, Permitted Liens. In the case of property (whether or not such property constitutes Collateral) leased by such Credit Party, such property is subject to the terms and conditions of the applicable leases. Upon consummation of the transactions contemplated hereby, all leases of real property are in full force and effect in all material respects without the necessity for any consent which has not previously been obtained.

(i) (i) BLS has delivered to the Agent copies of the Parent’s (a) audited consolidated year-end financial statements for and as of the end of the two (2) fiscal years ended January 28, 2017 and (b) unaudited consolidated quarter-end financial statements for and as of the end of the fiscal quarter ended July 31, 2017 (collectively, the “Historical Statements”). The Historical Statements were compiled from the books and records maintained by the Parent’s management, fairly represent in all material respects the consolidated financial condition of the Parent and its Subsidiaries as of their dates and the results of operations for the fiscal periods then ended and have been prepared in accordance with GAAP consistently applied.

(ii) BLS has delivered to the Agent consolidated financial projections of the Parent and its Subsidiaries as required pursuant to the Revolving Credit Agreement derived from various assumptions of the Parent’s management (the “Financial Projections”). The Financial Projections represent a reasonable estimation of possible results in light of the history of the business, present and foreseeable conditions and the estimates and assumptions of the Parent’s management. Such Financial Projections and the assumptions therein were, at the time made, fair; however, actual results may differ materially from such Financial Projections.

(iii) Neither the Parent nor any Subsidiary of the Parent has any liabilities, contingent or otherwise, or forward or long-term commitments that are not disclosed in the Historical Statements or in the notes thereto, and except as disclosed therein there are no unrealized or anticipated losses from any commitments of the Parent or any Subsidiary of the Parent, in each case which would reasonably be expected to cause a Material Adverse Effect. From January 28, 2017 to (A) the Initial Closing Date and (B) each Test Date, if applicable, no Material Adverse Effect has occurred.

(j) Neither the Construction Agent nor the Lessee shall use the proceeds of any Lessor Advance for any purpose other than Property Acquisition Costs, costs incurred by the Construction Agent to permit the acquisition, testing, engineering, installation, development, construction, modification, design, and renovation, as applicable, of the Property (or components thereof) in
accordance with the terms of the Agency Agreement and the other Operative Agreements (including construction of the Improvements and acquisition and installation of the Equipment) or for the payment of Transaction Expenses, in each case which accrue prior to the Rent Commencement Date.

(k) None of the Credit Parties or any Subsidiaries of any Credit Party engages or intends to engage principally, or as one of its important activities, in the business of extending credit for the purpose, immediately, incidentally or ultimately, of purchasing or carrying margin stock (within the meaning of Regulation U, T or X as promulgated by the Board of Governors of the Federal Reserve System). No part of the proceeds of any Lessor Advance has been or will be used, immediately, incidentally or ultimately, to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or to refund Indebtedness originally incurred for such purpose, or for any purpose which entails a violation of or which is inconsistent with the provisions of the regulations of the Board of Governors of the Federal Reserve System. None of the Credit Parties holds or intends to hold margin stock in such amounts that more than twenty-five percent (25%) of the reasonable value of the assets of any Credit Party are or will be represented by margin stock.

(l) Neither this Agreement nor any other Operative Agreement, nor any certificate, statement, agreement or other documents furnished to any Financing Party in connection herewith or therewith taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which they were made, not misleading. There is no fact known to any Credit Party which materially adversely affects the business, property, assets, financial condition, results of operations or prospects of any Credit Party which has not been set forth in this Agreement, another Operative Agreement or in the certificates, statements, agreements or other documents furnished in writing to the Financing Party prior to or at the date hereof in connection with the transactions contemplated hereby.

(m) All federal, state, local and other Tax returns required to have been filed with respect to each Credit Party have been filed, and payment or adequate provision has been made for the payment of all Taxes, fees, assessments and other governmental charges which have or may become due pursuant to said returns or to assessments received, except to the extent that (i) any failure to file a Tax return, or the amount of Taxes required to be paid or provided for (individually or in the aggregate), would not reasonably be expected to cause a Material Adverse Effect, or (ii) such Taxes, fees, assessments and other charges are being contested in good faith by appropriate proceedings diligently conducted and for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made. There are no agreements or waivers extending the statutory period of limitations for assessments applicable to any federal or other income Tax return of any Credit Party for any Tax years prior to the Credit Parties’ fiscal year ended on or about January 28, 2017 for federal income Tax returns and February 3, 2007 for state income Tax returns.

(n) No consent, approval, exemption, order or authorization of, or a registration or filing with, any Official Body or any other Person is required by any Law or any agreement in connection with the execution, delivery and carrying out of this Agreement and the other Operative Agreements by any Credit Party, except as listed on Schedule VI, all of which shall have been obtained or made on or prior to the Initial Closing Date.

(o) No event has occurred and is continuing and no condition exists or will exist, including after giving effect to any Lessor Advance to be made on the date of such Lessor Advance,
under or pursuant to the Operative Agreements which constitutes an Event of Default or a Default. None of the Credit Parties is in violation of (i) any material term of its certificate of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other organizational documents or (ii) any material agreement or instrument to which it is a party or by which it or any of its properties may be subject or bound where such violation would constitute a Material Adverse Effect.

(p) Each Credit Party owns or possesses all the material patents, trademarks, service marks, trade names, copyrights, licenses, registrations, franchises, permits and rights necessary to own and operate its properties and to carry on its business as presently conducted and planned to be conducted by such Credit Party, without known possible, alleged or actual conflict with the rights of others.

(q) Schedule VII lists all insurance policies to which any Credit Party is a party, all of which are valid and in full force and effect. No notice has been given or claim made and no grounds exist to cancel or avoid any of such policies or to reduce the coverage provided thereby. Such policies provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each Credit Party in accordance with customary business practice in the industry of the Credit Parties.

(r) The Credit Parties are in compliance in all material respects with all Applicable Laws (other than labor and employment Laws which are specifically addressed in Section 6.1(v) and Environmental Laws which are specifically addressed in Section 6.1(w)) in all jurisdictions in which any Credit Party is presently or will be doing business except where the failure to do so would not reasonably be expected to constitute a Material Adverse Effect.

(s) All material contracts relating to the business operations of each Credit Party, including all employee benefit plans and Labor Contracts are valid, binding and enforceable upon such Credit Party except as limited by bankruptcy, insolvency and general concepts of equity and each of the other parties thereto in accordance with their respective terms, and there is no default by such Credit Party thereunder or, to the Credit Parties’ knowledge, by any other parties thereto. None of the Credit Parties is bound by any contractual obligation, or subject to any restriction in any organization document, or any requirement of Law which would reasonably be expected to result in a Material Adverse Effect or which restricts or prohibits any Credit Party from entering into, and performing its obligations under, the transactions contemplated hereby. For purposes of this Section 6.1(s), the term “material contracts” shall mean those contracts or other agreements which the Parent would be required to file with the SEC pursuant to item 601(a)(10) of Regulation S-K promulgated under the Securities Act and the Exchange Act.

(t) None of the Credit Parties is an “investment company” registered or required to be registered under the Investment Company Act or under the “control” of an “investment company” as such terms are defined in the Investment Company Act and shall not become such an “investment company” or under such “control.” None of the Credit Parties is subject to any other federal or state statute or regulation limiting its ability to incur Indebtedness for borrowed money.

(u) Except as set forth on Schedule VIII:

(i) The Revolving Credit Agreement US Borrowers and each other member of the ERISA Group are in compliance in all material respects with any applicable provisions of the Code and ERISA with respect to all Benefit Arrangements and Plans. As of the Initial
Closing Date, the Revolving Credit Agreement US Borrowers and each other member of the ERISA Group do not have any obligation to make contributions to any Multiemployer Plans or Multiple Employer Plans. There has been no Prohibited Transaction with respect to any Benefit Arrangement or any Plan or, to the best knowledge of the Revolving Credit Agreement US Borrowers and each other member of the ERISA Group, with respect to any Multiemployer Plan or Multiple Employer Plan, which could result in any material liability to any Revolving Credit Agreement US Borrower or any other member of the ERISA Group. The Revolving Credit Agreement US Borrowers and all other members of the ERISA Group have made when due any and all payments required to be made under any agreement relating to a Multiemployer Plan or a Multiple Employer Plan or any Law pertaining thereto. With respect to each Plan, Multiemployer Plan and Multiple Employer Plan, the Revolving Credit Agreement US Borrowers and each other member of the ERISA Group (A) have fulfilled in all material respects their obligations under the minimum funding standards of ERISA, (B) except for required premium payments, have not incurred any liability to the PBGC, and (C) have not had asserted against them any penalty for failure to fulfill the minimum funding standards of ERISA.

(ii) To the best knowledge of each Revolving Credit Agreement US Borrower and each other member of the ERISA Group, each Multiemployer Plan and Multiple Employer Plan is able to pay benefits thereunder when due.

(iii) Neither a Revolving Credit Agreement US Borrower nor any other member of the ERISA Group has instituted or intends to institute proceedings to terminate any Plan.

(iv) No event requiring notice to the PBGC under Section 303(k)(4) of ERISA has occurred or is reasonably expected to occur with respect to any Plan.

(v) With respect to each Plan and in accordance with each such Plan’s most recent actuarial valuation report used to determine funding under Section 412 of the Code, no Plan is in “at risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code).

(vi) Neither a Revolving Credit Agreement US Borrower nor any other member of the ERISA Group has incurred or reasonably expects to incur any material withdrawal liability under ERISA to any Multiemployer Plan or Multiple Employer Plan. Neither a Revolving Credit Agreement US Borrower nor any other member of the ERISA Group has been notified by any Multiemployer Plan or Multiple Employer Plan that such Multiemployer Plan or Multiple Employer Plan has been terminated within the meaning of Title IV of ERISA and, to the best knowledge of each Revolving Credit Agreement US Borrower and each other member of the ERISA Group, no Multiemployer Plan or Multiple Employer Plan is reasonably expected to be reorganized or terminated, within the meaning of Title IV of ERISA.

(vii) To the extent that any Benefit Arrangement is insured, the Revolving Credit Agreement US Borrowers and all other members of the ERISA Group have paid when due all premiums required to be paid for all periods through the Initial Closing Date. To the extent that any Benefit Arrangement is funded other than with insurance, the Revolving Credit Agreement US Borrowers and all other members of the ERISA Group have made
when due all contributions required to be paid for all periods through the Initial Closing Date.

(viii) All Plans, Benefit Arrangements, Multiemployer Plans and Multiple Employer Plans have been administered in all material respects in accordance with their terms and Applicable Law.

(v) Each of the Credit Parties is in compliance with the Labor Contracts and all applicable labor and employment Laws including those related to equal employment opportunity and affirmative action, labor relations, minimum wage, overtime, child labor, medical insurance continuation, worker adjustment and relocation notices, immigration controls and worker and unemployment compensation, where the failure to comply would reasonably be expected to constitute a Material Adverse Effect. There are no outstanding grievances, arbitration awards or appeals therefrom arising out of the Labor Contracts or current or threatened strikes, picketing, handbilling or other work stoppages or slowdowns at facilities of any of the Credit Parties which in any case would reasonably be expected to constitute a Material Adverse Effect.

(w) Except as disclosed on Schedule IX:

(i) None of the Credit Parties has received any material Environmental Complaint, whether directed or issued to any Credit Party or relating or pertaining to any predecessor of any Credit Party or to any prior owner, operator or occupant of the Revolving Credit Agreement Property, and none of such Credit Parties have reason to believe that it might receive a material Environmental Complaint.

(ii) No activity of any Credit Party at the Revolving Credit Agreement Property is being or has been conducted in violation of any Environmental Law or Environmental Permit which has caused or would reasonably be expected to cause a Material Adverse Effect and, to the knowledge of any such Credit Party no activity of any predecessor of any Credit Party or any prior owner, operator or occupant of the Revolving Credit Agreement Property was conducted in violation of any Environmental Law which has caused or would reasonably be expected to cause a Material Adverse Effect.

(iii) There are no Regulated Substances present on, in, under, or emanating from, or to any Credit Party’s knowledge emanating to, the Revolving Credit Agreement Property or any portion thereof which result in Contamination and which would reasonably be expected to cause a Material Adverse Effect.

(iv) Each Credit Party has all Environmental Permits and all such Environmental Permits are in full force and effect and each such Credit Party’s operations at the Revolving Credit Agreement Property are conducted in compliance with the terms and conditions of such Environmental Permits except to the extent that such noncompliance would not reasonably be expected to cause a Material Adverse Effect and none of the Credit Parties have received any written notice from an Official Body that such Official Body has or intends to suspend, revoke or adversely alter, whether in whole or in part, any such Environmental Permit.

(v) Each Credit Party has submitted to an Official Body and/or maintains, as appropriate, all material Environmental Records.
(vi) No structures, improvements, equipment, fixtures, impoundments, pits, lagoons or aboveground or under
ground storage tanks located on the Revolving Credit Agreement Property contain or use, except in compliance
with Environmental Laws and Environmental Permits, Regulated Substances or otherwise are operated or maintained
except in compliance with Environmental Laws and Environmental Permits unless such noncompliance would not be
reasonably expected to cause a Material Adverse Effect. To the knowledge of each Credit Party, no structures,
improvements, equipment, fixtures, impoundments, pits, lagoons or aboveground or underground storage tanks of prior
owners, operators or occupants of the Revolving Credit Agreement Property contained or used Regulated Substances,
except in compliance with Environmental Laws, Regulated Substances or otherwise were operated or maintained by any
such prior owner, operator or occupant except in compliance with Environmental Laws unless such noncompliance
would not be reasonably expected to cause a Material Adverse Effect.

(vii) To the knowledge of each Credit Party, no facility or site to which any such Credit Party, either directly or
indirectly by a third party, has sent Regulated Substances for storage, treatment, disposal or other management has been
or is being operated in violation of Environmental Laws except to the extent that such violation would not reasonably be
expected to cause a Material Adverse Effect.

(viii) No portion of the Revolving Credit Agreement Property is identified or, to the knowledge of each Credit
Party, proposed to be identified on any list of contaminated properties or other properties which pursuant to
Environmental Laws are the subject of a Remedial Action by an Official Body or any other Person (including any such
Credit Party), nor to the knowledge of any such Credit Party is any property adjoining or in the proximity of the
Revolving Credit Agreement Property identified or proposed to be identified on any such list or the subject of a
Remedial Action.

(ix) No portion of the Revolving Credit Agreement Property constitutes an Environmentally Sensitive Area
except for those portions of the Revolving Credit Agreement Property constituting an Environmentally Sensitive Area
which would not reasonably be expected to result in a Material Adverse Effect.

(x) No Lien or other material encumbrance authorized by Environmental Laws exists against the Revolving
Credit Agreement Property and none of the Credit Parties has any reason to believe that such a Lien or encumbrance
may be imposed.

(xi) Neither the transaction contemplated by the Operative Agreements nor any other transaction involving the
sale, transfer or exchange of the Revolving Credit Agreement Property will trigger or has triggered any obligation under
any applicable Environmental Laws to make a filing, provide a notice, provide other disclosure or take any other action,
or in the event that any such transaction-triggered obligation does arise or has arisen under any applicable
Environmental Laws, all such action required thereby has been taken in compliance with applicable Environmental
Laws except to the extent that the failure to take such action in compliance with applicable Environmental Laws would
not be reasonably expected to cause a Material Adverse Effect.

(x) The obligations of each Credit Party under Operative Agreements to which it is a party do rank and will rank at
least pari passu in priority of payment with all other Indebtedness of
such Credit Party except Indebtedness of such Credit Party to the extent secured by Revolving Credit Agreement Permitted Liens. There is no Lien upon or with respect to any of the properties or income of any Credit Party which secures indebtedness or other obligations of any Person except for, in the case of such properties or income other than the Collateral, Revolving Credit Agreement Permitted Liens and, in the case of such properties or income constituting Collateral, Permitted Liens.

(y) None of the Credit Parties nor, to any Credit Party’s knowledge, any Affiliate of any Credit Party, is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(z) None of the Credit Parties, nor, to any Credit Party’s knowledge, any Affiliate of any Credit Party is any of the following (each a “Blocked Person”):

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

(iii) a Person or entity with which any Financing Party is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person or entity that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order No. 13224; or

(v) a Person or entity that is named as a “specially designated national” on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list.

No Credit Party or to the knowledge of any Credit Party, any Affiliate of any Credit Party (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224.

(aa) Each Excluded US Inactive Subsidiary has no material assets or liabilities (except for the New York Potential Tax Claim) and does not conduct business.

(bb) Upon the execution and delivery of the Lease, (i) the Lessee will have unconditionally accepted the Property and will have a valid leasehold interest in the Property, subject only to the Permitted Liens, and (ii) no offset will exist with respect to any Rent or other sums payable under the Lease.

(cc) (i) The Security Documents (other than the Lease, which is referenced in Section 6.1(cc)(ii)) create, as security for the Obligations, valid and enforceable security interests in, and Liens on, all of the Collateral, subject only to Permitted Liens, in favor of the Agent, for the benefit of the Secured Parties. Upon recordation of the Mortgage Instrument in the real estate recording office in the county or parish in which the Property is located, the Lien created by the
Mortgage Instrument in the real property described therein shall be a perfected first priority mortgage Lien on such real property (subject only to Permitted Liens) in favor of the Agent, for the benefit of the Secured Parties. To the extent that the security interests in the portion of the Collateral comprised of personal property can be perfected by filing in the filing office in the state where the Lessee is located for purposes of the UCC, upon filing of the UCC Financing Statements in such filing offices, the security interests created by the Security Documents (other than the Lease, which is referenced in Section 6.1(cc)(ii)) shall be perfected first priority security interests (subject only to Permitted Liens) in such personal property in favor of the Agent, for the benefit of the Secured Parties; and

(ii) The Lease creates, as security for the obligations of the Lessee under the Lease, valid and enforceable security interests in, and Liens on, the Property leased thereunder, subject only to Permitted Liens, in favor of the Lessor. Upon recordation of the memorandum of the Lease (or a short form lease) and either the Deed in the real estate recording office in the county or parish in which the Property is located, the Lien created by the Lease in the real property described therein shall be a perfected first priority mortgage Lien on such real property (subject only to Permitted Liens) in favor of the Lessor, which rights pursuant to the UCC Financing Statements are assigned to the Agent, for the benefit of the Secured Parties. To the extent that the security interests in the portion of the Property comprised of personal property can be perfected by the filing in the filing office in the state where the Lessee is located for purposes of the UCC, upon filing of the UCC Financing Statements in such filing offices, a security interest created by the Lease shall be a perfected first priority security interests (subject only to Permitted Liens) in such personal property in favor of the Lessor, which rights pursuant to the UCC Financing Statements are assigned to the Agent, for the benefit of the Secured Parties.

(dd) The Plans and Specifications for the Property will be prepared prior to the commencement of construction in accordance with all applicable Legal Requirements (including all applicable Environmental Laws and building, planning, zoning and fire codes), except to the extent the failure to comply therewith, individually or in the aggregate, shall not have and could not reasonably be expected to have a Material Adverse Effect. Upon completion of the Improvements for the Property in accordance with the applicable Plans and Specifications (except with respect to final completion matters regarding any punch list items for which the Punchlist Advance has been made), such Improvements will be within any building restriction lines and will not encroach in any manner onto any adjoining land (except as permitted by express written easements or those encroachments which have been approved by the Agent).

(ee) To the best of the knowledge of the Credit Parties, all written information and written materials which have been prepared and provided by the Credit Parties to (i) an appraiser in connection with an Appraisal are true and accurate in all material respects on the date as of which such written information and written materials are dated or certified, except for such inaccuracies or misstatements which would not have a Material Adverse Effect, and are not incomplete by omitting to state any material fact necessary to make such information (taken as a whole) not misleading at such time in light of the circumstances under which such information was provided and (ii) the Lessor with respect to the Property are true and accurate on the date as of which such written information and materials are dated or certified, except such as would not have a Material Adverse Effect.

(ff) Nothing contained in Section 11 hereof limits any payment obligations to additional insureds or loss payees with respect to any insurance policies required to be maintained by the Lessee
pursuant to Article XIV of the Lease and amounts payable under such insurance policies to or for the benefit of such additional insureds or loss payees are not limited by the provisions of Section 5.4 of the Agency Agreement.

(gg) The location of the Construction Agent and the Lessee for purposes of the UCC is the State of Ohio and, respecting the Construction Agent and the Lessee, its principal place of business is located at 300 Phillipi Road, Columbus, Franklin County, OH 43228-5311, and its chief executive office and office where the documents, accounts and records related to the transactions contemplated by this Agreement and each other Operative Agreement are located at 300 Phillipi Road, Columbus, Franklin County, OH 43228-5311. The Construction Agent and the Lessee maintain a mailing address at: AVDC, Inc., c/o Big Lots, Inc., 300 Phillipi Road, Columbus, OH 43228-5311.

(hh) As of the Property Closing Date, the date of each subsequent Lessor Advance and the Rent Commencement Date only, the Property is the Permitted Facility which consists of (i) unimproved Land, (ii) Land and existing Improvements thereon which Improvements are either suitable for occupancy at the time of acquisition or will be renovated and/or modified in accordance with the terms of this Agreement, and/or (iii) Equipment. The Property is located at the location set forth on the applicable Requisition.

(ii) As of the Property Closing Date, the date of each subsequent Lessor Advance and the Rent Commencement Date only, the Lessor has good and marketable legal title to the Property, subject only to (i) such Liens referenced in Section 6.1(cc) (i) and (ii) on the Property Closing Date and (ii) subject to Section 5.6, Permitted Liens after the Property Closing Date.

(jj) As of the Property Closing Date, the date of each subsequent Lessor Advance and the Rent Commencement Date only, the Property complies with all Insurance Requirements and all standards of the Lessee with respect to similar properties owned by the Lessee or Subsidiaries (direct or indirect) or Affiliates of the Lessee.

(kk) As of the Property Closing Date, the date of each subsequent Lessor Advance and the Rent Commencement Date only, the Property complies with all Legal Requirements as of such date (including all zoning and land use laws and Environmental Laws), except to the extent that failure to comply therewith, individually or in the aggregate, shall not have and could not reasonably be expected to have a Material Adverse Effect and there is not and has not been any Environmental Condition at the Property, except as shall not and could not reasonably be expected to have a Material Adverse Effect.

(ll) As of the Property Closing Date, the date of each subsequent Lessor Advance and the Rent Commencement Date only, all utility services and facilities necessary for the construction and operation of the Improvements and the installation and operation of the Equipment regarding the Property (including gas, electrical, water and sewage services and facilities) are available at the Land and vehicular access to the Improvements on the Property is provided by either public right of way abutting the Property or Appurtenant Rights, except to the extent that the non-availability of such utility services and facilities does not have and could not reasonably be expected to have a Material Adverse Effect, and will be constructed prior to the Completion Date.

(mm) As of the Property Closing Date, the date of each subsequent Lessor Advance and the Rent Commencement Date only, the acquisition, installation and testing of the Equipment (if any) and construction of the Improvements (if any) to such date shall have been performed in a good and workmanlike manner, substantially in accordance with the applicable Plans and Specifications,
except to the extent that the failure of such performance does not have and could not reasonably be expected to have a Material Adverse Effect.

(nn) As of the Property Closing Date, the date of each subsequent Lessor Advance and the Rent Commencement Date only, the Property has been acquired at a price that is not in excess of fair market value.

(oo) As of the Property Closing Date, the date of each subsequent Lessor Advance and the Rent Commencement Date only, the Land included in the Property in respect of which a Lessor Advance is being requested is a separate parcel for all real estate Tax and assessment purposes, and no part of the Land is aggregated with any other parcel for such purposes.

(pp) As of the Property Closing Date and the date of each subsequent Lessor Advance, the amount of any Lessor Advance then being requested represents an amount owed by the Construction Agent or the Lessee in respect of Property Costs incurred prior to or as of the date of such Lessor Advance for which, in each case, the Construction Agent or the Lessee has not previously been reimbursed by a Lessor Advance.

(qq) As of the Rent Commencement Date only, the Property shall be improved in accordance with the applicable Plans and Specifications in a good and workmanlike manner and shall be operational and a certificate of occupancy or its equivalent shall have been issued therefor.

(rr) The Equipment shall only be, but in any event shall include, all equipment, apparatus, furnishings, fittings and other personal property (together with all replacements, modifications, alterations and additions thereto) necessary or otherwise appropriate for use in the physical plant of the Property and shall not in any event include any Excluded Equipment.

(ss) No Credit Party is a “covered fund” within the meaning of Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 1851) and the regulations promulgated in connection therewith.

(tt) No Credit Party is an EEA Financial Institution.

6.2 Representations and Warranties of the Lessor Parties.

Effective as of the Initial Closing Date or the Property Closing Date, as applicable, the date of each Lessor Advance and the Rent Commencement Date (except to the extent any representation and warranty is otherwise specifically limited to one or more specific dates), each Lessor Party represents and warrants (as to itself but not as to any other Person, including any other Lessor Party) to each of the other parties hereto that:

(a) It is an entity duly organized, validly existing and in good standing in the jurisdiction of its formation (and as to the Lessor but not as to any other Lessor Party, the State of California) and has the power and authority to enter into and perform its obligations under each of the Operative Agreements to which it is or will be a party and each other agreement, instrument and document to be executed and delivered by it on or before the Initial Closing Date and the Property Closing Date in connection with or as contemplated by each such Operative Agreement to which it is, or as the case may be, will be a party;
(b) The execution, delivery and performance of each Operative Agreement to which it is or will be a party has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof (i) does or will require any approval or consent of any holder of any of its indebtedness or obligations or any other consent or approval by any Person that has not previously been obtained, (ii) does or will contravene any Legal Requirement, (iii) does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any of its property (except for the Liens created expressly pursuant to the Security Documents) under (A) its articles of organization or other formation documents or (B) any other agreement or instrument to which it is a property or by which it or its properties may be bound or affected;

(c) This Agreement and the other Operative Agreements to which it is or, as the case may be, will be a party, have been or on or before the Initial Closing Date or the Property Closing Date, as applicable, will be, duly executed and delivered by it and constitute, or upon execution and delivery will constitute, a legal, valid and binding obligation enforceable against it in accordance with the terms thereof, subject to bankruptcy, insolvency, moratorium and similar laws affecting creditors’ rights generally and general principles of equity (regardless of whether considered in a proceeding at law or in equity);

(d) There is no action or proceeding pending or, to its knowledge, threatened to which it is or will be a party before any Governmental Authority that, if adversely determined, would materially and adversely affect its ability to perform its obligations under the Operative Agreements to which it is a party or would question the validity or enforceability of any of the Operative Agreements to which it is or will become a party;

(e) It has not assumed or transferred any of its right, title or interest in or under the Agency Agreement, the Lease or its interest in the Property or any portion thereof, except in accordance with the Operative Agreements;

(f) [Reserved];

(g) Except as otherwise expressly contemplated by the Operative Agreements, the proceeds of the Lessor Advances shall not be applied by it for any purpose other than Property Acquisition Costs, costs incurred to permit the acquisition, testing, engineering, installation, development, construction, modification, design, and renovation, as applicable, of the Property (or components thereof) in accordance with the terms of the Agency Agreement and the other Operative Agreements (including construction of the Improvements and acquisition and installation of the Equipment), in each case, which accrue prior to the Rent Commencement Date;

(h) Neither it nor any Person authorized by it to act on its behalf has offered any security relating to the Property, or any security the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the aforementioned securities to, or solicited any offer to acquire any of the same from, any Person, and neither it nor any Person authorized by it to act on its behalf will take any action which would subject, as a direct result of such action alone, the issuance or sale of any of the aforementioned securities to the provisions of Section 5 of the Securities Act or require the qualification of any Operative Agreement under the Trust Indenture Act of 1939, as amended;

(i) [Reserved];
(j) It is not engaged principally in, and does not have as one (1) of its important activities, the business of extending credit for the purpose of purchasing or carrying any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States), and no part of the proceeds of the Lessor Advances will be used by it to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulations T, U, or X of the Board of Governors of the Federal Reserve System of the United States;

(k) It is not itself, nor is it controlled by, an “investment company” registered or required to be registered under the Investment Company Act; and

(l) The Property is free and clear of all Lessor Liens attributable to it.

SECTION 6B.
GUARANTY

6B.1 Guaranty of Payment and Performance.

Subject to Section 6B.7, the Guarantors hereby unconditionally guarantee to each Financing Party the prompt payment and performance of the Company Obligations in full when due (whether at stated maturity, as a mandatory repayment or prepayment, by acceleration or otherwise) or when such is otherwise to be performed. This Section 6B is a guaranty of payment and performance and not of collection and is a continuing guaranty and shall apply to all Company Obligations whenever arising.

6B.2 Obligations Unconditional.

The Guarantors agree that the obligations of the Guarantors hereunder are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Operative Agreements, or any other agreement or instrument referred to therein, or any substitution, release or exchange of any other guarantee of or security for any of the Company Obligations, and, to the fullest extent permitted by Applicable Law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety, guarantor or co-obligor, it being the intent of this Section 6B.2 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. The Guarantors agree that this Section 6B may be enforced by any Financing Party without the necessity at any time of resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse to any of the Operative Agreements or any collateral, if any, hereafter securing the Company Obligations or otherwise and the Guarantors hereby waive the right to require the Financing Parties to proceed against the Construction Agent, the Lessee or any other Person (including a co-guarantor) or to require the Financing Parties to pursue any other remedy or enforce any other right. The Guarantors further agree that each Guarantor hereby waives any and all right of subrogation, indemnity, reimbursement or contribution against the Construction Agent, the Lessee or any other guarantor of the Company Obligations for amounts paid under this Section 6B until such time as the Lessor Advances, accrued but unpaid Lessor Yield and all other amounts owing under the Operative Agreements have been paid in full. Without limiting the generality of the waiver provisions of this Section 6B, the Guarantors hereby waive any rights to require the Financing Parties to proceed against the Construction Agent, the Lessee or any co-guarantor or to require the Lessor to pursue any other remedy or enforce any other right, including any and all rights under N.C. Gen. Stat. § 26-7 through 26-9, or any similar statute. Additionally, the Guarantors hereby waive any rights and defenses that are or may become available to any of them by reason of §§ 2787 to 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code.

40
The foregoing waivers and the provisions otherwise set forth in this Section 6B which pertain to North Carolina law or to California law are included solely out of an abundance of caution, and shall not be construed to mean that any such provisions of North Carolina law or California law are in any way applicable to this Section 6B or the Company Obligations. The Guarantors further agree that nothing contained in this Section 6B shall prevent the Financing Parties from suing on any Operative Agreement or foreclosing any security interest in or Lien on any Collateral, if any, securing the Company Obligations or from exercising any other rights available to it under any Operative Agreement, or any other instrument of security, if any, and the exercise of any of the aforesaid rights and the completion of any foreclosure proceedings shall not constitute a discharge of the obligations of the Guarantors hereunder; it being the purpose and intent of the Guarantors that the obligations of the Guarantors hereunder shall be absolute, independent and unconditional under any and all circumstances; provided, that any amounts due under this Section 6B which are paid to or for the benefit of any Financing Party shall reduce the Company Obligations by a corresponding amount (unless required to be rescinded at a later date). Neither the obligations of the Guarantors under this Section 6B nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of any other Credit Party or by reason of the bankruptcy or insolvency of any other Credit Party. The Guarantors waive any and all notice of the creation, renewal, extension or accrual of any of the Company Obligations and notice of or proof of reliance by any Financing Party upon this Section 6B or acceptance of this Section 6B. The Company Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Section 6B. All dealings between the Credit Parties, on the one hand, and the Financing Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon this Section 6B.

6B.3 Modifications.

The Guarantors agree that (a) all or any part of the security now or hereafter held for the Company Obligations, if any, may be exchanged, compromised or surrendered from time to time; (b) no Financing Party shall have any obligation to protect, perfect, secure or insure any such security interests, Liens or encumbrances now or hereafter held, if any, for the Company Obligations or the properties subject thereto; (c) the time or place of payment of the Company Obligations may be changed or extended, in whole or in part, to a time certain or otherwise, and may be renewed or accelerated, in whole or in part; (d) the Construction Agent, the Lessee and any other party liable for payment under the Operative Agreements may be granted indulgences generally; (e) any of the provisions of any Operative Agreements may be modified, amended or waived; (f) any party (including any co-guarantor) liable for the payment thereof may be granted indulgences or be released; and (g) any deposit balance for the credit of the Construction Agent, the Lessee or any other party liable for the payment of the Company Obligations or liable upon any security therefor may be released, in whole or in part, at, before or after the stated, extended or accelerated maturity of the Company Obligations, all without notice to or further assent by the Guarantor, which shall remain bound thereon, notwithstanding any such exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release.

6B.4 Waiver of Rights.

The Guarantors expressly waive to the fullest extent permitted by Applicable Law: (a) notice of acceptance of this Section 6B by any Financing Party and of all extensions of credit or other Lessor Advances by the Lessor Parties pursuant to the terms of the Operative Agreements; (b) presentment and demand for payment or performance of any of the Company Obligations; (c) protest and notice of dishonor or of default with respect to the Company Obligations or with respect to any security therefor; (d) notice of any Financing Party obtaining, amending, substituting for, releasing, waiving or modifying any security interest, Lien or
encumbrance, if any, hereafter securing the Company Obligations, or any Financing Party’s subordinating, compromising, discharging or releasing such security interests, Liens or encumbrances, if any; (e) all other notices to which the Guarantors might otherwise be entitled; and (f) the right to seek through any means to have the obligations of the Guarantors under this Section 6B adjudicated invalid or unenforceable. Notwithstanding anything to the contrary herein, (i) payments from the Guarantors hereunder shall be due two (2) Business Days after written demand by any Financing Party for such payment (unless the Company Obligations are automatically accelerated pursuant to the applicable provisions of the Operative Agreements in which case payments from the Guarantors shall be automatically due) and (ii) any modification of the Operative Agreements which has the effect of increasing the Company Obligations shall not be enforceable against the Guarantors unless the Guarantors execute the document evidencing such modification or otherwise reaffirm their guaranty in writing in connection with such modification.

6B.5 Reinstatement.

The obligations of the Guarantors under this Section 6B shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Company Obligations is rescinded or must be otherwise restored by any holder of any of the Company Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Guarantors agree that the Guarantors will indemnify each Financing Party on demand for all reasonable costs and expenses (including reasonable fees of counsel) incurred by any Financing Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

6B.6 Remedies.

The Guarantors agree that, as between the Guarantors, on the one hand, and each Financing Party, on the other hand, the Company Obligations may be declared to be forthwith due and payable as provided in the applicable provisions of the Operative Agreements (and shall be deemed to have become automatically due and payable in the circumstances provided therein) notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing such Company Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or such Company Obligations being deemed to have become automatically due and payable), such Company Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors in accordance with the applicable provisions of the Operative Agreements.

6B.7 Limitation of Guaranty.

Notwithstanding any provision to the contrary contained herein or in any of the other Operative Agreements (but subject to Section 6B.4(f)), to the extent the obligations of the Guarantors shall be adjudicated to be invalid or unenforceable for any reason (including because of any applicable state or federal law relating to fraudulent conveyances or transfers) then the obligations of the Guarantors hereunder shall be limited to the maximum amount that is permissible under Applicable Law (whether federal or state and including the Bankruptcy Code). This paragraph shall not apply to any Guarantor that is the direct or indirect owner of 100% of the equity interest in the Lessee.

Subject to Section 6B.5, upon the indefeasible satisfaction of the Company Obligations in full, regardless of the source of payment, the obligations of the Guarantors hereunder shall be deemed satisfied, discharged and terminated other than indemnifications set forth herein that expressly survive.


6B.8 **Payment of Amounts to the Agent.**

Each Financing Party hereby instructs the Guarantors, and the Guarantors hereby acknowledge and agree, that until such time as the Lessor Advances are paid in full and the Liens evidenced by the Security Documents have been released, any and all Rent (excluding Excepted Payments which shall be payable to the Lessor or other Person as appropriate) and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable to any Financing Party shall instead be paid directly to the Agent (excluding Excepted Payments which shall be payable to the Lessor or other Person as appropriate) or as the Agent may direct from time to time for allocation and distribution in accordance with the procedures set forth in Section 8.7 hereof.

6B.9 **Joinder of Guarantors.**

Any Subsidiary of the Parent which is required to join this Agreement as a Guarantor pursuant to Section 8.3B(h) and which has not yet done so shall execute and deliver to the Agent (a) a Guarantor Joinder in substantially the form attached hereto as EXHIBIT H pursuant to which it shall join as a Guarantor each of the documents to which the Guarantors are parties; and (b) documents in the forms described in Sections 5.3(t), 5.3(u) and 5.3(y) modified as appropriate to relate to such Subsidiary. The Credit Parties shall deliver such Guarantor Joinder and related documents to the Agent within ten (10) Business Days after the date of (x) the filing of such Subsidiary’s articles of incorporation or other similar formation document if the Subsidiary is a corporation, (y) the filing of its certificate of limited partnership or other similar formation document, if the Subsidiary is a limited partnership or (z) the filing of the applicable formation document, if the Subsidiary is an entity other than a corporation or limited partnership.

6B.10 **Additional Waivers and Provisions.**

(a) The Guarantors understand, acknowledge and agree that if the Secured Parties foreclose judicially or nonjudicially against any real property security for the Obligations and/or the Company Obligations, that foreclosure could impair or destroy any ability that any such Guarantor may have to seek reimbursement, contribution, or indemnification from any applicable Person based on any right such Guarantor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by such Guarantor hereunder, including by reason of Sections 2787 through 2855 of the California Civil Code. The Guarantors further understand and acknowledge that in the absence of this paragraph, such potential impairment or destruction of the Guarantors’ rights, if any, may entitle the Guarantors, or any of them, to assert a defense to its guaranty obligations under this Section 6B based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing this Agreement, each Guarantor freely, irrevocably, and unconditionally: (i) waives and relinquishes that defense and agrees that it will be fully liable under this Agreement even though the Secured Parties may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations and/or the Company Obligations; (ii) agrees that it will not assert that defense in any action or proceeding which the Secured Parties may commence to enforce this Section 6B; (iii) acknowledges and agrees that the rights and defenses waived by such Guarantor in this Section 6B include any right or defense that it may have or be entitled to assert based upon or arising out of any one or more of §§ 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or § 2848 of the California Civil Code; and (iv) acknowledges and agrees that the Secured Parties are relying on this waiver in creating the Obligations and the Company Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Obligations and the Company Obligations.
(b) The Guarantors waive all rights and defenses that any of them may have because any of the Obligations or the Company Obligations is secured by real property. This means, among other things: (i) the Secured Parties may collect from any Guarantor without first foreclosing on any real or personal property collateral pledged by the Lessor or the Lessee; and (ii) if the Secured Parties foreclose on any real property collateral pledged by the Lessor or the Lessee: (A) the amount of the Obligations and the Company Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Secured Parties may collect from any Guarantor even if the Secured Parties, by foreclosing on the real property collateral, have destroyed any right such Guarantor may have to collect from the Lessor or the Lessee. This is an unconditional and irrevocable waiver of any rights and defenses the Guarantors may have because any of the Obligations or the Company Obligations is secured by real property. These rights and defenses include any rights or defenses based upon § 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(c) The Guarantors waive any right or defense any of them may have at law or equity, including California Code of Civil Procedure § 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

6B.11 Representations; Separateness.

Each Guarantor represents, warrants and covenants that, except as permitted under Sections 8.3B and 10.1, (a) it does not have and will not acquire any direct ownership interest in the Property or any portion thereof, and (b) it will not merge or consolidate with the Construction Agent, the Lessee or the Lessor.

SECTION 7.
PAYMENT OF CERTAIN EXPENSES.

7.1 Transaction Expenses.

(a) The Lessor Parties agree on the Initial Closing Date, to pay, or cause to be paid, all Transaction Expenses arising from the Initial Closing Date, including all reasonable fees, expenses and disbursements of the various legal counsels for the Credit Parties, the Lessor and the Agent in connection with the transactions contemplated by the Operative Agreements and incurred in connection with the Initial Closing Date, all fees, Taxes and expenses for the recording, registration and filing of such documents and in any event all such Taxes, fees and other charges in connection with any and all UCC financing statements and fixture filings and all other reasonable fees, expenses and disbursements incurred in connection with the Initial Closing Date; provided, however, the Lessor Parties shall be obligated to pay such amounts described in this Section 7.1(a) only to the extent of the amount of the funds made available by the Lessor Parties as part of the Lessor Advances without regard to whether such amounts are referenced in any Requisition. On the Initial Closing Date after satisfaction of the conditions precedent for such date, the Lessor Parties shall make Lessor Advances sufficient in the aggregate to pay for the Transaction Expenses referenced in this Section 7.1(a). The Lessee shall pay all such amounts if not paid by the Lessor Parties.

(b) Assuming no Default or Event of Default shall have occurred and be continuing, the Lessor Parties agree on the Property Closing Date, the date of each Construction Advance and on the Completion Date to pay, or cause to be paid, all Transaction Expenses including all Fees, all other reasonable fees, expenses and disbursements of the various legal counsels for the Credit Parties, the Lessor and the Agent in connection with the transactions contemplated by the Operative Agreements and billed in connection with the Property Closing Date, date of Construction Advance
or the Completion Date, all amounts described in Section 7.1(a) of this Agreement which have not been previously paid, all fees, expenses and disbursements incurred with respect to the various items referenced in Sections 5.3 and/or 5.4 (including any premiums for title insurance policies and charges for any updates to such policies) and all other fees, expenses and disbursements in connection with the Property Closing Date, date of Construction Advance or Completion Date, including all expenses relating to and all fees, Taxes and expenses for the recording, registration and filing of such documents and in any event all such Taxes, fees and other charges in connection with any and all UCC financing statements and fixture filings; provided, however, the Lessor Parties shall be obligated to pay such amounts described in this Section 7.1(b) only to the extent of the amount of funds made available by the Lessor Parties as part of the Lessor Advances and without regard to whether such amounts are referenced in any Requisition. On the Property Closing Date, on the date of any Construction Advance and on the Completion Date, after satisfaction of the conditions precedent for such date, the Lessor Parties shall make Lessor Advances sufficient in the aggregate to pay for the Transaction Expenses referenced in this Section 7.1(b). The Lessee shall pay all such amounts if not paid by the Lessor Parties.

7.2 Fee Calculation.

All fees payable pursuant to the Operative Agreements shall be calculated on the basis of a year of three hundred sixty (360) days for the actual days elapsed.

7.3 Certain Fees and Expenses.

Subject to Sections 7.1(a) and 7.1(b), the Lessee agrees to pay or cause to be paid (a) all reasonable fees, costs and expenses incurred by the Credit Parties or the Agent, including all reasonable fees, expenses and disbursements of the various legal counsels for the Credit Parties or the Agent, in entering into any future Operative Agreements or any future amendments, modifications, supplements, restatements and/or replacements with respect to any of the Operative Agreements, whether or not such future Operative Agreements or future amendments, modifications, supplements, restatements and/or replacements are ultimately entered into, or giving or withholding of waivers of consents hereto or thereto, which have been requested by the Credit Parties or the Agent, (b) all fees, costs and expenses (including reasonable fees and expenses of counsel) incurred by the Credit Parties, the Agent or the Lessor Parties in connection with any exercise of remedies under any Operative Agreement following the occurrence and continuance of an Event of Default and (c) all reasonable fees, costs and expenses (including fees and expenses of counsel) incurred by the Credit Parties, the Agent or the Lessor Parties in connection with (i) any transfer or conveyance of the Property, whether or not such transfer or conveyance is ultimately accomplished and (ii) the matters described in Section 5A.7; provided further, however, that the Lessee shall only be responsible for the reasonable documented out-of-pocket fees and disbursements of one primary counsel to the Agent (and, if reasonably necessary, one regulatory counsel and one local counsel in each jurisdiction the laws of which govern any of the Operative Agreements or in which the Lessee is organized or owns property or assets).

7.4 Lessor Parties Unused Fee.

Subject to Sections 7.1(a) and 7.1(b), during the Commitment Period, the Lessee agrees to pay or to cause to be paid to the Agent monthly on the last Business Day of each calendar month or such other date as agreed with the Agent for the account of the Lessor Parties an unused fee (the "Lessor Parties Unused Fee"), calculated as the Available Lessor Parties Commitment multiplied by the Applicable Percentage allocated by the Agent ratably among the Lessor Parties.
Notwithstanding the foregoing provisions of this Section 7.4:

(a) No Defaulting Lessor Party shall be entitled to receive any Lessor Parties Unused Fee for any period during which that Lessor Party is a Defaulting Lessor Party (and the Lessee shall not be required to pay or to cause to be paid any such fee that otherwise would have been required to have been paid to that Defaulting Lessor Party).

(b) With respect to any Lessor Parties Unused Fee payable to any Defaulting Lessor Party pursuant to the first paragraph of this Section 7.4 (which is to be withheld from any Defaulting Lessor Party pursuant to the foregoing subsection (a)), (i) the Lessee agrees to pay, or to cause to be paid, to each Non-Defaulting Lessor Party that portion of any such fee otherwise payable to the Defaulting Lessor Party with respect to the Defaulting Lessor Party’s Lessor Advance that have been reallocated to a Non-Defaulting Lessor Party pursuant to Section 5A.1(e)(i)(C), and (ii) the Lessee shall not be required to pay, or cause to be paid, the remaining amount of any such fee.

7.5 Lessor Parties Upfront Fee.

Subject to Section 7.1(a), on the Initial Closing Date, the Lessee shall pay or cause to be paid to the Agent (a) for the account of the Lessor Parties an upfront fee (the “Lessor Parties Upfront Fee”), on the terms and conditions set forth in the Engagement Letter.

7.6 Administrative Agency Fee.

Subject to Sections 7.1(a) and 7.1(b), the Lessee shall pay or cause to be paid to the Agent, for the account of the Agent, an administrative agency fee (the “Administrative Agency Fee”), on the terms and conditions set forth in the Engagement Letter.

7.7 Structuring Fee.

Subject to Section 7.1(a), on the Initial Closing Date, the Lessee shall pay or cause to be paid a structuring fee (the “Structuring Fee”) to the Agent for the benefit of Wells Fargo Securities, LLC (for its individual account) on the terms and conditions set forth in the Engagement Letter.

SECTION 8.
OTHER COVENANTS AND AGREEMENTS.

8.1 Cooperation with the Lessee.

The Lessor Parties and the Agent shall, at the expense of and to the extent reasonably requested by the Lessee (but without assuming additional liabilities on account thereof and only to the extent such is acceptable to the Lessor Parties and the Agent in their reasonable discretion), cooperate with the Lessee in connection with the Lessee satisfying its covenant obligations contained in the Operative Agreements including at any time and from time to time, promptly and duly executing and delivering any and all such further instruments, documents and financing statements (and continuation statements related thereto).
8.2 **Covenants of the Lessor Parties.**

Each Lessor Party hereby agrees (as to itself but not as to any other Person, including any other Lessor Party) that so long as this Agreement is in effect:

(a) It will not create or permit to exist at any time, and it will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, or to cause to be discharged, all Lessor Liens attributable to it on the Property and the other Collateral; provided, however, that it shall not be required to so discharge any such Lessor Lien while the same is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not materially and adversely affect the rights of the Lessee under the Lease and the other Operative Agreements or involve any material danger of impairment of the Liens of the Security Documents or of the sale, forfeiture or loss of, and shall not interfere with the use or disposition of, the Property or title thereto or any interest therein or the payment of Rent;

(b) [Reserved];

(c) The Lessor shall take or refrain from taking such actions and grant or refrain from granting such approvals with respect to the Property and/or with respect to the election and enforcement of remedies regarding any Event of Default, in each case as directed in writing by the Agent in accordance with the Operative Agreements (as determined by the Majority Secured Parties, subject to the provisions of any applicable agreements among the Lessor Parties pursuant to the Operative Agreements) or, in connection with Section 8.5, the Construction Agent or the Lessee; provided, however, that notwithstanding the foregoing provisions of this subparagraph (c), (i) the Lessor shall retain its right as a Lessor Party to vote on each Unanimous Vote Matter or matters for which its consent is required pursuant to Section 8.6, in each case, in its sole discretion and without regard to any direction from any other Financing Party, any Credit Party or any other Person and (ii) the Lessor shall retain its rights in the Excepted Payments and any and all other rights expressly reserved by it under the Operative Agreements; and

(d) Within ten (10) days following receipt by Lessor from Lessee of a request delivered in accordance with Section 12.2, Lessor shall provide to Lessee a Lessor Confirmation Letter; provided, Lessor shall have no obligation to provide any Lessor Confirmation Letter more frequently than once each calendar quarter; provided, further, that if there have been any changes to the factual matters set forth in the Lessor Confirmation Letter or the financial accounting standards referenced therein that bear on the conclusions set forth therein, such letter shall set forth the analysis based on such changed factual matters or financial accounting standards. The parties hereto agree that the Credit Parties and their auditors are the sole beneficiaries of the matters addressed in this Section 8.2(d).

8.3 **Credit Party Covenants, Consent and Acknowledgment.**

The Credit Parties, jointly and severally, covenant and agree that until Payment in Full, the Credit Parties shall comply at all times with the following covenants:

(a) Each Credit Party shall, to the extent reasonably requested by any of the other parties hereto, cooperate with the other parties in accordance with Section 12.11 hereof.

(b) Each Lessor Party hereby instructs each Credit Party, and each Credit Party hereby acknowledges and agrees, that until such time as the Lessor Advances are paid in full and the Liens
evidenced by the Security Documents have been released (i) any and all Rent (excluding Excepted Payments which shall be payable to the Lessor Party or other Person as appropriate) and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable by any Credit Party to any Lessor Party (including pursuant to Section 5.3(c) of the Agency Agreement and Section 17.6(c) of the Lease) shall instead be paid directly to the Agent (excluding Excepted Payments which shall be payable to the Lessor Party or other Person as appropriate) or as the Agent may direct from time to time for allocation and distribution in accordance with the procedures set forth in Section 8.7 hereof, (ii) all rights of the Lessor Parties under the Lease (except in respect of Excepted Payments and as provided in Section 12.4) shall be exercised by the Agent and (iii) each Credit Party shall cause all notices, certificates, financial statements, communications and other information which are delivered, or are required to be delivered, to any Lessor Party, to also be delivered at the same time to the Agent.

(c) No Credit Party shall consent to or permit any amendment, supplement or other modification of the terms or provisions of any Operative Agreement except in accordance with Section 12.4 of this Agreement.

(d) From and after the Rent Commencement Date, the Lessee hereby covenants and agrees to reimburse the Agent for any Appraisal or reappraisal (in form and substance satisfactory to the Agent and from an appraiser selected by the Agent) to be issued respecting the Property as requested by the Agent from time to time (i) at each and every time as such shall be required to satisfy any regulatory requirements imposed on the Agent and/or any Lessor Party and (ii) after the occurrence and continuance of an Event of Default. To the extent any such Appraisal or reappraisal is deemed necessary by the Agent prior to the Rent Commencement Date, such shall be paid for as a Transaction Expense.

(e) Each Credit Party hereby covenants and agrees that, except for amounts payable as Basic Rent, any and all payment obligations owing from time to time under the Operative Agreements by any Person to any Financing Party or any other Person shall (without further action) be deemed to be Supplemental Rent obligations payable by the Lessee and guaranteed by the Guarantors, which is subject to the funding requirements described in this Agreement prior to the Rent Commencement Date. Without limitation, such obligations of the Credit Parties shall include the Transaction Expenses.

(f) At any time the Lessor or the Agent is entitled under the Operative Agreements to possession of the Property or any component thereof, each of the Construction Agent and the Lessee hereby covenants and agrees, at its own cost and expense, to assemble the Equipment and make the same available to the Agent (on behalf of the Lessor) at the Property.

(g) Each of the Construction Agent and the Lessee hereby covenants and agrees that (i) each Indemnified Person will, at all times, be covered to the extent so provided in Article XIV of the Lease, as additional insured or loss payee, as the case may be, under the insurance policies required to be maintained by the Construction Agent or the Lessee pursuant to Section 2.6(e) of the Agency Agreement and Article XIV of the Lease, or pursuant to the insurance policies that the Construction Agent or the Lessee requires any relevant contractor or subcontractor to carry, for any Claim arising out of the acts or omissions of any of the contractors or subcontractors of the Construction Agent or the Lessee and (ii) each insurance policy that is carried by the Construction Agent or the Lessee pursuant to the Agency Agreement or the Lease (A) shall at all times contain a waiver of subrogation clause pursuant to which the relevant insurers waive any and all rights to
make any claim against any such additional insured or loss payee with respect to any payments made, or any obligation of such insureds under, any such policy and (B) shall at all times cover each such additional insured or loss payee for any and all Claims relating to the Property or the transactions contemplated by the Operative Agreements. The Construction Agent and the Lessee will be liable to each such additional insured or loss payee, on a full recourse basis, for any breach of the foregoing covenants and agreements.

(h) The Lessee hereby covenants and agrees that as of the Completion, the Property shall be the Permitted Facility.

(i) The Lessee hereby covenants and agrees that it shall give prompt notice to the Agent if the location of the Lessee for purposes of the UCC shall cease to be in the State of Ohio, if the Lessee’s principal place of business shall cease to be located at 300 Phillipi Road, Columbus, Franklin County, OH 43228-5311 or if the Lessee’s chief executive office or office where the records concerning the account or contract rights relating to the Property are kept shall cease to be located at 300 Phillipi Road, Columbus, Franklin County, OH 43228-5311 or if it shall change its name. The Lessee shall at all times maintain a mailing address at: AVDC, Inc., c/o Big Lots, Inc., 300 Phillipi Road, Columbus, OH 43228-5311.

(j) The Lessee hereby covenants and agrees that the rights of the Lessee under this Agreement and under the Lease shall not impair or in any way diminish the obligations of the Construction Agent and/or the rights of the Lessor under the Agency Agreement.

(k) Each Credit Party shall promptly notify the Agent, or cause the Agent to be promptly notified, upon a Responsible Officer of such Credit Party gaining knowledge of the occurrence of any Default or Event of Default (whether material or not) which is continuing at such time. In any event, such notice shall be provided to the Agent within ten (10) days of when such Credit Party gains such knowledge.

(l) The Lessee shall cause all financing statements and continuation statements and any other necessary documents covering the right, title and interest of the Agent as agent for the Secured Parties with regard to the Collateral to be promptly produced, to be submitted to the Agent for review and after confirmation thereof by the Agent, to be filed for recordation in such manner and in such places as may be required by law fully to preserve and protect the right, title and interest of the Agent as agent for the Secured Parties hereunder to all property comprising the Collateral. The Lessee shall deliver to the Agent file-stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. The Lessor shall cooperate fully with the Lessee in connection with the obligations of the Lessee set forth above and will execute or cause the execution (at the expense of the Lessee, which the Lessee agrees to pay) of any and all documents reasonably required to fulfill the intent of this Section 8.3(l).

(m) Each Credit Party acknowledges and agrees that such Credit Party shall at no time be an EEA Financial Institution.

(n) The Lessee covenants and agrees to deliver to the Agent, on or before the Commencement Date, the Lease and a memorandum thereof (or short form lease) (such memorandum or short form lease to be in the form attached to the Lease as Exhibit B or in such other form as is acceptable to the Agent, with modifications as necessary to conform to applicable state law, and in form suitable for recording).
In addition to, and not in limitation of, the requirements of Article XIV of the Lease, Lessee will maintain insurance against loss or damage which to the Lessee’s knowledge is similar to the kinds and in the amounts customarily maintained by corporations engaged in the same or similar businesses and which are similarly situated to the Lessee, the failure of which would be reasonably likely to have a Material Adverse Effect.

8.3A Additional Credit Party Affirmative Covenants.

The Credit Parties, jointly and severally, covenant and agree that until Payment in Full, the Credit Parties shall comply at all times with the following affirmative covenants:

(a) Each Credit Party shall maintain its legal existence as a corporation, limited partnership or limited liability company and its license or qualification and good standing in each jurisdiction in which its ownership or lease of property or the nature of its business makes such license or qualification necessary, except to the extent that the failure to be so qualified or licensed would not be reasonably likely to cause a Material Adverse Effect and as otherwise expressly permitted in Section 8.3B(e) or Section 10.1.

(b) Each Credit Party shall, and shall cause each of its Subsidiaries to, duly pay and discharge all liabilities to which it is subject or which are asserted against it, promptly as and when the same shall become due and payable, including all Taxes, assessments and governmental charges upon it or any of its properties, assets, income or profits, prior to the date on which penalties attach thereto, except to the extent that such liabilities, including Taxes, assessments or charges, are being contested in good faith and by appropriate and lawful proceedings diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made, but only to the extent that failure to discharge any such liabilities would not result in a Material Adverse Effect, provided that the Credit Parties and their Subsidiaries will pay all such liabilities forthwith upon the commencement of proceedings to foreclose any Lien which may have attached as security therefor.

(c) Each Credit Party shall, and shall cause each Excluded US Active Subsidiary to, insure its properties and assets against loss or damage by fire and such other insurable hazards as such assets are commonly insured (including fire, extended coverage, property damage, workers’ compensation, public liability and business interruption insurance) and against other risks (including errors and omissions) in such amounts as similar properties and assets are insured by prudent companies in similar circumstances carrying on similar businesses, and with reputable and financially sound insurers, including self-insurance to the extent customary, all as reasonably determined by the Agent.

At the request of the Agent, the Credit Parties shall deliver to the Agent (i) on the Initial Closing Date and annually thereafter an original certificate of insurance signed by the Credit Parties’ independent insurance broker describing and certifying as to the existence of the insurance required to be maintained by this Agreement and the other Operative Agreements, and (ii) from time to time a summary schedule indicating all insurance then in force with respect to each of the Credit Parties.

(d) Each Credit Party shall, and shall cause each Excluded US Active Subsidiary to, maintain in good repair, working order and condition (ordinary wear and tear excepted) in accordance with the general practice of other businesses of similar character and size, all of those material properties useful or necessary to its business, and from time to time, such Credit Party will make or cause to be made all appropriate repairs, renewals or replacements thereof to the extent that a failure
to make such repairs, renewals or replacements would be reasonably expected to cause a Material Adverse Effect.

(e) Each Credit Party shall, and shall cause each Excluded US Active Subsidiary to, maintain in full force and effect all patents, trademarks, service marks, trade names, copyrights, licenses, franchises, permits and other intellectual property and authorizations necessary for the ownership and operation of its properties and business if the failure so to maintain the same would constitute a Material Adverse Effect.

(f) Each Credit Party shall permit any of the officers or authorized employees or representatives of any Financing Party to visit, no more than twice per year (unless an Event of Default has occurred and is continuing), during normal business hours and inspect any of its properties and to examine and make excerpts from its books and records and discuss its business affairs, finances and accounts with its officers, all in such detail and at such times and as often as any Lessor Party may reasonably request, provided that each Lessor Party shall provide the Agent with reasonable notice prior to any visit or inspection; provided, further, that such visit or inspection shall be conducted during normal business hours and shall not unreasonably interfere with the business or operations of the applicable Credit Party and all information obtained or observed during such visit or inspection shall be subject to the confidentiality obligations in Section 12.13. In the event any Lessor Party desires to visit and inspect any Credit Party, such Lessor Party shall make a reasonable effort to conduct such visit and inspection contemporaneously with any visit and inspection to be performed by the Agent.

(g) The Parent shall, and shall cause each Subsidiary of the Parent to, maintain and keep proper books of record and account which enable the Parent and its Subsidiaries to issue financial statements in accordance with GAAP and as otherwise required by Applicable Laws of any Official Body having jurisdiction over the Parent or any Subsidiary of the Parent, and in which full, true and correct entries shall be made in all material respects of all its dealings and business and financial affairs.

(h) Each Revolving Credit Agreement US Borrower shall, and shall cause each other member of the ERISA Group to, comply with ERISA, the Code and other Applicable Laws applicable to Plans and Benefit Arrangements except where such failure, alone or in conjunction with any other failure, would not result in a Material Adverse Effect. Without limiting the generality of the foregoing, each Revolving Credit Agreement US Borrower shall cause all of its Plans and all Plans maintained by any member of the ERISA Group to be funded in accordance with the minimum funding standards of ERISA and shall make, and cause each other member of the ERISA Group to make, in a timely manner, all contributions due to Plans, Benefit Arrangements, Multiemployer Plans and Multiple Employer Plans.

(i) Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with all Applicable Laws, including all Environmental Laws, in all respects, provided that it shall not be deemed to be a violation of this Section 8.3A(i) if any failure to comply with any Law would not result in fines, penalties, remediation costs, other similar liabilities or injunctive relief which in the aggregate would reasonably be expected to constitute a Material Adverse Effect.

(j) The Credit Parties will use the proceeds of the Lessor Advances for the purposes stated in Section 6.1(j). The Credit Parties shall not use the proceeds of the Lessor Advances for any purposes which contravenes any Applicable Law or any provision hereof.
(k) Each Credit Party shall cause any intercompany Indebtedness, loans or advances owed by any Credit Party to any other Credit Party to be subordinated pursuant to the terms of the Intercompany Subordination Agreement.

(l) The Credit Parties and their respective Affiliates and agents shall not knowingly (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order No. 13224, the USA Patriot Act or any other Anti-Terrorism Law. The Agent shall deliver to the Lessor Parties any certification or other evidence requested from time to time by any such entity in its sole reasonable discretion, confirming Credit Parties’ compliance with this Section 8.3A(l).

(m) BLS shall update the schedules listed immediately after this paragraph on each date on which a quarterly Compliance Certificate is delivered. Provided that BLS delivers such updates with each Compliance Certificate and timely delivers such Compliance Certificates, (1) any inaccuracy in such schedules between due dates for Compliance Certificates shall not be a default under the Operative Agreements, and (2) such schedules shall be deemed to be amended upon delivery thereof.

Schedule II Capitalization
Schedule III Subsidiaries
Schedule V Owned Real Property

BLS shall update the schedules listed immediately after this paragraph as soon as reasonably practicable after receipt thereof from the insurer. Provided that BLS delivers such updates as stated, (1) any inaccuracy in such schedules between due dates for Compliance Certificates shall not be a default under the Operative Agreements, and (2) such schedules shall be deemed to be amended upon delivery thereof.

Schedule VII Insurance Policies

Should any of the information or disclosures provided on any of the other Schedules attached hereto become outdated or incorrect in any material respect, BLS shall promptly provide the Agent in writing with such revisions or updates to such Schedule as may be necessary or appropriate to update or correct same; provided, however, that no Schedule shall be deemed to have been amended, modified or superseded by any such correction or update, nor shall any breach of warranty or representation resulting from the inaccuracy or incompleteness of any such Schedule be deemed to have been cured thereby, unless and until the Majority Secured Parties, in their sole and absolute discretion, shall have accepted in writing such revisions or updates to such Schedule.

8.3B Additional Credit Party Negative Covenants.

The Credit Parties, jointly and severally, covenant and agree that until Payment in Full, the Credit Parties shall comply with the following negative covenants:

52
(a) Each of the Credit Parties shall not at any time create, incur, assume or suffer to exist any Indebtedness, except:

(i) Indebtedness under the Revolving Credit Agreement Loan Documents;

(ii) Existing Indebtedness as set forth on Schedule X (including any extensions or renewals thereof, provided there is no increase in the amount thereof, or an increase in the effective interest rate thereof, or an earlier maturity date for any payment payable thereunder, or the provision of any security or guarantees therefor, or other significant change in the terms thereof unless otherwise specified on Schedule X);

(iii) Indebtedness in respect of Capital Leases and Synthetic Lease Obligations;

(iv) Indebtedness secured by Purchase Money Security Interests or by security interests in proceeds granted in connection with securities lending transactions or reverse repurchase agreements involving United States Treasury bonds, provided that the aggregate amount as of any date of all such Indebtedness permitted by this Section 8.3B(a)(iv) shall not exceed Ten Million and 00/100 Dollars ($10,000,000.00);

(v) Indebtedness of a Credit Party to another Credit Party which is subordinated in accordance with the provisions of Section 8.3A(k);

(vi) Any Bank-Provided Hedge or other Qualified Hedge Agreement; and

(vii) Unsecured Indebtedness; provided, that

(A) such Indebtedness is pari passu in right of payment with the Company Obligations,

(B) such Indebtedness complies with Section 8.3B(q), and

(C) immediately prior to and after giving effect to such Indebtedness, no Event of Default or Default shall have occurred.

(b) Each of the Credit Parties shall not at any time create, incur, assume or suffer to exist any Lien (i) on any of its property or assets (other than Collateral), tangible or intangible, now owned or hereafter acquired, or agree or become liable to do so, except Revolving Credit Agreement Permitted Liens and (ii) on any Collateral, now owned or hereafter acquired, or agree or become liable to do so, except Permitted Liens.

(c) Each of the Credit Parties shall not at any time, directly or indirectly, become or be liable in respect of any Guaranty, or assume, guarantee, become surety for, endorse or otherwise agree, become or remain directly or contingently liable upon or with respect to any obligation or liability of any other Person, except for:

(i) existing Guaranties as set forth on Schedule XI;

(ii) Guaranties of Indebtedness of the Credit Parties permitted in Section 8.3B(a);

53
(iii) other Guaranties to the extent the Indebtedness represented by such Guaranties is permitted in Section 8.3B(a); and
(iv) Guaranties by any Credit Party of the obligations, to the extent not prohibited by the Revolving Credit Agreement or by the Operative Agreements, of any other Credit Party.

(d) Each of the Credit Parties shall not at any time make or suffer to remain outstanding any loan or advance to, or purchase, acquire or own any stock, bonds, notes or securities of, or any partnership interest (whether general or limited) or limited liability company interest in, or any other investment or interest in, or make any capital contribution to, any other Person, or agree, become or remain liable to do any of the foregoing, except:

(i) trade credit extended on usual and customary terms in the ordinary course of business;
(ii) advances to employees to meet expenses incurred by such employees in the ordinary course of business;
(iii) Permitted Investments;
(iv) investments in a Credit Party;
(v) investments in an amount which should not exceed One Hundred Twenty Five Million and 00/100 Dollars ($125,000,000.00) in the aggregate;
(vi) investments in notes and other securities received in settlement of overdue Indebtedness and accounts payable owed to a Credit Party in the ordinary course of business and for amounts which, individually and in the aggregate, are not material to the Credit Parties;
(vii) investments in the nature of seller financing or other consideration received in any disposition (including any sale, lease, sale-leaseback, assignment or transfer) of assets or property by any Credit Party, provided that the aggregate value of all such investments at any time (based on the value at the time of acquisition thereof but reduced by payments or other realization thereon) shall not exceed Ten Million and 00/100 Dollars ($10,000,000.00);
(viii) investments in Bank-Provided Hedges or Qualified Hedge Agreements;
(ix) Permitted Acquisitions; and
(x) investments in the Big Lots Supplemental Savings Plan and such other similar non-qualified plans as the Credit Parties may create or enter into from time to time.

(e) Each of the Credit Parties shall not dissolve, liquidate or wind-up its affairs, or become a party to any merger or consolidation, or acquire by purchase, lease or otherwise all or substantially all of the assets or capital stock of any other Person, provided, that:
(i) any Credit Party other than a Revolving Credit Agreement US Borrower may consolidate or merge into another Credit Party which is directly or indirectly wholly-owned by one or more of the other Credit Parties; provided, that the Lessee may not so consolidate or merge into another Credit Party unless the requirements of Section 10.1 (regarding assignment and other transfers (directly or indirectly pursuant to a merger or other transaction) by the Lessee or the Construction Agent) are satisfied to the satisfaction of the Agent, in its reasonable discretion, as if such Section 10.1 were reconstituted to apply to consolidation and merger of the Lessee and the Construction Agent, in a manner as the Agent shall determine, in its reasonable discretion;

(ii) any Credit Party other than a Revolving Credit Agreement US Borrower may be dissolved, provided, that the assets of such Credit Party are distributed to another Credit Party; provided, that the Lessee may not so dissolve unless the Lessee has previously assigned or otherwise transferred (directly or indirectly pursuant to a merger or other transaction) its entire right, title and interest in the Operative Agreements and with respect to the Property in accordance with all of the requirements of Section 10.1

(iii) any Credit Party may acquire (A) all or substantially all of the ownership interests of another Person or (B) all or substantially all of the assets of another Person or of a business or division of another Person (each a “Permitted Acquisition”), provided that, unless such acquisition is of inventory in the ordinary course of business (which shall be a Permitted Acquisition but shall not be subject to the requirements below), each of the following requirements is met:

(A) if a Credit Party is acquiring the ownership interests in such Person, such Person shall, unless not required by Section 8.3B(h), execute a Guarantor Joinder and such other documents required by Section 6B.9 and join this Agreement as a Guarantor pursuant to Section 6B.9 on or before the date of such Permitted Acquisition;

(B) the board of directors or other equivalent governing body of such Person shall have approved such Permitted Acquisition and if the Credit Parties shall use any portion of the loans under the Revolving Credit Agreement to fund such Permitted Acquisition, the Credit Parties also shall have delivered to the Financing Parties written evidence of the approval of the board of directors (or equivalent body) of such Person for such Permitted Acquisition;

(C) the business acquired, or the business conducted by the Person whose ownership interests are being acquired, as applicable, shall be complementary to or substantially the same as one or more line or lines of business conducted by the Credit Parties and shall comply with Section 8.3B(j);

(D) no Default or Event of Default shall exist immediately prior to and after giving effect to such Permitted Acquisition; and

(E) if the Consideration in connection with any such Permitted Acquisition exceeds Twenty-Five Million and 00/100 Dollars ($25,000,000.00), the Credit Parties shall demonstrate that they shall be in compliance with the covenant contained in Section 8.3B(o) after giving effect to such Permitted Acquisition (including in such computation Indebtedness or other liabilities assumed or incurred
in connection with such Permitted Acquisition) by delivering at least ten (10) Business Days prior to such Permitted Acquisition a certificate in the form of EXHIBIT I evidencing such compliance.

(f) None of the Credit Parties shall sell, convey, assign, lease, abandon or otherwise transfer or dispose of, voluntarily or involuntarily, any of its properties or assets, tangible or intangible, except (notwithstanding the following exceptions, with respect to the Lessee, none of the following exceptions shall apply or otherwise permit any sale, conveyance, assignment, lease, abandonment or other transfer or disposal of any of Lessee’s right, title or interest in any of the Operative Agreements or with respect to the Property, unless the Lessee has previously assigned or otherwise transferred (directly or indirectly pursuant to a merger or other transaction) its entire right, title, and interest in the Operative Agreements and with respect to the Property in accordance with all of the requirements of Section 10.1):

(i) transactions involving the sale of inventory in the ordinary course of business;

(ii) any sale, transfer or lease of properties or assets in the ordinary course of business which are no longer necessary or required in the conduct of such Credit Party’s business;

(iii) any sale, transfer or lease of properties or assets by any Credit Party to another Credit Party;

(iv) any sale, transfer or lease of properties or assets in the ordinary course of business which are replaced by substitute properties or assets acquired or leased;

(v) any sale or transfer by the Parent of the capital stock or other equity interests of the Parent; or

(vi) any sale, transfer or lease of properties or assets, other than those specifically excepted pursuant to clauses (i) through (v) above, provided that:

(A) there shall not exist any Event of Default or Default immediately prior to and after giving effect to such sale; and

(B) the Credit Parties shall be in compliance with all of the covenants herein applicable to any Credit Party and with respect to any sale the proceeds of which exceed Ten Million and 00/100 Dollars ($10,000,000.00), BLS shall deliver a Compliance Certificate to the Agent at least ten (10) Business Days before such sale confirming the same.

(g) None of the Credit Parties shall enter into or carry out any transaction with any Affiliates of any Credit Party (including purchasing property or services from or selling property or services to any Affiliate of any Credit Party) unless such transaction (i) is not otherwise prohibited by the Revolving Credit Agreement or the Operative Agreements, (ii) is entered into in the ordinary course of business upon fair and reasonable arm’s-length terms and conditions which, upon request, are fully disclosed to the Agent and (iii) is in accordance with all Applicable Law.
(h) Each of the Credit Parties shall not, and shall not permit any of its Subsidiaries to, own or create directly or indirectly any Subsidiaries other than (i) any Subsidiary which has joined this Agreement as a Guarantor on the Initial Closing Date and has otherwise joined the Revolving Credit Agreement in accordance with the terms thereof; (ii) any Excluded US Active Subsidiary; (iii) any Excluded US Inactive Subsidiary; (iv) any Subsidiary formed or acquired after the Initial Closing Date which joins this Agreement as a Guarantor pursuant to Section 6B.9; or (v) the Lessee; provided, however, no Subsidiary shall be required to join this Agreement as a Guarantor pursuant to Section 6B.9 if the execution of the Guarantor Joinder would cause material adverse Tax consequences to any Credit Party as demonstrated to the reasonable satisfaction of the Agent. As of the Initial Closing Date hereof, the only Guarantors are BLS, the Parent and each Subsidiary of Parent which is designated as a “Guarantor” on the signature pages hereof.

(i) Except for investments permitted by Section 8.3B(d), each of the Credit Parties shall not become or agree to (i) become a general or limited partner in any general or limited partnership, except that the Credit Parties may be general or limited partners in other Credit Parties, (ii) become a member or manager of, or hold a limited liability company interest in, a limited liability company, except that the Credit Parties may be members or managers of, or hold limited liability company interests in, other Credit Parties, or (iii) become a joint venturer or hold a joint venture interest in any joint venture. The Credit Parties shall not permit any Excluded US Inactive Subsidiary to acquire or hold any material assets, incur or suffer to exist any material liabilities or to conduct any material business.

(j) None of the Credit Parties shall engage in any business other than the distribution of and the wholesale and retail sale of general merchandise, substantially as conducted and operated by such Credit Party during the present fiscal year, and such Credit Party shall not permit any material change in such business. This Section 8.3B(j) shall not prohibit the Parent, BLS or any Subsidiary thereof from engaging in a business which provides services common to the retail or wholesale trade in general merchandise to the Parent, BLS or any Subsidiary thereof or to any Person engaged in the sale of general retail merchandise.

(k) Each of the Credit Parties and each other member of the ERISA Group shall not:

(i) fail to satisfy the minimum funding standards of ERISA and the Code with respect to any Plan;

(ii) request a minimum funding standard waiver from the Internal Revenue Service with respect to any Plan;

(iii) engage in a Prohibited Transaction with respect to any Plan, Benefit Arrangement, Multiemployer Plan or Multiple Employer Plan which, alone or in conjunction with any other circumstances or set of circumstances resulting in liability under ERISA or the Code, would constitute a Material Adverse Effect;

(iv) permit any Plan to be in “at risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), determined as of the most recent actuarial valuation report for each Plan using the actuarial assumptions required under Section 412 of the Code for purposes of funding;

(v) fail to make when due any contribution to any Multiemployer Plan or Multiple Employer Plan that any Revolving Credit Agreement US Borrower or any other
member of the ERISA Group may be required to make under any agreement relating to such Multiemployer Plan or Multiple Employer Plan, or any Law pertaining thereto;

(vi) withdraw (completely or partially) from any Multiemployer Plan or withdraw (or be deemed under Section 4062(e) of ERISA to withdraw) from any Multiple Employer Plan, where any such withdrawal would result in a Material Adverse Effect;

(vii) terminate, or institute proceedings to terminate, any Plan, where such termination would result in a Material Adverse Effect;

(viii) permit the imposition of a Lien under Section 303(k)(4) of ERISA; or

(ix) fail to give any and all notices and make all disclosures and governmental filings required under ERISA or the Code, where such failure would result in a Material Adverse Effect.

(l) The Parent shall not, and shall not permit any Subsidiary of the Parent to, change its fiscal year from the fifty-two (52)/fifty-three (53) week fiscal year beginning on the Sunday closest to February 1 of each calendar year and ending on the Saturday closest to January 31 of the following calendar year.

(m) Each of the Credit Parties (other than the Parent) shall not, and shall not permit any of its Subsidiaries to, issue any additional shares of its capital stock or other equity interests or any options, warrants or other rights in respect thereof other than to another Credit Party or Subsidiary of a Credit Party.

(n) Each of the Credit Parties shall not amend in any material respect its certificate or articles of incorporation, by-laws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other organizational documents without providing at least five (5) calendar days’ prior written notice to the Revolving Credit Agreement Administrative Agent, the Revolving Credit Agreement Banks and the Financing Parties and, in the event such change would be adverse to (i) the Revolving Credit Agreement Banks as determined by the Revolving Credit Agreement Administrative Agent in its sole reasonable discretion, obtaining the prior written consent of the Revolving Credit Agreement Required Banks or (ii) the Financing Parties as determined by the Agent in its sole reasonable discretion, obtaining the prior written consent of the Majority Secured Parties.

(o) The Credit Parties shall not at any time permit the Leverage Ratio, calculated as of the end of each fiscal quarter for the period equal to the four (4) fiscal quarters then ended, to exceed the ratio set forth below for the periods specified below:

<table>
<thead>
<tr>
<th>Four (4) Consecutive Fiscal Quarters Ending (Nearest) of Each Year that this Agreement is in Effect</th>
<th>Maximum Total Leverage Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 30</td>
<td>3.00 to 1.00</td>
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<tr>
<td>July 31</td>
<td>3.25 to 1.00</td>
</tr>
<tr>
<td>October 31</td>
<td>3.50 to 1.00</td>
</tr>
<tr>
<td>January 31</td>
<td>3.00 to 1.00</td>
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</tbody>
</table>
(p) The Credit Parties shall not permit the Fixed Charge Coverage Ratio, calculated as of the end of each fiscal quarter for the period equal to the four (4) fiscal quarters then ended, to be less than 1.50 to 1.00.

(q) No Credit Party shall directly or indirectly enter into or assume or become bound by, or permit any Subsidiary to enter into or assume or become bound by, any agreement (other than the Revolving Credit Agreement, the other Revolving Credit Agreement Loan Documents, this Agreement, the other Operative Agreements and any operative documents in connection with any other Synthetic Lease Obligations (collectively, the Operative Agreements and any other such operative documents may be referred to as the “Synthetic Lease Documents”), or any provision of any certificate of incorporation, bylaws, partnership agreement, operating agreement or other organizational formation or governing document prohibiting the creation or assumption of any Lien or encumbrance upon any such Credit Party’s or Subsidiary’s properties, whether now owned or hereafter created or acquired, or otherwise prohibiting or restricting any transaction contemplated hereby; provided, that the foregoing shall not apply to (i) restrictions and conditions imposed by any Law or by any Revolving Credit Agreement Loan Document and the Synthetic Lease Documents, (ii) restrictions or conditions imposed by any agreement relating to secured Indebtedness or other obligations permitted by both this Agreement and the Synthetic Lease Documents but, (y) solely with respect to the specific assets that secure the Synthetic Lease Obligations, any restriction or condition imposed by the Synthetic Lease Documents and, (z) with respect to any other assets, only to the extent such restriction or condition is limited to the specific assets subject to a Revolving Credit Agreement Permitted Lien, (iii) customary provisions in leases or other agreements restricting assignment thereof, or (iv) restrictions or conditions imposed by any agreement relating to the issuance by any Credit Party of Indebtedness represented by publicly or privately placed notes as permitted by Section 8.3B(a)(vii).

8.3C Additional Credit Party Reporting Requirements.

The Credit Parties, jointly and severally, covenant and agree that until Payment in Full, the Credit Parties will furnish or cause to be furnished to the Agent:

(a) As soon as available and in any event within forty-five (45) calendar days after the end of each of the first three (3) fiscal quarters in each fiscal year of the Parent, unaudited financial statements of the Parent, consisting of: (i) a consolidated balance sheet as of the end of such fiscal quarter and as of the end of the prior fiscal year; (ii) a consolidated statement of operations for such fiscal quarter and the year-to-date period of the then-current fiscal year, and for the corresponding fiscal quarter and year-to-date period of the prior fiscal year; (iii) a consolidated statement of shareholders’ equity as of the end of such fiscal quarter, as of the end of the corresponding fiscal quarter of the prior fiscal year, and as of the end of the prior fiscal year; and (iv) a consolidated statement of cash flows for the year-to-date period of the then-current fiscal year and the corresponding year-to-date period of the prior fiscal year. Each of the aforementioned financial statements shall be in reasonable detail and certified (subject to normal year-end audit adjustments) by an Authorized Officer of the Parent as having been prepared in accordance with GAAP. The Credit Parties will be deemed to have complied with the delivery requirements of this Section 8.3C(a) if the Credit Parties have complied with the portion of Section 8.3C(h)(iv) that relates to Form 10-Q reporting and the financial statements contained in such Form 10-Q reports meet the requirements described in this Section 8.3C(a).
(b) As soon as available and in any event within ninety (90) days after the end of each fiscal year of the Parent, financial statements of the Parent consisting of a consolidated balance sheet as of the end of such fiscal year, and related consolidated statements of operations, shareholders' equity and cash flows for the fiscal year then ended, all in reasonable detail and setting forth in comparative form the financial statements as of the end of and for the preceding fiscal year, and audited by independent certified public accountants of nationally recognized standing. The Credit Parties shall deliver with such financial statements a certifying letter of such accountants to the Agent for the benefit of each Financing Party which shall: (i) be to the effect that such consolidated financial statements fairly present in all material respects the financial condition and results of operations of the Parent and its Subsidiaries on a consolidated basis in accordance with GAAP, (ii) not contain a “going concern” or like qualification or exception, (iii) not contain a qualification or exception as to the scope of such audit (other than as is customary), and (iv) not indicate the occurrence or existence of any event, condition or contingency which would materially impair the prospect of payment or performance of any covenant, agreement or duty of any Credit Party under any of the Revolving Credit Loan Documents or any Operative Agreements.

The Credit Parties will be deemed to have complied with the delivery requirements of this Section 8.3C(b) if (i) the Credit Parties have complied with the portion of Section 8.3C(h)(iv) that relates to Form 10-K reporting and the financial statements contained in such Form 10-K meet the requirements described in this Section 8.3C(b) and (ii) the Parent delivers to the Agent the certifying letter of accountants as described above.

(c) Concurrently with the financial statements of the Parent furnished to the Agent for the benefit of the Financing Parties pursuant to Sections 8.3C(a) and 8.3C(b), a certificate (each a “Compliance Certificate”) of the Revolving Credit Agreement US Borrowers signed by an Authorized Officer of each Revolving Credit Agreement US Borrower, in the form of EXHIBIT J, to the effect that, except as described pursuant to Section 8.3C(d), (i) the representations and warranties of the Credit Parties contained in Section 6.1 and in the other Operative Agreements are true in all material respects on and as of the date of such certificate with the same effect as though such representations and warranties had been made on and as of such date (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date) and the Credit Parties have performed and complied with all covenants and conditions of the Operative Agreements, (ii) no Event of Default or Default exists and is continuing on the date of such certificate and (iii) containing calculations in sufficient detail to demonstrate compliance as of the date of such financial statements with all financial covenants contained in Sections 8.3B(o) and 8.3B(p).

(d) Promptly after any officer of any Credit Party has learned of the occurrence of a Event of Default or Default, a certificate signed by an Authorized Officer of such Credit Party setting forth the details of such Event of Default or Default and the action which such Credit Party proposes to take with respect thereto.

(e) Promptly after the commencement thereof, notice of all actions, suits, proceedings or investigations before or by any Official Body or any other Person against any Credit Party or Subsidiary of any Credit Party, which involve a claim or series of claims, or which the Credit Party or Subsidiary reasonably determines would be, in excess of Twenty-Five Million and 00/100 Dollars ($25,000,000.00) or which if adversely determined would constitute a Material Adverse Effect.
(f) Written notice to the Agent:

(i) at least ten (10) Business Days prior thereto, with respect to any proposed sale or transfer of assets pursuant to Section 8.3B(f)(vi); and

(ii) within the time limits set forth in Section 8.3B(n), any material amendment to the organizational documents of any Credit Party.

(g) Within two (2) Business Days after S&P’s or Moody’s announces a change in the Debt Rating, notice of such change. BLS will deliver together with such notice a copy of any written notification which any Credit Party received from the applicable rating agency regarding such change of Debt Rating.

(h) Promptly upon their becoming available to any Credit Party:

(i) any forecasts or projections of the Parent, to be supplied not later than thirty (30) days prior to commencement of the fiscal year to which any of the foregoing may be applicable,

(ii) any reports including management letters submitted to the Parent by independent accountants in connection with any annual, interim or special audit,

(iii) any reports or notices generally distributed by the Parent to its shareholders on a date no later than the date supplied to such shareholders,

(iv) periodic or current reports, including Forms 10-K, 10-Q and 8-K, proxy statements, registration statements and prospectuses (but excluding statements regarding beneficial ownership on Forms 3, 4 and 5), filed by the Parent with the SEC,

(v) a copy of any order in any proceeding to which the Parent or any of its Subsidiaries is a party issued by any Official Body which would reasonably be expected to result in a Material Adverse Effect, and

(vi) such other reports and information as any of the Financing Parties may from time to time reasonably request. BLS shall also notify the Financing Parties promptly of the enactment or adoption of any Law which would reasonably be expected to result in a Material Adverse Effect.

Information required to be delivered pursuant to sub-clause (iv) above shall be deemed to have been delivered on the date on which the Credit Parties provide notice to the Agent that such information has been posted on the Internet at www.biglots.com, www.sec.gov or another website identified in such notice and accessible by the Agent without charge; provided, that (i) such notice may be included in a certificate delivered pursuant to Section 8.3C(c) and (ii) BLS shall deliver paper copies of the information referred to in sub-clause (iv) above to the Agent if it so requests.

In the event that the Parent shall for any reason cease to be subject to the reporting requirements of the Exchange Act, it shall nonetheless furnish to the Agent reports containing substantially the same information at substantially the same times as would otherwise be required by the foregoing provisions of sub-clause (iv) above.
(i) Promptly upon becoming aware of the occurrence thereof, notice (including the nature of the event and, when known, any action taken or threatened by the Internal Revenue Service or the PBGC with respect thereto) of:

(ii) any Reportable Event with respect to any Revolving Credit Agreement US Borrower or any other member of the ERISA Group (regardless of whether the obligation to report said Reportable Event to the PBGC has been waived),

(ii) any Prohibited Transaction which could subject any Revolving Credit Agreement US Borrower or any other member of the ERISA Group to a material civil penalty assessed pursuant to Section 502(i) of ERISA or a material Tax imposed by Section 4975 of the Code in connection with any Plan, any Benefit Arrangement or any trust created thereunder,

(iii) any assertion of material withdrawal liability with respect to any Multiemployer Plan or Multiple Employer Plan,

(iv) any partial or complete withdrawal from a Multiemployer Plan or Multiple Employer Plan by any Revolving Credit Agreement US Borrower or any other member of the ERISA Group under Title IV of ERISA (or assertion thereof), where such withdrawal is likely to result in material withdrawal liability,

(v) any cessation of operations (by any Revolving Credit Agreement US Borrower or any other member of the ERISA Group) at a facility in the circumstances described in Section 4062(e) of ERISA,

(vi) any withdrawal by any Revolving Credit Agreement US Borrower or any other member of the ERISA Group from a Multiple Employer Plan,

(vii) a failure by any Revolving Credit Agreement US Borrower or any other member of the ERISA Group to make a payment to a Plan required to avoid imposition of a Lien under Section 303(k)(4) of ERISA,

(viii) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code, or

(ix) any change in the actuarial assumptions or funding methods used for any Plan, where the effect of such change is to materially reduce the Plan’s funding target attainment percentage or materially increase the obligation to make periodic contributions.

Promptly after receipt thereof, copies of (a) all notices received by any Revolving Credit Agreement US Borrower or any other member of the ERISA Group of the PBGC’s intent to terminate any Plan administered or maintained by any Revolving Credit Agreement US Borrower or any member of the ERISA Group, or to have a trustee appointed to administer any such Plan; and (b) at the request of the Agent or any other Financing Party each annual report (IRS Form 5500 series) and all accompanying schedules, the most recent actuarial reports, the most recent financial information concerning the financial status of each Plan administered or maintained by any Revolving Credit Agreement US Borrower or any other member of the ERISA Group, and schedules showing the amounts contributed to each such Plan by or on behalf of any Revolving Credit Agreement US Borrower or any other member of the ERISA Group in which any of their personnel
participate or from which such personnel may derive a benefit, and each Schedule B (Actuarial Information) to the annual report filed by any Revolving Credit Agreement US Borrower or any other member of the ERISA Group with the Internal Revenue Service with respect to each such Plan.

(k) Promptly upon the filing thereof, copies of any Form 500, or any successor or equivalent form to Form 500, filed with the PBGC in connection with the standard termination of any Plan.

8.4 **Sharing of Certain Payments.**

Except for Excepted Payments, the parties hereto acknowledge and agree that all payments due and owing by any Credit Party to any Lessor Party under the Lease or any of the other Operative Agreements (including pursuant to Section 5.3(c) of the Agency Agreement and Section 17.6(c) of the Lease) shall be made by such Credit Party directly to the Agent as more particularly provided in Section 8.3(b) hereof. The Financing Parties and the Credit Parties acknowledge the terms of Section 8.7 of this Agreement regarding the allocation of payments and other amounts made or received from time to time under the Operative Agreements and agree, that all such payments and amounts are to be allocated as provided in Section 8.7 of this Agreement.

8.5 **Grant of Easements, Agreement regarding Restrictive Covenants, etc.**

The Financing Parties hereby agree that, so long as no Event of Default shall have occurred and be continuing, the Lessor shall, from time to time at the request of the Lessee (and with the prior consent of the Agent, except with regard to that certain water easement requested by the Town of Apple Valley, California and consisting of a rectangular easement area near the northeast corner of the Property (the “Water Utility Easement”) which shall not require any such consent from the Agent), in connection with the transactions contemplated by the Agency Agreement, the Lease or the other Operative Agreements, (i) grant easements and other rights in the nature of easements with respect to the Property, including the Water Utility Easement, (ii) release existing easements or other rights in the nature of easements which are for the benefit of the Property, (iii) execute and deliver to any Person any instrument appropriate to confirm or effect such grants or releases, and (iv) execute and deliver to any Person such other documents or materials in connection with the acquisition, development, construction, testing or operation of the Property, including reciprocal easement agreements, construction contracts, operating agreements, development agreements, plats, replats or subdivision documents; provided, that each of the agreements referred to in this Section 8.5 (including the Water Utility Easement) shall be of the type normally executed by the Lessee in the ordinary course of the Lessee’s business and shall be on commercially reasonable terms so as not to diminish the value or limit the use of the Property in any material respect.

8.6 **The Agent.**

(a) Each Lessor Party hereby designates and appoints the Agent as administrative agent and collateral agent of such Lessor Party to act as specified herein and in the other Operative Agreements, and each such Lessor Party hereby authorizes the Agent as the administrative agent and collateral agent for such Lessor Party, to take such action on its behalf under the provisions of this Agreement and the other Operative Agreements and to exercise such powers and perform such duties as are expressly delegated by the terms hereof and of the other Operative Agreements, together with such other powers as are reasonably incidental thereto. Such delegation of authority shall include the execution and delivery by the Agent of release instruments in recordable form releasing the Lien of the Operative Agreements in accordance with the requirements thereof. Notwithstanding
any provision to the contrary in any of the Operative Agreements, the Agent shall not have any duties or responsibilities, except those expressly set forth herein and therein, or any fiduciary relationship with any Lessor Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any of the other Operative Agreements, or shall otherwise exist against the Agent. The provisions of this Section 8.6 are solely for the benefit of the Agent and the Lessor Parties and no other Person shall have any rights as a third party beneficiary of the provisions hereof. Except as otherwise provided in this Section 8.6, in performing its functions and duties under this Agreement and the other Operative Agreements, the Agent shall act solely as Agent of the Lessor Parties. The Agent does not assume and shall not be deemed to have assumed any obligation or relationship of agency or trust with or for any Credit Party or any other Person.

(b) The Agent may execute any of its duties hereunder or under the other Operative Agreements by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) Neither the Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection herewith or in connection with any of the other Operative Agreements (except for its or such Person’s own gross negligence or willful misconduct), or (ii) responsible in any manner to any Lessor Party for any recitals, statements, representations or warranties contained herein or in any of the other Operative Agreements or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection herewith or in connection with the other Operative Agreements, or enforceability or sufficiency of any of the other Operative Agreements, or for any failure of any party (not including the Agent) to any Operative Agreement to perform its obligations hereunder or thereunder. The Agent shall not be responsible to any Lessor Party for the effectiveness, genuineness, validity, enforceability, collectability or sufficiency of this Agreement, or any of the other Operative Agreements or for any representations, warranties, recitals or statements made herein or therein or made by any Credit Party in any written or oral statement or in any financial or other statements, instruments, reports, certificates or any other documents in connection herewith or therewith furnished or made by the Agent to any Lessor Party or by or on behalf of any Credit Party to the Agent or any Lessor Party or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the purchases or of the existence or possible existence of any Default or Event of Default or to inspect the properties, books or records of any of the Credit Parties.

(d) The Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, facsimile, email, cablegram, telegram, telecopy, telex, teletype or electronic message, statement, order or other document or conversation believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to any Credit Party), independent accountants and other experts selected by the Agent with reasonable care. The Agent may deem and treat the Lessor Parties as the owner of their respective interests hereunder for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Agent in accordance with Section 10 or any other applicable provision of the Operative Agreements. The Agent, acting in its capacity as Agent, shall be fully justified in failing or refusing to take any action under this Agreement or under any of the other Operative Agreements unless it shall first receive such advice or concurrence of the Majority Secured
Parties as it deems appropriate or it shall first be indemnified to its satisfaction by the Lessor Parties against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or under any of the other Operative Agreements in accordance with a request of the Majority Secured Parties or all the Lessor Parties if such request is a Unanimous Vote Matter and such request, and any action taken or failure to act pursuant thereto shall be binding upon all the Lessor Parties (including their successors and assigns).

(e) The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Agent has received notice from a Lessor Party, the Construction Agent or the Lessee referring to the Operative Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” In the event that the Agent receives such a notice, the Agent shall give prompt notice thereof to the Lessor Parties. Subject to this Section 8.6 of the Participation Agreement, the Agent shall take such action with respect to such Default or Event of Default as shall be directed by the Majority Secured Parties.

(f) Each Lessor Party expressly acknowledges that neither the Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates has made any representations or warranties to it and that no act by the Agent or any affiliate thereof hereafter taken, including any review of the affairs of the Credit Parties, shall be deemed to constitute any representation or warranty by the Agent to any Lessor Party. Each Lessor Party represents to the Agent that it has, independently and without reliance upon the Agent or any other Lessor Party, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties and made its own decision to make its purchases hereunder and enter into this Agreement. Each Lessor Party also represents that it will, independently and without reliance upon the Agent or any other Lessor Party, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties. Except for notices, reports and other documents expressly required to be furnished to the Lessor Parties by the Agent pursuant to this Agreement, the Agent shall not have any duty or responsibility to provide any Lessor Party with any credit or other information concerning the business, operations, assets, property, financial or other conditions, prospects or creditworthiness of the Credit Parties which may come into the possession of the Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

(g) The Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Credit Parties as though the Agent were not Agent hereunder.

(h) The provisions of Section 10.3 shall govern with respect to the replacement of the Agent.

(i) Regarding the Agent functioning as the collateral agent for the Secured Parties, each of the Lessor (and to the extent necessary, each of the other Lessor Parties) hereby assigns to the Agent the Lien granted by the Lessee pursuant to the Lease to secure the Lessor Advances. The Secured Parties acknowledge, agree and direct that the rights and remedies of the Secured Parties in connection with an Event of Default, including as beneficiaries of the Lien of the Security Documents, shall be exercised by the Agent on behalf of the Secured Parties as directed from time.
to time (a) by the Majority Secured Parties; provided, notwithstanding the foregoing, the Agent shall not take any action concerning the exercise of remedies or otherwise under any of the Operative Agreements with respect to the Property (regardless of whether a Default or Event of Default has occurred and is continuing) unless the Lessor has expressly consented to such action or (b) pursuant to Sections 8.2(c) and 12.4, by the Lessor Parties; provided, that for the avoidance of doubt, nothing in this Section 8.6 shall affect any automatic acceleration, right of acceleration or right to terminate the Lessor Parties Commitment exercised in accordance with the applicable Operative Agreements; and provided further, in all cases, the Agent shall allocate payments and other amounts received in accordance with Section 8.7. Except in the case of Excepted Payments and other rights expressly reserved by the Lessor pursuant to the Operative Agreements and subject to Section 12.4, the Agent is further appointed to provide notices under the Operative Agreements on behalf of the Lessor (as determined by the Agent, in its reasonable discretion with regard to matters concerning the Collateral) and to receive notices under the Operative Agreements on behalf of the Lessor with regard to matters concerning the Collateral. The Agent hereby accepts such appointments. The Agent hereby further agrees promptly to provide notices and other documentation received from time to time from the Credit Parties to the Lessor Parties. The parties hereto hereby agree to the provisions contained in this Section 8.6. For the avoidance of doubt and notwithstanding anything contained in this Agreement or any other Operative Agreement to the contrary, each Financing Party agrees that no Secured Party (other than the Agent) shall have the right to individually seek to realize upon any Lien granted by any Security Document, it being understood and agreed that such rights and remedies may be exercised solely by the Agent for the benefit for the Secured Parties upon the terms of the Operative Agreements; provided, if any action requires the participation of the Lessor (given the Lessor is the holder of legal title to the Property), then the Lessor shall participate in such action as reasonably requested by the Agent.

8.7 Collection and Allocation of Payments and Other Amounts.

(a) Each Credit Party has agreed pursuant to Section 5.7 and otherwise in accordance with the terms of this Agreement to pay to (i) the Agent any and all Rent (excluding Excepted Payments) and any and all other amounts of any kind or type under any of the Operative Agreements, in each case, due and owing or payable to any Financing Party and (ii) each Person as appropriate the Excepted Payments. Promptly after receipt, the Agent shall apply and allocate, in accordance with the terms of this Section 8.7, such amounts received from any Credit Party and all other payments, receipts and other consideration of any kind whatsoever received by the Agent or any Lessor Party in connection with the Collateral, the Security Documents or any of the other Operative Agreements. Ratable distributions among the Lessor Parties under this Section 8.7 shall be made based on the ratio of the various Lessor Party’s outstanding Lessor Advances to the aggregate Property Cost. If, and to the extent that both Eurodollar Lessor Advances and ABR Lessor Advances are outstanding at a point in time at which payments and other amounts are to be applied and allocated pursuant to this Section 8.7, then such payments and amounts shall first be applied and allocated to the ABR Lessor Advances and next to the Eurodollar Lessor Advances.

(b) Payments and other amounts received by the Agent from time to time in accordance with the terms of subparagraph (a) shall be applied and allocated as follows (subject in all cases to Sections 8.7(c)(i), (ii) and (iii)):

(i) Any such payment or amount identified as or deemed to be Basic Rent, any amount in respect of a Casualty referenced in the last two sentences of Section 3.4(b) of the Agency Agreement or any amount in respect of a Condemnation referenced the last two
sentences of Section 3.5(b) of the Agency Agreement shall be applied and allocated by the Agent:

first, ratably to the Lessor Parties for application and allocation to the payment of accrued Lessor Yield with respect to the Lessor Advances and thereafter ratably to the outstanding Lessor Advances which are due and payable on such date;

second, if a Default or Event of Default is in effect, such excess (if any) shall be held by the Agent until the earlier of (I) the first date thereafter on which no Default or Event of Default shall be in effect (in which case such payments or returns shall then be made pursuant to “third” below) and (II) the Expiration Date (or, if earlier, the date of any acceleration), in which case such amounts shall be applied and allocated in the manner contemplated by Section 8.7(b)(iv); and

third, any excess shall be paid to the Lessee.

(ii) Except as otherwise specified pursuant to (A) Section 3.4(b) of the Agency Agreement, Section 3.5(b) of the Agency Agreement or Section 15.1(a) of the Lease (regarding amounts payable to the Construction Agent or the Lessee, as applicable) and (B) Section 8.7(b)(i) (regarding allocation of amounts referenced in the last two sentences of Section 3.4(b) of the Agency Agreement and the last two sentences of Section 3.5(b) of the Agency Agreement), if (other than as specified in the foregoing subsection (A) or (B)) on any date the Agent or the Lessor shall receive any amount in respect of any Casualty or Condemnation pursuant to Section 3.4 or 3.5 of the Agency Agreement or Section 15.1(a) of the Lease, then such amount shall be applied and allocated in accordance with Section 8.7(b)(iii)(x) hereof.

(iii) (x) An amount equal to the proceeds from the RVI Policy and an amount equal to any payment identified as proceeds of the sale or other disposition (or lease upon the exercise of remedies) of the Property or any portion thereof, including pursuant to (i) the exercise of remedies under the Security Documents (other than proceeds in an amount equal to the Termination Value which shall be allocated pursuant to Section 8.7(b)(iv)), (ii) the exercise of remedies set forth in the Agency Agreement, (iii) the exercise of remedies set forth in the Lease, or (iv) any payment in respect of excess wear and tear pursuant to Section 21.3 of the Lease, in each case shall be applied and allocated (subject to the following provisos) by the Agent, in accordance with clauses first, second and third of this Section 8.7(b)(iii)(x);

provided, prior to such allocation in accordance with clauses first, second and third of this Section 8.7(b)(iii)(x), allocations shall be made in connection with the exercise of remedies under clause (y) of the second paragraph of Section 5.3(c) of the Agency Agreement, (a) with the Construction Agent retaining the amounts allocable to it under the waterfall provisions of clause (y) of such second paragraph of such Section 5.3(c) and the other amounts thereunder being allocated pursuant to the first paragraph of this Section 8.7(b) (which first paragraph precedes Section 8.7(b)(i)) and thereafter to the following provisions of this Section 8.7(b)(iii)(x); and (b) with the Agent retaining in favor of the Lessor Parties the one percent (1%) interest as referenced in such second paragraph of such Section 5.3(c) regarding any sale or other disposition of the Lessor’s interest in the Property to the extent
occurring on or prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Agency Agreement Event of Default;

provided, further, in connection with the exercise of remedies under the third paragraph of Section 5.3(c) of the Agency Agreement or Section 5.3(d) of the Agency Agreement, there shall be no allocation pursuant to clause third below and in substitution for such clause third, an allocation shall be made ratably to the Lessor Parties based on their respective Lessor Advances outstanding immediately prior to the allocation of proceeds received pursuant to such third paragraph of such Section 5.3(c) or such Section 5.3(d), as applicable; and

provided, prior to such allocation in accordance with clauses first, second and third of this Section 8.7(b)(iii)(x), allocations shall be made in connection with the exercise of remedies under Section 17.6 of the Lease, with the Lessee retaining the amounts allocable to it under such Section 17.6(c) and the other amounts thereunder being allocated pursuant to the first paragraph of this Section 8.7(b) (which first paragraph precedes Section 8.7(b)(i)) and thereafter to the following provisions of this Section 8.7(b)(iii)(x):

first, ratably to the payment to the Lessor Parties of the Lessor Yield with respect to the Lessor Advances and then to the advance amount balance of the Lessor Advances;

second, to the extent moneys remain after application and allocation pursuant to clause first above, to all other amounts owing under the Operative Agreements to the Lessor Parties then outstanding; and

third, to the extent moneys remain after application and allocation pursuant to clause first through second above, to the Lessee.

(y) Notwithstanding any provision in any Operative Agreement to the contrary (including the provisions of clause (x) of this Section 8.7(b)(iii)), any amount paid by a third party purchaser for the purchase of the Property on the Expiration Date pursuant to the election by the Lessee of the Sale Option shall be applied and allocated by the Agent in the following order of priority:

first, so much of such amount as shall be required to pay actual and reasonable costs of the Financing Parties of selling and transferring the Property, including all recordation fees, legal fees and expenses, finders’ and brokers’ fees and sales commissions allocable to the Property;

second, ratably to the payment to the Lessor Parties of the Lessor Yield with respect to the Lessor Advances, then to the advance balance of the Lessor Advances and then to all other amounts owing under the Operative Agreements to the Lessor Parties then outstanding; and

third, to the extent moneys remain after application and allocation pursuant to clauses first through second above, to the Lessee.

(iv) An amount equal to (A) any such payment identified as a payment pursuant to the Maximum Residual Guarantee Amount or the Deficiency Balance, as may be required under the Lease, or the Construction Period Guarantee Amount, as may be required under
the Agency Agreement, (B) any other amount payable upon any exercise of remedies after the occurrence and continuance of an Event of Default not covered by Section 8.7(b)(i) or 8.7(b)(iii) above (including any amount received in connection with an acceleration which does not represent proceeds from the sale or liquidation of the Property), (C) any amounts payable by the Guarantors pursuant to Section 6B and (D) any payment of the Termination Value under the Agency Agreement or the Lease, including in connection with Article V of the Agency Agreement, Article XVII of the Lease or the exercise of the Purchase Option under Articles XVI or XX of the Lease, in each case shall be applied and allocated by the Agent:

first, ratably to the payment to the Lessor Parties of the Lessor Yield with respect to the Lessor Advances and then to the advance amount balance of the Lessor Advances; and

second, to the extent moneys remain after application and allocation pursuant to clause first above, to all other amounts owing under the Operative Agreements to the Lessor Parties then outstanding.

(v) An amount equal to any such payment identified as Supplemental Rent shall be applied and allocated by the Agent to the payment of any amounts then owing to the Financing Parties and the other parties to the Operative Agreements (or any of them) (other than any such amounts payable pursuant to the preceding provisions of this Section 8.7(b)) for which such payment is made in accordance with the provisions of Operative Agreements; provided, however, that Supplemental Rent received upon the exercise of remedies after the occurrence and continuance of an Event of Default in lieu of or in substitution of the Maximum Residual Guarantee Amount or as a partial payment thereon shall be applied and allocated as set forth in Section 8.7(b)(iv).

(vi) Any such payment or amount payable to the Agent pursuant to Section 5.11 shall be applied and allocated by the Agent ratably to the Lessor Parties for application and allocation to the payment of accrued Lessor Yield with respect to the Lessor Advances and thereafter ratably to the outstanding Lessor Advances on such date.

(vii) The Agent in its reasonable judgment shall identify the nature of each payment or amount received by the Agent and apply and allocate each such amount in the manner specified above.

(c) It is agreed that, prior to the application and allocation of amounts received by the Agent in the order described in Section 8.7(b) above or any distribution of money to the Lessee, any such amounts shall first be applied and allocated to the payment of (i) any and all sums advanced by the Agent or the Lessor (regarding the Lessor, only to the extent such amounts have not otherwise been funded by the Lessor Parties in accordance with Section 8.9) in order to preserve the Collateral or to preserve its Lien thereon, (ii) the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing or realizing on the Collateral, or of any exercise by the Agent or the Lessor (regarding the Lessor, only to the extent such amounts have not otherwise been funded by the Lessor Parties in accordance with Section 8.9) of its rights under the Security Documents, together with reasonable attorneys’ fees and expenses and court costs and (iii) any and all other amounts reasonably owed to the Agent under or in connection with the transactions contemplated by the Operative Agreements (including any accrued and unpaid administration fees).
8.8 Release of Property, etc.

(a) If the Lessee shall at any time purchase the Property pursuant to the Lease, or the Construction Agent shall purchase the Property pursuant to the Agency Agreement, or if the Property shall be sold in accordance with Article XXI of the Lease, then, upon payment of all amounts then due and owing by the Lessee and the Construction Agent under the Operative Agreements, the Agent is hereby authorized and directed to release the Property from the Liens created by the Operative Agreements to the extent of its interest therein. In addition, upon the Payment in Full (unless the Secured Parties retain rights in the Property at such time in accordance with the Operative Agreements), the Agent is hereby authorized and directed to release the Property from the Liens created by the Operative Agreements to the extent of its interest therein. Upon request of the Lessor or the Lessee following any such release, the Agent shall, at the sole cost and expense of the Lessee, execute and deliver to the Lessor and the Lessee such documents as the Lessor or the Lessee shall reasonably request to evidence such release.

(b) Each of the Lessor Parties irrevocably authorizes the Agent, at its option and in its discretion, to release any Guarantor from its obligations under the Guaranty set forth in Section 6B of this Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder. Upon request by the Agent at any time, the Majority Secured Parties will confirm in writing the Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this Section 8.8(b). In each case as specified in this Section 8.8(b), the Agent will, at the Lessee's expense, execute and deliver to the applicable Lessor Party such documents as such Lessor Party may reasonably request (provided, such are in form and substance reasonably satisfactory to the Agent) to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Operative Agreements and this Section 8.8(b).

8.9 Sharing of Lessor Expenses After Rent Commencement Date.

From and after the Rent Commencement Date, the Lessor Parties shall share costs and expenses (if any) to be paid by the Lessor pursuant to the Lease ratably based on their then current Lessor Parties Ownership Interest.

SECTION 9.
RIGHTS UNDER SECTION 5A OF THIS AGREEMENT.

9.1 [Reserved].

9.2 [Reserved].

9.3 The Construction Agent’s and the Lessee’s Rights under Section 5A of this Agreement.

Notwithstanding anything to the contrary contained in any Operative Agreement, the Credit Parties and the Lessor Parties hereby agree that, prior to the occurrence and continuation of any Default or Event of Default, the Construction Agent and the Lessee shall have the following rights (provided, that the Lessee shall have the right to receive all notices and certificates referenced in this Section 9.3 notwithstanding the occurrence and continuance of any Default or Event of Default):
(a) the right to provide any notices of repayment or prepayment pursuant to Section 5A.4 of this Agreement; and

(b) the right to receive any notice and any certificate, in each case issued pursuant to Section 5A.1 through 5A.5 of this Agreement in addition to the other parties referenced therein to receive such notices and certificates.

SECTION 10.
TRANSFER OF INTEREST.

10.1 Restrictions on Transfer.

Each Lessor Party may participate, assign or transfer all or a portion of its interest hereunder and under the other Operative Agreements in accordance with Sections 10.4 and 10.5; provided, that in the event any Lessor Party assigns or transfers all or a portion of its interest hereunder and under the other Operative Agreements, such Lessor Party shall deliver to the Agent a copy of any such assignment agreement or other documents referenced in Section 10.5; provided, further, that any such participation, assignment or other transfer by the Lessor shall be subject to the rights of the Lessee under the Lease and the other Operative Agreements and to the Lien of the applicable Security Documents and (provided, no Default or Event of Default has occurred and is continuing) shall require the consent of the Lessee (which consent may not be unreasonably withheld or delayed); provided, further, notwithstanding the foregoing, there shall be no such requirement to obtain the consent of the Lessee with regard to the matters effected pursuant to the Lessor Assignment Agreement. If any assignment of an interest of any Lessor Party to Section 10.5 or of the Lessor’s interest pursuant to this Section 10.1 is made at such time that an Event of Default shall have occurred and be continuing, then the Lessee shall pay the expenses incurred in connection with such assignment. The requirements of this Agreement that the Lessor assign or transfer its right, title or interest in or to the Property only to an Eligible Assignee shall not apply to the obligations of the Lessor to transfer the Property to the Lessee or a third party purchaser pursuant to the Lease or the Agency Agreement upon payment for the Property in accordance with the terms and conditions of the Lease or the Agency Agreement.

Subject to the proviso to this sentence, no Guarantor may assign or otherwise transfer (directly or indirectly pursuant to a merger or other transaction) any of the Operative Agreements or any of their respective rights or obligations thereunder or with respect to the Property in whole or in part to any Person without the prior written consent of the Agent and the Lessor Parties; provided, however, that no such consent shall be required for a Guarantor to engage in a transaction permitted by Sections 8.3B(e)(i), (e)(ii) or (f). Subject to the provisos to this sentence, neither the Construction Agent nor the Lessee may assign or otherwise transfer (directly or indirectly pursuant to a merger or other transaction) any of the Operative Agreements or any of their respective rights or obligations thereunder or with respect to the Property in whole or in part to any Person (other than any Subsidiary of the Parent (direct or indirect)) without the prior written consent of the Agent and the Lessor Parties; provided, however, no such consent shall be required in connection with any such assignment or other transfer (direct or indirect pursuant to a merger or other transaction) to any Subsidiary of the Parent (direct or indirect); provided, further, and notwithstanding the preceding proviso, all such assignments and other transfers (including such assignments and other transfers (direct or indirect pursuant to a merger or other transaction) to any Subsidiary of the Parent (direct or indirect) must satisfy all the following terms of this Section 10.1 and, if such terms are not so satisfied, then any such assignment or other transfer (direct or indirect pursuant to a merger or other transaction) shall, automatically and without the need for further action, be null and void and of no further force or effect.
In addition to any consent that may be required by the second sentence of the immediately preceding paragraph (if any), neither the Construction Agent nor the Lessee may assign or otherwise transfer (directly or indirectly pursuant to a merger or other transaction) any of the Operative Agreements or any of their respective rights or obligations thereunder or with respect to the Property in whole or in part to any Person without satisfaction in full of the following conditions precedent:

(a) the Construction Agent or the Lessee, as applicable, shall provide prior written notice to the Agent of such assignment or other transfer no less than ninety (90) days prior to the anticipated effective date of such assignment or other transfer;

(b) the Credit Parties (including any such assignee or other transferee of the Construction Agent or the Lessee) shall (when applicable, as determined by the Agent, in its reasonable discretion) execute and deliver to the Agent, or cause to be so executed and delivered with regard to such assignment or other transfer and such assignee or other transferee, all agreements, documents, instruments, certificates, opinions, evidence of insurance and such other items, in each case, as required by the Agent, in its reasonable discretion, and in form and substance satisfactory to the Agent, in its reasonable discretion, including: (i) an assignment and assumption agreement pursuant to which such assignee or other transferee assumes all liabilities and obligations of the Construction Agent or the Lessee, as applicable, under or pursuant to the Operative Agreements and otherwise with regard to the Property; (ii) a certificate regarding such assignee or other transferee from the Secretary or an Assistant Secretary of such assignee or other transferee (comparable to the certificates contemplated under Section 5.3(u)); (iii) a legal opinion by counsel to such assignee or other transferee acceptable to the Agent and addressing such issues as identified by the Agent and otherwise consistent with the opinions delivered in respect of the Credit Parties on the date hereof; (iv) UCC, tax and judgment lien searches regarding such assignee or other transferee (comparable to the searches contemplated under Section 5.3(q)); (v) a reaffirmation by all remaining Credit Parties of their liabilities and obligations under or pursuant to the Operative Agreements from and after the effectiveness of such assignment or other transfer; (vi) amendments, supplements and/or restatements regarding the Operative Agreements and filings of the same in the appropriate filing offices, in each case as determined necessary or appropriate by the Agent, in its reasonable discretion; (vii) endorsements to the title insurance policy delivered pursuant to Section 5.3(g), as such are determined necessary or appropriate by the Agent, in its reasonable discretion; (viii) all Taxes, fees and other charges in connection with such assignment or other transfer, including in connection with the execution, delivery, recording, filing and registration of documents in connection with such assignment or other transfer (including with regard to any and all UCC Financing Statements), the out-of-pocket fees and expenses incurred by the Agent (including reasonable fees of outside counsel) and the cost of title insurance endorsements shall have been paid by the Construction Agent or the Lessee, as applicable, or provision for such payment (including pursuant to a Lessor Advance) shall have been made by the Construction Agent or the Lessee, as applicable; (ix) a certificate of insurance evidencing the insurance with respect to the Property as required by the Lease or the Agency Agreement, as applicable; (x) UCC Financing Statements; and (xi) such other items in regard to such assignment or other transfer as are identified by the Agent, in its reasonable discretion; and

(c) there shall not have occurred and be continuing any Default or Event of Default, as of the effective date of such assignment or other transfer.

Notwithstanding any provision in any Operative Agreement to the contrary, no assignment or other transfer by the Construction Agent or the Lessee, as applicable, shall be effective unless and until the Agent has confirmed to its satisfaction, in its reasonable discretion, that all conditions precedent for such assignment
or other transfer have been satisfied, and any such assignment or other transfer effected without such confirmation by the Agent shall (without the need for any further action) be null and void and of no further force or effect.

10.2  Effect of Transfer.

From and after any transfer effected in accordance with this Section 10, the transferor shall be released, to the extent of such transfer, from its liability hereunder and under the other documents to which it is a party in respect of obligations to be performed on or after the date of such transfer; provided, however, that any transferor shall remain liable hereunder and under such other documents to the extent that the transferee shall not have assumed the obligations of the transferor thereunder. Upon any transfer by any Lessor Parties as above provided, any such transferee shall assume the obligations of the applicable Lessor Party and shall be deemed a “Lessor Party” for all purposes of such documents and each reference herein to the transferor shall thereafter be deemed a reference to such transferee for all purposes, except as provided in the preceding sentence. Notwithstanding any transfer of all or a portion of the transferor’s interest as provided in this Section 10, the transferor shall be entitled to all benefits accrued and all rights vested prior to such transfer including rights to indemnification under any such document.

10.3  Successor Agent.

The Agent may, at any time, resign upon twenty (20) days’ written notice to the Lessor Parties and the Lessee and be removed with cause by the Lessor Parties upon thirty (30) days’ written notice to the Agent. Upon any such resignation or removal, the Majority Secured Parties, in consultation with the Lessee, shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed, and shall have accepted such appointment, within thirty (30) days after the notice of resignation or notice of removal, as appropriate, then the retiring Agent shall select a successor Agent provided such successor is a Lessor Party or a commercial bank organized under the laws of the United States of America or of any State thereof, has a combined capital and surplus of at least $100,000,000 or an Affiliate of any such commercial bank. Upon the acceptance of any appointment as the Agent hereunder by a successor, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations as the Agent under the Operative Agreements. The fees payable by the Lessee to a successor Agent shall be the same as those payable to its predecessor unless agreed between the Lessee and such successor.Notwithstanding the foregoing, the provisions of Section 8.6 shall inure to the benefit of the retiring Agent as to any actions taken or omitted to be taken by it while it was the Agent under the Operative Agreements.

10.4  Participations.

Subject to and in accordance with Section 10.1, any Lessor Party may, in the ordinary course of its business and in accordance with Applicable Law and at its own cost and expense, at any time sell to one (1) or more banks, lending institutions or other entities (other than a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or a competitor of any Credit Party) (each, a “Participant”) participating interests in any Lessor Advance owing to such Lessor Party, any Lessor Parties Commitment of such Lessor Party or any other interest of such Lessor Party under the Operative Agreements; provided, that any such sale of a participating interest shall be in a Lessor Advance amount of at least $2,000,000 or such lesser amount constituting such Lessor Party’s entire interest in the Operative Agreements. In the event of any such sale by a Lessor Party of a participating interest to a Participant, such Lessor Party’s obligations under the Operative Agreements to the other parties to this Agreement shall remain unchanged, such Lessor Party shall remain solely responsible for the performance thereof, such Lessor Party
shall remain the holder of its Lessor Parties Interest for all purposes under the Operative Agreements, and the Credit Parties and the Agent shall continue to deal solely and directly with such Lessor Party in connection with such Lessor Party’s rights and obligations under the Operative Agreements. In no event shall any Participant have any right to approve any amendment or waiver of any provision of any Operative Agreement, or any consent to any departure by any Credit Party or any other Person therefrom, except to the extent that such amendment, waiver or consent would (a) reduce any Lessor Advance or Lessor Yield on any Lessor Advance, or postpone the date of the final maturity of any Lessor Advance, in each case to the extent subject to such participation or (b) release all or substantially all of the collateral pursuant to the Security Documents. The Credit Parties agree that, while an Event of Default shall have occurred and be continuing, if amounts outstanding by any Credit Party under the Operative Agreements are due or unpaid, or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall, to the maximum extent permitted by Applicable Law, but only after obtaining the prior written consent of the Majority Secured Parties prior to exercising any right of set-off, be deemed to have the right of set-off in respect of its participating interests in amounts owing directly to it as a Lessor Party, provided, that in purchasing such participating interest, such Participant shall be deemed to have agreed to share with the Lessor Parties the proceeds thereof as provided in Section 12.15 as fully as if it were a Lessor Party hereunder. The Credit Parties also agree that each Participant shall be entitled to the benefits of, and shall be subject to the obligations and limitations under, Sections 11.2, 11.3 and 11.4 with respect to its participation in the Lessor Parties Commitments and the Lessor Advances outstanding from time to time as if it was a Lessor Party; provided, that such Participant shall have complied with the requirements of said Sections and provided, further, that no Participant shall be entitled to receive any greater amount pursuant to any such Section than the transferor Lessor Party would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lessor Party to such Participant had no such transfer occurred and provided, further, that the Lessor Parties and the Participants, taken as a whole, shall not be entitled to receive any greater amount pursuant to any such Section than the original Lessor Party (prior to any participation) would have been entitled to receive pursuant to such Section.

10.5 Assignments.

(a) Subject to and in accordance with Section 10.1, any Lessor Party may, in the ordinary course of its business and in accordance with Applicable Law and at its own cost and expense, at any time and from time to time assign to any Eligible Assignee (each, a “Purchasing Lessor Party”), all or any part of its rights and obligations under this Agreement and the other Operative Agreements pursuant to an assignment and acceptance, in form and substance reasonably acceptable to the Agent, executed by such Purchasing Lessor Party, such assigning Lessor Party and the Agent and delivered to the Agent for its acceptance and recording in the Register; provided, that no such assignment to a Purchasing Lessor Party (other than any Lessor Party or any affiliate thereof) shall be in an aggregate advance amount less than $2,000,000 (other than in the case of an assignment of all of a Lessor Party’s interests under the Operative Agreements); provided, further, to the extent no Default or Event of Default shall have occurred and be continuing, any such assignment (other than to a Lessor Party or its Affiliates) shall be subject to the consent (not to be unreasonably withheld or delayed) by the Lessee; provided, further, upon the occurrence and during the continuance of any Event of Default, (i) any Lessor Party may assign to any Person (regardless of whether such Person is an Eligible Assignee; provided that, in no event, shall any assignment be made to any competitor of any Credit Party even if an Event of Default has occurred) all or any part of such Lessor Party’s rights and obligations under the Operative Agreements pursuant to an assignment and acceptance, in form and substance reasonably satisfactory to the Agent, and (ii) there shall be no minimum aggregate advance amount required for any such assignment. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such assignment

74
and acceptance, (x) the Purchasing Lessor Party thereunder shall be a party hereto and, to the extent provided in such assignment and acceptance, have the rights and obligations of a Lessor Party hereunder with a Lessor Parties Interest as set forth therein, and (y) the assigning Lessor Party thereunder shall, to the extent provided in such assignment and acceptance, be released from its obligations under this Agreement (and, in the case of an assignment and acceptance covering all of the remaining portion of an assigning Lessor Party’s rights and obligations under the Operative Agreements, such assigning Lessor Party shall cease to be a party hereto).

(b) Upon its receipt of an assignment and acceptance, in form and substance reasonably satisfactory to the Agent, executed by an assigning Lessor Party, a Purchasing Lessor Party and the Agent together with payment to the Agent of a registration and processing fee of $3,500 (which, subject to Section 5A.7(b), shall not be payable by the Construction Agent or the Lessee), the Agent shall (i) promptly accept such assignment and acceptance and (ii) promptly after the effective date determined pursuant thereto, record the information contained therein in the Register and give notice of such acceptance and recordation to the Lessee and the Lessor Parties.

(c) Each Purchasing Lessor Party, by executing and delivering an assignment and acceptance,

(i) agrees to execute and deliver to the Agent, as promptly as practicable, the documentation described in Section 11.2(e), as applicable;

(ii) represents and warrants to the Lessee and the Agent that the form so delivered is true and accurate and that, as of the effective date of the assignment and acceptance, each of such Purchasing Lessor Party’s lending offices is entitled to receive payments of advance amount and Lessor Yield under or in respect of this Agreement without withholding or deduction for or on account of any U.S. Taxes;

(iii) agrees to update the forms delivered pursuant to clause (i) if such forms expire or become obsolete or inaccurate unless an event has occurred which renders the relevant form inapplicable (it being understood that if the applicable form is not so delivered, payments under or in respect of the Operative Agreements may be subject to withholding and deduction and such Purchasing Lessor Party may not have any rights to indemnity for such withholding and deduction under Section 11.2(e) as provided therein);

(iv) agrees to promptly notify the Lessee and the Agent in writing if it ceases to be entitled to receive payments of advance amount and Lessor Yield under or in respect of the Operative Agreements without withholding or deduction for or on account of any U.S. Taxes (it being understood that payments under or in respect of the Operative Agreements may be subject to withholding and deduction in such event);

(v) acknowledges that in the event it ceases to be exempt from withholding and/or deduction of U.S. Taxes, the Agent may withhold and/or deduct the applicable amount from any payments to which such assignee Lessor Party would otherwise be entitled, without any liability to such assignee Lessor Party therefor; and

(vi) agrees to indemnify the Lessee and the Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs or expenses that result from such assignee Lessor Party’s breach of any such representation, warranty or agreement;
provided, however, that the foregoing provisions of this Section 10.5 shall not apply to any Purchasing Lessor Party to the extent it is not legally eligible to provide such forms and is entitled to indemnification from U.S. withholding taxes under Section 11.2(e) under the circumstances described in clause (a) of Section 11.2(e)(i).

(d) Any Lessor Party party to this Agreement may, from time to time and without the consent of the Lessee or any other Person, pledge or assign for security purposes any portion of its Lessor Parties Interest or any other interests in the Operative Agreements to any Federal Reserve Bank.

(e) In connection with any assignment of rights and obligations under the Operative Agreements of any Defaulting Lessor Party, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Lessee and the Agent, the applicable Pro Rata Share of Lessor Advances previously requested but not funded by the Defaulting Lessor Party, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lessor Party to the Agent or any Lessor Party under any Operative Agreement (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full Pro Rata Share of all Lessor Advances in accordance with the percentage corresponding to the applicable Lessor Parties Commitment of the assignor. Notwithstanding the foregoing, in the event that any assignment of rights and obligations under the Operative Agreements of any Defaulting Lessor Party shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lessor Party for all purposes of the Operative Agreements until such compliance occurs. No assignment by a Defaulting Lessor Party will constitute a waiver or release of any claim of any party hereunder arising from that Lessor Party’s having been a Defaulting Lessor Party. Any assignment or transfer by a Lessor Party of rights or obligations under the Operative Agreements that does not comply with this subsection shall be treated for purposes of the Operative Agreements as a sale by such Lessor Party of a participation in such rights and obligations in accordance with this Agreement.

10.6 The Register; Disclosure.

The Agent shall maintain for the benefit of the Lessor Parties a copy of each assignment and acceptance delivered to it and a register (the “Register”) for the recordation of the names and addresses of the Lessor Parties, the Lessor Parties Commitments of the Lessor Parties, the Commitment Percentages of the Lessor Parties, the Percentage Shares of the Lessor Parties and the amount of outstanding Lessor Advances owing to each Lessor Party from time to time. The entries in the Register shall be conclusive, in the absence of clearly demonstrable error, and the Credit Parties, the Agent and the Lessor Parties may treat each Person whose name is recorded in the Register as the owner of the Lessor Parties Interests recorded therein for all purposes of the Operative Agreements. The Register shall be available for inspection by the Lessee or any Lessor Party at any reasonable during normal business hours of the Agent and from time to time upon reasonable notice.
SECTION 11.
INDEMNIFICATION.

11.1 General Indemnity.

Subject to Sections 11.2 (regarding indemnification matters concerning Impositions) and 11.6, whether or not any of the transactions contemplated hereby shall be consummated, the Indemnity Provider hereby assumes liability for and agrees to defend, indemnify and hold harmless each Indemnified Person on an After Tax Basis from and against any Claims which may be imposed on, incurred by or asserted against an Indemnified Person by any third party (including any other Indemnified Person), including Claims arising from the negligence of such Indemnified Person (but, in each case, not to the extent (1) such Claims arise from the gross negligence or willful misconduct of such Indemnified Person itself, as determined by a court of competent jurisdiction in a final nonappealable judgment, as opposed to gross negligence or willful misconduct imputed to such Indemnified Person; (2) disputes solely between or among Indemnified Persons and not relating to or in connection with acts or omissions by the Lessee or any other Credit Party; (3) such Claims result from a claim brought by any Credit Party against an Indemnified Person for breach in bad faith of such Indemnified Person’s obligations hereunder or under any other Operative Agreement, if such Credit Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction; (4) the Indemnity Provider was not given notice of the subject claim and the opportunity to participate in the defense thereof, at its expense (except that each Credit Party shall remain liable to the extent such failure to give notice does not result in a loss of such Credit Party); or (5) the same results from a compromise or settlement agreement entered into without the consent of the Indemnity Provider, which shall not be unreasonably withheld), whether or not such Indemnified Person shall also be indemnified as to any such Claim by any other Person and whether or not such Claim is initiated after the Termination Date, so long as such Claim arises out of an act or omission (or other circumstance or condition of any kind or description) which arose or occurred prior to the Termination Date, in any way relating to or arising or alleged to relate to, or arise out of the execution, delivery, performance or enforcement of this Agreement, the Lease, the Agency Agreement or any other Operative Agreement or on or with respect to the Property or any component thereof, including Claims in any way relating to or arising or alleged to arise out of (a) the financing, refinancing, purchase, acceptance, rejection, ownership, design, construction, refurbishment, development, delivery, nondelivery, leasing, subleasing, possession, use, occupancy, operation, maintenance, repair, modification, transportation, condition, sale, return, repossession (whether by summary proceedings or otherwise), or any other disposition of the Property or any part thereof, including the acquisition, holding or disposition of any interest in the Property, lease or agreement comprising a portion of any thereof; (b) any latent or other defects in the Property or any portion thereof whether or not discoverable by an Indemnified Person or the Indemnity Provider; (c) any violation or alleged violation of law or in tort (strict liability or otherwise); (d) any Claim based upon a violation or alleged violation of the terms of any restriction, easement, condition or covenant or other matter affecting title to the Property; (e) any violation of or noncompliance with (or alleged violation or noncompliance with) any Environmental Laws, any Environmental Claims or any loss of or damage to any property or the environment relating to the Property, the Lease or the Indemnity Provider; (f) the Operative Agreements, or any transaction contemplated thereby (including the formation, continuance, operation and ultimate dissolution and liquidation of the Lessor) or any amendment, modification or waiver thereof or the exercise of remedies under any Operative Agreement following the occurrence and continuance of any Event of Default; (g) any breach by the Indemnity Provider, the Construction Agent or any Guarantor of any of its representations or warranties under the Operative Agreements to which the Indemnity Provider, the Construction Agent or any Guarantor is a party or failure by the Indemnity Provider, the Construction Agent or any Guarantor to perform or observe any covenant or agreement to be performed by it under any of the Operative Agreements; (h) the making of any Modifications in violation of the Operative Agreements or any standards imposed by any insurance policies required to be
maintained by the Lessee pursuant to the Lease which are in effect at any time with respect to the Property or any part thereof; (i) any Claim for patent, trademark or copyright infringement; (j) the transactions contemplated hereby or by any other Operative Agreement, in respect of the application of Parts 4 and 5 of Subtitle B of Title I of ERISA; (k) personal injury, death or property damage, including Claims based on strict or absolute liability in tort; (l) any fees, expenses and/or other assessments by any business park or any other applicable entity with oversight responsibility for the Property; (m) the retaining or employment of any broker, finder or financial advisor by any Credit Party to act on its behalf in connection with this Agreement or the other Operative Agreements; (n) Claims arising from any public improvements with respect to the Property resulting in any change or special assessments being levied against the Property or any plans to widen, modify or realign any street or highway adjacent to the Property, or any Claim for utility “tap-in” fees; (o) except in all cases for the existence of Lessor Liens and Liens created under the Operative Agreements in favor of any Financing Party, the existence of any Lien on or with respect to the Property, the Improvements or any Equipment relating thereto, title thereto, any interest therein or on any Basic Rent or Supplemental Rent, including any Liens which arise out of the possession, use, occupancy, construction, repair or rebuilding of the Property or by reason of labor or materials furnished or claimed to have been furnished to the Lessee or the Lessor or any predecessor in title, or any of its contractors or agents or by reason of the financing of any personality or equipment purchased or leased by the Lessee or the Lessor or any predecessor in title or Modifications constructed by the Lessee.

If a written Claim is made against any Indemnified Person or if any proceeding shall be commenced against such Indemnified Person (including a written notice of such proceeding), for any Claim, such Indemnified Person shall promptly notify the Indemnity Provider in writing and shall not take action with respect to such Claim without the consent of the Indemnity Provider for thirty (30) days after the receipt of such notice by the Indemnity Provider; provided, however, that in the case of any such Claim, if action shall be required by law or regulation to be taken prior to the end of such period of thirty (30) days, such Indemnified Person shall endeavor to, in such notice to the Indemnity Provider, inform the Indemnity Provider of such shorter period, and no action shall be taken with respect to such Claim without the consent of the Indemnity Provider before seven (7) days before the end of such shorter period; provided, further, that the failure of such Indemnified Person to give the notices referred to in this sentence shall not diminish the Indemnity Provider’s obligation hereunder except to the extent such failure precludes in any material respect the Indemnity Provider from contesting such Claim.

If, within thirty (30) days of receipt of such notice from the Indemnified Person (or such shorter period as the Indemnified Person has notified the Indemnity Provider is required by law or regulation for the Indemnified Person to respond to such Claim), the Indemnity Provider shall request in writing that such Indemnified Person respond to such Claim, the Indemnity Provider shall, at the expense of the Indemnity Provider, in good faith conduct and control such action (including by pursuit of appeals) by, in the sole discretion of the Person conducting and controlling such action (1) resisting payment thereof, (2) not paying the same except under protest, if protest is necessary and proper, (3) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, or (4) taking such other action as is reasonably requested by the Indemnity Provider from time to time (provided, however, that (A) if such Claim, in the Indemnity Provider’s reasonable discretion, can be pursued by the Indemnity Provider on behalf of or in the name of such Indemnified Person, the Indemnified Person, at the Indemnity Provider’s request, shall allow the Indemnity Provider to conduct and control the response to such Claim unless such Claim cannot be pursued independently from any other claim involving such Indemnified Person or unless such Claim is unrelated to the Property or the transactions contemplated by the Operative Agreements and (B) in the case of any Claim (and notwithstanding the provisions of the foregoing subsection (A)), the Indemnified Person may require the Indemnity Provider to conduct and control the response to such Claim (with counsel to be selected by the Indemnity Provider and consented to by such Indemnified
Person, such consent not to be unreasonably withheld); provided, however, that any Indemnified Person may retain separate counsel at the expense of the Indemnity Provider if, in the written opinion of counsel to the Indemnified Person reasonably acceptable to the Indemnity Provider (the expense of which opinion shall be paid by the Indemnity Provider), use of counsel of the Indemnity Provider’s choice would be expected to give rise to a conflict of interest between such Indemnified Person and the Indemnity Provider).

The party controlling the response to any Claim shall consult in good faith with the non-controlling party and shall keep the non-controlling party reasonably informed as to the conduct of the response to such Claim; provided, that all decisions ultimately shall be made in the discretion of the controlling party. The parties agree that an Indemnified Person may at any time decline to take further action with respect to the response to such Claim and may settle such Claim if such Indemnified Person shall waive its rights to any indemnity from the Indemnity Provider that otherwise would be payable in respect of such Claim (and any future Claim, the pursuit of which is precluded by reason of such resolution of such Claim) and shall pay to the Indemnity Provider any amount previously paid or advanced by the Indemnity Provider pursuant to this Section 11.1 by way of indemnification or advance for the payment of an amount regarding such Claim (not including the expenses of the contest).

Notwithstanding the foregoing provisions of this Section 11.1, an Indemnified Person shall not be required to take any action and the Indemnity Provider shall not be permitted to respond to any Claim in its own name or that of the Indemnified Person unless (A) the Indemnity Provider shall have agreed in writing to pay and shall pay to such Indemnified Person on demand and on an After Tax Basis all reasonable costs, losses and expenses that such Indemnified Person actually incurs in connection with such Claim, including all reasonable legal, accounting and investigatory fees and disbursements and the Indemnity Provider shall have agreed in writing to indemnify such Indemnified Person in respect of the Claim if and to the extent the contest is not successful, (B) the Indemnified Person shall have reasonably determined that the action to be taken will not result in any material danger of sale, forfeiture or loss of the Property, or any part thereof or interest therein, will not interfere with the payment of Rent, and will not result in risk of criminal liability or civil penalty or risk of sale, forfeiture or loss of or the creation of any Lien (other than a Permitted Lien) on the Property, (C) if such Claim shall involve the payment of any amount prior to the resolution of such Claim, the Indemnity Provider shall provide to the Indemnified Person an interest-free advance in an amount equal to the amount that the Indemnified Person is required to pay (with no additional net after-Tax cost to such Indemnified Person) prior to the date such payment is due, (D) in the case of an appeal of an adverse determination respecting a Claim that must be pursued in the name of an Indemnified Person (or an Affiliate thereof), the Indemnity Provider shall have provided to such Indemnified Person an opinion of independent counsel selected by the Indemnity Provider and reasonably satisfactory to the Indemnified Person stating that a reasonable basis exists to pursue such an appeal, and (E) no Default or Event of Default shall have occurred and be continuing. In no event shall an Indemnified Person be required to appeal an adverse judicial determination to the United States Supreme Court. In addition, an Indemnified Person shall not be required to contest any Claim in its name (or that of an Affiliate) if the subject matter thereof shall be of a continuing nature and shall have previously been decided adversely by a court of competent jurisdiction pursuant to the contest provisions of this Section 11.1, unless there shall have been a change in Law (or interpretation thereof) and the Indemnified Person shall have received, at the Indemnity Provider’s expense, an opinion of independent counsel selected by the Indemnity Provider and reasonably acceptable to the Indemnified Person stating that as a result of such change in Law (or interpretation thereof), it is more likely than not that the Indemnified Person will prevail in such contest. In no event shall the Indemnity Provider be permitted to adjust or settle any Claim without the consent of the Indemnified Person to the extent any such adjustment or settlement involves, or is reasonably likely to involve, any performance by or adverse admission by or with respect to the Indemnified Person.

79
11.2 **General Tax Indemnity.**

(a) Subject to Section 11.6, the Indemnity Provider shall pay and assume liability for, and does hereby agree to indemnify, protect and defend the Property and all Indemnified Persons, and hold them harmless against, all Impositions on an After Tax Basis, and all payments pursuant to the Operative Agreements shall be made free and clear of and without deduction or Withholding for any and all present and future Impositions, except as required by Applicable Law. If deduction or Withholding from any such payment is required by Applicable Law and such deduction or Withholding is subject to indemnification by the Indemnity Provider under the provisions of this Section 11.2, then such payment amount shall be increased as necessary so that after making all required deductions and Withholdings (including deductions and Withholdings applicable to additional sums payable under this Section 11.2(a)) the applicable recipient of such payment receives an amount equal to the sum it would have received had no such deduction or Withholding been made.

(b) Notwithstanding anything to the contrary in Section 11.2(a) hereof, the following shall be excluded from the indemnity required by Section 11.2(a):

(i) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, value added, transfer or property Taxes) that are imposed on or measured by net income (however denominated and including the Texas franchise Tax on taxable margin, Taxes based on capital gains and minimum Taxes), net worth, or capital stock, franchise Taxes, gross receipts Taxes and branch profits Taxes, in each case, imposed as a result of an Indemnified Person (A) being organized under the laws of, or having its principal office or, in the case of any Financing Party, its applicable lending office located in, the jurisdiction imposing such Taxes (or any political subdivision thereof) or (B) having a present or former connection with the jurisdiction imposing such Taxes; provided, that such Taxes shall not be excluded under this subparagraph (i) to the extent the sole connection between such Indemnified Person and the jurisdiction imposing such Taxes is (I) the location, possession or use of the Property in, the location or the operation of the Lessee or any use of the Property in, or the making of payments by or on behalf of the Lessee under the Operative Agreements from, the jurisdiction imposing such Taxes and/or (II) the activities of any one or more of the Indemnified Persons in the jurisdiction imposing the Taxes in connection with its or their enforcement of remedies under the Operative Agreements; provided, further, that this clause (i) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made; and

(ii) any Taxes which are imposed on an Indemnified Person as a result of the gross negligence or willful misconduct of such Indemnified Person itself, as determined by a court of competent jurisdiction in a final nonappealable judgment (as opposed to gross negligence or willful misconduct imputed to such Indemnified Person), but not Taxes imposed as a result of ordinary negligence of such Indemnified Person.

(c) Subject to the terms of Sections 11.2(f) and 11.6, the Indemnity Provider shall pay or cause to be paid all Impositions directly to the applicable Governmental Authority where feasible and otherwise to the Indemnified Person, as appropriate, and the Indemnity Provider shall at its own expense, upon such Indemnified Person’s reasonable request, furnish to such Indemnified Person copies of official receipts or other satisfactory proof evidencing such payment.
(ii) In the case of Impositions for which no contest is conducted pursuant to Section 11.2(f) and which the Indemnity Provider pays directly to the applicable Governmental Authority, the Indemnity Provider shall (subject to Section 11.6) pay such Impositions prior to the latest time permitted by the relevant Governmental Authority for timely payment. In the case of Impositions for which the Indemnity Provider reimburses an Indemnified Person describing in reasonable detail the nature of the Imposition and the basis for the demand (including the computation of the amount payable), accompanied by receipts, if available, or other reasonable evidence of such demand (and shall make advances with respect to such Impositions in the manner and to the extent provided by Section 11.2(f) and 11.1 prior to such date). In the case of Impositions for which a contest is conducted pursuant to Section 11.2(f), the Indemnity Provider shall (subject to Section 11.6) pay such Impositions or reimburse such Indemnified Person for such Impositions, to the extent not previously paid, advanced or reimbursed pursuant to subsection (a) or (f), prior to the latest time permitted by the relevant Governmental Authority for timely payment after conclusion of all contests under Section 11.2(f) (and shall make advances with respect to such Impositions in the manner and to the extent provided by Section 11.2(f) and 11.1 prior to such date).

(iii) At the Indemnity Provider’s request, the amount of any indemnification payment by the Indemnity Provider pursuant to subsection (a) shall be verified and certified by an independent public accounting firm mutually acceptable to the Indemnity Provider and the Indemnified Person. The fees and expenses of such independent public accounting firm shall be paid by the Indemnity Provider.

(d) The Indemnity Provider shall be responsible for preparing and filing (i) any real and personal property or ad valorem Tax returns in respect of the Property and (ii) any other Tax returns required of the Lessor respecting the transactions described in the Operative Agreements (but in the case of Tax returns described in clause (ii), other than returns with respect to Taxes excluded from indemnification pursuant to Section 11.2(b)(i)). In case any report or Tax return shall be required to be made with respect to any Tax indemnified by the Indemnity Provider under subsection (a), the Indemnity Provider, at its sole cost and expense, shall notify the relevant Indemnified Person of such requirement and (except if such Indemnified Person notifies the Indemnity Provider that such Indemnified Person intends to prepare and file such report or return) (A) to the extent required or permitted by and consistent with Legal Requirements, make and file in the Indemnity Provider’s name such return, statement or report; and (B) in the case of any other such return, statement or report required to be made in the name of such Indemnified Person, advise such Indemnified Person of such fact and prepare such return, statement or report for filing by such Indemnified Person or, where such return, statement or report shall be required to reflect items in addition to any obligations of the Indemnity Provider under or arising out of subsection (a), provide such Indemnified Person, at the Indemnity Provider’s expense, with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of the Indemnity Provider under or arising out of subsection (a). Such Indemnified Person shall, upon the Indemnity Provider’s request and at the Indemnity Provider’s expense, provide any data maintained by such Indemnified Person (and not otherwise available to or within the control of the Indemnity Provider) with respect to the Property which the Indemnity Provider may reasonably be required to prepare any required Tax returns or reports.
As between the Indemnity Provider on one hand, and each Financing Party on the other hand, the Indemnity Provider shall be responsible for, and the Indemnity Provider shall indemnify and hold harmless each Financing Party (including, for purposes of this Section 11.2(e), each Participant to the extent such Participant is entitled to the benefit of this provision pursuant to Section 10.4) (without duplication of any indemnification required by subsection (a) and subject to Section 11.6) on an After Tax Basis against, any obligation for United States or foreign withholding Taxes or similar levies, imposts, charges, fees, deductions or withholdings (collectively, “Withholdings”) imposed in respect of the the Lessor Yield payable on the Lessor Advances, Rent payable under the Lease or with respect to any other payments under the Operative Agreements to be made without deduction, withholding or set-off (all such payments being referred to herein as “Exempt Payments”) (including, if any Financing Party receives a demand for such payment from any Governmental Authority or a Withholding is otherwise required with respect to any Exempt Payment, the Indemnity Provider shall discharge such demand on behalf of such Financing Party); provided, however, that the obligation of the Indemnity Provider under this Section 11.2(e) shall not apply to:

(i) Withholdings on any Exempt Payment to any Financing Party which is a Non-U.S. Person unless such Financing Party is, on the date hereof (or on the date it becomes a Financing Party hereunder) and on the date of any change in the principal place of business or the lending office of such Financing Party, entitled to submit and submits to the Agent (which shall be available to the Indemnity Provider upon request) an executed IRS Form W-8BEN, Form W-8BEN-E, Form W-8IMY, Form W-8ECI or other applicable forms (relating to such Financing Party and entitling it to a complete exemption from Withholding on such Exempt Payment) or is otherwise subject to exemption from Withholding with respect to such Exempt Payment (except (a) in the case of a transferee, if the transferring Financing Party was being indemnified against Withholdings at the time of transfer as a result of a change in Law after the Initial Closing Date (or, if later, the date the transferring Financing Party became a Financing Party hereunder) or (b) where the failure of the exemption results from a change in the principal place of business of the Lessee);

(ii) Any U.S. Taxes imposed solely by reason of the failure by a Non-U.S. Person to comply with applicable certification, information, documentation or other reporting requirements concerning the nationality, residence, identity or connections with the United States of America of such Non-U.S. Person if such compliance is required by statute or regulation of the United States as a precondition to relief or exemption from such U.S. Taxes (but only if the Non-U.S. Person can legally comply with such requirement);

(iii) Withholdings on any Exempt Payment to any Financing Party which is a U.S. Person unless such Financing Party has delivered to the Agent (which shall be available to the Indemnity Provider upon request), on or before the date it becomes a Financing Party hereunder, an executed IRS Form W-9 certifying that such Financing Party is exempt from U.S. federal backup withholding Tax; or

(iv) U.S. federal Withholdings imposed under FATCA.

For the purposes of this Section 11.2(e), (A) “U.S. Person” shall mean a citizen, national or resident of the United States, a corporation, partnership or other entity created or organized in or under any laws of the United States or any State thereof, or any estate or trust that is subject to Federal income taxation regardless of the source of its income and (B) “U.S. Taxes” shall mean any
present or future Tax, assessment or other charge or levy imposed by or on behalf of the United States or any taxing authority thereof or therein.

If a Financing Party or an Affiliate with whom such Financing Party files a consolidated Tax return (or equivalent) subsequently receives the benefit in any country of a Tax credit or an allowance resulting from U.S. Taxes with respect to which it has received a payment of an additional amount under this Section 11.2(e), so long as no Event of Default has occurred and is continuing (or at such time as such Event of Default is no longer continuing), such Financing Party will pay to the Indemnity Provider such part of that benefit as in the reasonable opinion of such Financing Party will leave it (after such payment) in a position no more and no less favorable than it would have been in if no additional payment had been required to be paid, provided always that (i) such Financing Party will be the sole judge of the amount of any such benefit and of the date on which it is received, (ii) such Financing Party will have the absolute discretion as to the order and manner in which it employs or claims Tax credits and allowances available to it and (iii) such Financing Party will not be obliged to disclose to the Indemnity Provider any information regarding its Tax affairs or Tax computations.

Each U.S. Person and Non-U.S. Person that shall become a Financing Party after the date hereof shall, upon the effectiveness of the related transfer or otherwise upon becoming a Financing Party hereunder, be required to provide all of the forms and statements referenced above or other evidences of exemption from Withholdings to the Agent, which shall be available to the Indemnity Provider upon request (unless the transferor of such Financing Party was being indemnified against Withholding at the time of the transfer as a result of a change in Law after the Initial Closing Date, in which case such forms and statements shall evidence a rate of Withholding that does not exceed the rate of Withholding applicable to Exempt Payments to the transferor).

(f) If an Imposition is made against any Indemnified Person or if any proceeding shall be commenced against such Indemnified Person (including a written notice of such proceeding), for any Imposition, such Indemnified Person shall promptly notify the Indemnity Provider in writing and shall not take action with respect to such Imposition without the consent of the Indemnity Provider upon request (unless the transferor of such Financing Party was being indemnified against Withholding at the time of the transfer as a result of a change in Law after the Initial Closing Date, in which case such forms and statements shall evidence a rate of Withholding that does not exceed the rate of Withholding applicable to Exempt Payments to the transferor).

If, within thirty (30) days of receipt of such notice from the Indemnified Person (or such shorter period as the Indemnified Person has notified the Indemnity Provider is required by Applicable Law for the Indemnified Person to respond to such Imposition), the Indemnity Provider shall request in writing that such Indemnified Person contest such Imposition, the Indemnified Person shall, at the expense of the Indemnity Provider, in good faith conduct and control such action with counsel selected by the Indemnified Person and consented to by the Indemnity Provider, such consent not to be unreasonably withheld (including by pursuit of appeals) by, in the sole discretion of the Person conducting and controlling such action (1) resisting payment thereof, (2) not paying the same
except under protest, if protest is necessary and proper, (3) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, or (4) taking such other action as is reasonably requested by the Indemnity Provider from time to time provided that such other action cannot reasonably be expected to have any adverse effect on the Indemnified Person (provided, however, that (A) if such contest, in the Indemnified Person’s reasonable discretion, can be pursued by the Indemnity Provider in its own name, the Indemnified Person, at the Indemnity Provider’s request, shall allow the Indemnity Provider to conduct and control the contest of such Imposition unless such Imposition cannot be pursued independently from any other claim involving such Indemnified Person or unless such Imposition is unrelated to the Property or the transactions contemplated by the Operative Agreements and (B) in the case of any Imposition (and notwithstanding the provisions of the foregoing subsection (A)), the Indemnified Person may require the Indemnity Provider to conduct and control the contest of such Imposition (with counsel to be selected by the Indemnity Provider and consented to by such Indemnified Person, such consent not to be unreasonably withheld); provided, however, that any Indemnified Person may retain separate counsel at the expense of the Indemnity Provider if, in the written opinion of counsel to the Indemnified Person reasonably acceptable to the Indemnity Provider (the expense of which opinion shall be paid by the Indemnity Provider), use of counsel of the Indemnity Provider’s choice would be expected to give rise to a conflict of interest between such Indemnified Person and the Indemnity Provider).

The party controlling the contest of any Imposition shall consult in good faith with the non-controlling party and shall keep the non-controlling party reasonably informed as to the conduct of the contest of such Imposition; provided, that all decisions ultimately shall be made in the discretion of the controlling party. The parties agree that an Indemnified Person may at any time decline to take further action with respect to the contest of such Imposition and may settle such contest if such Indemnified Person shall waive its rights to any indemnity from the Indemnity Provider that otherwise would be payable in respect of such Imposition (and any future Imposition, the pursuit of which is precluded by reason of such resolution of such contest) and shall pay to the Indemnity Provider any amount previously paid or advanced by the Indemnity Provider pursuant to this Section 11.2 by way of indemnification or advance for the payment of an amount regarding such Imposition (not including the expenses of the contest).

Notwithstanding the foregoing provisions of this Section 11.2(f), an Indemnified Person shall not be required to take any action and the Indemnity Provider shall not be permitted to contest any Imposition in its own name or that of the Indemnified Person unless (A) the Indemnity Provider shall have agreed in writing to pay and shall pay to such Indemnified Person on demand and on an After Tax Basis all reasonable costs, losses and expenses that such Indemnified Person actually incurs in connection with such contest, including all reasonable legal, accounting and investigatory fees and disbursements and the Indemnity Provider shall have agreed in writing to indemnify such Indemnified Person in respect of the Imposition if and to the extent the contest is not successful, (B) the Indemnified Person shall have reasonably determined that the action to be taken will not result in any material danger of sale, forfeiture or loss of the Property, or any part thereof or interest therein, will not interfere with the payment of Rent, and will not result in risk of criminal liability or risk of sale, forfeiture or loss of or the creation of any Lien (other than a Permitted Lien) on the Property, (C) if such contest shall involve the payment of any amount prior to the resolution of such contest, the Indemnity Provider shall provide to the Indemnified Person an interest-free advance in an amount equal to the amount that the Indemnified Person is required to pay (with no additional net cost, on an After Tax Basis, to such Indemnified Person) prior to the date such payment is due, (D) in the case of a contest of an Imposition that cannot and is not to be pursued in the name of the

84
Indemnity Provider, the Indemnity Provider shall have provided to such Indemnified Person an opinion of independent counsel selected by the Indemnity Provider and reasonably satisfactory to the Indemnified Person stating that a reasonable basis exists to pursue the contest (or in the case of an appeal of adverse judicial determination, the position asserted in such appeal will more likely than not prevail), and (E) no Default or Event of Default shall have occurred and be continuing. In no event shall an Indemnified Person be required to appeal an adverse judicial determination to the United States Supreme Court. In addition, an Indemnified Person shall not be required to contest any Imposition in its name (or that of an Affiliate) if the subject matter thereof shall be of a continuing nature and shall have previously been decided adversely by a court of competent jurisdiction pursuant to the contest provisions of this Section 11.2(f), unless there shall have been a change in Law (or interpretation thereof) and the Indemnified Person shall have received, at the Indemnity Provider’s expense, an opinion of nationally-recognized independent counsel selected by the Indemnity Provider and reasonably acceptable to the Indemnified Person stating that as a result of such change in Law (or interpretation thereof), that the Indemnified Person should prevail in such contest. In no event shall the Indemnity Provider be permitted to adjust or settle the contest of Imposition without the consent of the Indemnified Person to the extent any such adjustment or settlement involves, or is reasonably likely to involve, any performance by or adverse admission by or with respect to the Indemnified Person.

(g) Each Lessor Party has entered into the transactions contemplated by the Operative Agreements on the assumption that the Lessor Advances are properly characterized for Federal, State and local income Tax purposes as debt (the “Assumed Characterization”). If for any reason (and notwithstanding anything to the contrary contained in the Operative Agreements and without regard to paragraph (b) hereof, except subsection (ii) thereof) (other than any Financing Party voluntarily taking a position on its Federal, State or local income Tax returns inconsistent with the Assumed Characterization), any Financing Party shall suffer any adverse Federal, State or local income Tax consequences as a result of any challenge to the Assumed Characterization (a “Tax Loss”), the Indemnity Provider will pay to such Financing Party an amount sufficient to reimburse such Financing Party, on an After Tax Basis, for the additional Federal, State and local income Taxes payable by (or not refundable to) such Financing Party from time to time as a result of such Tax Loss plus all interest, penalties, fines and additions to Tax payable by such Financing Party as a result of such Tax Loss. In connection with the foregoing, the applicable Financing Party shall provide written notice to the Indemnity Provider of any claim for indemnification under this Section 11.2(g). Any such claim shall be subject to the contest provisions of Section 11.2(f) and the verification procedure set forth in Section 11.2(c)(iii). Any payments due to such Financing Party pursuant to this Section 11.2(g) shall be paid no later than the date that such Financing Party shall become obligated to pay the additional Federal, State or local income Taxes resulting from the Tax Loss.

11.3 Yield Protection Amount.

Subject to Section 11.6, if any Regulatory Change occurring after the date hereof:

(a) shall impose upon any Financing Party (which, for purposes of this Section 11.3, shall include any Participant to the extent such Participant is entitled to the benefit of this provision pursuant to Section 10.4), modify or deem applicable any reserve, special deposit or similar requirement against assets of any Financing Party, deposits or obligations with or for the account of any Financing Party or with or for the account of any Affiliate (or entity deemed by the Federal

85
Reserve Board to be an Affiliate) of any Financing Party, or credit extended by any Financing Party (except any reserve requirement already reflected in the LIBOR Rate); or

(b) shall change the amount of capital maintained or required or requested or directed to be maintained by any Financing Party or such Financing Party’s holding company; or

(c) shall impose any other condition affecting any Lessor Advance or any Operative Agreement (or any Financing Party’s participation therein) or any of its obligations or right to acquire or hold any Lessor Advance;

and the result of any of the foregoing is or would be with regard to the transactions evidenced by the Operative Agreements:

(i) to increase the cost to (or impose a cost on) a Financing Party funding or acquiring or holding any Lessor Advance or loans or other extensions of credit under any Operative Agreement or any obligation or commitment of such Financing Party with respect to any of the foregoing,

(ii) to reduce the amount of any sum received or receivable by a Financing Party as a Lessor Party (or otherwise in respect of any of the Lessor Advances), under any Operative Agreement (or its participation in any of the foregoing), or

(iii) to reduce the rate of return on the capital of such a Financing Party as a consequence of its obligations under the Operative Agreements (or its participation therein) to a level below that which such Financing Party could otherwise have achieved,

in each case by an amount reasonably deemed by such Financing Party to be material, then prior to the next Payment Date, and in any case within thirty (30) days after demand by such Financing Party, the Lessee shall pay directly to such Financing Party such additional amount or amounts as will compensate such Financing Party for such additional or increased cost or such reduction (the “Yield Protection Amount”); provided that the Lessee shall not be required to compensate any Financing Party pursuant to the foregoing provisions of this Section 11.3 for any increased costs incurred or reductions suffered more than one hundred twenty (120) days prior to the date that such Financing Party notifies the Lessee of the event or circumstances giving rise to such increased costs or reductions and of such Financial Party’s intention to claim compensation therefor (except that, if the Regulatory Change giving rise to such increased costs or reductions is retroactive, then the one hundred twenty (120) days period referred to above shall be extended to include the period of retroactive effect thereof).

In determining any amount provided for or referred to in this Section 11.3, a Financing Party may use any reasonable averaging and attribution method that it (in its sole discretion) shall deem applicable. Any Financing Party when making a claim under this Section 11.3 shall submit to the Lessee a statement as to such increased cost or reduced return (including calculation thereof in reasonable detail), which statement shall, in the absence of error, be conclusive and binding upon the Lessee.

(d) Notwithstanding any other provision of this Agreement, if any Financing Party (including, for purposes of this Section 11.3(d), any Participant to the extent such Participant is entitled to the benefit of this provision pursuant to Section 10.4) shall notify the Agent that the introduction of or any change in or in the interpretation of any Law or regulation makes it unlawful,
or any central bank or other governmental authority asserts that it is unlawful, for any Financing Party to perform its obligations hereunder to make or maintain Eurodollar Lessor Advances then (i) each Eurodollar Lessor Advance will automatically, at the earlier of the end of the Lessor Yield Period for such Eurodollar Lessor Advance or the date required by law, convert into an ABR Lessor Advance, and (ii) the obligation of the Financing Parties to make, convert or continue Eurodollar Lessor Advances shall be suspended until the Agent shall notify the Lessee that such Financing Party has determined that the circumstances causing such suspension no longer exist.

11.4 **Funding/Contribution Indemnity.**

Subject to Section 11.6, the Lessee agrees to indemnify each Financing Party (which, for purposes of this Section 11.4, shall include any Participant to the extent such Participant is entitled to the benefit of this provision pursuant to Section 10.4) and to hold each Financing Party harmless from (I) all Breakage Costs, and (II) any loss or reasonable expense which such Financing Party may sustain or incur as a consequence of (a) any default in connection with the drawing of funds for any Lessor Advance, (b) any default in making any repayment or prepayment after a notice thereof has been given in accordance with the provisions of the Operative Agreements or the delivery by the Lessee of a revocation of such a notice (notwithstanding that each such notice is expressly irrevocable and that the Lessee has no right to revoke) pursuant to Section 16.2(a) or 20.2 of the Lease or (c) the making of a voluntary or involuntary payment of Lessor Advances (except for ABR Lessor Advances) on a day which is not the last day of a Lessor Yield Period with respect thereto. Such indemnification shall be in an amount equal to the excess, if any, of (x) the amount of Lessor Yield which would have accrued on the amount so paid, or not so borrowed, accepted, converted or continued for the period from the date of such payment or of such failure to borrow, accept, convert or continue to the last day of such Lessor Yield Period (or, in the case of a failure to borrow, accept, convert or continue, the Lessor Yield Period that would have commenced on the date of such failure) in each case at the applicable Lessor Yield for such Lessor Yield Period over (y) the amount of yield (as determined by such Financing Party in its reasonable discretion) which would have accrued to such Financing Party on such amount by placing such amount on deposit for a comparable period with leading banks in the relevant interest rate market. This covenant shall survive the termination of the Operative Agreements and the payment of all other amounts payable hereunder.

11.5 **EXPRESS INDEMNIFICATION FOR ORDINARY NEGLIGENCE, STRICT LIABILITY, ETC.**

WITHOUT LIMITING THE GENERALITY OF THE INDEMNIFICATION PROVISIONS OF ANY AND ALL OF THE OPERATIVE AGREEMENTS (BUT SUBJECT TO SECTION 11.6), EACH PERSON PROVIDING INDEMNIFICATION OF ANOTHER PERSON UNDER ANY OPERATIVE AGREEMENT HEREBY FURTHER EXPRESSLY RELEASES EACH BENEFICIARY OF ANY SUCH INDEMNIFICATION FROM ALL CLAIMS FOR LOSS OR DAMAGE, DESCRIBED IN ANY OPERATIVE AGREEMENT, CAUSED BY ANY ACT OR OMISSION ON THE PART OF ANY SUCH BENEFICIARY ATTRIBUTABLE TO THE ORDINARY NEGLIGENCE (WHETHER SOLE OR CONTRIBUTORY) OR STRICT LIABILITY OF ANY SUCH BENEFICIARY, AND INDEMNIFIES, EXONERATES AND HOLDS EACH SUCH BENEFICIARY FREE AND HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, CAUSES OF ACTION, SUITS, CLAIMS, LOSSES, COSTS, LIABILITIES, DAMAGES AND EXPENSES (INCLUDING ATTORNEY’S FEES AND EXPENSES), DESCRIBED ABOVE, INCURRED BY ANY SUCH BENEFICIARY (IRRESPECTIVE OF WHETHER ANY SUCH BENEFICIARY IS A PARTY TO THE ACTION FOR WHICH INDEMNIFICATION UNDER THIS AGREEMENT OR ANY OTHER OPERATIVE AGREEMENT IS SOUGHT) ATTRIBUTABLE TO
THE ORDINARY NEGLIGENCE (WHETHER SOLE OR CONTRIBUTORY) OR STRICT LIABILITY OF ANY SUCH BENEFICIARY.

11.6 Indemnity Prior to Completion Date / Construction Period Termination Date.

Notwithstanding the provisions of Sections 11.1, 11.2, 11.3, 11.4 and 11.5 and any other indemnity provision in any Operative Agreement (except as set forth in Section 11.7), the Lessor shall be the only beneficiary of the provisions set forth in Sections 11.1, 11.2, 11.3, 11.4 and 11.5 or any other indemnity provision in any Operative Agreement requiring indemnity payments directly or indirectly from any Credit Party (except as set forth in Section 11.7) with respect to any Claim arising thereunder with respect to the Construction Period Property for the period prior to the Completion Date related to the Property, but the Indemnity Provider shall provide such indemnity only to the extent such Claims result from claims caused by or resulting from the Indemnity Provider’s own actions or failures to act (or the act or failure to act of its Affiliates, employees, servants or agents) while in possession of or having management responsibility for the Construction Period Property. As a clarification of the prior sentence, the Indemnity Provider indemnifies the Lessor for, and shall pay the Lessor with respect to, any such Claim referenced in the prior sentence by or against any Indemnified Person other than the Lessor. The Indemnity Provider acknowledges and agrees in this connection that the Property is in its possession and that the Indemnity Provider has management responsibility for the Property, in each case prior to the Completion Date, that the Indemnity Provider is responsible as the Construction Agent for the acts and omissions of its Affiliates, employees, servants and agents and that the Indemnity Provider has agreed to maintain the Property free from injury or mishap to third persons; provided, however, that the occurrence of injury or mishap to third persons shall not give rise to an Event of Default. To the extent the Indemnity Provider is not obligated to indemnify each Indemnified Person with respect to the various matters described in this Section 11.6, the Lessor shall indemnify each other Indemnified Person for such Claims; provided, however, that any obligation of the Lessor to provide any such indemnity shall be discharged solely and exclusively from amounts received by the Lessor from the Indemnity Provider or from Lessor Advances and to the extent such amounts are insufficient to pay such Claims, then the Lessor shall have no responsibility therefor. To the extent the Indemnity Provider does not provide an amount to the Lessor adequate to pay such Claims by or against any Indemnified Person, the Lessor Parties shall make Lessor Advances to pay for such Claim without regard to the satisfaction of conditions precedent pursuant to Section 5.3 or 5.4 of this Agreement but only to the extent amounts are available therefor with respect to the Available Lessor Parties Commitment (subject to the rights of the Lessor Parties to increase their respective commitment amounts in accordance with the provisions of Section 5.8). Notwithstanding any other provision in any other Operative Agreement to the contrary, all amounts so advanced shall be added to the Property Cost for the Construction Period Property.

THE INDEMNITY OBLIGATIONS UNDERTAKEN BY THE LESSOR PURSUANT TO THIS SECTION 11.6 ARE IN ALL RESPECTS SUBJECT TO THE LIMITATIONS ON LIABILITY REFERENCED IN SECTION 12.9.

This Section 11.6 shall only limit or otherwise affect any obligation of the Indemnity Provider in respect of any Claim which arises out of or relates to the Property prior to the Completion Date.

11.7 Additional Provisions Regarding Environmental Indemnification.

Each and every Indemnified Person shall at all times have the rights and benefits, and the Indemnity Provider shall have the obligations, in each case provided pursuant to the Operative Agreements with respect to environmental matters, violations of any Environmental Law, and Environmental Claim or other loss of
or damage to any property or the environment relating to the Property, the Lease or the Indemnity Provider (including the rights and benefits provided pursuant to Section 11.1(e)).

11.8 Increase of Lessor Advances.

The Lessor Advances and the Property Cost shall be increased on a dollar-for-dollar basis for the respective Lessor Advances necessary for the Lessor Parties to fund the Lessor in an amount sufficient to pay indemnity claims made by any other Indemnified Person against any Lessor Party pursuant to Section 11.6.

11.9 Survival.

The obligations of the Indemnity Provider under this Section 11 shall survive in accordance with the provisions of Section 12.1.

SECTION 12.
MISCELLANEOUS.

12.1 Survival of Agreements.

The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Agreements, and the parties’ obligations under any and all thereof, shall survive the execution and delivery of this Agreement, the transfer of the Property to the Lessor, the acquisition of the Property (or any of its components), the construction of any Improvements, the Completion of the Property, any disposition of any interest of the Lessor in the Property, the payment of the Lessor Advances and any disposition thereof and shall be and continue in effect notwithstanding any investigation made by any party and the fact that any party may waive compliance with any of the other terms, provisions or conditions of any of the Operative Agreements. Except as otherwise expressly set forth herein or in other Operative Agreements, the indemnities of the parties provided for in the Operative Agreements shall survive the expiration or termination of any thereof.

12.2 Notices.

All notices required or permitted to be given under any Operative Agreement shall be in writing. Notices may be served by private courier, prepaid; by facsimile; or personally couriered notices shall be deemed delivered when delivered as addressed, or if the addressee refuses delivery, when presented for delivery notwithstanding such refusal. Telecommunicated notices shall be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office. Personal delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the parties at the following addresses:

If to the Lessee, to such entity at the following address:

AVDC, Inc.
c/o Big Lots, Inc.
300 Phillipi Road
Columbus, OH 43228-5311
Attention: Paul Schroeder
Telephone: (614) 278-6815
Fax: (614) 278-6666

89
If to the Parent, to such entity at the following address:

Big Lots, Inc.
300 Phillipi Road
Columbus, OH 43228-5311
Attention: Paul Schroeder
Telephone: (614) 278-6815
Fax: (614) 278-6666

If to any of the Guarantors other than the Parent, to each such entity at the following address:

c/o Big Lots, Inc.
300 Phillipi Road
Columbus, OH 43228-5311
Attention: Paul Schroeder
Telephone: (614) 278-6815
Fax: (614) 278-6666

If to any of the Lessor Parties, to each such entity at the address set forth for such Lessor Party on Schedule XVI.

If to the Agent, to it at the following address:

Wells Fargo Bank, National Association
10 South Wacker Drive, 22nd Floor
Chicago, IL 60606
Attention: John Runger
Telephone: 312-845-9631
Fax: None

From time to time any party may designate additional parties and/or another address for notice purposes by notice to each of the other parties hereto. Each notice hereunder shall be effective upon receipt or refusal thereof.

12.3 Counterparts.

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one (1) and the same instrument.


Except with regard to the Unanimous Vote Matters and each other exception expressly set forth in any Operative Agreement, each Operative Agreement only may be terminated, amended, supplemented, waived or modified by, or consent granted by, an instrument in writing signed by the Majority Secured Parties and each Credit Party, to the extent such Credit Party is a party to such Operative Agreement.

Notwithstanding the foregoing, no such termination, amendment, supplement, waiver or modification or consent shall, without the consent of the Agent and, to the extent affected thereby, the Lessor Parties, in all cases without the need for any consent from any Defaulting Lessor Party except to the extent
required pursuant to the second to last paragraph of this Section 12.4 (collectively, the “Unanimous Vote Matters”) (i) reduce or increase the Lessor Parties Commitment except as otherwise provided in Sections 5.8, 5A.6 and 9.3 of this Agreement, (ii) extend the scheduled date of maturity of any Lessor Advance, (iii) extend the scheduled Expiration Date, (iv) extend any payment date of any Lessor Advance, (v) reduce the stated Lessor Yield (other than as a result of waiving the applicability of any post-default increase in Lessor Yield), (vi) modify the priority of any Lien in favor of the Agent under any Security Document, (vii) consent to any Lien against the Property or other Collateral other than any Permitted Lien, (viii) subordinate any obligation owed to any of the Lessor Parties, (ix) reduce the Fees under this Agreement, (x) extend the expiration date of the Lessor Parties Commitment, (xi) terminate, amend, modify, extend, supplement, restate, replace or waive any provision of this Section 12.4, (xii) modify the Collateral (except in accordance with Section 8.8(a)), (xiii) release any Credit Party from its obligations under any Operative Agreement (except in accordance with Section 8.8(b)) or (xiv) otherwise alter any payment obligations of any Credit Party to the Lessor or any Financing Party under the Operative Agreements. Additionally, in no event shall Section 8.6 be terminated, amended, supplemented, waived or modified without the consent of the Agent. Any such termination, amendment, supplement, waiver or modification shall apply equally to each of the Lessor Parties and shall be binding upon all the parties to this Agreement. In the case of any waiver, each party to this Agreement shall be restored to its former position and rights under the Operative Agreements, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. For the avoidance of doubt, the parties to this Agreement agree that, except as provided in Sections 5.8 and 11.8, any increase in the Lessor Parties Commitment of the Lessor Parties shall be a matter decided as a Unanimous Vote Matter.

Notwithstanding the foregoing, the Engagement Letter may be amended, modified, extended, supplemented, restated, replaced or waived, or a consent with respect thereto may be granted, in each case only by an instrument in writing signed by the parties thereto.

Notwithstanding anything to the contrary herein, (i) no Defaulting Lessor Party shall have any right to approve or disapprove of any termination, amendment, supplement, waiver or modification of any Operative Agreement or otherwise to provide a consent with respect to any Operative Agreement (and any termination, amendment, supplement, waiver, modification or consent which by its terms requires the consent of all Lessor Parties or each affected Lessor Party may be effected with the consent of the applicable Lessor Parties other than Defaulting Lessor Party), except that (A) the Lessor Parties Commitment of any Defaulting Lessor Party may not be increased or extended without the consent of such Lessor Party, and (B) any termination, amendment, supplement, waiver or modification requiring the consent of all Lessor Parties or each affected Lessor Party, that by its terms affects any Defaulting Lessor Party disproportionately adversely relative to other affected Lessor Parties shall require the consent of such Defaulting Lessor Party, as applicable; (ii) each Lessor Party is entitled to vote as such Lessor Party sees fit on any bankruptcy reorganization plan that affects the Lessor Advances, and each Lessor Party acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein and (iii) the Majority Secured Parties shall determine whether or not to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lessor Parties.

If any Lessor Party does not consent to a proposed termination, amendment, supplement, waiver, modification or consent with respect to any Operative Agreement that requires the consent of each Lessor Party and that has been approved by the Majority Secured Parties, the Lessee may replace such Non-Consenting Lessor Party in accordance with a required assignment of the Lessor Party’s interests pursuant to Section 5A.7(b); provided, that such termination, amendment, supplement, waiver, modification or consent

91
can be effected as a result of such assignment (together with all other such assignments required by the Lessee to be made pursuant to this paragraph).

12.5 **Headings, etc.**

The Table of Contents and headings of the various Articles and Sections of this Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

12.6 **Parties in Interest.**

Except as expressly provided herein, none of the provisions of this Agreement are intended for the benefit of any Person except the parties hereto.

12.7 **GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL; VENUE.**

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERUNDER SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK EXCEPT TO THE EXTENT THAT LOCAL LAW IS PROPERLY APPLICABLE FOR MATTERS OF REAL PROPERTY. Any legal action or proceeding with respect to this Agreement or any other Operative Agreement may be brought in the courts of the State of New York in New York County or of the United States for the Southern District of New York, and, by execution and delivery of this Agreement, each of the parties to this Agreement hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the nonexclusive jurisdiction of such courts. Each of the parties to this Agreement further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by overnight courier delivery to it at the address set out for notices pursuant to Section 12.2, such service to become effective in the manner provided in Section 12.2. Nothing herein shall affect the right of any party to serve process in any other manner permitted by Law or to commence legal proceedings or to otherwise proceed against any party in any other jurisdiction.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO ANY DISPUTE OR THIS AGREEMENT, ANY OTHER OPERATIVE AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

(c) Each of the parties to this Agreement hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement or any other Operative Agreement brought in the courts referred to in subsection (a) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

(d) Notwithstanding anything to the contrary contained in this Agreement or any of the other Operative Agreements, if any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Operative Agreement and the foregoing waiver of a right to a trial by jury
is for any reason not enforceable in such action or proceeding (including as a consequence of the application of California law), the parties to this Agreement hereby agree that (a) the court shall, and the parties shall advise and direct the court to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision; provided, that at the option of any party to such proceeding, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) without limiting the generality of Section 7, the Lessee shall be solely responsible to pay, or cause to be paid, all fees and expenses of any referee appointed in such action or proceeding.

12.8 Sev erability.

Any provision of any Operative Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12.9 Liability Limited.

Anything to the contrary contained in any Operative Agreement notwithstanding, except as stated in this Section 12.9, no Exculpated Person shall be personally liable in any respect for any liability or obligation arising hereunder or in any other Operative Agreement including the payment of the advance amount or yield regarding the Lessor Advances, or for monetary damages for the breach of performance of any of the covenants contained in the Operative Agreements. The Lessor Parties and the Agent agree that, in the event any remedies under any Operative Agreement are pursued, none of the Lessor Parties or the Agent shall have any recourse against any Exculpated Person, for any deficiency, loss or Claim for monetary damages or otherwise resulting therefrom and recourse shall be had solely and exclusively against the Lessor’s interest in the Trust Property, and the assets of the Credit Parties (with respect to the Credit Parties’ obligations under the Operative Agreements); but nothing contained herein shall be taken to prevent recourse against or the enforcement of remedies against (a) the Lessor’s interest in the Trust Property in respect of any and all liabilities, obligations and undertakings contained herein and/or in any other Operative Agreement; (b) the Lessor Parties for any of their obligations arising on a full recourse basis; or (c) the Lessor Parties or any other Person for gross negligence or willful misconduct (other than any gross negligence or willful misconduct imputed to any Lessor Party from any Person other than the Lessor Party or any Affiliate of the Lessor Party (excepting the Agent)). Notwithstanding the provisions of this Section 12.9, nothing in any Operative Agreement shall: (w) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by or arising under any Operative Agreement or secured by any Operative Agreement, but the same shall continue until paid or discharged; (x) relieve any Exculpated Person from liability and responsibility for (but only to the extent of the damages arising by reason of); active waste knowingly committed by any Exculpated Person with respect to the Property, any fraud, gross negligence or willful misconduct on the part of any Exculpated Person (other than any fraud, gross negligence or willful misconduct imputed to such Exculpated Person from any Person other than an Affiliate of such Exculpated Person (excepting the Agent)); (y) relieve any Exculpated Person from liability and responsibility for (but only to the extent of the moneys misappropriated, misapplied or not turned over) (i) except for Excepted Payments, misappropriation or misapplication by any Lessor Party (i.e., application in a manner contrary to any of the Operative Agreements) of any insurance proceeds or condemnation award paid or delivered to any Lessor Party by any Person other than the Agent, (ii) except for Excepted Payments, any rent or other income received by any Lessor Party from any Credit Party that is not turned over to the Agent, or (iii) except for Excepted Payments, any deposits
or any escrows or amounts owed by the Construction Agent under the Agency Agreement held by any Lessor Party; or (z) affect or in any way limit the Agent’s rights and remedies under any Operative Agreement with respect to the Rents (other than Excepted Payments) and rights and powers of the Agent under the Operative Agreements or to obtain a judgment against the Lessee’s interest in the Property or the Agent’s rights and powers to obtain a judgment against any Lessor Party (but limited as to those matters specified in this Section 12.9) or any Credit Party (provided, that no deficiency judgment or other money judgment shall be enforced against any Exculpated Person except to the extent of the Lessor’s interest in the Trust Property or to the extent any Lessor Party may be liable as otherwise contemplated in clauses (b) and (c) of this Section 12.9).

12.10 Rights of the Credit Parties.

If at any time all obligations of the Lessor Parties under the Operative Agreements and of the Credit Parties under the Operative Agreements have in each case been satisfied or discharged in full, then the Credit Parties shall be entitled to terminate the Lease and guaranty obligations under Section 6B.

12.11 Further Assurances.

The parties hereto shall promptly cause to be taken, executed, acknowledged or delivered, at the sole expense of the Lessee, all such further acts, conveyances, documents and assurances as the other parties may from time to time reasonably request in order to carry out and effectuate the intent and purposes of this Agreement, the other Operative Agreements and the transactions contemplated hereby and thereby (including the preparation, execution (if applicable) and filing of any and all UCC Financing Statements, Mortgage Instruments and other filings or registrations which the parties hereto may from time to time request to be filed or effected). The Lessee, at its own expense and without need of any prior request from any other party, shall take such action as may be necessary (including any action specified in the preceding sentence), or (if the Agent or the Lessor shall so request) as so requested, in order to maintain and protect all security interests provided for hereunder or under any other Operative Agreement. In addition, in connection with the sale or other disposition of the Property or any portion thereof, the Lessee agrees to execute such instruments of conveyance as may be reasonably required in connection therewith.

12.12 Calculations under Operative Agreements.

The parties hereto agree that all calculations and numerical determinations to be made under the Operative Agreements by any Lessor Party shall be made by the Agent (to the extent such calculations and numerical determinations relate to any Lessor Party, Lessor Advances or Lessor Yield) and that such calculations and determinations shall be conclusive and binding on the parties hereto in the absence of manifest error.

12.13 Confidentiality.

Each Financing Party severally agrees to use reasonable efforts to keep confidential all non-public information pertaining to any Credit Party or any of its Subsidiaries which is provided to it by any Credit Party or any of its Subsidiaries and which an officer of the Lessee or any of its Subsidiaries has requested in writing be kept confidential, and shall not intentionally disclose such information to any Person except:

(a) to the extent such information is public when received by such Person or becomes public thereafter due to the act or omission of any party other than such Person;

(b) to the extent such information is independently obtained from a source other than any Credit Party or any of its Subsidiaries and such information from such source is not, to such
Person’s knowledge, subject to an obligation of confidentiality or, if such information is subject to an obligation of confidentiality, that disclosure of such information is permitted;

(c) to counsel, auditors or accountants retained by any such Person or any Affiliates of any such Person (if such Affiliates are permitted to receive such information pursuant to clause (f) or (g) below), provided they agree to keep such information confidential as if such Person or Affiliate were party to this Agreement and to financial institution regulators, including examiners of any Financing Party or any Affiliate thereof in the course of examinations of such Persons;

(d) in connection with any litigation or the enforcement or preservation of the rights of any Financing Party under the Operative Agreements;

(e) to the extent required by any applicable statute, rule or regulation or court order (including, by way of subpoena) or pursuant to the request of any regulatory or Governmental Authority having jurisdiction over any such Person; provided, however, that such Person shall endeavor (if not otherwise prohibited by Law) to notify the Lessee prior to any disclosure made pursuant to this clause (e), except that no such Person shall be subject to any liability whatsoever for any failure to so notify the Lessee;

(f) any Financing Party may disclose such information to another Financing Party or to any Affiliate of a Financing Party that is a direct or indirect owner of any Financing Party;

(g) any Financing Party may disclose such information to an Affiliate of any Financing Party to the extent required in connection with the transactions contemplated hereby or to the extent such Affiliate is involved in, or provides advice or assistance to such Person with respect to, such transactions (provided, in each case that such Affiliate has agreed in writing to maintain confidentiality as if it were such Financing Party (as the case may be)); or

(h) to the extent disclosure to any other financial institution or other Person is appropriate in connection with any proposed or actual assignment by any Lessor Party of interests to another Person, as specified in Section 10.1 (who will in turn be required by the transferring Lessor Party to agree in writing to maintain confidentiality as if it were the Lessor Party originally party to this Agreement).


The Credit Parties agree to obtain advice from their own accountants and Tax counsel regarding the financial reporting treatment and the Tax characterization of the transactions described in the Operative Agreements. The Credit Parties further agree that none of them shall rely upon any statement of any Financing Party or any of their respective Affiliates and/or Subsidiaries regarding any such financial reporting treatment and/or Tax characterization.

12.15 Set-off.

In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, upon and after the occurrence and continuance of any Event of Default and during the continuance thereof (but only after obtaining the prior written consent of the Majority Secured Parties) the Lessor Parties and their respective Affiliates and any assignee or participant of any Lessor Party in accordance with the applicable provisions of the Operative Agreements are hereby authorized by the Credit Parties at any time or from time to time, without notice to the Credit Parties or to any other Person (subject to the

95
above requirement to obtain the prior written consent of the Majority Secured Parties), any such notice being hereby expressly waived, to set-off and to appropriate and to apply any and all deposits (general or special, time or demand, including indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by such Lessor Party, their respective Affiliates or any assignee or participant of such Lessor Party in accordance with the applicable provisions of the Operative Agreements or for the credit or the account of any Credit Party against and on account of the obligations of any Credit Party under the Operative Agreements irrespective of whether or not (a) such Lessor Party shall have made any demand under any Operative Agreement or (b) the Agent shall have declared any or all of the obligations of any Credit Party under the Operative Agreements to be due and payable and although such obligations shall be contingent or unmatured. Notwithstanding the foregoing, no Lessor Party shall exercise, or attempt to exercise, any right of set-off, banker’s lien, or the like, against any deposit account or property of any Credit Party held by any Lessor Party, without the prior written consent of the Majority Secured Parties, and any Financing Party violating this provision shall indemnify the Agent and the other Financing Parties from any and all costs, expenses, liabilities and damages resulting therefrom. The contractual restriction on the exercise of set-off rights provided in the foregoing sentence is solely for the benefit of the Financing Parties and may not be enforced by any Credit Party. In addition to the foregoing, and not in limitation thereof, in the event that any Defaulting Lessor Party shall exercise any such right of set-off, but only after obtaining the prior written consent of the Majority Secured Parties, (a) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 5A.1(e), respectively, and, pending such payment, shall be segregated by such Defaulting Lessor Party from its other funds and deemed held in trust for the benefit of the Agent and the other Secured Parties and (b) the applicable Defaulting Lessor Party shall provide promptly to the Agent a statement describing in reasonable detail the secured obligations owing to such entity as to which it exercised such right of set-off.

Except as otherwise expressly provided herein or as otherwise agreed among all the Lessor Parties, where, and to the extent, one Lessor Party is entitled to payments prior to other Lessor Parties, if any Lessor Party (a “Benefitted Lessor Party”) shall at any time receive any payment of all or part of its Lessor Advances, or Lessor Yield thereon, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off or otherwise (subject to having first obtained the written consent of the Majority Secured prior to initiating any action with regard to such collateral)), in a greater proportion than any such payment to or collateral received by any other Lessor Party, if any, in respect of such other Lessor Party’s Lessor Parties Interest, or Lessor Yield thereon, such Benefitted Lessor Party shall purchase for cash from the other Lessor Parties a participating interest in such portion of each such other Lessor Party’s Lessor Parties Interest, or shall provide such other Lessor Parties with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefitted Lessor Party to share the excess payment or benefits of such collateral or proceeds ratably with each of the other Lessor Parties; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lessor Party, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without Lessor Yield.

12.16 Limited Obligation of the Lessee to Pay on behalf of the Lessor.

To the extent the Lessee undertakes to pay any amount on behalf of any Lessor Party pursuant to any Operative Agreement, such obligation of the Lessee shall be limited only to amounts payable by such Lessor Party, as the case may be, on a non-recourse basis.
12.17 **Limitation on Commitments.**

Notwithstanding any provision of any Operative Agreement to the contrary, the Property may not be financed under the Operative Agreements until such time as sufficient commitments therefor have been approved by each Financing Party in its sole discretion.

12.18 **USA Patriot Act Notice.**

Each Financing Party that is subject to the USA Patriot Act hereby notifies each of the Credit Parties that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of Credit Parties and other information that will allow such Financing Party to identify the Credit Parties in accordance with the USA Patriot Act.

12.19 **Acknowledgement and Consent to Bail-In of EEA Financial Institutions.**

Notwithstanding anything to the contrary in any Operative Agreement or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lessor Party that is an EEA Financial Institution arising under any Operative Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by: (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lessor Party that is an EEA Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Operative Agreement; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

12.20 **UCC Filing Authorization.**

Lessee authorizes Lessor and Agent, to file UCC financing and fixture filings statements, amendments thereto and renewals thereof without Lessee’s signature, as Lessor or Agent may determine to be necessary or appropriate to perfect and maintain the security interests and liens granted pursuant to any and all of the Security Documents.

12.21 **Lessor Party Voting Regarding Covenants, Representations and Warranties and Waivers.**

To the extent a Lessor Party or its Affiliate is a Revolving Credit Agreement Bank at such time that a Revolving Credit Agreement Amendment is effected, then such Lessor Party agrees to vote in the same manner regarding a proposed amendment, or waiver with respect thereto, of Sections 6.1, 8.3A, 8.3B and/or 8.3C of this Agreement and/or of any related definitions contained in this Agreement or any materiality levels in respect of any Event of Default under any Operative Agreement, as applicable, as such Lessor Party or its Affiliate voted with regard to such Revolving Credit Agreement Amendment.

[signature pages follow]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

CONSTRUCTION AGENT AND LESSEE:

AVDC, INC., as the Construction Agent and the Lessee

By: ____________
Name: ______________
Title: ______________

(signature pages continue)
GUARANTORS:

BIG LOTS STORES, INC., as a Guarantor

By: ___________
Name: ___________
Title: ___________

BIG LOTS, INC., as a Guarantor

By: ___________
Name: ___________
Title: ___________

BIG LOTS ECOMMERCE LLC, as a Guarantor

By: ___________
Name: ___________
Title: ___________

BIG LOTS F&S, INC., as a Guarantor

By: ___________
Name: ___________
Title: ___________

BIG LOTS ONLINE LLC, as a Guarantor

By: ___________
Name: ___________
Title: ___________

(signature pages continue)
BLC LLC, as a Guarantor

By: __________
Name: __________
Title: __________

BLSI PROPERTY, LLC, as a Guarantor

By: __________
Name: __________
Title: __________

CAPITAL RETAIL SYSTEMS, INC., as a Guarantor

By: __________
Name: __________
Title: __________

CLOSEOUT DISTRIBUTION, INC., as a Guarantor

By: __________
Name: __________
Title: __________

(signedature pages continue)
CONSOLIDATED PROPERTY HOLDINGS, INC., as a Guarantor

By: ____________
Name: ____________
Title: ____________

CSC DISTRIBUTION, INC., as a Guarantor

By: ____________
Name: ____________
Title: ____________

C.S. ROSS COMPANY, as a Guarantor

By: ____________
Name: ____________
Title: ____________

DURANT DC, LLC, as a Guarantor

By: ____________
Name: ____________
Title: ____________

GREAT BASIN LLC, as a Guarantor

By: ____________
Name: ____________
Title: ____________

(signature pages continue)
INDUSTRIAL PRODUCTS OF NEW ENGLAND, INC., as a Guarantor

By: ___________
Name: ___________
Title: ___________

MAC FRUGAL’S BARGAINS • CLOSE-OUTS, INC., as a Guarantor

By: ___________
Name: ___________
Title: ___________

MIDWESTERN HOME PRODUCTS, INC., as a Guarantor

By: ___________
Name: ___________
Title: ___________

PNS STORES, INC., as a Guarantor

By: ___________
Name: ___________
Title: ___________

SAHARA LLC, as a Guarantor

By: ___________
Name: ___________
Title: ___________

(signature pages continue)
SONORAN LLC, as a Guarantor

By: ____________
Name: ____________
Title: ____________

TOOL AND SUPPLY COMPANY OF NEW ENGLAND, INC., as a Guarantor

By: ____________
Name: ____________
Title: ____________

WEST COAST LIQUIDATORS, INC., as a Guarantor

By: ____________
Name: ____________
Title: ____________

(signature pages continue)

PARTICIPATION AGREEMENT

CHAR1:1561065
LEASE PARTIES:

WACHOVIA SERVICE CORPORATION, as the Lessor

By: ______________________
Name: _____________________
Title: _____________________

(signature pages continue)

PARTICIPATION AGREEMENT
BANKERS COMMERCIAL CORPORATION, as a Lease Participant

By: Stefan Breuer
Name: Stefan Breuer
Title: Managing Director

(signature pages continue)

PARTICIPATION AGREEMENT
PNC EQUIPMENT FINANCE, LLC, as a Lease Participant

By: ____________
Name: ____________
Title: ____________

(signature pages continue)
AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as the Agent

By: 
Name: 
Title: 

(signature pages end)

PARTICIPATION AGREEMENT

CHAR1:1561065
I. Rules of Usage

The following rules of usage shall apply to this Appendix A and the Operative Agreements (and each appendix, schedule, exhibit and annex to the foregoing) unless otherwise required by the context or unless otherwise defined therein:

(a) Except as otherwise expressly provided, any definitions set forth herein or in any other document shall be equally applicable to the singular and plural forms of the terms defined.

(b) Except as otherwise expressly provided, references in any document to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits are references to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits in or to such document.

(c) The headings, subheadings and table of contents used in any document are solely for convenience of reference and shall not constitute a part of any such document nor shall they affect the meaning, construction or effect of any provision thereof.

(d) References to any Person shall include such Person, its successors, permitted assigns and permitted transferees.

(e) Except as otherwise expressly provided, reference to any agreement means such agreement as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof.

(f) Except as otherwise expressly provided, references to any law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor.

(g) When used in any document, words such as “hereunder”, “hereto”, “hereof” and “herein” and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof.

(h) References to “including” mean including without limiting the generality of any description preceding such term and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned.

(i) References herein to “attorney’s fees”, “legal fees”, “costs of counsel” or other such references shall not include the allocated cost of in-house counsel.
Each of the parties to the Operative Agreements and their counsel have reviewed and revised, or requested revisions to, the Operative Agreements, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in the construction and interpretation of the Operative Agreements and any amendments or exhibits thereto.

Capitalized terms used in any Operative Agreements which are not defined in this Appendix A but are defined in another Operative Agreement shall have the meaning so ascribed to such term in the applicable Operative Agreement.

In computing any period of time for purposes of any Operative Agreement, the mechanics for counting the number of days set forth in Rule 6 of the Federal Rules of Civil Procedure shall be observed.

Time is of the essence, including with regard to the performance of all obligations.

II. Definitions

“ABR” shall mean, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) except during any period of the unavailability of LIBOR (as determined by the Agent in accordance with the Operative Agreements), the LIBOR Rate for a Lessor Yield Period of one month plus 1%; each change in the ABR shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or the LIBOR Rate.

“ABR Lessor Advance” shall mean a Lessor Advance bearing a Lessor Yield based on the ABR.

“Acceptable Regulatory Standards” shall mean those standards currently in effect with respect to the presence of a hazardous substance on the Property which would be sufficient to satisfy the promulgated remediation standards of the jurisdiction where the Property is located for the continued use of the real property for industrial or commercial purposes only, including the possible application of restrictive covenants, engineering controls, other types of use restrictions or monitored natural attenuation for the minimum and lowest cost.

“Acquisition Advance” shall have the meaning given to such term in Section 5.3 of the Participation Agreement.

“Adjusted Consolidated EBITDAR” shall mean, as of any date of determination, Consolidated EBITDAR for the period equal to the immediately preceding twelve (12) consecutive months, as adjusted to include without duplication the difference between (i) the sum of (a) net income plus (b) depreciation, plus (c) amortization, plus (d) other non-cash charges to net income, plus (e) interest expense, plus (f) income Tax expense, plus (g) Consolidated Rental Expense, minus (ii) non-cash credits to net income, all calculated as set forth in the definition of “Consolidated EBITDAR” below, for such period of any Persons or assets acquired by any Credit Party during such period on a pro forma basis for such period as if such Permitted Acquisition had occurred on the first day of such period as evidenced by pro forma financial statements in form and substance satisfactory to the Agent, in each case determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP.

“Administrative Agency Fee” shall have the meaning given to such term in Section 7.6 of the Participation Agreement.

“Advance” shall mean, individually, an Initial Closing Date Advance, an Acquisition Advance, a Construction Advance or any other Lessor Advance in accordance with the Operative Agreements.

Appendix A - 2
“Affiliate”, as to any Person, shall mean any other Person (a) which directly or indirectly controls, is controlled by, or is under common control with such Person, (b) which beneficially owns or holds twenty percent (20%) or more of any class of the voting or other equity interests of such Person, or (c) twenty percent (20%) or more of any class of voting interests or other equity interests of which is beneficially owned or held, directly or indirectly, by such Person. Control, as used in this definition, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, including the power to elect a majority of the directors or trustees of a corporation or trust, as the case may be.

“After Tax Basis” shall mean, in the context of determining the amount of a payment to be made on such basis, actually or constructively, the base amount of such payment increased so that, after reduction by the amount of all Taxes required to be paid by the recipient calculated at the then maximum marginal Tax rates generally applicable to Persons of the same Tax classification as the recipient with respect to the receipt of such increased amount (and taking into account the deductibility of any such Taxes at such maximum marginal Tax rates, as well as any actual Tax benefits realized as a result of the recipient’s actual or constructive payment of the base amount that is subject to indemnification), such increased payment (as so reduced) is equal to the base amount of the payment otherwise required to be made. At the Indemnity Provider’s request, the amount of any indemnification payment by the Indemnity Provider required to be made on such “After Tax Basis” shall be verified and certified by an independent public accounting firm mutually acceptable to the Indemnity Provider and the applicable Indemnified Person. The fees and expenses of such independent public accounting firm shall be paid by the Indemnity Provider.

“Agency Agreement” shall mean the Construction Agency Agreement dated on or about the Initial Closing Date, between the Construction Agent and the Lessor.

“Agency Agreement Default” shall mean any event or condition which, with the lapse of time or the giving of notice, or both, would constitute an Agency Agreement Event of Default.

“Agency Agreement Event of Default” shall mean an “Event of Default” as defined in Section 5.1 of the Agency Agreement.

“Agent” shall mean Wells Fargo Bank, National Association, a national banking association, as agent for the Lessor Parties, or any successor agent appointed in accordance with the terms of the Participation Agreement, and respecting the Security Documents, as agent for the Secured Parties, to the extent of their interests.

“Anti-Terrorism Laws” shall mean any Laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, the Laws comprising or implementing the Bank Secrecy Act, the Laws administered by the United States Treasury Department’s Office of Foreign Asset Control and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) (as any of the foregoing Laws may from time to time be amended, renewed, extended, or replaced).

“Applicable Law” shall mean, for any Person, all existing and future applicable laws, rules, regulations (including proposed, temporary and final income Tax regulations), statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by any Governmental Authority (including usury laws, the Federal Truth in Lending Act, and Regulation Z and Regulation B of the Board of Governors of the Federal Reserve System), and applicable judgments, decrees, injunctions, writs or orders of any court, arbitrator or other administrative, judicial, or quasi-judicial Tribunal or agency of competent jurisdiction.
“Applicable Percentage” shall mean for Eurodollar Lessor Advances, ABR Lessor Advances and for Lessor Parties Unused Fees, the appropriate applicable percentages corresponding to the pricing level set forth below based on the rating of the senior, unsecured, long-term debt of the Parent by Moody’s and S&P:

<table>
<thead>
<tr>
<th>Pricing Level</th>
<th>Senior Debt Rating Moody’s/S&amp;P</th>
<th>Applicable Percentage for Eurodollar Lessor Advances</th>
<th>Applicable Percentage for ABR Lessor Advances</th>
<th>Applicable Percentage for Lessor Parties Unused Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Baa1/BBB+ or higher</td>
<td>1.35%</td>
<td>0.35%</td>
<td>0.125%</td>
</tr>
<tr>
<td>II</td>
<td>Baa2/BBB</td>
<td>1.60%</td>
<td>0.60%</td>
<td>0.150%</td>
</tr>
<tr>
<td>III</td>
<td>Baa3/BBB-</td>
<td>1.85%</td>
<td>0.85%</td>
<td>0.200%</td>
</tr>
<tr>
<td>IV</td>
<td>Ba1/BB+</td>
<td>2.10%</td>
<td>1.10%</td>
<td>0.250%</td>
</tr>
<tr>
<td>V</td>
<td>Below Ba1/BB+</td>
<td>2.60%</td>
<td>1.60%</td>
<td>0.350%</td>
</tr>
</tbody>
</table>

From the Initial Closing Date to the first reset date, the Applicable Percentage shall be based on Pricing Level II. Any change in the Applicable Percentage shall be effective as of the day on which the applicable rating is announced and publicly available (if such announcement day is a Business Day) or the Business Day next following such announcement day (if such announcement day is not a Business Day). In the event of a split rating, (a) if there is one level difference between the ratings from the ratings agencies, then the higher rating will apply and (b) if there is a two or more level difference between the ratings from the ratings agencies, then the lower rating will apply. If any rating from one of the ratings agencies shall be suspended or withdrawn, the Applicable Percentage during such period for which such rating is suspended or withdrawn shall be based upon Level V.

“Appraisal” shall mean, with respect to the Property, an appraisal to be delivered in connection with the Participation Agreement or in accordance with the terms of the Lease, in each case prepared by a reputable appraiser reasonably acceptable to the Agent, which in the judgment of counsel to the Agent, complies with all of the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, the rules and regulations adopted pursuant thereto, and all other applicable Legal Requirements, or any other appraisal or valuation with respect to the Property reasonably acceptable to the Agent.

“Appraisal Procedure” shall have the meaning given such term in Section 21.4 of the Lease.

“Appurtenant Rights” shall mean (a) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or pertaining to the Land underlying the Improvements or the Improvements, including the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to the Land and (b) all permits, licenses and rights, whether or not of record, appurtenant to such Land or the Improvements.

“Assumed Characterization” shall have the meaning given to such term in Section 11.2(g) of the Participation Agreement.

“Attributable Indebtedness” shall mean, with respect to any Person, on any date, (a) in respect of any Capital Lease, the capitalized amount thereof that would appear on the balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments thereunder that would appear on a balance sheet of
such Person prepared as of such date in accordance with GAAP if such Synthetic Lease Obligation were accounted for as a Capital Lease.

“Authorized Officer” shall mean with respect to any Credit Party, the Chief Executive Officer, President, Chief Financial Officer, Treasurer or Assistant Treasurer of such Credit Party or such other individuals, designated by written notice to the Agent from BLS authorized to execute notices, reports and other documents on behalf of the Credit Parties required under the Operative Agreements. Any Credit Party may amend such list of individuals from time to time by giving written notice of such amendment to the Agent.

“Available Lessor Parties Commitment” shall mean an amount equal to the excess, if any, of (a) the amount of the Lessor Parties Commitment over (b) the aggregate amount of the Lessor Advances made since the Initial Closing Date after giving effect to Section 5.2(d) of the Participation Agreement.

“Bail-In Action” shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule.

“Bank-Provided Hedge” shall mean a Hedge Agreement which is provided by any Revolving Credit Agreement Bank and with respect to which the Revolving Credit Agreement Administrative Agent confirms meets specified requirements of the Revolving Credit Agreement, all as evidenced by the Credit Parties to the reasonable satisfaction of the Agent. The liabilities of the Credit Parties to the provider of any Bank-Provided Hedge, for purposes of the Operative Agreements, shall not be Obligations or Company Obligations.


“Basic Rent” shall mean the scheduled Lessor Yield due on the Lessor Advances on any Payment Date (but not including yield on overdue amounts), calculated as of the applicable date on which Basic Rent is due.

“Basic Term” shall have the meaning given to such term in Section 2.2 of the Lease.

“Basic Term Expiration Date” shall have the meaning given to such term in Section 2.2 of the Lease.

“Benefit Arrangement” shall mean at any time an “employee benefit plan,” within the meaning of Section 3(3) of ERISA, which is not a Plan, a Multiemployer Plan or a Multiple Employer Plan and which is maintained, sponsored or otherwise contributed to by any member of the ERISA Group.

“Benefitted Lessor Party” shall have the meaning given to such term in Section 12.15 of the Participation Agreement.

“Big Lots Capital Group” shall mean, collectively, Big Lots Capital, Inc., an Ohio corporation, and any hereinafter created direct or indirect Subsidiary of Big Lots Capital, Inc., provided, that BLS owns all of the issued and outstanding shares of capital stock of Big Lots Capital, Inc. and Big Lots Capital, Inc. has granted a security interest in substantially all of its personal property to BLS or another Credit Party.
“**Big Lots Supplemental Savings Plan**” shall mean the nonqualified deferred compensation plan maintained for the benefit of employees of the Parent’s Subsidiaries.

“**Bill of Sale**” shall mean a warranty bill of sale (or special warranty bill of sale if seller is not an individual) regarding Equipment, in form and substance satisfactory to the Agent, in its reasonable discretion.

“**Blocked Person**” shall have the meaning given to such term in Section 6.1(z) of the Participation Agreement.

“**BLS**” shall mean Big Lots Stores, Inc., an Ohio corporation.

“**Breakage Costs**” shall mean any amount or amounts as shall compensate any Financing Party for any loss, cost or expense incurred by such Financing Party (as determined by such Financing Party in its reasonable discretion) as a result of a repayment or prepayment of Lessor Advances or Lessor Yield pursuant to the terms of the Operative Agreements on any date other than a Payment Date or any failure to receive a Lessor Advance, in each case on the date specified therefor in the applicable Requisition.

“**Budgeted Total Property Cost**” shall mean the amount of Property Cost set forth in the Construction Budget for the Property necessary for final completion thereof.

“**Business Day**” shall mean any day of the year other than a Saturday or a Sunday on which (a) banks are not required or authorized to be closed in New York, New York or Charlotte, North Carolina and (b) if the term “Business Day” is used in connection with the determination of the LIBOR Rate, dealings in United States dollar deposits are carried on in the London interbank market.

“**Capital Lease**” shall mean all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“**Captive Insurance Entity**” shall mean an insurance company created and owned by a Credit Party whose primary purpose is to provide coverage on the risk of the Parent or the Parent’s Subsidiaries.

“**Casualty**” shall mean any damage or destruction of all or any portion of the Property as a result of a fire or other casualty.


“**Certifying Party**” shall have the meaning given to such term in Section 26.3 of the Lease.

“**Claims**” shall mean any and all obligations, liabilities, losses, actions, suits, penalties, claims, demands, costs and expenses (including reasonable attorney’s fees and expenses) of any nature whatsoever.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” shall mean, excluding in all cases Excepted Payments, the assets and property upon which a Lien is created, exists or is purported to be created by one or more of the Security Documents.

“**Commencement Date**” shall have the meaning given to such term in Section 2.2 of the Lease.

Appendix A - 6
“Commitment Percentage” shall mean, as to any Lessor Party at any time, the percentage which such Lessor Party’s Lessor Parties Commitment then constitutes of the aggregate Lessor Parties Commitments.

“Commitment Period” shall mean the period from and including the Initial Closing Date to and including the date that is eighteen (18) months after the Initial Closing Date or in the event that a Force Majeure Event occurs with respect to the Property during such eighteen (18) month period, then the date that is up to three (3) months after such eighteen (18) month period as determined in a manner consistent with Section 3.3 of the Agency Agreement, or such earlier date as the Lessor Parties Commitment shall terminate as provided in the Participation Agreement.

“Commitments” shall mean the Lessor Parties Commitments.

“Company Obligations” shall mean the Obligations of the Lessee and/or the Construction Agent, in any and all capacities. Company Obligations shall not include the liabilities to any Financing Party under any Bank-Provided Hedge or Qualified Hedge Agreement.

“Completion” shall mean, such time as the acquisition, installation, testing and final completion of the Improvements on the Property has been achieved in all material respects in accordance with the Plans and Specifications, the Agency Agreement and/or the Lease, and in compliance with all Legal Requirements and Insurance Requirements and a temporary certificate of occupancy or its equivalent has been issued with respect to the Property by the appropriate governmental entity (except if noncompliance, individually or in the aggregate, shall not have and could not reasonably be expected to have a Material Adverse Effect). If the Lessor purchases the Property that includes existing Improvements that are to be immediately occupied by the Lessee without any improvements to be financed pursuant to the Operative Agreements, the date of Completion for the Property shall be the Property Closing Date.

“Completion Date” shall mean, the earlier of (a) the date on which Completion for the Property has occurred or (b) the Construction Period Termination Date.

“Compliance Certificate” shall have the meaning given to such term in Section 8.3C(c) of the Participation Agreement.

“Condemnation” shall mean any taking or sale of the use, access, occupancy, easement rights or title to the Property or any part thereof, wholly or partially (temporarily or permanently), by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Person having the power of eminent domain, including an action by a Governmental Authority to change the grade of, or widen the streets adjacent to, the Property or alter the pedestrian or vehicular traffic flow to the Property so as to result in a change in access to the Property, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action.

“Consolidated EBITDAR” shall mean, for any period of determination, without duplication (a) the sum of consolidated net income, depreciation, amortization, other non-cash charges to net income, interest expense, income Tax expense and Consolidated Rental Expense, minus (b) non-cash credit to net income, in each case determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP.

“Consolidated Interest Expense” shall mean, for any period of determination, the aggregate amount of interest or fees paid, accrued or scheduled to be paid or accrued in respect of any Indebtedness (including the interest portion of rentals under Capital Leases but not the interest portion of Synthetic Leases Obligations) and all but the principal component of payments in respect of conditional sales or other title retention
agreements paid, accrued or scheduled to be paid or accrued during such period, net of interest income, in each case determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP.

“Consolidated Rental Expense” shall mean, for any period of determination, the aggregate rental amounts payable by the Parent and its Subsidiaries during such period under any lease of real property having a remaining term (including any required renewals or any renewals at the option of the lessor or lessee) of one year or more (but does not include any amounts payable under Capital Leases or performance rents), in each case determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP.

“Consolidated Subsidiary” shall mean, as to any Person, any Subsidiary of such Person which under the rules of GAAP consistently applied should have its financial results consolidated with those of such Person for purposes of financial accounting statements.

“Consolidated Total Indebtedness” shall mean, as of any date of determination, any and all Indebtedness (excluding any Synthetic Lease Obligation and any reimbursement obligations (contingent or otherwise) under any Hedge Agreement) of the Parent and its Subsidiaries, in each case determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP.

“Construction Advance” shall mean an advance of funds by any of the Lessor Parties to pay, or to reimburse the Lessee, the Construction Agent or a designee or designees of either for, Property Costs pursuant to Section 5.4 of the Participation Agreement.

“Construction Agent Person” shall mean the Construction Agent, the Lessee, the Guarantors, any contractor, subcontractor, adviser, architect, engineer, developer, employee, attorney-in-fact or agent with respect to the Property and any other Person that the Construction Agent directly or indirectly supervises, hires or otherwise permits to engage in any Work with respect to the Property, any portion thereof or any Improvements thereto, and any Affiliate of any of the foregoing.

“Construction Agent” shall mean AVDC, Inc., an Ohio corporation, as the construction agent under the Agency Agreement.

“Construction Agent Certificate” shall have the meaning given to such term in Section 5.17(b)(i)(A) of the Participation Agreement.

“Construction Budget” shall mean the construction budget certified to the Agent detailing the cost of acquisition, installation, testing, constructing and developing the Property as determined by the Construction Agent in its reasonable, good faith judgment, as such budget may be amended, modified or supplemented from time to time in accordance with the terms of the Operative Agreements.

“Construction Commencement Date” shall mean, with respect to Improvements, the Property Closing Date.

“Construction Consultant” shall mean Wells Fargo Real Estate Technical Services, a division of Wells Fargo Bank, National Association, a national banking association.

“Construction Contract” shall mean any contract entered into between the Construction Agent or the Lessee with (a) a Contractor for the construction of Improvements or any portion thereof on the Property, which shall be a maximum guaranteed price design-build agreement between the Construction Agent and the general contractor for the Property to complete construction of the Property in accordance with the Construction Budget on or prior to the Construction Period Termination Date, (b) an architect for the design

Appendix A - 8
of Improvements or any portion thereof on the Property, and (c) an engineer for engineering services regarding Improvements or any portion thereof on the Property.

“Construction Documents” shall mean each of the Construction Contracts, the Construction Budget, the construction schedule, the Plans and Specifications and each and every other agreement or document related to any of the foregoing.

“Construction Period” shall mean the period commencing on the Construction Commencement Date and ending on the Completion Date.

“Construction Period Guarantee Amount” shall have the meaning given to such term in Section 5.4 of the Agency Agreement.

“Construction Period Property” shall mean the Property if, at any date of determination, the Rent Commencement Date has not occurred on or prior to such date.

“Construction Period Termination Date” shall mean (a) the earlier of (i) the date that the Lessor Parties Commitment has been terminated in its entirety in accordance with the terms of the Participation Agreement, or (ii) the date that is eighteen (18) months after the Initial Closing Date or in the event that a Force Majeure Event occurs with respect to the Property during such eighteen (18) month period, then the date that is up to three (3) months after such eighteen (18) month period as determined in a manner consistent with Section 3.3 of the Agency Agreement or (b) such later date as shall be agreed to by each Lessor Party, in its sole discretion.

“Contamination” shall mean the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from any Revolving Credit Agreement Property which pursuant to Environmental Laws requires notification or reporting to an Official Body, or which pursuant to Environmental Laws requires the investigation, cleanup, removal, remediation, containment, abatement of or other response action or which otherwise constitutes a violation of Environmental Laws.

“Contractor” shall mean each entity with whom the Construction Agent or the Lessee contracts to construct any Improvements or any portion thereof on the Property.

“Controlled Group” shall mean all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Lessee, are treated as a single employer under Section 414 of the Code.

“Credit Parties” shall mean the Construction Agent, the Lessee and the Guarantors.

“Debt Ratings” shall mean collectively the rating of the Parent’s Indebtedness under the Revolving Credit Agreement by each of S&P’s and/or Moody’s, each of which is referred to herein individually as a “Debt Rating”.

“Debtor Relief Laws” shall mean the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Deed” shall mean a warranty deed (or special warranty deed if grantor is not an individual) respecting any Land and/or Improvements, in form and substance satisfactory to the Agent, in its reasonable discretion.

Appendix A - 9
“Deemed Insolvency” shall mean with respect to any Person, such Person (i) is insolvent pursuant to the Uniform Fraudulent Transfers Act or any similar, equivalent or replacement thereof, (ii) is engaged in a business or transaction, or is about to engage in business or a transaction, for which any property remaining with such Person is an unreasonably small amount of capital or (iii) intended to incur, or believed that such Person would incur, debt or other obligations that would be beyond such Person’s ability to pay as such debts and obligations mature or otherwise become due.

“Default” shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

“Defaulting Lessor Party” shall mean, subject to Section 5A.1(e)(ii) of the Participation Agreement, any Lessor Party that

(a) has failed to (i) fund all or any portion of its Lessor Advances within two (2) Business Days of the date such Lessor Advances were required to be funded under the Operative Agreement unless such Lessor Party notifies the Agent and the Lessee in writing that such failure is the result of such Lessor Party’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Agent or any other Lessor Party any other amount required to be paid by it hereunder within two (2) Business Days of the date when due,

(b) has notified the Agent or the Lessee in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lessor Party's obligation to fund a Lessor Advance and states that such position is based on such Lessor Party’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied),

(c) has failed, within three (3) Business Days after written request by the Agent or the Lessee, to confirm in writing to the Agent and the Lessee that it will comply with its prospective funding obligations hereunder (provided, that such Lessor Party shall cease to be a Defaulting Lessor Party pursuant to this clause (c) upon receipt of such written confirmation by the Agent), or

(d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action;

provided, that a Lessor Party shall not be a Defaulting Lessor Party solely by virtue of the ownership or acquisition of any equity interest in that Lessor Party or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lessor Party with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lessor Party (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lessor Party. Any determination by the Agent that a Lessor Party is a Defaulting Lessor Party under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lessor Party shall be deemed to be a Defaulting Lessor Party (subject to Section 5A.1(e)(ii)) as of the

Appendix A - 10
date established therefor by the Agent in a written notice of such determination, which shall be delivered by the Agent to each other Lessor Party promptly following such determination.

“Deficiency Balance” shall have the meaning given to such term in Section 21.1(b) of the Lease.

“Dollars” and “$” shall mean dollars in lawful currency of the United States of America.

“DTSC” shall have the meaning given to such term in Section 5.14 of the Participation Agreement.

“EEA Financial Institution” shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Election Date” shall have the meaning given to such term in Section 20.1 of the Lease.

“Election Notice” shall have the meaning given to such term in Section 20.1 of the Lease.

“Eligible Assignee” shall mean respecting any assignee of any Lessor Party, any “qualified institutional buyer” as that term is defined in Rule 144A under the Securities Act or an Affiliate of a “qualified institution buyer”, except in all cases any Defaulting Lessor Party, any Credit Party, any Affiliate of any Credit Party or any competitor of any Credit Party.

“Engagement Letter” shall mean that certain engagement letter agreement, dated October 17, 2017, from Wells Fargo Securities, LLC and Wells Fargo Bank, National Association to Mr. Paul Schroeder, Senior Vice President, Controller and Treasurer of Big Lots, Inc., and accepted by Big Lots, Inc., as such letter may be amended, modified, supplemented, restated or replaced from time to time.

“Environmental Claims” shall mean any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding, or claim (whether administrative, judicial, or private in nature) arising (a) pursuant to, or in connection with, an actual or alleged violation of, or noncompliance with, any Environmental Law, (b) in connection with any Hazardous Substance, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Substance, Environmental Law, or other order of a Tribunal or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

“Environmental Complaint” shall mean any (a) notice of non-compliance or violation, citation or order relating in any way to any Environmental Law, Environmental Permit, Contamination or Regulated Substance; (b) civil, criminal, administrative or regulatory investigation instituted by an Official Body relating in any way to any Environmental Law, Environmental Permit, Contamination or Regulated Substance; (c) administrative, regulatory or judicial action, suit, claim or proceeding instituted by any Person
or Official Body or any written notice of liability or potential liability from any Person or Official Body, in either instance, setting forth allegations relating to or a cause of action for personal injury (including death), property damage, natural resource damage, contribution or indemnity for the costs associated with the performance of Remedial Actions, direct recovery for the costs associated with the performance of Remedial Actions, liens or encumbrances attached to or recorded or levied against property for the costs associated with the performance of Remedial Actions, civil or administrative penalties, criminal fines or penalties, or declaratory or equitable relief arising under any Environmental Laws; or (d) subpoena, request for information or other written notice or demand of any type issued to the Guarantor or any of its Subsidiaries by an Official Body pursuant to any Environmental Laws.

“Environmental Condition” shall mean any action, omission, event, condition or circumstance, including the presence of any Hazardous Substance, which does or reasonably could (i) require assessment, investigation, abatement, correction, removal or remediation, (ii) give rise to any obligation or liability of any nature (whether civil or criminal, arising under a theory of negligence or strict liability, or otherwise under any Environmental Law, (iii) create or constitute a public or private nuisance or trespass, or (iv) constitute a violation of or noncompliance with any Environmental Law.

“Environmental Laws” shall mean all federal, state, provincial, local and foreign Laws (including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, the Federal Air Pollution Control Act, 42 U.S.C. § 7401 et seq., the Oil Pollution Act, 33 U.S.C. § 2701 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 to 136y) each as amended, and any regulations promulgated thereunder or any equivalent state, provincial or local Law, each as amended, and any regulations promulgated thereunder and any consent decrees, settlement agreements, judgments, orders, directives or any binding policies having the force and effect of law issued by or entered into with an Official Body pertaining or relating to: (a) pollution or pollution control; (b) protection of human health from exposure to Regulated Substances; (c) protection of the environment and/or natural resources; (d) the presence, use, management, generation, manufacture, processing, extraction, treatment, recycling, refining, reclamation, labeling, sale, transport, storage, collection, distribution, disposal or release or threat of release of Regulated Substances; (e) the presence of Contamination; (f) the protection of endangered or threatened species; and (g) the protection of Environmentally Sensitive Areas.

“Environmental Permits” shall mean all permits, licenses, bonds or other forms of financial assurances, consents, registrations, identification numbers, approvals or authorizations required under Environmental Laws (a) to own, occupy or maintain any Revolving Credit Agreement Property; (b) for the operations and business activities of the Credit Parties; or (c) for the performance of a Remedial Action.

“Environmental Records” shall mean all notices, reports, records, plans, applications, forms or other filings relating or pertaining to all Revolving Credit Agreement Properties, Contamination, the performance of a Remedial Action and the operations and business activities of the Credit Parties which pursuant to Environmental Laws, Environmental Permits or at the request or direction of an Official Body either must be submitted to an Official Body or otherwise must be maintained.

“Environmental Violation” shall mean any activity, omission, occurrence or condition that violates or threatens (if the threat requires remediation under any Environmental Law and is not remediated during any grace period allowed under such Environmental Law) to violate or results in or threatens (if the threat...

Appendix A - 12
requires remediation under any Environmental Law and is not remediated during any grace period allowed under such Environmental Law) to result in noncompliance with any Environmental Law.

“Environmentally Sensitive Area” shall mean (a) any wetland as defined by or designated by Applicable Laws, including applicable Environmental Laws; (b) any area designated as a coastal zone pursuant to Applicable Laws, including Environmental Laws; (c) any area of historic or archeological significance or scenic area as defined or designated by Applicable Laws, including Environmental Laws; (d) habitats of endangered species or threatened species as designated by Applicable Laws, including Environmental Laws; (e) wilderness or refuge areas as defined or designated by Applicable Laws, including Environmental Laws; or (f) a floodplain or other flood hazard area as defined pursuant to any Applicable Laws.

“Equipment” shall mean equipment, apparatus, furnishings, fittings and personal property of every kind and nature whatsoever that is purchased, leased or otherwise acquired using the proceeds of the Lessor Advances, together with all replacements, modifications, alterations, attachments and additions thereto.

“Equipment Schedule” shall mean each Equipment Schedule attached to the applicable Requisition.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) under common control with the Lessee within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” shall mean (a) a reportable event as defined in Section 4043(b) of ERISA and the regulations issued thereunder, with respect to a Pension Plan, as to which PBGC has not by regulation waived the requirements of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event (provided that a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(c) of the Code); (b) the filing under Section 4041 of ERISA of a notice of intent to terminate any Pension Plan or the termination of any Plan; (c) the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or the receipt by any Guarantor or any ERISA Affiliate of notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan; (d) the complete or partial withdrawal by any Guarantor or any ERISA Affiliate under Section 4201 or 4204 of ERISA from a Multiemployer Plan, or the receipt by any Guarantor or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A or ERISA; and (e) the institution of a proceeding by a fiduciary of any Multiemployer Plan against any Guarantor or any ERISA Affiliate to enforce Section 515 of ERISA which proceeding is not dismissed within thirty (30) days.

“ERISA Group” shall mean, at any time, the Revolving Credit US Borrowers and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Revolving Credit US Borrower, are treated as a single employer under Section 414 of the Code; provided, however, that the ERISA Group shall only include those entities that regularly employ individuals to perform services within the United States.
“EU Bail-In Legislation Schedule” shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurocurrency Liabilities” shall have the meaning given to such term in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Eurodollar Lessor Advance” shall mean a Lessor Advance bearing a Lessor Yield based on the LIBOR Rate.

“Eurodollar Reserve Percentage” shall mean for any Eurodollar Lessor Advance, the percentage applicable during such period (or, if more than one such percentage shall be so applicable, the daily average of such percentages for those days in such period during which any such percentage shall be so applicable) under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to liabilities or assets consisting of or including Eurocurrency Liabilities having a term of one month.

“Event of Default” shall mean a Lease Event of Default or an Agency Agreement Event of Default.

“Excepted Payments” shall mean, regarding each Lessor Party:

(a) all indemnity payments (including indemnity payments made pursuant to Section 11 of the Participation Agreement) to which any Lessor Party or any of its Affiliates, successors, assigns, shareholders, members, managers, partners, agents, officers, directors or employees is entitled;

(b) any amounts (other than Basic Rent or Termination Value) payable under any Operative Agreement to reimburse any Lessor Party or any of its respective Affiliates (including the reasonable expenses of any Lessor Party incurred in connection with any such payment) for performing or complying with any of the obligations of any Credit Party under and as permitted by any Operative Agreement;

(c) any amount payable to any Lessor Party by any transferee as the purchase price of any Lessor Party’s Lessor Party Interest (or a portion thereof);

(d) any insurance proceeds (or payments with respect to risks self-insured or policy deductibles) under liability policies in favor of any Lessor Party;

(e) any insurance proceeds under policies maintained by any Lessor Party;

(f) Transaction Expenses or other amounts, fees, disbursements or expenses paid or payable to or for the benefit of any Lessor Party;

(g) any payments in respect of interest to the extent attributable to payments referred to in clauses (a) through (f) above;

(h) any rights of any Lessor Party to demand, collect, sue for or otherwise receive and enforce payment of any of the foregoing amounts, provided that such rights shall not include the right to terminate the Lease; and

(i) any payments to any Lessor Party regarding any Overfunded Amount.
“Excess Proceeds” shall mean the excess, if any, of the aggregate of all awards, compensation, insurance proceeds or condemnation proceeds payable in connection with a Casualty or Condemnation over the Termination Value paid by the Lessee pursuant to the Lease with respect to such Casualty or Condemnation.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

“Excluded Equipment” shall mean equipment, apparatus, furnishings, fittings and personal property of every kind and nature whatsoever that is not Equipment.

“Excluded US Active Subsidiaries” shall mean collectively the following Subsidiaries of any Credit Party: (a) any entity in the Big Lots Capital Group, (b) any Captive Insurance Entity, (c) any Qualified Community Development Entity and any Subsidiary of a Qualified Community Development Entity, and (d) the Subsidiaries of the Parent listed on Schedule XII; each of which is referred to individually as an “Excluded US Active Subsidiary”. Any Excluded US Active Subsidiary that joins the Participation Agreement as a Guarantor pursuant to Section 6B.9 of the Participation Agreement shall cease to be an Excluded US Active Subsidiary.

“Excluded US Inactive Subsidiaries” shall mean collectively the following Subsidiaries of the Parent listed on Schedule XIII, each of which is referred to herein individually as an Excluded US Inactive Subsidiary. Any Excluded US Inactive Subsidiary which joins the Participation Agreement as a Guarantor pursuant to Section 6B.9 of the Participation Agreement shall cease to be an Excluded US Inactive Subsidiary.

“Exculpated Persons” shall mean the Lessor Parties (except with respect to the representations and warranties and the other obligations of the Lessor Parties pursuant to the Operative Agreements expressly undertaken in their respective individual capacities, including the representations and warranties of the Lessor Parties pursuant to Section 6.2 of the Participation Agreement and the obligations of the Lessor Parties under Section 8.2 of the Participation Agreement) and their respective Affiliates, successors, assigns, shareholders, members, managers, partners, agents, officers, directors or employees.

“Exempt Payments” shall have the meaning given to such term in Section 11.2(e) of the Participation Agreement.

“Expiration Date” shall mean the last day of the Term; provided, in no event shall the Expiration Date be later than the seventy-eight (78) month anniversary of the Initial Closing Date, unless such later date has been expressly agreed to in writing by each of the Financing Parties in accordance with Section 2.2 of the Lease, in which case the Expiration Date shall in no event be later than the two hundred and fifty-eight (258) month anniversary of the Initial Closing Date.

“Facility Termination Date” shall mean the Expiration Date or such later date as the Lessor Parties shall notify the Lessee and the Agent of in writing.

“Fair Market Sales Value” shall mean, the amount, which in any event, shall not be less than zero (0), that would be paid in cash in an arms-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, the Property. Fair Market Sales Value of the Property shall be determined based on the assumption that, except for purposes of Section 17 of the Lease, the Property is in the condition and state of repair required under Section 10.1 of the Lease and each Credit Party is in compliance with the other requirements of the Operative Agreements.

Appendix A - 15
“FATCA” shall mean Section 1471 through 1474 of the Code, as of the date of the Participation Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b) of the Code.

“Federal Funds Effective Rate” shall mean the Federal Funds Rate.

“Federal Funds Rate” shall mean, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the overnight federal funds rates as in Federal Reserve Board Statistical Release H.15(519) or any successor or substitute publication selected by the Agent (or, if such day is not a Business Day, for the next preceding Business Day), or, if, for any reason, such rate is not available on any day, the rate determined, in the good faith opinion of the Agent, to be the rate at which overnight federal funds are being offered in the national federal funds market at 9:00 a.m. Charlotte, North Carolina time, absent demonstrable error; provided, notwithstanding the foregoing, if such interest rate determined as provided above would be less than 0.0% per annum for any applicable time period, then such interest rate for such time period shall be deemed to be 0.0% per annum.

“Fees” shall mean the Lessor Parties Unused Fee, the Lessor Parties Upfront Fee, the Administrative Agency Fee, the Structuring Fee and any and all additional fees referenced pursuant to the Engagement Letter.

“Financial Projections” shall have the meaning given to such term in Section 6.1(i)(ii) of the Participation Agreement.

“Financing Parties” shall mean the Lessor Parties and the Agent.

“Fiscal Quarter” shall mean any quarter of a Fiscal Year.

“Fiscal Year” shall mean any period of twelve consecutive calendar months ending on December 31; references to a Fiscal Year with a number corresponding to any calendar year (e.g., the “2004 Fiscal Year”) refer to the Fiscal Year ending on December 31st of such calendar year.

“Fitch” shall mean Fitch Ratings, Inc., a subsidiary of the Fitch Group, Inc.

“Fixed Charge Coverage Ratio” shall mean the ratio of (a) Consolidated EBITDAR to (b) the sum of (i) Consolidated Interest Expense and (ii) Consolidated Rental Expense.

“Fixtures” shall mean all fixtures relating to the Improvements, including all components thereof, located in or on the Improvements, together with all replacements, modifications, alterations and additions thereto.

“Force Majeure Event” shall mean, with respect to construction in connection with the Construction Period Property, any event (the existence of which at the construction commencement date was not known, or would not reasonably have been expected to be discovered through the exercise of commercially reasonable due diligence, by any Construction Agency Person, taking into account the contemplated use of the Land and the Improvements) beyond the control of any such Person, including general strikes (but not any strike or other job action involving employees of any Construction Agency Person), acts of God, government activities directly interfering with the work of construction of the Improvements, any general inability to obtain labor or materials, civil commotion and enemy action; but excluding in all cases any event, cause or condition that results from a breach by any Construction Agency Person of its obligations, representations

Appendix A - 16
or warranties under the Operative Agreements or any other agreements to which it is a party, from any Construction Agency Person’s financial condition or failure to pay or any event, cause or condition which could have been avoided or which could be remedied or mitigated through the exercise of commercially reasonable efforts or the commercially reasonable expenditure of funds or other commercially reasonably action, election or arrangement which would correct or resolve the impact of such event on the construction.

“Force Majeure Loss” shall mean the actual construction costs, determined by the applicable insurance company in assessing a claim for such costs under any policy of insurance, or if such loss is not fully insured in whole or in part under any policy of insurance, then as determined by a nationally recognized independent appraiser selected by the Agent, expended to repair and restore damage caused by a Force Majeure Event with respect to the Property (or portion thereof) to the condition of the Property immediately prior to such Force Majeure Event (but excluding all capitalized costs and other collateral costs and carrying costs whenever accrued).

“Full Recourse Event of Default” shall mean (a) an Agency Agreement Event of Default arising in whole or in part as a consequence of any fraudulent act or omission of any Construction Agency Person in connection with the negotiation, execution, delivery, consummation and/or performance of any Operative Agreement or any other contractual agreement relating to the Property or the construction or work thereon; (b) an Agency Agreement Event of Default arising in whole or in part as a consequence of the misapplication of any Lessor Advance or any portion thereof or any other funds made available to, or on behalf of, the Construction Agent or any other Construction Agency Person under any Operative Agreement; (c) an Agency Agreement Event of Default arising in whole or in part as a consequence of an Insolvency Event; (d) an occurrence pursuant to which any Construction Agency Person shall willfully breach any of its respective obligations, covenants, representations or warranties under any Operative Agreement, Construction Document or any other contractual agreement or otherwise regarding any law relating to the Property or the construction or work thereon; (e) an occurrence pursuant to which any Construction Agency Person shall commit any illegal act regarding the Property; or (f) an occurrence pursuant to which any Construction Agency Person, through its actions or failure to act, shall cause any loss, cost or damage to any Financing Party with respect to the Property or matters related to the Operative Agreements, excluding (for purposes of this subclause (f) only) indemnity claims solely arising from failure to achieve (or to timely achieve) Completion.

“GAAP” shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the accounting principles board of the American Institute of Certified Public Accountants, and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, that are applicable to the circumstances as of the date of determination.

“GAAP Project Cost” shall mean the Property Cost less any Uninsured Force Majeure Loss attributable to the Property.

“Governmental Action” shall mean all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Legal Requirement, and shall include, without limitation, all environmental and operating permits and licenses that are required for the full use, occupancy, zoning and operating of the Property.

“Governmental Authority” shall mean the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality,
regulatory body, court, central bank or other entity exercising executive, legislative, judicial, Taxing, regulatory or administrative powers or functions of or pertaining to government (including the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or the European Central Bank).

“Guarantor” shall mean, collectively, each Person executing the Participation Agreement as of the Initial Closing Date or otherwise executing a Guaranty Joinder from time to time after the Initial Closing Date, in each case, to evidence the guarantee of the Company Obligations.

“Guarantor Joinder” shall mean each Guarantor Joinder and Assumption Agreement executed by a newly added Guarantor pursuant to the provisions of Sections 6B.9 and 8.3B(h) of the Participation Agreement, in the form of EXHIBIT H to the Participation Agreement or in such other form as is satisfactory to the Agent, in its reasonable discretion.

“Guaranty” of any Person shall mean any obligation of such Person guaranteeing or in effect guaranteeing any liability or obligation of any other Person in any manner, whether directly or indirectly, including any agreement to indemnify or hold harmless any other Person, any performance bond or other suretyship arrangement and any other form of assurance against loss, except endorsement of negotiable or other instruments for deposit or collection in the ordinary course of business.


“Hard Costs” shall mean all costs and expenses payable for supplies, materials, labor and profit with respect to the Improvements under any Construction Contract.

“Hazardous Substance” shall mean any of the following: (a) any petroleum or petroleum product, explosives, radioactive materials, asbestos, formaldehyde, polychlorinated biphenyls, lead and radon gas; (b) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste, or pollutant, in each case whether naturally occurring, man-made or the by-product of any process, that is toxic, harmful or hazardous to the environment or health or safety of human beings; or (c) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant that would support the assertion of any claim under any Environmental Law or is the subject of regulatory action by any Governmental Authority under any Environmental Law, whether or not defined as hazardous as such under any Environmental Law.

“Hedge Agreements” shall mean foreign exchange agreements, currency swap agreements, interest rate exchange, collar, cap, swap, adjustable strike cap, adjustable strike corridor agreements or similar hedging agreements entered into by the Parent or its Subsidiaries in the ordinary course of business and not for speculative purposes.

“Historical Statements” shall have the meaning given to such term in Section 6.1(i)(i) of the Participation Agreement.

“Holdback Amount” shall mean the “Holdback Amount” (as defined in the Purchase Agreement) up to, but not to exceed, an amount equal to $650,000.

“Impositions” shall mean any and all liabilities, losses, expenses, costs, charges and Liens of any kind whatsoever for fees, taxes, levies, impost, duties, charges, assessments or withholdings ("Taxes") including but not limited to (i) real and personal property taxes, including personal property taxes on any property covered by the Lease that is classified by Governmental Authorities as personal property, and real

Appendix A - 18
estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangibles taxes); (iii) excise taxes; (iv) real estate transfer taxes, conveyance taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of franchise, income, value added, privilege and doing business taxes, license and registration fees; (vi) assessments on the Property, including all assessments for public Improvements or benefits, whether or not such improvements are commenced or completed within the Term; and (vii) taxes, Liens, assessments or charges asserted, imposed or assessed by the PBGC or any Governmental Authority succeeding to or performing functions similar to the PBGC; and (viii) in each case all interest, additions to tax and penalties thereon, which at any time prior to, during or with respect to the Term or in respect of any period for which the Lessee shall be obligated to pay Supplemental Rent, may be levied, assessed or imposed by any Governmental Authority upon or with respect to (a) the Property or any part thereof or interest therein; (b) the leasing, financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy, servicing, maintenance, repair, ownership, possession, activity conducted on, delivery, insuring, use, operation, improvement, sale, transfer of title, return or other disposition of the Property or any part thereof or interest therein; (c) indebtedness with respect to the Property, or the Lessor Advances, or any part thereof or interest therein; (d) the rentals, receipts or earnings arising from the Property or any part thereof or interest therein; (e) the Operative Agreements, the performance thereof, or any payment made or accrued pursuant thereto; (f) the income or other proceeds with respect to the Property or any part thereof or interest therein upon the sale or disposition thereof; (g) any contract (including the Agency Agreement) relating to the construction, acquisition or delivery of the Improvements or any part thereof or interest therein; (h) the obtaining of Lessor Advances; (i) the Lessor or the Trust Property; or (j) otherwise in connection with the transactions contemplated by the Operative Agreements.

“Improvements” shall mean, with respect to any Land, all buildings, structures, Fixtures, and other improvements of every kind existing at any time and from time to time on or under the Land purchased or otherwise acquired using the proceeds of the Lessor Advances, together with any and all appurtenances to such buildings, structures, Fixtures or improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways, and including all Modifications and other additions to or changes in the Improvements at any time, including (a) any Improvements existing as of the Property Closing Date as such Improvements may be referenced on the applicable Requisition and (b) any Improvements made subsequent to the Property Closing Date.

“Indebtedness” shall mean, as to any Person at any time, without duplication, any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person for or in respect of: (a) borrowed money, (b) amounts raised under or liabilities in respect of any note purchase or acceptance credit facility, (c) reimbursement obligations (contingent or otherwise) under any letter of credit or Hedge Agreement, (d) any other transaction (including forward sale or purchase agreements and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements (but not including trade payables and accrued expenses incurred in the ordinary course of business), (e) Attributable Indebtedness of such Person in respect of Capital Leases and Synthetic Lease Obligations, or (f) any Guaranty of Indebtedness for borrowed money.

“Indemnified Person” shall mean without duplication each Financing Party and their respective successors, assigns, directors, shareholders, members, managers, partners, officers, employees, agents and Affiliates.

“Indemnity Provider” shall mean the Lessee.
“Initial Closing Date” shall mean November 30, 2017.

“Initial Closing Date Advance” shall have the meaning given to such term in Section 5.3 of the Participation Agreement.

“Insolvency Event” shall mean one or more of (a) the liquidation or dissolution of the Construction Agent or the Lessee, or the suspension of the business of the Construction Agent or the Lessee, or the filing by the Construction Agent or the Lessee of a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under the Bankruptcy Code or under any other insolvency act or law, state or federal, now or hereafter existing, or any other action of the Construction Agent or the Lessee indicating its consent to, approval of or acquiescence in, any such petition or proceeding; the application by the Construction Agent or the Lessee for, or the appointment by, consent to or acquiescence of the Construction Agent or the Lessee regarding a receiver, a trustee or a custodian of the Construction Agent or the Lessee for all or a substantial part of its property; the making by the Construction Agent or the Lessee of any assignment for the benefit of creditors; the inability of the Construction Agent or the Lessee, or the admission by the Construction Agent or the Lessee in writing of its inability, to pay its debts as they mature; or the Construction Agent or the Lessee taking any corporate action to authorize any of the foregoing; (b) the filing of an involuntary petition against the Construction Agent or the Lessee in bankruptcy or seeking reorganization, arrangement, readjustment of its debts or for any other relief under the Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing; or the involuntary appointment of a receiver, a trustee or a custodian of the Construction Agent or the Lessee for all or a substantial part of its property; or the issuance of a warrant of attachment, execution or similar process against any substantial part of the property of the Construction Agent or the Lessee, and the continuance of any of such events for ninety (90) days undischarged or undischarged; (c) the adjudication of the Construction Agent or the Lessee as bankrupt or insolvent or the occurrence of a Deemed Insolvency with respect to the Construction Agent or the Lessee; (d) the entering of any order in any proceedings against the Construction Agent or the Lessee or any Subsidiary of the foregoing decreeing the dissolution, divestiture or split-up of the Construction Agent or the Lessee or any Subsidiary of the Construction Agent or the Lessee, and such order remains in effect for more than sixty (60) days; (e) the occurrence of any Agency Agreement Event of Default under Section 5.1(c) of the Agency Agreement, to the extent such Agency Agreement Event of Default is attributable to a Lease Event of Default under Section 17.1(n) or (o) of the Lease; or (f) the occurrence of any Lease Event of Default under Section 17.1(n) or (o) of the Lease.

“Insurance Requirements” shall mean all terms and conditions of any insurance policy required by the Lease to be maintained by the Lessee or required by the Agency Agreement to be maintained by the Construction Agent, all requirements of the issuer of any such policy and from and after the Completion Date, regarding self-insurance, any other insurance requirements of the Lessee.

“Intercompany Subordination Agreement” shall mean a Subordination Agreement among the Credit Parties in the form attached to the Participation Agreement as EXHIBIT K.

“Investment Company Act” shall mean the Investment Company Act of 1940, as amended, together with the rules and regulations promulgated thereunder.

“IRS” shall mean the United States Internal Revenue Service.

“Labor Contracts” shall mean all employment agreements, employment contracts, collective bargaining agreements and other similar agreements guaranteeing a right of employment among any Credit Party and its employees.

Appendix A - 20
“**Land**” shall mean a parcel of real property described on (a) the Requisition issued by the Construction Agent or the Lessee on the Property Closing Date and (b) **Exhibit A** to the Lease.

“**Land Cost**” shall have the meaning given to such term in Section 5.4 of the Agency Agreement.

“**Law**” shall mean any law (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, release, ruling, order, injunction, writ, decree, bond, judgment, authorization or approval, Lien or award of or settlement agreement with any Official Body.

“**Lease**” or “**Lease Agreement**” shall mean the Real Property Lease Agreement dated on or about the Initial Closing Date, between the Lessor and the Lessee.

“**Lease Default**” shall mean any event or condition which, with the lapse of time or the giving of notice, or both, would constitute a Lease Event of Default.

“**Lease Event of Default**” shall have the meaning given to such term in Section 17.1 of the Lease.

“**Lease Participant**” shall mean each bank or other financial institution which is from time to time party to any of the Operative Agreements in its capacity as a “Lease Participant”.

“**Legal Requirements**” shall mean all foreign, federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting any Lessor Party, any Credit Party, the Agent or the Property, Land, Improvements, Equipment or the taxation, demolition, construction, use or alteration of such Improvements, whether now or hereafter enacted and in force, including any that require repairs, modifications or alterations in or to the Property or in any way limit the use and enjoyment thereof (including all building, zoning and fire codes and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et. seq., and any other similar federal, state or local laws or ordinances and the regulations promulgated thereunder) and any that may relate to environmental requirements (including all Environmental Laws), and all permits, certificates of occupancy, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments which are either of record or known to any Credit Party affecting the Property or the Appurtenant Rights.

“**Lessee**” shall have the meaning given to such term in the Lease, and shall include any successor, transferee or assignee permitted pursuant to Section 10.1 of the Participation Agreement.

“**Lessor**” shall mean Wachovia Service Corporation, a Delaware corporation.

“**Lessor Advance**” shall mean, as the context may require,

(a) any single advance made by any Lessor Party pursuant to the terms of the Operative Agreements or

(b) the aggregate amount of all advances made by the Lessor Parties pursuant to the terms of the Operative Agreements as reduced from time to time by any repayment or prepayment of such advances pursuant to Section 5A.4 of the Participation Agreement or otherwise in accordance with the Operative Agreements.
“Lessor Assignment Agreement” shall mean the Assignment and Assumption Agreement dated on or about the Initial Closing Date, among the Lessor, the various banks and other lending institutions which are parties thereto as assignees, the Agent and the Lessee.

“Lessor Confirmation Letter” shall mean the confirmation letter issued by the Lessor from time to time to the Lessee pursuant to Section 8.2(d) of the Participation Agreement, in a form substantially similar to the form of confirmation letter provided to the Lessee on or prior to the Initial Closing Date.

“Lessor Lien” shall mean any Lien, lease or disposition of title in respect of the Property or any other Collateral arising as a result of (a) any claim against any Lessor Party or any Affiliate of any Lessor Party not resulting from the transactions contemplated by the Operative Agreements, (b) any act or omission of any Lessor Party or any Affiliate of any Lessor Party which is not required by the Operative Agreements or is in violation of any of the terms of the Operative Agreements, (c) any claim against any Lessor Party or any Affiliate of any Lessor Party with respect to Taxes or Transaction Expenses against which the Lessee is not required to indemnify the applicable Lessor Party or its Affiliate pursuant to Section 11 of the Participation Agreement or otherwise to pay pursuant to the Operative Agreements or (d) any claim against any Lessor Party or any Affiliate of any Lessor Party arising out of any transfer by the applicable Lessor Party of all or any portion of the interest of such Lessor Party in the Property or the Operative Agreements other than the transfer of title to or possession of the Property by such Lessor Party pursuant to and in accordance with the Operative Agreements, including pursuant to the exercise of the remedies set forth in Article XVII of the Lease.

“Lessor Parties” shall mean the Lessor and the Lease Participants.

“Lessor Parties Commitment” shall mean the pro rata Lessor Parties Commitment of the Lessor and the Lease Participants as set forth in Schedule I to the Participation Agreement as such Schedule I may be amended or replaced from time to time.

“Lessor Parties Interest” shall mean, regarding each Lessor Party, its respective (a) Lessor Parties Commitment and (b) Lessor Parties Ownership Interest.

“Lessor Parties Ownership Interest” shall mean, concurrent with the effectiveness of the Lessor Assignment Agreement, and with regard to each of the Lessor Parties, an undivided, pari passu ownership interest for the applicable Lessor Party (for each such Lessor Party, in an amount equal to its Percentage Share) in (a) all rights to payments required to be made by any Credit Party under the Operative Agreements (including, as applicable, the Construction Period Guarantee Amount, the Deficiency Balance, the Maximum Residual Guarantee Amount and Rent), (b) proceeds from (i) insurance that the Lessee is required to maintain pursuant to the Operative Agreements and (ii) condemnation proceedings regarding the Property, (c) any other proceeds from the sale or other disposition of the Property or any interest therein and (d) any other amounts payable pursuant to the Operative Agreements regarding the Property or any interest therein or the right, title and interest of the Lessor in the Property (but limited in each case regarding the foregoing subsections (a) – (d), to the amounts which would otherwise be payable to or for the benefit of the Lessor for its own account if the Lessor Assignment Agreement were not in effect and excluding in all cases regarding the foregoing subsections (a) – (d), the Excepted Payments which Excepted Payments shall be in favor exclusively of the applicable Lessor Party and/or its related parties).

“Lessor Parties Unused Fee” shall have the meaning given to such term in Section 7.4 of the Participation Agreement.

Appendix A - 22
“Lessor Parties Upfront Fee” shall have the meaning given to such term in Section 7.5 of the Participation Agreement.

“Lessor Yield,” shall mean with respect to Lessor Advances a per annum rate equal to the LIBOR Rate plus the Applicable Percentage, the ABR plus the Applicable Percentage or a combination thereof as determined pursuant to Section 5A.5 of the Participation Agreement.

“Lessor Yield Period,” shall mean as to any Eurodollar Lessor Advance (i) with respect to the initial Lessor Yield Period, the period beginning on the date of the first Eurodollar Lessor Advance and ending one (1) month thereafter, and (ii) thereafter, each period commencing on the last day of the next preceding Lessor Yield Period applicable to such Eurodollar Lessor Advance and ending one (1) month thereafter; provided, however, that all of the foregoing provisions relating to Lessor Yield Periods are subject to the following: (A) if any Lessor Yield Period would end on a day which is not a Business Day, such Lessor Yield Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (B) no Lessor Yield Period shall extend beyond the Expiration Date, (C) where a Lessor Yield Period begins on a day for which there is no numerically corresponding day in the calendar month in which the Lessor Yield Period is to end, such Lessor Yield Period shall end on the last Business Day of such calendar month and (D) there shall not be more than one (1) Lessor Yield Period outstanding at any one (1) time, respectively, for Eurodollar Lessor Advances.

“Leverage Ratio” shall mean, as of any date of determination, the ratio of (a) the sum of (i) Consolidated Total Indebtedness on such date and (ii) four (4) times Consolidated Rental Expense for the four (4) fiscal quarters ending on such date, to (b) Adjusted Consolidated EBITDAR for the four (4) fiscal quarters ending on such date.

“LIBOR” shall mean, for any day during any Lessor Yield Period and any Eurodollar Lessor Advance, an interest rate per annum equal to:

(a) for any interest rate or yield calculation with respect to a Eurodollar Lessor Advance, the rate of interest or yield, as applicable, per annum determined on the basis of the rate of interest for deposits in Dollars for a period equal to the applicable Lessor Yield Period which appears on the applicable Reuters screen (or such other commercially available source providing such quotations as may be designated by the Agent from time to time) at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Lessor Yield Period (rounded upward, if necessary, to the nearest 1/100th of 1%). If, for any reason, such rate of interest does not appear on the applicable Reuters screen (or such other commercially available source as referenced above), then “LIBOR” shall be determined by the Agent to be the arithmetic average of the rate of interest per annum at which deposits in Dollars in minimum amounts of at least $5,000,000 would be offered by first class banks in the London interbank market to the Agent at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Lessor Yield Period. Notwithstanding the foregoing, if any such rate of interest or yield, as applicable, for any Lessor Yield Period determined as provided above would be less than 0.0% per annum, then such rate of interest for such Lessor Yield Period shall be deemed to be 0.0% per annum; and

(b) for any interest rate or yield calculation with respect to an ABR Lessor Advance, the rate of interest per annum determined on the basis of the rate of interest for deposits in Dollars in minimum amounts of at least $5,000,000 for a period equal to one month (commencing on the date
of such ABR Lessor Advance) which appears on the applicable Reuters screen (or such other commercially available source providing such quotations as may be designated by the Agent from time to time) at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable one month period (rounded upward, if necessary, to the nearest 1/100th of 1%). If, for any reason, such rate of interest does not appear on the applicable Reuters screen (or such other commercially available source as referenced above), then “LIBOR” for such ABR Lessor Advance shall be determined by the Agent to be the arithmetic average of the rate of interest per annum at which deposits in Dollars in minimum amounts of at least $5,000,000 would be offered by first class banks in the London interbank market to the Agent at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable one month period for a period equal to such one month period. Notwithstanding the foregoing, if any such rate of interest or yield, as applicable, for any applicable time period determined as provided above would be less than 0.0% per annum, then such rate of interest for such time period shall be deemed to be 0.0% per annum.

“LIBOR Rate” shall mean a rate per annum determined by the Agent pursuant to the following formula:

\[
\text{LIBOR Rate} = \frac{\text{LIBOR}}{1.00 - \text{Eurodollar Reserve Percentage}}
\]

“Lien” shall mean any mortgage, pledge, security interest, encumbrance, lien, option, attachment, levy, encroachment, title defect or charge of any kind.

“Limited Recourse Amount” shall mean in the case of the Lease regarding the Property, an amount equal to the Termination Value less the Maximum Residual Guarantee Amount.

“Limited Recourse Event of Default” shall have the meaning given to such term in Section 17.12 of the Lease.

“LLC Interests” shall have the meaning given to such term in Section 6.1(c) of the Participation Agreement.

“Majority Secured Parties” shall mean at any time the Lessor Parties (other than any Defaulting Lessor Party) whose Lessor Advances outstanding represent at least fifty-one percent (51%) of (a) the aggregate Lessor Advances outstanding or (b) to the extent there are no Lessor Advances outstanding, the aggregate Lessor Parties Commitment.

“Marketing Period” shall mean, if the Lessee has given a Sale Notice in accordance with Section 20.1 of the Lease, the period commencing on the date such Sale Notice is given and ending on the Expiration Date.

“Material Adverse Effect” shall mean any set of circumstances or events which: (a) has or could reasonably be expected to have any material adverse effect upon the validity or enforceability of the Participation Agreement or any other Operative Agreement; (b) is or could reasonably be expected to be material and adverse to the business, operations, properties, assets, or financial condition of the Credit Parties taken as a whole; provided that a downgrade of the Debt Ratings or a Negative Pronouncement shall not in and of itself be deemed to be a Material Adverse Effect; (c) impairs materially or could reasonably be expected to impair materially the ability of the Credit Parties taken as a whole to duly and punctually pay or perform

Appendix A - 24
their Indebtedness or any of their respective obligations under the Operative Agreements; (d) impairs materially or could reasonably be expected to impair materially the ability of the Revolving Credit Agreement Administrative Agent, any of the Revolving Credit Agreement Banks or any of the Financing Parties, to the extent permitted, to enforce their legal remedies pursuant to the Revolving Credit Agreement Loan Documents (in the case of the Revolving Credit Agreement Administrative Agent or any of the Revolving Credit Agreement Banks) or pursuant to the Participation Agreement or any other Operative Agreement (in the case of any of the Financing Parties); (e) impairs materially or could reasonably be expected to impair materially the validity, priority or enforceability of any Lien on the Property created by any of the Operative Agreements; or (f) impairs materially or could reasonably be expected to impair materially the value, utility or useful life of the Property, which has caused or could reasonably be expected to cause a diminution of the fair market value of the Property of ten percent (10%) or more from the then-current fair market value of the Property, or the use, or ability of the Lessee to use, the Property for the purpose for which it was intended.

“Maturity Date” shall mean the Expiration Date.

“Maximum Residual Guarantee Amount” shall mean (a) from the Initial Closing Date to and including December 31, 2018, an amount equal to the product of the GAAP Project Cost for the Property times eighty-seven percent (87.0%) and (b) from and including January 1, 2019 and thereafter, an amount as reasonably determined by the Majority Secured Parties and the Lessee in accordance with Accounting Standards Codification No. 842.

“Modifications” shall have the meaning given to such term in Section 11.1 of the Lease.

“Monthly Notice Date” shall mean the tenth (10th) day of each calendar month unless such is not a Business Day and in such case on the next preceding Business Day.

“Moody’s” shall mean Moody’s Investors Services, Inc., and any successor thereto.

“Mortgage Instrument” shall mean any mortgage, deed of trust or any other instrument executed by the Lessee (or regarding any Land, the applicable Affiliate of the Lessee) in favor of the Trustee thereunder, for the benefit of the Agent (for the benefit of the Secured Parties) and evidencing a Lien on the Lessee’s interest in the Property, in form and substance reasonably acceptable to the Agent.

“Multiemployer Plan” shall mean any employee benefit plan which is a “multiemployer plan” within the meaning of Section 4001(a)(3) of ERISA and to which any Revolving Credit Agreement US Borrower or any other member of the ERISA Group is then making or accruing an obligation to make contributions or, within the preceding five Plan years, has made or had an obligation to make such contributions.

“Multiple Employer Plan” shall mean a Plan which has two or more contributing sponsors (including any Credit Party or any other member of the ERISA Group) at least two of whom are not under common control, as such a plan is described in Sections 4063 and 4064 of ERISA.

“Negative Pronouncement” shall mean a public announcement by either S& P’s or Moody’s with respect to a possible downgrade of, or negative outlook with respect to, the Debt Ratings.

“New York Potential Tax Claim” shall mean the liability for taxes or gains arising from the resale of real estate asserted by the New York State Department of Taxation and Finance against some of the Excluded US Inactive Subsidiaries described in Schedule IV of the Participation Agreement.

Appendix A - 25
“Non-Consenting Lessor Party” shall mean any Lessor Party that does not approve any proposed termination, amendment, supplement, waiver, modification or consent with respect to any Operative Agreement that (a) requires the approval of all Lessor Parties, or all affected Lessor Parties, in accordance with the terms of Section 12.4 of the Participation Agreement and (b) has been approved by the Majority Lessor Parties.

“Non-Defaulting Lessor Party” shall mean, at any time, each Lessor Party that is not a Defaulting Lessor Party at such time.

“Non-U.S. Person” shall mean a Person that is not a U.S. Person.

“Obligations” shall mean the collective reference to all obligations (including without limitation all payment and performance obligations), now existing or hereafter arising, owing by the Lessee and/or the Construction Agent, as applicable, to one or more Secured Parties under or pursuant to the Operative Agreements, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, which may arise under, out of, or in connection with the Participation Agreement, the Lessor Assignment Agreement, the Lease, the Agency Agreement or any of the other Operative Agreements, whether on account of advanced amounts, yield, reimbursement obligations, fees, indemnities, costs, expenses, termination payments or otherwise (including without limitation all fees and disbursements of counsel to any of the Secured Parties) that are required to be paid by the Lessee and/or the Construction Agent, as applicable, pursuant to the terms of the Operative Agreements for any purpose, including without limitation in connection with the exercise of remedies. Obligations shall not include the liabilities to any Financing Party under any Bank-Provided Hedge or Qualified Hedge Agreement.

“Off-Site Construction Costs” shall mean the construction costs, not to exceed Twelve Million and 00/100 Dollars ($12,000,000.00), incurred to pay for the Off-Site Improvements.

“Off-Site Improvements” shall mean the off-site improvements not located on the Land and not included in the Improvements, with such off-site improvements to include dry utilities (electrical, phone and street light); wet utilities (LP/HP mains and meters); curb gutters, road widening, sidewalks and landscaping; and all other necessary labor, materials, equipment and services to complete such work.

“Officer’s Certificate” with respect to any Person shall mean a certificate executed on behalf of such Person by a Responsible Officer who has made or caused to be made such examination or investigation as is necessary to enable such Responsible Officer to express an informed opinion with respect to the subject matter of such Officer’s Certificate.

“Official Body” shall mean the government of the United States of America or any other nation, or of any political subdivision thereof, whether state, provincial, local or otherwise, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, Taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Operative Agreements” shall mean the following: the Participation Agreement, the Lessor Assignment Agreement, the Agency Agreement, the Engagement Letter, the Lease (and a memorandum thereof (or a short form lease), in each case, in a form reasonably acceptable to the Agent), each Requisition, the Intercompany Subordination Agreement, the Security Documents, the Deeds, the Bills of Sale and any and all other agreements, documents and instruments executed in connection with any of the foregoing.

Appendix A - 26
“Overdue Rate” shall mean a per annum rate equal to the lesser of (a) the then current rate of Lessor Yield respecting the particular amount in question plus two percent (2%) and (b) the highest rate permitted by Applicable Law, in each case from the date of such non-payment until such amount is paid in full (whether after or before judgment).

“Overfunded Amount” shall have the meaning given to such term in Section 5.2(c)(ii) of the Participation Agreement.

“Overnight Federal Funds Rate” shall mean for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of one percent (1%)) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (a) if such day is not a Business Day, the Overnight Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Overnight Federal Funds Rate for such day shall be the average rate charged to Wells Fargo Bank, National Association on such day on such transactions as determined by Wells Fargo Bank, National Association.

“Parent” shall mean Big Lots, Inc., an Ohio corporation.

“Participant” shall have the meaning given to such term in Section 10.4 of the Participation Agreement.

“Participation Agreement” shall mean the Participation Agreement dated on or about the Initial Closing Date, among the Lessor Parties, the Lessee, the Construction Agent, the Guarantors and the Agent.

“Partnership Interests” shall have the meaning given to such term in Section 6.1(c) of the Participation Agreement.

“Payment Date” shall mean (a) as to any Eurodollar Lessor Advance, the last day of the Lessor Yield Period applicable to such Eurodollar Lessor Advance, (b) as to any ABR Lessor Advance, the twentieth day of each month, unless such day is not a Business Day and in such case on the next occurring Business Day and (c) as to all Lessor Advances, the date of any voluntary or involuntary payment, repayment, prepayment, return or redemption, and the Expiration Date.

“Payment in Full” shall mean the indefeasible payment and satisfaction in full of all Company Obligations and the obligations of the other Credit Parties pursuant to the Operative Agreements (other than contingent indemnification and reimbursement obligations in respect of which no claim for payment has yet been asserted by the Person entitled thereto) and termination of the Lessor Parties Commitments.

“PBGC” shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor.

“Pension Plan” shall mean a “pension plan”, as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Plan), and to which any Credit Party or any ERISA Affiliate may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

Appendix A - 27
“Percentage Share” shall mean, for each Lessor Party and from time to time, the percentage which its respective funded Lessor Advances bears to all funded Lessor Advances, as the Percentage Share for each Lessor Party shall be determined from time to time by the Agent in good faith, with such determination by the Agent being conclusive and binding on each Lessor Party and the Credit Parties, absent manifest error.

“Permitted Acquisition” shall have the meaning given to such term in Section 8.3B(e)(iii) of the Participation Agreement.

“Permitted Facility” shall mean the approximately one million three hundred fifty thousand (1,350,000) square foot (gross building area) distribution center to be constructed at the southwest corner of Navajo Road and Lafayette Road in San Bernardino County, California identified by the Construction Agent or the Lessee reasonably acceptable to the Agent, it being agreed that in determining said acceptability, the Agent shall be entitled to require an appraisal of the parcel of real property.

“Permitted Investments” shall mean:

(a) direct obligations of the United States of America or any agency or instrumentality thereof or obligations backed by the full faith and credit of the United States of America maturing in twelve (12) months or less from the date of acquisition;

(b) commercial paper maturing in one (1) year or less rated not lower than A-1, by S&P’s, P-1 by Moody’s or F-1 by Fitch on the date of acquisition;

(c) demand deposits, time deposits or certificates of deposit maturing within one year in any Bank or any other commercial banks whose obligations are rated A-1, A or the equivalent or better by S&P’s on the date of acquisition;

(d) money market mutual funds or cash management trusts rated the highest rating by S&P’s, Moody’s or Fitch (and not rated other than the highest rating by S&P’s, Moody’s or Fitch) or investing solely in investments described in clauses (a) through (c) above;

(e) fully collateralized repurchase agreements with a term of not more than one hundred eighty (180) days for securities described in clause (a) above and entered into with commercial banks whose obligations are rated A-1, A or the equivalent or better by S&P’s on the date of acquisition;

(f) short term Tax-exempt securities rated not lower than BBB by S&P’s, Baa2 by Moody’s or an equivalent rating by Fitch with provisions for liquidity or maturity accommodations of two (2) years or less;

(g) investments in other readily marketable securities (excluding any equity or equity-linked securities other than auction rate preferred securities) which are rated P1 or P2 by Moody’s, A1 or A2 by S&P’s or F1 or F2 by Fitch (in lieu of a short term rating, a long term rating of not less than A2 by Moody’s, A by S&P’s or an equivalent rating by Fitch would qualify under this sub-clause (g), provided that no such security position shall exceed five percent (5%) of the invested cash portfolio of the Credit Parties); and

(h) any investment existing on the date of the Revolving Credit Agreement and described on Schedule XIV.
“Permitted Liens” shall mean:

(a) the respective rights and interests of the parties to the Operative Agreements as provided in the Operative Agreements;

(b) the rights of any sublessee or assignee under a sublease or an assignment expressly permitted by the terms of the Lease for no longer than the duration of the Lease;

(c) Liens for Taxes that either are (i) not yet due or (ii) are being contested in accordance with the provisions of Section 13.1 of the Lease;

(d) Liens arising by operation of law, materialmen’s, mechanics’, workmen’s, repairmen’s, employees’, carriers’, warehousemen’s and other like Liens relating to the construction of the Improvements or in connection with any Modifications or arising in the ordinary course of business for amounts that (i) are not more than thirty (30) days past due, (ii) are being diligently contested in good faith by appropriate proceedings, so long as such proceedings satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease or (iii) have been bonded for not less than the full amount in dispute (or as to which other security arrangements satisfactory to the Majority Secured Parties, in their reasonable discretion, have been made), which bonding (or arrangements) shall comply with applicable Legal Requirements, and shall have effectively stayed any execution or enforcement of such Liens;

(e) Liens arising out of judgments or awards with respect to which appeals or other proceedings for review are being prosecuted in good faith and for the payment of which adequate reserves have been provided to the extent required by GAAP or other appropriate provisions have been made, so long as such proceedings have the effect of staying the execution of such judgments or awards and satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease;

(f) Liens in favor of municipalities to the extent agreed to by the Majority Secured Parties;

(g) Liens that are expressly set forth as title exceptions on the title commitment issued under Section 5.3(g) of the Participation Agreement with respect to the Property, to the extent such title exceptions do not have and could not reasonably be expected to have a Material Adverse Effect;

(h) Liens on the Property approved by the Majority Secured Parties or otherwise permitted under Section 8.5 of the Participation Agreement; and

(i) Lessor Liens.

“Person” shall mean an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, sole proprietorship, joint venture, government (or any agency or political subdivision thereof) or other entity.

“Plan” shall mean at any time an employee pension benefit plan (including a Multiple Employer Plan, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code and either (a) is maintained by any member of the ERISA Group for employees of any member of the ERISA Group or (b) has at any time within the preceding five
years been maintained by any entity which was at such time a member of the ERISA Group for employees of any entity which was at such time a member of the ERISA Group.

“Plans and Specifications” shall mean, with respect to Improvements, the plans and specifications for such Improvements to be constructed or already existing certified to the Agent, as such Plans and Specifications may be amended, modified or supplemented from time to time in accordance with the terms of the Operative Agreements.

“Prime Rate” shall mean the rate announced by Wells Fargo Bank, National Association from time to time as its prime rate in the United States, such rate to change as and when such designated rate changes; provided, notwithstanding the foregoing, if any such interest rate for any period of time determined as provided above would be less than 0.0% per annum, then such interest rate for such period of time shall be deemed to be 0.0% per annum. The Prime Rate is not intended to be the lowest rate of interest charged by Wells Fargo Bank, National Association in connection with extensions of credit to debtors.

“Pro Rata Share” shall mean with respect to a Lessor Party, a percentage equal to such Lessor Party’s pro rata share of the aggregate Lessor Parties Commitments, in each case, as set forth next to such Lessor Party’s name on Schedule I of the Participation Agreement or on any assignment pursuant to which such Lessor Party becomes a party hereto.

“Prohibited Transaction” shall mean any prohibited transaction as defined in Section 4975 of the Code or Section 406 of ERISA for which (a) no statutory exception exists or (b) neither an individual nor a class exemption has been issued by the United States Department of Labor.

“Property” shall mean the real property that is (or is to be) acquired, constructed and/or renovated pursuant to the terms of the Operative Agreements, including the Land, each item of Equipment and the various Improvements, in each case located on such Land, including the Property if it is a Construction Period Property and if the Term has commenced.

“Property Acquisition Cost” shall mean the cost to the Lessor Parties for the Lessor to purchase the Property on the Property Closing Date (including Transaction Expenses).

“Property Closing Date” shall mean the Initial Closing Date.

“Property Cost” shall mean (a) the aggregate amount of the Lessor Advances (in each case, as such amounts shall be increased pro rata according to the Lessor Advances advanced or extended from time to time including to pay for the Transaction Expenses and Uninsured Force Majeure Losses) and (b) respecting the various amounts described in the foregoing subsection (a), all the occurrences and items giving rise to all such amounts.

“Punchlist Advance” shall have the meaning given to such term in Section 5.11 of the Participation Agreement.

“Punchlist Deadline” shall have the meaning given to such term in Section 5.11 of the Participation Agreement.

“Purchase Agreement” shall mean the Agreement of Purchase and Sale and Joint Escrow Instructions dated as of October 4, 2017 by and between Watson Land Company and the Lessee, without regard to any amendment, modification, extension, supplement, restatement and/or replacement thereof subsequent to such date.
“Purchase Money Security Interest” shall mean Liens upon real or tangible personal property securing loans to any Credit Party or Subsidiary of a Credit Party or deferred payments by such Credit Party or Subsidiary for the purchase of such real or tangible personal property.

“Purchase Option” shall have the meaning given to such term in Section 20.1 of the Lease.

“Purchasing Lessor Party” shall have the meaning given to such term in Section 10.5(a) of the Participation Agreement.

“Qualified Community Development Entity” shall mean any corporation or partnership (or a limited liability company designated as a corporation or partnership for federal income Tax purposes) organized under the laws of the United States of America or any state thereof that meets the requirements of Section 45(D)(c) of the Code.

“Qualified Hedge Agreement” shall mean a Hedge Agreement with a financial institution reasonably acceptable to the Revolving Credit Agreement Administrative Agent (as evidenced by the Credit Parties to the reasonable satisfaction of the Agent) and the Agent and which (a) is documented in a standard International Swap Dealer Association Agreement or a similar agreement, (b) provides for the method of calculating the reimbursable amount of the provider’s credit exposure in a reasonable and customary manner, (c) is entered into for hedging (rather than speculative) purposes, and (d) does not require that any collateral be provided as security for such agreement.

“Real Property” shall mean the Property.

“Real Property Lease” or “Real Property Lease Agreement” shall mean the Lease.

“Register” shall have the meaning given to such term in Section 10.6 of the Participation Agreement.

“Regulated Substances” shall mean, without limitation, any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a “hazardous substance,” “pollutant,” “pollution,” “contaminant,” “hazardous or toxic substance,” “extremely hazardous substance,” “toxic chemical,” “toxic substance,” “toxic waste,” “hazardous waste,” “special handling waste,” “industrial waste,” “residual waste,” “solid waste,” “municipal waste,” “mixed waste,” “infectious waste,” “chemotherapeutic waste,” “medical waste,” “pesticide” or “regulated substance” or any other substance, material or waste, regardless of its form or nature, which is regulated, controlled or governed by Environmental Laws due to its radioactive, ignitable, corrosive, reactive, explosive, toxic, carcinogenic or infectious properties or nature or any other material, substance or waste, regardless of its form or nature, which otherwise is regulated, controlled or governed by Environmental Laws, including petroleum and petroleum products (including crude oil and any fractions thereof), natural gas, synthetic gas and any mixtures thereof, asbestos, urea formaldehyde, polychlorinated biphenyls, mercury, radon and radioactive materials.

“Regulation B” shall mean Regulation B of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

“Regulation U” shall mean Regulation U of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

“Regulation Z” shall mean Regulation Z of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

Appendix A - 31
“Regulatory Change” shall mean the occurrence, after the Initial Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Regulatory Change”, regardless of the date enacted, adopted or issued.

“Release” shall mean any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Substance.

“Remedial Action” shall mean any investigation, identification, preliminary assessment, characterization, delineation, feasibility study, cleanup, corrective action, removal, remediation, risk assessment, fate and transport analysis, in situ treatment, containment, operation and maintenance or management in-place, control or abatement of or other response actions to Regulated Substances and any closure or post-closure measures associated therewith.

“Renewal Term” shall have the meaning given to such term in Section 2.2 of the Lease.

“Rent” shall mean, collectively, the Basic Rent and the Supplemental Rent, in each case payable under the Lease.

“Rent Commencement Date” shall mean, the Completion Date with respect to the Property.

“Reportable Event” shall mean a reportable event described in Section 4043 of ERISA and regulations thereunder with respect to a Plan, a Multiemployer Plan or a Multiple Employer Plan.

“Requested Funds” shall mean any funds requested by the Lessee or the Construction Agent, as applicable, in accordance with Section 5 of the Participation Agreement.

“Requesting Party” shall have the meaning given to such term in Section 26.3 of the Lease.

“Requisition” shall have the meaning given to such term in Section 4.2 of the Participation Agreement.

“Responsible Officer” shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Operative Agreement, the President, or any Vice President, Assistant Vice President, Trust Officer or other officer, who in the normal performance of his or her operational responsibility would have knowledge of such matters and the requirements with respect thereto.

“Revolving Credit Agreement” shall mean the Credit Agreement dated as of July 22, 2011 by and among BLS, the Parent, Big Lots Canada, Inc., the various entities parties thereto from time to time as guarantors thereunder, the various entities parties thereto from time to time as lenders thereunder, PNC Bank, National Association as administrative agent thereunder and the other entities parties thereto from time to time, as amended by that certain First Amendment to Credit Agreement dated as of May 30, 2013 and that certain Second Amendment to Credit Agreement dated as of May 28, 2015, in each case by and among the afore referenced parties, and as may be further amended from time to time.
“Revolving Credit Agreement Administrative Agent” shall mean the Administrative Agent (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement Banks” shall mean the Banks (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement Amendment” shall mean an amendment of the Revolving Credit Agreement or waiver with respect thereto (to the extent such amendment or waiver requires a vote of the Revolving Credit Agreement Banks), with regard to (a) any of the covenants, representations and warranties or any materiality levels in respect of any Event of Default (as defined in the Revolving Credit Agreement) in the Revolving Credit Agreement which are identical to or substantially similar to the provisions of Sections 6.1, 8.3A, 8.3B and/or 8.3C of the Participation Agreement or Events of Default under any Operative Agreement and/or (b) any definitions in the Revolving Credit Agreement related to the matters described in the foregoing subsection (a).

“Revolving Credit Agreement Loan Documents” shall mean the Revolving Credit Agreement and the other Loan Documents (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement Loan Parties” shall mean the Loan Parties (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement Obligations” shall mean the Obligations (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement Permitted Liens” shall mean:

(a) Liens for Taxes, assessments, or similar charges, incurred in the ordinary course of business and which are not yet due and payable;

(b) Pledges or deposits made in the ordinary course of business to secure payment of workmen’s compensation, or to participate in any fund in connection with workmen’s compensation, unemployment insurance, old-age pensions or other social security programs;

(c) Liens of contractors, mechanics, materialmen, warehousemen, carriers, or other like Liens, securing obligations incurred in the ordinary course of business that are not yet due and payable and Liens of landlords securing obligations to pay lease payments that are not yet due and payable or in default;

(d) Good-faith pledges or deposits made in the ordinary course of business to secure performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, not in excess of the aggregate amount due thereunder, or to secure statutory obligations, or surety, appeal, indemnity, performance or other similar bonds required in the ordinary course of business;

(e) Encumbrances consisting of zoning restrictions, easements or other restrictions on the use of real property, none of which materially impairs the use of such property or the value thereof, and none of which is violated in any material respect by existing or proposed structures or land use;

(f) Liens on property leased by or consigned to any Credit Party under Capital Leases, operating leases, leases giving rise to Synthetic Lease Obligations or consignment arrangements, in Appendix A - 33
each case, securing obligations of such Credit Party to the lessor (and, in the case of leases giving rise to Synthetic Lease Obligations, the lenders to the lessor) or the consignor under such leases or consignment arrangements;

(g) Any Lien existing on the date of the Revolving Credit Agreement and described on Schedule XV, provided that the principal amount secured thereby is not hereafter increased, and no additional assets become subject to such Lien;

(h) Purchase Money Security Interests to the extent that the aggregate amount of loans and deferred payments secured by such Purchase Money Security Interests, when aggregated with the amount of Indebtedness secured by Liens as permitted in clause (i) below, do not exceed at any one time outstanding Ten Million and 00/100 Dollars ($10,000,000.00) (excluding for the purpose of this aggregate computation any loans or deferred payments secured by Liens described on Schedule XV);

(i) Liens on proceeds granted in connection with securities lending transactions or reverse repurchase agreements involving United States Treasury bonds to the extent the aggregate amount of the Indebtedness secured by such Liens, when aggregated with the amount of loans and deferred payments secured by Purchase Money Security Interests as permitted in clause (h) above, do not exceed at any one time outstanding Ten Million and 00/100 Dollars ($10,000,000.00) (excluding for the purpose of this aggregate computation any loans or deferred payments secured by Liens described on Schedule XV); and

(j) The following, (i) if the validity or amount thereof is being contested in good faith by appropriate and lawful proceedings diligently conducted so long as levy and execution thereon have been stayed and continue to be stayed or (ii) if a final judgment is entered and such judgment is discharged within thirty (30) days of entry, or (iii) if payments thereof are covered in full (subject to customary deductibles) by an insurance company of reputable standing which has acknowledged that the applicable policy applies to the following and is not reserving any right to contest applicability, and in any case they do not in the aggregate materially impair the ability of any Credit Party to perform its obligations hereunder or under the other Operative Agreements:

(A) Claims or Liens for Taxes, assessments or charges due and payable and subject to interest or penalty, provided that the applicable Credit Party maintains such reserves or other appropriate provisions as shall be required by GAAP and pays all such Taxes, assessments or charges forthwith upon the commencement of proceedings to foreclose any such Lien;

(B) Claims, Liens or encumbrances upon, and defects of title to, real or personal property, including any attachment of personal or real property or other legal process prior to adjudication of a dispute on the merits;

(C) Claims or Liens of mechanics, materialmen, warehousmen, carriers, or other statutory nonconsensual Liens; or

(D) Liens resulting from final judgments or orders for the payment of money in excess of Twenty-Five Million and 00/100 Dollars ($25,000,000.00) in the aggregate entered against any Credit Party by a court having jurisdiction in the premises, which judgment is not satisfied, discharged, vacated, bonded or stayed pending appeal within a period of sixty (60) days from the date of entry.

Appendix A - 34
“Revolving Credit Agreement Property” shall mean all real property (including the Property), both owned and leased, of any Credit Party.

“Revolving Credit Agreement Required Banks” shall mean the Required Banks (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement US Borrowers” shall mean BLS and the Parent.

“RVI Policy” shall mean, with respect to the Property, a residual value insurance policy in form and substance reasonably acceptable to the Lessor in an amount sufficient to enable the Lessor to achieve its desired accounting treatment.

“S&P” shall mean Standard & Poor’s, a division of The McGraw Hill Companies Inc., and any successor thereto.

“Sale Date” shall have the meaning given to such term in Section 20.3(a) of the Lease.

“Sale Notice” shall mean a notice given to the Lessor in connection with the election by the Lessee of its Sale Option.

“Sale Option” shall have the meaning given to such term in Section 20.1 of the Lease.

“Sale Proceeds Shortfall” shall mean the amount by which the proceeds of a sale described in Section 21.1 of the Lease are less than the Limited Recourse Amount with respect to the Property if it has been determined that the Fair Market Sales Value of the Property at the expiration of the term of the Lease has been impaired by greater than ordinary wear and tear during such term.

“Secured Parties” shall mean the Lessor Parties and the Agent, together with their successors and permitted assigns.

“Securities Act” shall mean the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

“Security Documents” shall mean the collective reference to the Mortgage Instruments, (to the extent the Lease is construed as a security instrument) the Lease, the UCC Financing Statements and all other security documents granting a Lien on any asset or assets of any Person to secure the obligations and liabilities of the Lessee under any Operative Agreement or to secure any guarantee of any such obligations and liabilities.

“Seismic Report” shall mean the Seismic Risk Assessment Report dated October 18, 2017 prepared by Global Realty Services Group regarding Big Lots Industrial Project Located at the SWC of Navajo Road and Lafayette Road.

“Shares” shall have the meaning given to such term in Section 6.1(b) of the Participation Agreement.

“Soft Costs” shall mean (a) all costs which are ordinarily and reasonably incurred in relation to the acquisition, development, leasing, financing, installation, construction, improvement and testing of the Property other than Hard Costs, including Off-Site Construction Costs, Fees, legal fees, broker fees, upfront fees, fees of the Construction Consultant, fees and expenses related to appraisals, title examinations, title insurance, document recordation, documentary stamp Taxes, intangible Taxes, surveys, environmental site assessments, geotechnical soil investigations and similar costs and professional fees customarily associated
with a real estate purchase and closing and (b) the settlement amounts described in Schedule XVII to the Participation Agreement.

“Solvent” and “Solvency” shall mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Structuring Fee” shall have the meaning given to such term in Section 7.7 of the Participation Agreement.

“Subsidiary” of any Person at any time shall mean (a) any corporation or trust of which fifty percent (50%) or more (by number of shares or number of votes) of the outstanding capital stock or shares of beneficial interest normally entitled to vote for the election of one or more directors or trustees (regardless of any contingency which does or may suspend or dilute the voting rights) is at such time owned directly or indirectly by such Person or one or more of such Person’s Subsidiaries, (b) any partnership of which such Person is a general partner or of which fifty percent (50%) or more of the partnership interests are at the time directly or indirectly owned by such Person or one or more of such Person’s Subsidiaries, (c) any limited liability company of which such Person is a member or of which fifty percent (50%) or more of the limited liability company interests are at the time directly or indirectly owned by such Person or one or more of such Person’s Subsidiaries or (d) any corporation, trust, partnership, limited liability company or other entity which is controlled or capable of being controlled by such Person or one or more of such Person’s Subsidiaries.

“Subsidiary Shares” shall have the meaning given to such term in Section 6.1(c) of the Participation Agreement.

“Supplemental Rent” shall mean all amounts, liabilities and obligations (other than Basic Rent) which the Lessee assumes or agrees to pay to any Lessor Party, the Agent or any other Person under the Lease or under any of the other Operative Agreements including payments of the Termination Value and the Maximum Residual Guarantee Amount and all indemnification amounts, liabilities and obligations.

“Synthetic Lease Documents” shall have the meaning given to such term in Section 8.3B(q) of the Participation Agreement.

“Synthetic Lease Obligation” shall mean the monetary obligation of any Person under (a) a so-called synthetic or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that, pursuant to the applicable FASB accounting standards, do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Tax Loss” shall have the meaning given to such term in Section 11.2(g) of the Participation Agreement.
“Taxes” shall have the meaning given to such term in the definition of “Impositions”.

“Term” shall mean the Basic Term and each Renewal Term, if any.

“Termination Date” shall have the meaning given to such term in Section 16.2(a) of the Lease.

“Termination Notice” shall have the meaning given to such term in Section 16.1 of the Lease.

“Termination Value” shall mean the sum of (a) an amount equal to the aggregate outstanding Property Cost for the Property, as of the last occurring Payment Date, plus (b) any and all accrued but unpaid Lessor Yield on the Lessor Advances, plus (c) to the extent the same is not duplicative of the amounts payable under clause (b) above, all other Rent and other amounts then due and payable or accrued under the Agency Agreement, the Lease and/or any other Operative Agreement (including amounts under Sections 11.1 through 11.9 of the Participation Agreement and all costs and expenses incurred by any Lessor Party and/or the Agent in connection with the transfer or sale of the Property to any Person (regardless of whether any such transfer or sale actually occurs)).

“Test Date” shall mean, if at the time the rating of either S&P’s or Moody’s with respect to the Parent’s consolidated Indebtedness under the Revolving Credit Agreement shall be less than BBB- or Baa3 and the rating of the other such rating agency with respect to BLS’ Indebtedness under the Revolving Credit Agreement shall not be at least BBB- or Baa3, or if there shall not be a rating in effect from such other rating agency of BLS’ Indebtedness under the Revolving Credit Agreement, each date of the making of a loan under the Revolving Credit Agreement or the issuance of any letter of credit under the Revolving Credit Agreement.

“Transaction Expenses” shall mean all Soft Costs and all other costs and expenses incurred or expended by the Construction Agent, the Lessee or any Financing Party in connection with the preparation, execution and delivery of the Operative Agreements and the transactions contemplated by the Operative Agreements including all costs, fees, expenses and other amounts described in Section 7 of the Participation Agreement, all reasonable costs and expenses incurred by any Lessor Party in connection with any designation of a new lending office or assignment by a Lessor Party to another of its offices, branches or affiliates, in each case, pursuant to Section 5A.7(a) the assignment fee payable to the Agent and any other fees or amounts (excluding advance amounts, Lessor Yield and Fees) incurred by a Lessor Party pursuant to Section 5A.7(b) and (except to the extent payable and actually paid by the Construction Agent or the Lessee pursuant to Section 11.6 of the Participation Agreement) all indemnity amounts, breakage amounts, costs, fees, expenses and other amounts arising pursuant to Section 11 of the Participation Agreement and the following:

(a) the reasonable fees, out-of-pocket expenses and disbursements of counsel in negotiating the terms of the Operative Agreements and the other transaction documents, preparing for the closings under, and rendering opinions in connection with, such transactions and in rendering other services customary for counsel representing parties to transactions of the types involved in the transactions contemplated by the Operative Agreements;

(b) the reasonable fees, out-of-pocket expenses and disbursements of accountants for any Credit Party in connection with the transactions contemplated by the Operative Agreements;

(c) any and all other reasonable fees, charges or other amounts payable to the Agent or any broker which arises under any of the Operative Agreements;
(d) any other reasonable fee, out-of-pocket expenses, disbursement or cost of any party to the Operative Agreements or any of the other transaction documents; and

(e) any and all Taxes and fees incurred in recording or filing any Operative Agreement or any other transaction document, any deed, declaration, mortgage, security agreement, notice or financing statement with any public office, registry or governmental agency in connection with the transactions contemplated by the Operative Agreement.

Notwithstanding the foregoing or any provision in Section 7.1 of the Participation Agreement or in any other Operative Agreement to the contrary, “Transaction Expenses” shall not include legal fees and other professional fees or similar costs and expenses expended by any transferee or assignee of any Lease Participant as of the Initial Closing Date.

“Tribunal” shall mean any state, commonwealth, federal, foreign, territorial, or other court or government body, subdivision agency, department, commission, board, bureau or instrumentality of a governmental body.

“Trust Property” shall mean the collateral identified in the Security Documents.

“UCC Financing Statements” shall mean UCC financing statements and fixture filings appropriately completed for filing in the applicable jurisdictions in order to procure a security interest in the Property against the Lessee, as debtor, in favor of the Lessor, as secured party, and thereafter assigned to the Agent, respecting any of the Security Documents.

“Unanimous Vote Matters” shall have the meaning given to such term in Section 12.4 of the Participation Agreement.

“Uniform Commercial Code” and “UCC” shall mean the Uniform Commercial Code as from time to time in effect in the applicable jurisdiction or jurisdictions.

“Uninsured Force Majeure Loss” shall mean an amount equal to the Force Majeure Loss less any and all insurance proceeds paid in connection with the Force Majeure Event giving rise to such Force Majeure Loss.

“United States” shall mean the United States of America.

“United States Bankruptcy Code” shall mean the Bankruptcy Code.

“U.S. Person” shall have the meaning given to such term in Section 11.2(e) of the Participation Agreement.

“U.S. Taxes” shall have the meaning given to such term in Section 11.2(e) of the Participation Agreement.

“Water Utility Easement” shall have the meaning given to such term in Section 8.5 of the Participation Agreement.

“Wholly-Owned Entity” shall mean a Person all of the shares of capital stock or other ownership interest of which are owned by the Parent and/or one of its wholly-owned Subsidiaries or other wholly-owned entities.

Appendix A - 38
“Withholdings” shall have the meaning given to such term in Section 11.2(e) of the Participation Agreement.

“Work” shall mean the furnishing of labor, materials, components, furniture, furnishings, fixtures, appliances, machinery, equipment, tools, power, water, fuel, lubricants, supplies, goods and/or services with respect to the Property.

“Write-Down and Conversion Powers” shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

“Yield Protection Amount” shall have the meaning given to such term in Section 11.3 of the Participation Agreement.

Appendix A - 39
AVDC, INC., an Ohio corporation (the “Company”), as Construction Agent, as of ____, 20__, hereby certifies as true and correct and delivers the following Requisition to Wells Fargo Bank, National Association, as the agent for the Lessor Parties and respecting the Security Documents, as the agent for the Secured Parties, to the extent of their interests (the “Agent”):

Reference is made herein to that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”) among the Company, in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and the Agent. Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth therefor in the Participation Agreement.

Check one:

___ INITIAL CLOSING DATE:__________
(as of the Initial Closing Date)

___ ACQUISITION ADVANCE DATE:__________
(three (3) Business Days prior notice required for Advance, unless delivered as of the Initial Closing Date in accordance with Section 4.2 of the Participation Agreement)

___ CONSTRUCTION ADVANCE DATE:__________
(ten (10) days prior notice required for Advance)

1. Transaction Expenses and any and all other amounts contemplated to be financed under the Participation Agreement including any broker’s fees, taxes, recording fees and the like (with supporting invoices or closing statement attached):

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<th>Party to Whom Amount is Owed</th>
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CHAR1:1561065v7
2. Aggregate Lessor Advances requested under the Operative Agreements with respect to the Property for which Advances are requested under this Requisition, including without limitation all amounts requested under this Requisition:

$_____

CHECK THE APPLICABLE BOX:

☐ All as a Eurodollar Lessor Advance
☐ All as an ABR Lessor Advance

3. The Company hereby certifies that (a) the aggregate Lessor Advances requested pursuant to Section 2 do not exceed the aggregate of the Available Lessor Parties Commitments and (b) each of the provisions of the Participation Agreement applicable to the Lessor Advances requested hereunder have been complied with as of the date of this Requisition.

4. The Advances requested in connection with this Requisition are with respect to (a) the acquisition of the Land described in the legal description in the attached Schedule 1, (b) reimbursement of costs previously incurred or direct payment for costs incurred concerning the Improvements described in the attached Schedule 2, (c) reimbursement of costs previously incurred or direct payment for costs incurred concerning the Equipment described in the attached Schedule 3 and/or (d) the payment of anticipated costs not yet incurred which are the subject of the Punchlist Advance made pursuant to Section 5.11 of the Participation Agreement.

5. Each and every representation and warranty of each Credit Party contained in the Operative Agreements to which it is a party is true and correct in all material respects on and as of the date hereof (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date).

6. Each and every condition precedent pursuant to the Operative Agreements with respect to the Advances requested in connection with this Requisition have been (a) satisfied or (b) otherwise waived in writing by (i) the Agent and (ii) each other Financing Party as required pursuant to the Operative Agreements.

7. None of the Advances being requested in connection with this Requisition shall be used for the acquisition of, or otherwise in any manner regarding, any Excluded Equipment.
The Company has caused this Requisition to be executed by its duly authorized officer as of the day and year first above written.

AVDC, INC., as Construction Agent

By: ____________
Name: ____________
Title: ____________
Schedule 1

Land
Schedule 2

Improvements
Schedule 3

Equipment
AVDC, INC., an Ohio corporation (the “Company”), as of ____, 20__, DOES HEREBY CERTIFY as follows:

1. Each and every representation and warranty of each Credit Party contained in the Operative Agreements to which it is a party is true and correct in all material respects on and as of the date hereof.

2. No Default or Event of Default has occurred and is continuing.

3. Each Operative Agreement to which any Credit Party is a party is in full force and effect with respect to it.

4. Each Credit Party has duly performed and complied with all covenants, agreements and conditions contained in the Participation Agreement (hereinafter defined) or in any Operative Agreement required to be performed or complied with by it on or prior to the date hereof.

Capitalized terms used in this Officer’s Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”) among the Company, in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.

[signature page follows]
IN WITNESS WHEREOF, the Company has caused this Officer’s Certificate to be duly executed and delivered as of the day and year first above written.

AVDC, INC.

By: ______________
Name: ______________
Title: ______________
EXHIBIT C

FORM OF SECRETARY’S CERTIFICATE

[CREDIT PARTY]

[CREDIT PARTY], a _____ (the “Company”), as of ____, 20__, DOES HEREBY CERTIFY as follows:

1. Attached hereto as Schedule 1 is a true, correct and complete copy of the [articles of incorporation], as amended, of the Company on file with the Secretary of State of the State of _____. Such [articles of incorporation], as amended, remain in full force and effect as of the date hereof.

2. Attached hereto as Schedule 2 is a true, correct and complete copy of the [by-laws], as amended, of the Company. Such [by-laws], as amended, have not been otherwise amended, modified or rescinded since their date of adoption and remain in full force and effect as of the date hereof.

3. Attached hereto as Schedule 3 is a true, correct and complete copy of the resolutions of the Company duly authorizing the execution, delivery and performance by the Company of each of the Operative Agreements to which it is or will be a party. Such resolutions have not been amended, modified or rescinded since their date of adoption and remain in full force and effect as of the date hereof.

4. The persons named below now hold the offices with the Company set forth opposite their names, and the signatures opposite their names and titles are their true and correct signatures.

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<tr>
<th>Name</th>
<th>Office</th>
<th>Signature</th>
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Capitalized terms used in this Secretary’s Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”) among [the Company/AVDC, Inc.], in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.
IN WITNESS WHEREOF, the Company has caused this Secretary’s Certificate to be executed by its duly authorized officer as of the day and year first above written.

[Credit Party]

By: __________
Name: __________
Title: __________
Schedule 1

[Articles of Incorporation]
Schedule 2

[By-Laws]
Schedule 3

Resolutions
WACHOVIA SERVICE CORPORATION, a Delaware corporation (the “Company”), as of ____, 20__, DOES HEREBY CERTIFY as follows:

Each and every representation and warranty of the Company contained in the Operative Agreements to which it is a party is true and correct in all material respects on and as of the date hereof.

Each Operative Agreement to which the Company is a party is in full force and effect with respect to it.

The Company has duly performed and complied with all covenants, agreements and conditions contained in the Participation Agreement (hereinafter defined) or in any Operative Agreement required to be performed or complied with by it on or prior to the date hereof.

Capitalized terms used in this Officer’s Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”) among AVDC, Inc., in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, the Company, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.

[signature page follows]
IN WITNESS WHEREOF, the Company has caused this Officer’s Certificate to be duly executed and delivered as of the day and year first above written.

WACHOVIA SERVICE CORPORATION

By: ___________
Name: ___________
Title: ___________
EXHIBIT E

FORM OF SECRETARY’S CERTIFICATE

WACHOVIA SERVICE CORPORATION

WACHOVIA SERVICE CORPORATION, a Delaware corporation (the “Company”), as of ____, 20__, DOES HEREBY CERTIFY as follows:

1. Attached hereto as Schedule 1 is a true, correct and complete copy of the certificate of incorporation, as amended, of the Company on file with the Secretary of State of the State of Delaware. Such certificate of incorporation, as amended, remain in full force and effect as of the date hereof.

2. Attached hereto as Schedule 2 is a true, correct and complete copy of the by-laws, as amended, of the Company. Such by-laws, as amended, have not been otherwise amended, modified or rescinded since their date of adoption and remain in full force and effect as of the date hereof.

3. Attached hereto as Schedule 3 is a true, correct and complete copy of the resolutions of the Company duly authorizing the execution, delivery and performance by the Lessor of each of the Operative Agreements to which it is or will be a party. Such resolutions have not been amended, modified or rescinded since their date of adoption and remain in full force and effect as of the date hereof.

4. The persons named below now hold the offices with the Company set forth opposite their names, and the signatures opposite their names and titles are their true and correct signatures.

<table>
<thead>
<tr>
<th>Name</th>
<th>Office</th>
<th>Signature</th>
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</table>

Capitalized terms used in this Secretary’s Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”) among AVDC, Inc., in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, the Company, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.
IN WITNESS WHEREOF, the Company has caused this Secretary’s Certificate to be executed by its duly authorized officer as of the day and year first above written.

WACHOVIA SERVICE CORPORATION

By: _____________
Name: ______________
Title: ______________
Schedule 1

Certificate of Incorporation
Schedule 2

By-Laws
Schedule 3

Resolutions
AVDC, INC., an Ohio corporation (the "Company"), as of ___, 20__, DOES HEREBY CERTIFY as follows:

1. The address for the Property is __________________________ _______________________________________.

2. The Completion Date for the construction of Improvements at the Property occurred on ____________.

3. The aggregate Property Cost is $___________.

4. All representations and warranties of the Credit Parties in each Operative Agreement and in each certificate delivered pursuant thereto are true and correct in all material respects as of the Completion Date referenced above (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date).

5. Attached hereto as Schedule 1 is a copy of the temporary certificate of occupancy for the Property.

Capitalized terms used in this Officer’s Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”) among the Company, in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.

[signature page follows]
IN WITNESS WHEREOF, the Company has caused this Officer’s Certificate to be duly executed and delivered as of the day and year first above written.

AVDC, INC.

By: ____________
Name: ____________
Title: ____________
Schedule 1

Temporary Certificate of Occupancy
AVDC, INC., an Ohio corporation (the “Company”), as of ___, 20__, DOES HEREBY CERTIFY as follows:

1. Attached hereto as Schedule A is the detailed, itemized documentation supporting the asserted Property Cost figures.

2. Attached hereto as Schedule B are unconditional waivers of Lien covering all work and materials regarding the Property by the applicable general contractor and any subcontractors and suppliers.

Capitalized terms used in this Officer’s Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”) among the Company, in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.

[signature page follows]
IN WITNESS WHEREOF, the Company has caused this Officer’s Certificate to be duly executed and delivered as of the day and year first above written.

AVDC, INC.

By: ____________
Name: ____________
Title: ____________
Schedule A

(Itemized Documentation in Support of Asserted Property Cost)
Schedule B

(Unconditional Waivers of Lien by the Applicable General Contractor, Subcontractors and Suppliers)
EXHIBIT G

FORM OF CONSTRUCTION AGENT CERTIFICATE

THIS CONSTRUCTION AGENT CERTIFICATE dated as of _____, _____ (this “Certificate”) is executed by AVDC, INC., an Ohio corporation (the “Company” or the “Construction Agent”), in favor of (a) Wells Fargo Bank, National Association, as agent for the Lessor Parties and, respecting the Security Documents, as agent for the Secured Parties (the “Agent”) and (b) _____, a _____, as construction servicer on behalf of the Agent (the “Construction Servicer”).

The Construction Agent hereby certifies as follows:

1. Concurrent herewith, the Construction Agent has submitted a Requisition requesting funding thereof, all in accordance with the requirements of the Operative Agreements. The Requisition is attached hereto as Schedule A. The Construction Agent acknowledges that funding of the Requisition is subject to satisfaction of the conditions precedent in the Operative Agreements, including approval by the Construction Servicer.

2. This Certificate is to be utilized only in connection with the above-referenced Requisition.

3. To the best of the Construction Agent’s knowledge, it has complied with all duties and obligations required to date to be carried out and performed by it pursuant to the Operative Agreements.

4. No Event of Default has occurred and is continuing.

5. All change orders regarding the construction of the Property subject to the above-referenced Requisition or changes to any of the Construction Documents have been submitted to and, to the extent required pursuant to the Operative Agreements, approved by the applicable Financing Parties.

6. All previously disbursed Advances have been used for the purposes as set forth in the Operative Agreements.

7. All outstanding claims for labor, materials and/or services furnished prior to the Advance requested pursuant to the above-referenced Requisition that are due and payable have been paid or will be paid from the proceeds of such Advance (unless such are being contested as permitted by the Operative Agreements and no such certification is hereby made with respect to costs to be incurred with respect to the future completion of punch list items in connection with the Punchlist Advance).

8. To the best of the Construction Agent’s knowledge, all construction regarding the construction of the Property subject to the above-referenced Requisition prior to the date of this Certificate has been accomplished in substantial accordance with the Plans and Specifications; provided, no such certification is hereby made with respect to the future completion of punch list items in connection with the Punchlist Advance.

9. The Advance pursuant to the above-referenced Requisition will be used solely for the purposes set forth therein, and no amount requested for funding pursuant to the above-referenced Requisition has been the basis for any prior Requisition.
10. To the best of the Construction Agent’s knowledge, there are no Liens outstanding against the Property subject to the above-referenced Requisition, except for Permitted Liens.

11. To the best of the Construction Agent’s knowledge, the then Available Lessor Parties Commitment is sufficient to pay for Completion of the Property in accordance with the Construction Documents and the Operative Agreements.

12. All representations and warranties of the Credit Parties in the Operative Agreements are true and correct in all material respects as of the date hereof (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date).

13. The Construction Agent understands that this Certificate is made for the purpose of inducing the Agent and the Construction Servicer to approve the Advance pursuant to the above-referenced Requisition and in approving such Advance, the Agent and the Construction Servicer will rely upon the accuracy of the matters stated in this Certificate.

14. The statements made in this Certificate and any documents submitted herewith and identified herein are true and correct.

Capitalized terms used in this Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”) among the Company, in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.
The Construction Agent has caused this Certificate to be duly executed and delivered as of the day and year first above written.

AVDC, INC., as the Construction Agent

By: __________
Name: __________
Title: __________
Schedule A

(Requisition)
EXHIBIT H

FORM OF GUARANTOR JOINDER AND ASSUMPTION AGREEMENT

This Guarantor Joinder and Assumption Agreement ("Joinder") is made as of _________ ___, 20___, by ________________________, a ______________________ limited liability company/limited partnership/general partnership/corporation (the "New Guarantor").

Background

Reference is made to (i) the Participation Agreement, dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement"), by and among AVDC, Inc., an Ohio corporation (the "Construction Agent" or "Lessee"); the various entities which are parties thereto from time to time as guarantors (individually, a "Guarantor" and collectively, the "Guarantors"); Wachovia Service Corporation, a Delaware corporation (the "Lessor"); the various banks and other lending institutions which are parties thereto from time to time as lease participants (individually, a "Lease Participant" and collectively, the "Lease Participants"); and Wells Fargo Bank, National Association, a national banking association, as the agent for the Lessor Parties and, respecting the Security Documents, as agent for the Secured Parties (in such capacity, the "Agent") and (ii) the other Operative Agreements referred to in the Participation Agreement, as the same may be amended, modified, extended, supplemented, restated and/or replaced from time to time.

Agreement

Capitalized terms defined in the Participation Agreement are used herein as defined therein. In consideration of the New Guarantor becoming a Guarantor under the terms of the Participation Agreement and in consideration of the value of the synergistic benefits received by the New Guarantor as a result of becoming affiliated with the Credit Parties, the New Guarantor hereby agrees that (i) it shall become a "Guarantor" as defined in the Participation Agreement and be subject to Section 6B of the Participation Agreement, (ii) effective as of the date hereof, it hereby is, and shall be deemed to be, a Guarantor under the Participation Agreement and each of the other Operative Agreements to which the Guarantors are a party and agrees that from the date hereof and so long as any Company Obligation shall remain outstanding and until the payment and performance in full of all Company Obligations (other than contingent indemnification and reimbursement obligations in respect of which no claim for payment has yet been asserted by the Person entitled thereto), the New Guarantor has assumed the obligations of a Guarantor under, and the New Guarantor shall perform, comply with and be subject to and bound by, jointly and severally with any other Guarantor, each of the terms, provisions and waivers of the Participation Agreement, the Intercompany Subordination Agreement and each of the other Operative Agreements which are stated to apply to or are made by a Guarantor. Without limiting the generality of the foregoing, the New Guarantor hereby represents and warrants that (i) each of the representations and warranties with respect to the Guarantors set forth in Section 6.1 of the Participation Agreement (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date) is true and correct in all material respects as to the New Guarantor on and as of the date hereof as if made on and as of the date hereof by the New Guarantor and (ii) the New Guarantor has heretofore received a true and correct copy of
the Participation Agreement, and each of the other Operative Agreements (including any modifications thereof or supplements or waivers thereto) as in effect on the date hereof.

The New Guarantor hereby makes, affirms, and ratifies in favor of the Financing Parties, as applicable, the Participation Agreement, the Intercompany Subordination Agreement and each of the other Operative Agreements executed by the Guarantors.

The New Guarantor is simultaneously delivering to the Agent the following documents together with this Joinder required under Section 6B.9 [Joinder of Guarantors] of the Participation Agreement.

<table>
<thead>
<tr>
<th>Document</th>
<th>Delivered</th>
<th>Not Delivered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Officer’s Certificate (mandatory)</td>
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<tr>
<td>Secretary’s Certificate (mandatory)</td>
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<td>Opinion of Counsel (mandatory)</td>
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<td>Schedule III Subsidiaries (mandatory)</td>
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<td>Schedule V Owned Real Estate (if applicable)</td>
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<td>Schedule VI Consents and Approvals (mandatory)</td>
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<td>Schedule VII Insurance Policies (if applicable)</td>
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<td>Schedule VIII Employee Benefit Plan Disclosure (if applicable)</td>
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<td>Schedule IX Environmental Disclosure (if applicable)</td>
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<td>Schedule X Permitted Indebtedness (if applicable)</td>
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<td>Schedule XI Existing Guaranties (if applicable)</td>
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<td>Schedule XII Excluded US Active Subsidiaries (if applicable)</td>
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<td>Schedule XIII Excluded US Inactive Subsidiaries (if applicable)</td>
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<td>Schedule XIV Permitted Investments (if applicable)</td>
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<tr>
<td>Schedule XV Revolving Credit Agreement Permitted Liens (if applicable)</td>
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</table>

[Note: updates to schedules do not cure any breach of warranties unless expressly agreed in accordance with the terms of the Participation Agreement.]

As of the date set forth above, the New Guarantor has duly executed and delivered this Joinder.

[___]

By:___
Name:___
Title:___
EXHIBIT I

FORM OF OFFICER’S CERTIFICATE (PERMITTED ACQUISITION)

Wells Fargo Bank, National Association, as Agent
10 South Wacker Drive, 22nd Floor
Chicago, IL 60606
Attention: Peter R. Martinets

Ladies and Gentlemen:

We refer to the Participation Agreement, dated as of November 30, 2017 (as may be amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”), by and among AVDC, Inc., an Ohio corporation (the “Construction Agent” or “Lessee”); the various entities which are parties thereto from time to time as guarantors (individually, a “Guarantor” and collectively, the “Guarantors”); Wachovia Service Corporation, a Delaware corporation (the “Lessor”); the various banks and other lending institutions which are parties thereto from time to time as lease participants (individually, a “Lease Participant” and collectively, the “Lease Participants”); and Wells Fargo Bank, National Association, a national banking association, as the agent for the Lessor Parties and, respecting the Security Documents, as agent for the Secured Parties (in such capacity, the “Agent”). Unless otherwise defined herein, terms defined in the Participation Agreement are used herein with the same meanings.

[enter name of Credit Party] intends to enter into a Permitted Acquisition with [enter name of the target company] pursuant to which such Credit Party will [provide a brief description of the transactions contemplated by such Permitted Acquisition] and the Consideration paid by such Credit Party exceeds Twenty-Five Million and 00/100 Dollars ($25,000,000.00). This Certificate is delivered to the Administrative Agent in accordance with Section 8.3B(e)(iii)(E) of the Participation Agreement.

I, [Chief Executive Officer/President/Chief Financial Officer/Treasurer] of BLS, and I, [Chief Executive Officer/President/Chief Financial Officer/Treasurer] of the Parent, do hereby certify on behalf of the Credit Parties as of [at least 10 Business Days prior to any Permitted Acquisition] (the “Report Date”), as follows:

1. The representations and warranties of the Credit Parties contained in Section 6.1 of the Participation Agreement and in the other Operative Agreements to which they are a party are true and correct in all material respects on and as of the date hereof with the same effect as though such representations and warranties had been made on and as of the Report Date (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date). The Credit Parties are in compliance with, and since the date of the previously delivered Compliance Certificate have performed and complied with all covenants and conditions contained in the Participation Agreement except for any Event of Default that has been cured or waived.
2. No Default or Event of Default exists on the Report Date; no Default or Event of Default exists and is continuing; no Default or Event of Default shall exist immediately prior to and after giving effect to such Permitted Acquisition.

   [NOTE: If any Event of Default or Default has occurred and is continuing, set forth on an attached sheet the nature thereof and the action which the Credit Parties have taken, are taking or propose to take with respect thereto.]

3. Maximum Leverage Ratio (Section 8.3B(o)). After giving effect to such Permitted Acquisition (including in such computation Indebtedness or other liabilities assumed or incurred in connection with such Permitted Acquisition), the ratio of (a) the sum of (i) Consolidated Total Indebtedness, and (ii) four (4) times Consolidated Rental Expense, to (b) Adjusted Consolidated EBITDAR is _____ to 1.00 for the four (4) most recently completed fiscal quarters of the Parent and its Subsidiaries ending prior to the Report Date, which is not greater than the permitted ratio of _____ to 1.00 for the relevant period [insert applicable maximum from Table I below].

| TABLE I |
|---------------------------------|-----------------|
| Four (4) Consecutive Fiscal Quarters Ending (Nearest) of each applicable year | Maximum Total Leverage Ratio |
| April 30                         | 3.00 to 1.00    |
| July 31                          | 3.25 to 1.00    |
| October 31                       | 3.50 to 1.00    |
| January 31                       | 3.00 to 1.00    |

(A) Consolidated Total Indebtedness for the four (4) most recently completed fiscal quarters ending prior to the Report Date equals $______.

(B) Consolidated Rental Expense for the four (4) most recently completed fiscal quarters ending prior to the Report Date, multiplied by four (4), equals $______.

(C) The sum of item 3(A) plus item 3(B) equals $______, the numerator of the Leverage Ratio.

(D) Adjusted Consolidated EBITDAR for the four (4) most recently completed fiscal quarters prior to the Report Date, equals $______, and is computed as follows:

   (i) net income $___
   (ii) depreciation $___
   (iii) amortization $___
   (iv) other non-cash charges to net income $___
   (v) interest expense $___
   (vi) income tax expense $___
   (vii) Consolidated Rental Expense $___
(viii) sum of items 3(A)(i) through 3(A)(vii) $__

(ix) non-cash credit to net income $__

(x) item 3(A)(viii) less item 3(A)(ix) equals Adjusted Consolidated EBITDAR, the denominator of the Leverage Ratio $__

(E) The ratio of item 3(C) to item 3(D)(x) equals the Leverage Ratio.

[remainder of page intentionally left blank]
IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby have executed this Certificate this ____ day of _____, 20__. 

ATTEST:    Big Lots Stores, Inc.

By: __    By: __
Name: __    Name: __
Title: __    Title: __

ATTEST:    Big Lots, Inc.

By: __    By: __
Name: __    Name: __
Title: __    Title: __

CHAR1\1561065v7
Ladies and Gentlemen:

We refer to the Participation Agreement, dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”), by and among AVDC, Inc., an Ohio corporation (the “Construction Agent” or “Lessee”); the various entities which are parties thereto from time to time as guarantors (individually, a “Guarantor” and collectively, the “Guarantors”); Wachovia Service Corporation, a Delaware corporation (the “Lessor”); the various banks and other lending institutions which are parties thereto from time to time as lease participants (individually, a “Lease Participant” and collectively, the “Lease Participants”); and Wells Fargo Bank, National Association, a national banking association, as the agent for the Lessor Parties and, respecting the Security Documents, as agent for the Secured Parties (in such capacity, the “Agent”). Unless otherwise defined herein, terms defined in the Participation Agreement are used herein with the same meanings.

I, _____, [Chief Executive Officer/President/Chief Financial Officer/Treasurer] of BLS, do hereby certify on behalf of BLS, and I, _____, [Chief Executive Officer/President/Chief Financial Officer/Treasurer] of the Parent, do hereby certify on behalf of the Parent, each as of the fiscal [quarter/year] ended [_____, 20__] (the “Report Date”), as follows:

1. CHECK ONE:

   ______ The audited annual financial statements of the Parent and its Subsidiaries being delivered to the Agent with this Compliance Certificate (a) present fairly, in all material respects, the financial position of the Parent and its Subsidiaries and their results of operations and cash flows for the fiscal year set forth above determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP consistently applied and (b) comply with the reporting requirements for such financial statements as set forth in Section 8.3C(b) of the Participation Agreement.

   OR
The quarterly financial statements of the Parent and its Subsidiaries being delivered to the Agent with this Compliance Certificate (a) present fairly, in all material respects, the financial position of the Parent and its Subsidiaries and their results of operations and cash flows for the fiscal quarter set forth above determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP consistently applied, subject to normal year-end audit adjustments (except that such statements do not contain all of the footnotes required by GAAP) and (b) comply with the reporting requirements for such financial statements as set forth in Section 8.3C(a) of the Participation Agreement.

2. The representations and warranties of the Credit Parties contained in Section 6.1 of the Participation Agreement and in the other Operative Agreements are true and correct in all material respects on and as of the date hereof with the same effect as though such representations and warranties had been made on and as of the Report Date (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date) and the Credit Parties have performed and complied with all covenants and conditions of the Operative Agreements.

3. In accordance with Section 8.3A(m) of the Participation Agreement, attached hereto as Exhibit A are updates to the Schedules to the Participation Agreement, if applicable (the “Updated Schedules”).

4. No Event of Default or Default exists and is continuing on the Report Date; [Include the following when required pursuant to Section 6.1(i)(iii) of the Participation Agreement: no Material Adverse Effect has occurred since the date of the previously delivered Compliance Certificate; and no event has occurred and is continuing since the date of the previously delivered Compliance Certificate that may reasonably be expected to result in a Material Adverse Effect].

[NOTE: If any Event of Default, Default, [if required as noted above: Material Adverse Effect or event which may reasonably be expected to result in a Material Adverse Effect] has occurred and is continuing, set forth on an attached sheet the nature thereof and the action which the Credit Parties have taken, are taking or propose to take with respect thereto.]

5. Maximum Leverage Ratio (Section 8.3B(o)). The ratio of (a) the sum of (i) Consolidated Total Indebtedness, and (ii) four (4) times Consolidated Rental Expense, to (b) Adjusted Consolidated EBITDAR is _____ to 1.0 for the four (4) fiscal quarters of the Parent and its Subsidiaries ending as of the Report Date, which is not greater than the permitted ratio of _____ to 1.0 for the relevant period [insert applicable maximum from Table I below]:

CHAR1\1561065v7
TABLE I

<table>
<thead>
<tr>
<th>Four (4) Consecutive Fiscal Quarters Ending (Nearest) of each applicable year</th>
<th>Maximum Total Leverage Ratio</th>
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<td>April 30</td>
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<td>January 31</td>
<td>3.00 to 1.00</td>
</tr>
</tbody>
</table>

(A) Consolidated Total Indebtedness for the four (4) fiscal quarters ending as of the Report Date equals $_____.

(B) Consolidated Rental Expense for the four (4) fiscal quarters ending as of the Report Date, multiplied by four (4), equals $_____.

(C) The sum of item 5(A) plus item 5(B) equals $_____, the numerator of the Leverage Ratio.

(D) Adjusted Consolidated EBITDAR for the four (4) fiscal quarters ending as of the Report Date equals $_____, and is computed as follows:

   (i) net income $_____
   (ii) depreciation $_____
   (iii) amortization $_____
   (iv) other non-cash charges to net income $_____
   (v) interest expense $_____
   (vi) income tax expense $_____
   (vii) Consolidated Rental Expense $_____
   (viii) sum of items 5(A)(i) through 5(A)(vii) $_____
   (ix) non-cash credit to net income $_____
   (x) item 5(A)(viii) less item 5(A)(ix) equals Adjusted Consolidated EBITDAR, the denominator of the Leverage Ratio $_____

(E) The ratio of item 5(C) to item 5(D)(x) equals the Leverage Ratio

6. **Minimum Fixed Charge Coverage Ratio** (Section 8.3B(p)). The ratio of (a) Consolidated EBITDAR to (b) the sum of (i) Consolidated Interest Expense and (ii) Consolidated Rental Expense is
to 1.00 for the four (4) fiscal quarters of the Parent and its Subsidiaries ending as of the Report Date, which is not less than the permitted ratio of 1.50 to 1.00 for the relevant period:

(A) Consolidated EBITDAR for the four (4) most recently completed fiscal quarters equals $_____, and is computed as follows:
   (i) net income $_____
   (ii) depreciation $_____
   (iii) amortization $_____
   (iv) other non-cash charges to net income $_____
   (v) interest expense $_____
   (vi) income tax expense $_____
   (vii) Consolidated Rental Expense $_____
   (viii) sum of items 6(A)(i) through 6(A)(vii) $_____
   (ix) non-cash credit to net income $_____
   (x) item 6(A)(viii) less item 6(A)(ix) equals Consolidated EBITDAR, the numerator of the Fixed Charge Coverage Ratio $_____

(B) Consolidated Interest Expense for the four (4) most recently completed fiscal quarters equals $_____.

(C) Consolidated Rental Expense for the four (4) most recently completed fiscal quarters equals $_____.

(D) The sum of item 6(B) plus item 6(C) equals $_____, the denominator of the Fixed Charge Coverage Ratio.

(E) The ratio of item 6(A) to item 6(D) equals the Fixed Charge Coverage Ratio.

[INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have executed this Certificate this _____ day of _____, 20__. 

ATTEST:        Big Lots Stores, Inc.

By:__   By:__

Name:__   Name:__

Title:__   Title:__

ATTEST:        Big Lots, Inc.

By:__   By:__

Name:__   Name:__

Title:__   Title:__
EXHIBIT K

FORM OF INTERCOMPANY SUBORDINATION AGREEMENT

THIS INTERCOMPANY SUBORDINATION AGREEMENT (this “Agreement”) is dated as of November 30, 2017 and is made by and among the entities listed on the signature page hereto (or subsequently joining this Agreement) (each being individually referred to herein as a “Credit Party” and collectively as the “Credit Parties”) for the benefit of Wells Fargo Bank, National Association, as the agent for the Lessor (as hereinafter defined) and the Lease Participants (as hereinafter defined) and, respecting the Security Documents (as defined in the Participation Agreement (as hereinafter defined)), as agent for the Secured Parties (as defined in the Participation Agreement) (in such capacity, the “Agent”).

WITNESSETH THAT:

WHEREAS, each capitalized term used herein shall, unless otherwise defined herein, have the meaning specified in the Participation Agreement, dated as of even date herewith (as may be amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”), by and among AVDC, Inc., an Ohio corporation (the “Construction Agent” or “Lessee”), the various entities which are parties thereto from time to time as guarantors (individually, a “Guarantor” and collectively, the “Guarantors”); Wachovia Service Corporation, a Delaware corporation (the “Lessor”); the various banks and other lending institutions which are parties thereto from time to time as lease participants (individually, a “Lease Participant” and collectively, the “Lease Participants”); and Wells Fargo Bank, National Association, as the Agent; and

WHEREAS, pursuant to the Participation Agreement, the Agency Agreement and the other Operative Agreements, Lessor may (i) purchase a parcel of real property, which will (or may) have existing Improvements thereon, from one (1) or more third parties designated by the Construction Agent and (ii) fund the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Property by the Construction Agent; and

WHEREAS, the Credit Parties are or may become indebted to each other (the Indebtedness of each of the Credit Parties to any other Credit Party, now existing or hereafter incurred (whether created directly or acquired by assignment or otherwise), and interest and premiums, if any, thereon and other amounts payable in respect thereof are hereinafter collectively referred to as the “Intercompany Indebtedness”) and are permitted to dissolve or merge in accordance with the terms of the Participation Agreement; and

WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Property pursuant to the Participation Agreement, the Lease and the other Operative Agreements; and

WHEREAS, the obligations of the Lessor and the Lease Participants to maintain the Lessor Parties Commitments and make Lessor Advances from time to time are subject to the condition, among others, that the Credit Parties subordinate the Intercompany Indebtedness to the Indebtedness and all other Obligations of the Credit Parties to any of the Financing Parties pursuant to the Operative Agreements (collectively, the “Senior Debt”) in the manner set forth herein.
NOW, THEREFORE, intending to be legally bound hereby, the parties hereto covenant and agree as follows:

1. **Intercompany Indebtedness Subordinated to Senior Debt.** The recitals set forth above are hereby incorporated by reference. All Intercompany Indebtedness shall be subordinate and subject in right of payment to the prior Payment In Full of all Senior Debt pursuant to the provisions contained herein.

2. **Payment Over of Proceeds Upon Bankruptcy, Etc.** Upon any distribution of assets of any Credit Party in connection with (a) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to any such Credit Party or to its creditors, as such, or to its assets, or (b) any assignment for the benefit of creditors or any marshalling of assets and liabilities of any such Credit Party (a Credit Party distributing assets as set forth herein being referred to in such capacity as a “Distributing Credit Party”), then and in any such event, the Agent shall be entitled to receive, for the benefit of the Financing Parties, as their respective interests may appear, Payment In Full of all amounts due or to become due, if an Event of Default has occurred or the Senior Debt has been declared due and payable prior to the date on which it would otherwise have become due and payable, other than pursuant to Section 5A.4 of the Participation Agreement (a “Triggering Event”), on or in respect of any and all Senior Debt before the holder of any Intercompany Indebtedness owed by the Distributing Credit Party is entitled to receive any payment on account of the principal of or interest on such Intercompany Indebtedness. Additionally, the Credit Parties hereby agree that the Revolving Credit Agreement Administrative Agent shall be entitled to receive, for application to the payment of the amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents, any payment or distribution of any kind or character, whether in cash, property or securities, which may be payable or deliverable in respect of the Intercompany Indebtedness owed by the Distributing Credit Party in any such case, proceeding, dissolution, liquidation or other winding up event.

If, notwithstanding the foregoing provisions of this Section, after the occurrence of a Triggering Event, a Credit Party which is owed Intercompany Indebtedness by a Distributing Credit Party shall have received any payment or distribution of assets from the Distributing Credit Party of any kind or character, whether in cash, property or securities, then and in such event such payment or distribution shall be held in trust for the benefit of the Revolving Credit Agreement Administrative Agent for application to amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents, shall be segregated from other funds and property held by such Credit Party, and shall be forthwith paid over to the Revolving Credit Agreement Administrative Agent for application to amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to or held as collateral (in the case of noncash property or securities) for the payment or prepayment of the amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents in accordance with the terms of the Revolving Credit Agreement Loan Documents.

3. **No Commencement of Any Proceeding.** Each Credit Party agrees that, so long as the Senior Debt shall remain unpaid, it will not commence, or join with any creditor other than the Revolving Credit Agreement Banks, the Revolving Credit Agreement Administrative Agent and the Financing Parties in commencing any proceeding referred to in the first paragraph of Section 2 against any other Credit Party which owes it any Intercompany Indebtedness.

4. **No Payment When Senior Debt in Default.** If a Triggering Event shall have occurred and be continuing, or would result from or exist after giving effect to a payment with respect to any portion of the Intercompany Indebtedness, unless the Majority Secured Parties shall have consented to or waived the same, so long as Payment In Full has not occurred, no payment shall be made by any Credit Party owing...
such Intercompany Indebtedness on account of principal or interest on any portion of the Intercompany Indebtedness except to the
extent that the proceeds of such payment are used by the Credit Party receiving such proceeds to immediately apply the same to the
amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents.

If, notwithstanding the foregoing, any Credit Party shall make any payment of the Intercompany Indebtedness to another Credit
Party prohibited by the foregoing provisions of this Section, such payment shall be paid over and delivered forthwith to the Revolving
Credit Agreement Administrative Agent for application to amounts due and owing pursuant to the Revolving Credit Agreement Loan
Documents.

5. **Payment Permitted if No Default.** Nothing contained in this Agreement shall prevent any of the Credit Parties, at any time
except during the pendency of any of the conditions described in Sections 2 and 4 hereof, from making payments at any time of
principal of or interest on any portion of the Intercompany Indebtedness, or the retention thereof by any of the Credit Parties of any
money deposited with them for the payment of or on account of the principal of or interest on the Intercompany Indebtedness.

6. **Rights of Subrogation.** Each Credit Party agrees that no payment or distribution to the Revolving Credit Agreement
Administrative Agent for application to amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents pursuant
to the provisions of this Agreement shall entitle it to exercise any rights of subrogation in respect thereof until Payment In Full.

7. **Instruments Evidencing Intercompany Indebtedness.** Each Credit Party shall cause each instrument, if any, which now or
hereafter evidences all or a portion of the Intercompany Indebtedness to be conspicuously marked as follows:

“This instrument is subject to the terms of an Intercompany Subordination Agreement dated as of November 30, 2017 in
favor of Wells Fargo Bank, National Association, as agent for the Lessor Parties and, respecting certain security documents, as
agent for the Secured Parties (as such parties are referred to therein), which Intercompany Subordination Agreement is
incorporated herein by reference. Notwithstanding any contrary statement contained in the within instrument, no payment on
account of the principal thereof or interest thereon shall become due or payable except in accordance with the express terms of
said Intercompany Subordination Agreement.”

8. **Agreement Solely to Define Relative Rights.** The purpose of this Agreement is solely to define the relative rights of the
Credit Parties, on the one hand, and the Financing Parties, on the other hand. Nothing contained in this Agreement is intended to or
shall impair, as between any of the Credit Parties and their creditors other than the Financing Parties, the obligation of the Credit Parties
to each other to pay the principal of and interest on the Intercompany Indebtedness as and when the same shall become due and
payable in accordance with its terms, or is intended to or shall affect the relative rights among the Credit Parties and their creditors other
than the Financing Parties, nor shall anything herein prevent any of the Credit Parties from exercising all remedies otherwise permitted
by Applicable Law upon default under any agreement pursuant to which the Intercompany Indebtedness is created, subject to the
obligations of the Credit Parties under this Agreement to pay to the Revolving Credit Agreement Administrative Agent for application to
amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents such cash, property or securities otherwise
payable or deliverable with respect to the Intercompany Indebtedness.

9. **No Implied Waivers of Subordination.** No right of the Financing Parties to enforce subordination, as herein provided, shall
at any time in any way be prejudiced or impaired by any act or failure
to act on the part of any Credit Party or by any act or failure to act by any Financing Party, or by any non-compliance by any Credit Party with the terms, provisions and covenants of any agreement pursuant to which the Intercompany Indebtedness is created, regardless of any knowledge thereof any Financing Party may have or be otherwise charged with. Each Credit Party by its acceptance hereof shall agree that, so long as Payment In Full has not occurred, such Credit Party shall not agree to sell, assign, pledge, encumber or otherwise dispose of, or to compromise, the obligations of the other Credit Parties with respect to their Intercompany Indebtedness, other than by means of payment of such Intercompany Indebtedness according to its terms or the sale, assignment, pledge or transfer to another Credit Party, without the prior written consent of the Agent.

Without in any way limiting the generality of the foregoing paragraph, to the extent, if any, permitted by the Participation Agreement, the Financing Parties may, at any time and from time to time, without the consent of or notice to the Credit Parties except to the extent provided in the Participation Agreement, without incurring responsibility to the Credit Parties and without impairing or releasing the subordination provided in this Agreement or the obligations hereunder of the Credit Parties to the Financing Parties, do any one or more of the following: (i) change the manner, place or terms of payment, or extend the time of payment, renew or alter the Senior Debt or otherwise amend or supplement the Senior Debt or the Operative Agreements; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing the Senior Debt, if any; (iii) release any Person liable in any manner for the payment or collection of the Senior Debt; and (iv) exercise or refrain from exercising any rights against any of the Credit Parties and any other Person.

10. **Additional Subsidiaries.** The Credit Parties covenant and agree that they shall cause Subsidiaries created or acquired after the date of this Agreement that are required to join this Agreement pursuant to Section 6B.9 of the Participation Agreement, to execute a joinder in the form of Exhibit H to the Participation Agreement, whereby such Subsidiary joins this Agreement and subordinates all Indebtedness owed to any such Subsidiary by any of the Credit Parties or other Subsidiaries hereafter created or acquired to the Senior Debt.

11. **Continuing Force and Effect.** This Agreement shall continue in force until Payment In Full.

12. **Modification, Amendments or Waivers.** Any and all agreements amending or changing any provision of this Agreement or the rights of the Financing Parties hereunder, and any and all waivers or consents to departures from the due performance by the Credit Parties of their obligations hereunder, shall be made only by written agreement, waiver or consent signed by the Agent, acting on behalf of the Financing Parties, with the written consent of the Majority Secured Parties, any such agreement, waiver or consent made with such written consent being effective to bind all the Financing Parties and, with respect to amendments or changes to any provision of this Agreement, signed by the Credit Parties.

13. **Expenses.** The Credit Parties unconditionally and jointly and severally agree upon demand to pay to the Agent, on behalf of the Financing Parties, the amount of any and all reasonable and necessary out-of-pocket costs, expenses and disbursements for which reimbursement is customarily obtained, including fees and expenses of counsel, which any of the Financing Parties may incur in connection with (a) the administration of this Agreement, (b) the exercise or enforcement of any of the rights of the Financing Parties hereunder, or (c) the failure by the Credit Parties to perform or observe any of the provisions hereof.

14. **Severability.** The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in
any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

15. **Governing Law.** This Agreement shall be a contract under the internal Laws of the State of New York and for all purposes shall be construed in accordance with the internal Laws of the State of New York without giving effect to its principles of conflict of laws.

16. **Successors and Assigns.** This Agreement shall inure to the benefit of the Financing Parties and their respective successors and assigns, as permitted in the Participation Agreement, and the obligations of the Credit Parties shall be binding upon their respective successors and assigns. Except in connection with a consolidation or merger permitted by Section 8.3B(e) of the Participation Agreement, the duties and obligations of the Credit Parties may not be delegated or transferred by the Credit Parties without the written consent of the Majority Secured Parties and any such delegation or transfer without such consent shall be null and void. Except to the extent otherwise required by the context of this Agreement, any reference in this Agreement to any Financing Party or collectively, to the Financing Parties shall include, without limitation, any holder of an assignment of rights in any Lessor Parties Interests and any replacement of the Agent, in its capacity as “Agent” under the Operative Agreements, in each case as applicable, and each such Person shall have the benefits of this Agreement to the same extent as if such holder had originally been a Financing Party under the Operative Agreements.

17. **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when executed and delivered, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

18. **Attorneys-in-Fact.** Each of the Credit Parties hereby authorizes and empowers the Agent, at its election at any time after the occurrence and continuance of an Event of Default and the acceleration of the Senior Debt and in the name of either itself, for the benefit of the Financing Parties, as their respective interests may appear, or in the name of each such Credit Party as is owed Intercompany Indebtedness, to execute and file proofs and documents and take any other action the Agent may deem advisable to completely protect the interests of the Financing Parties pursuant to this Agreement and their right of enforcement thereof, and to that end each of the Credit Parties hereby irrevocably makes, constitutes and appoints the Agent, its officers, employees and agents, or any of them, with full power of substitution, as the true and lawful attorney-in-fact and agent of such Credit Party, and with full power for such Credit Party, and in the name, place and stead of such Credit Party for the purpose of carrying out the provisions of this Agreement, and taking any action and executing, delivering, filing and recording any instruments which the Agent may deem necessary or advisable to accomplish the purposes hereof, which power of attorney, being given for security, is coupled with an interest and is irrevocable. Each Credit Party hereby ratifies and confirms, and agrees to ratify and confirm, all action taken by the Agent, its officers, employees or agents pursuant to the foregoing power of attorney.

19. **[Reserved].**

20. **Remedies.** In the event of a breach by any of the Credit Parties in the performance of any of the terms of this Agreement, the Agent, on behalf of the Financing Parties, may demand specific performance of this Agreement and seek injunctive relief and may exercise any other remedy available at law or in equity, it being recognized that the remedies of the Agent on behalf of the Financing Parties at law may not fully compensate the Agent on behalf of the Financing Parties for the damages they may suffer in the event of a breach hereof.
21. **Consent to Jurisdiction, Waiver of Jury Trial.** Each of the Credit Parties hereby irrevocably consents to the non-exclusive jurisdiction of the State of New York in New York County or of the United States for the Southern District of New York, and consents to service of process in the manner provided for in the Participation Agreement. Each of the Credit Parties waives any objection to jurisdiction and venue of any action instituted against it as provided herein and agrees not to assert any defense based on lack of jurisdiction or venue, AND EACH OF THE COMPANIES WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT TO THE FULL EXTENT PERMITTED BY LAW.

22. **Notices.** All notices, statements, requests and demands and other communications given to or made upon the Credit Parties or the Financing Parties in accordance with the provisions of this Agreement shall be given or made as provided in Section 12.2 of the Participation Agreement.

[remainder of page intentionally left blank]
WITNESS the due execution hereof as of the day and year first above written.

ATTEST:

AVDC, INC.

By: ___________
Name: ___________
Title: ___________

BIG LOTS STORES, INC.

By: ___________
Name: ___________
Title: ___________

BIG LOTS, INC.

By: ___________
Name: ___________
Title: ___________

BIG LOTS ECOMMERCE LLC

By: ___________
Name: ___________
Title: ___________
BIG LOTS F&S, INC.

By: ____________
Name: ______________
Title: ______________

(SIGNS CONTINUE)

BIG LOTS ONLINE LLC

By: ____________
Name: ______________
Title: ______________

BLC LLC

By: ____________
Name: ______________
Title: ______________

BLSI PROPERTY, LLC

By: ____________
Name: ______________
Title: ______________

CAPITAL RETAIL SYSTEMS, INC.

By: ____________
Name: ______________
Title: ______________
CLOSEOUT DISTRIBUTION, INC.

By: __________
Name: __________
Title: __________

(signture pages continue)

CONSOLIDATED PROPERTY HOLDINGS, INC.

By: __________
Name: __________
Title: __________

CSC DISTRIBUTION, INC.

By: __________
Name: __________
Title: __________

C.S. ROSS COMPANY

By: __________
Name: __________
Title: __________

DURANT DC, LLC

By: __________
Name: __________
Title: __________
GREAT BASIN LLC

By: __________
Name: __________
Title: __________

(signature pages continue)

INDUSTRIAL PRODUCTS OF NEW ENGLAND, INC.

By: __________
Name: __________
Title: __________

MAC FRUGAL’S BARGAINS • CLOSE-OUTS, INC.

By: __________
Name: __________
Title: __________

MIDWESTERN HOME PRODUCTS, INC.

By: __________
Name: __________
Title: __________

PNS STORES, INC.

By: __________
Name: __________
Title: __________
SAHARA LLC

By: __________
Name: __________
Title: __________

(signature pages continue)

SONORAN LLC

By: __________
Name: __________
Title: __________

TOOL AND SUPPLY COMPANY OF NEW ENGLAND, INC.

By: __________
Name: __________
Title: __________

WEST COAST LIQUIDATORS, INC.

By: __________
Name: __________
Title: __________

(signature pages end)
<table>
<thead>
<tr>
<th>LESSOR PARTIES</th>
<th>COMMITTED AMOUNT</th>
<th>COMMITMENT PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wachovia Service Corporation</td>
<td>$160,000,000.00</td>
<td>100%</td>
</tr>
</tbody>
</table>

**COMMITTED AMOUNTS IMMEDIATELY AFTER THE EFFECTIVENESS OF THE LESSOR ASSIGNMENT AGREEMENT**

<table>
<thead>
<tr>
<th>LESSOR PARTIES</th>
<th>COMMITTED AMOUNT</th>
<th>COMMITMENT PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wachovia Service Corporation</td>
<td>$60,000,000.00</td>
<td>37.50%</td>
</tr>
<tr>
<td>Bankers Commercial Corporation</td>
<td>$50,000,000.00</td>
<td>31.25%</td>
</tr>
<tr>
<td>PNC Equipment Finance, LLC</td>
<td>$50,000,000.00</td>
<td>31.25%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$160,000,000.00</strong></td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>
The Parent had 362,876 total outstanding options to acquire its common shares as of November 8, 2017.
## SCHEDULE III

### CREDIT PARTIES

<table>
<thead>
<tr>
<th>Entity</th>
<th>Domestic Jurisdiction</th>
<th>Owner(s) / Member(s)</th>
<th>Authorized Shares</th>
<th>Issued &amp; Outstanding Shares</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>AVDC, Inc.</td>
<td>OH</td>
<td>Big Lots, Inc.</td>
<td>1,500 common, $0 par</td>
<td>100</td>
<td>c/o Big Lots, Inc. 300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Big Lots F&amp;S, Inc.</td>
<td>OH</td>
<td>Big Lots Stores, Inc.</td>
<td>1,500 common, $0 par</td>
<td>100</td>
<td>300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Big Lots eCommerce LLC</td>
<td>OH</td>
<td>Big Lots Stores, Inc.</td>
<td>N/A</td>
<td>N/A</td>
<td>300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Big Lots Online LLC</td>
<td>OH</td>
<td>Big Lots Stores, Inc.</td>
<td>N/A</td>
<td>N/A</td>
<td>300 Phillipi Road Columbus, OH 43228 (Inactive)</td>
</tr>
<tr>
<td>Big Lots, Inc.</td>
<td>OH</td>
<td>Publicly Owned</td>
<td>298,000,000 common, $0.01 par, 2,000,000 preferred, $0.01 par</td>
<td>42,452,285 common as of September 1, 2017, 0 preferred as of September 1, 2017</td>
<td>300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Big Lots Stores, Inc.</td>
<td>OH</td>
<td>Big Lots, Inc.</td>
<td>750 common, $0 par</td>
<td>575</td>
<td>300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>BLC LLC</td>
<td>DE</td>
<td>Big Lots, Inc.</td>
<td>N/A</td>
<td>N/A</td>
<td>c/o Big Lots, Inc. 300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>BLSI Property, LLC</td>
<td>DE</td>
<td>Big Lots Stores, Inc.</td>
<td>N/A</td>
<td>N/A</td>
<td>300 Phillipi Road, Columbus, OH 43228</td>
</tr>
<tr>
<td>Capital Retail Systems, Inc.</td>
<td>OH</td>
<td>Big Lots, Inc.</td>
<td>750 common, $0 par</td>
<td>100</td>
<td>300 Phillipi Road Columbus, OH 43228 (Inactive)</td>
</tr>
<tr>
<td>Closeout Distribution, Inc.</td>
<td>PA</td>
<td>Big Lots Stores, Inc.</td>
<td>1,000 common, $0 par</td>
<td>1,000</td>
<td>50 Rausch Creek Road Tremont, PA 17981</td>
</tr>
<tr>
<td>Consolidated Property Holdings, Inc.</td>
<td>NV</td>
<td>Big Lots Stores, Inc.</td>
<td>100 common, $0 par</td>
<td>5</td>
<td>330 E. Warm Springs Road Las Vegas, Nevada 89119</td>
</tr>
<tr>
<td>CSC Distribution, Inc.</td>
<td>AL</td>
<td>Big Lots Stores, Inc.</td>
<td>200 common, $50.00 par</td>
<td>100</td>
<td>2855 Selma Highway Montgomery, AL 36108</td>
</tr>
<tr>
<td>Entity</td>
<td>Domestic Jurisdiction</td>
<td>Owner(s) / Member(s)</td>
<td>Authorized Shares</td>
<td>Issued &amp; Outstanding Shares</td>
<td>Address</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>-----------------------</td>
<td>----------------------------------------</td>
<td>-------------------</td>
<td>-----------------------------</td>
<td>----------------------------------------------</td>
</tr>
<tr>
<td>C.S. Ross Company</td>
<td>OH</td>
<td>Big Lots Stores, Inc.</td>
<td>100 common, $1.00 par</td>
<td>100</td>
<td>300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Durant DC, LLC</td>
<td>OH</td>
<td>Big Lots Stores, Inc.</td>
<td>N/A</td>
<td>N/A</td>
<td>2306 Enterprise Drive Durant, OK 74701</td>
</tr>
<tr>
<td>Great Basin LLC</td>
<td>DE</td>
<td>Big Lots Stores, Inc.</td>
<td>N/A</td>
<td>N/A</td>
<td>300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Industrial Products of New England, Inc.</td>
<td>ME</td>
<td>Big Lots Stores, Inc.</td>
<td>250 common, $0 par</td>
<td>1</td>
<td>300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Industrial Products of New England, Inc.</td>
<td>ME</td>
<td>Big Lots Stores, Inc.</td>
<td>250 common, $0 par</td>
<td>1</td>
<td>300 Phillipi Road Columbus, OH 43228 (Inactive)</td>
</tr>
<tr>
<td>Mac Frugal’s Bargains • Close-outs, Inc.</td>
<td>DE</td>
<td>Big Lots, Inc.</td>
<td>3,000 common, $0.01 par</td>
<td>100</td>
<td>c/o Big Lots, Inc. 300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Midwestern Home Products, Inc.</td>
<td>DE</td>
<td>Big Lots Stores, Inc.</td>
<td>10,000 common, $0.01 par</td>
<td>100</td>
<td>300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Midwestern Home Products, Inc.</td>
<td>DE</td>
<td>Big Lots Stores, Inc.</td>
<td>10,000 common, $0.01 par</td>
<td>100</td>
<td>300 Phillipi Road Columbus, OH 43228 (Inactive)</td>
</tr>
<tr>
<td>PNS Stores, Inc.</td>
<td>CA</td>
<td>Mac Frugal’s Bargains • Close-outs, Inc.</td>
<td>5,000 common, $100.00 par</td>
<td>450</td>
<td>7241 Fair Oaks Blvd. Carmichael, CA 95608</td>
</tr>
<tr>
<td>Sahara LLC</td>
<td>DE</td>
<td>Big Lots Stores, Inc.</td>
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<td>N/A</td>
<td>300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Sahara LLC</td>
<td>DE</td>
<td>Big Lots Stores, Inc.</td>
<td>N/A</td>
<td>N/A</td>
<td>300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Sonoran LLC</td>
<td>DE</td>
<td>Big Lots Stores, Inc.</td>
<td>N/A</td>
<td>N/A</td>
<td>300 Phillipi Road Columbus, OH 43228</td>
</tr>
<tr>
<td>Tool and Supply Company of New England, Inc.</td>
<td>DE</td>
<td>Big Lots Stores, Inc.</td>
<td>10,000 common, $0.01 par</td>
<td>100</td>
<td>300 Phillipi Road Columbus, OH 43228 (Inactive)</td>
</tr>
<tr>
<td>West Coast Liquidators, Inc.</td>
<td>CA</td>
<td>Mac Frugal’s Bargains • Close-outs, Inc.</td>
<td>1,000 common, $0 par</td>
<td>200</td>
<td>12434 4th Street Rancho Cucamonga, CA 91730</td>
</tr>
</tbody>
</table>

CHARI\1561065v7
New York Potential Tax Claim. Fashion Barn, Inc., an Excluded US Inactive Subsidiary, may be liable to the State of New York for gains tax arising from the resale of real estate in 1988. On or about June 29, 1995, an administrative law judge ruled that Fashion Barn, Inc. may be liable for $493,417.20 in gains tax, plus applicable interest and penalties, if any. The administrative law judge further ruled that the State of New York could only collect this potential liability from Fashion Barn, Inc. and no other entity or person, including Barn Acquisition Corporation and the Borrower. Fashion Barn, Inc. currently has no assets.
<table>
<thead>
<tr>
<th>Location</th>
<th>Name</th>
<th>Address 1</th>
<th>City</th>
<th>ST</th>
<th>Zip</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1910</td>
<td>LAKEWOOD, CA</td>
<td>5227 LAKEWOOD AVE.</td>
<td>LAKEWOOD</td>
<td>CA</td>
<td>90712</td>
<td>Purchased 6/5/2012</td>
</tr>
<tr>
<td>4002</td>
<td>DOWNEY, CA</td>
<td>9020 E FIRESTONE BLVD</td>
<td>DOWNEY</td>
<td>CA</td>
<td>90241</td>
<td></td>
</tr>
<tr>
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Unit #

Purchased 6/23/2017
None.
## SCHEDULE VII

### INSURANCE POLICIES

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None.
SCHEDULE IX

ENVIRONMENTAL DISCLOSURE

None.
SCHEDULE X

PERMITTED INDEBTEDNESS

Indebtedness secured by Liens listed on Schedule XV.
SCHEDULE XI
EXISTING GUARANTIES

Guaranty obligations arising from or related to the purchase and/or sale of KB Toys.
SCHEDULE XII

EXCLUDED US ACTIVE SUBSIDIARIES

None.
SCHEDULE XIII

EXCLUDED US INACTIVE SUBSIDIARIES

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<thead>
<tr>
<th>Entity</th>
<th>Domestic Jurisdiction</th>
<th>Owner / Member</th>
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<tr>
<td>Barn Acquisition Corporation</td>
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<td>Industrial Products of New England, Inc.</td>
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<td>Liquidation World U.S.A. Holding Corp.</td>
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SCHEDULE XIV
PERMITTED INVESTMENTS

Any Credit Party’s ownership of the stock, partnership interest (whether general or limited) or limited liability company interest in, as applicable, or capital contribution to, any Excluded US Active Subsidiary or Excluded US Inactive Subsidiary.
SCHEDULE XV

REVOLVING CREDIT AGREEMENT PERMITTED LIENS

a. The security interests purportedly held against Big Lots Stores, Inc., PNS Stores, Inc., and C.S. Ross Company by LeaseNet Group, LLC in specific equipment.

b. The security interests purportedly held against Big Lots Stores, Inc. by Oce North America, Inc. in specific equipment.

c. The security interests purportedly held against Big Lots Stores, Inc. by IBM Credit LLC in specific equipment.

d. The security interests purportedly held against Big Lots Stores, Inc. by International Business Machines Corporation in specific equipment.

e. The security interests purportedly held against Big Lots Stores, Inc. by The Huntington National Bank in specific equipment.

f. The security interests purportedly held against Big Lots Stores, Inc. by Canon Solutions America, Inc. in specific equipment.

g. The security interest purportedly held against Closeout Distribution, Inc. by PNC Equipment Finance, LLC, in specific equipment.

h. The security interest purportedly held against West Coast Liquidators, Inc. by Raymond Leasing Corporation, in specific equipment.
SCHEDULE XVI

NOTICE INFORMATION FOR LESSOR PARTIES

Wachovia Service Corporation
301 South College Street, 12th Floor
Charlotte, NC 28202
MAC: D1053-124
Attention: Matthew Kuhn/Karla Brewer
Telephone: 704-410-2459

Bankers Commercial Corporation
445 South Figueroa Street, G14-200
Los Angeles, CA 90071
Attention: Leasing and Asset Finance
Telephone: 213-236-6444
Fax: 213-236-6460

PNC Equipment Finance, LLC
995 Dalton Avenue
Cincinnati, OH 45203
Attention: Customer Service
Telephone: 800-559-2755
Fax: 513-763-1637

with a copy to:

PNC Equipment Finance, LLC
Tower at PNC Plaza
300 Fifth Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Corporate Finance
Telephone: 412 762 4359
SCHEDULE XVII

SETTLEMENT AMOUNTS

Golden State Environmental Justice Alliance – $475,000 donation, payable 30 days after start of construction.

Sierra Club – $40,000 in attorney fees (already paid). Plus $50,000 donation to Mojave Desert Land Trust and $15,000 to Transition Habitat Conservancy, payable within 30 days of issuance of construction permits.
REAL PROPERTY LEASE AGREEMENT

Dated as of November 30, 2017

between

WACHOVIA SERVICE CORPORATION,
as Lessor

and

AVDC, INC.,
as Lessee

This Real Property Lease Agreement has been executed in several counterparts. To the extent, if any, that this Real Property Lease Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Real Property Lease Agreement may be created through the transfer or possession of any counterpart other than the original counterpart containing the receipt therefor executed by the Agent on the signature page hereof.
# TABLE OF CONTENTS

- **ARTICLE I.**  
  1.1 Definitions  
  1.2 Interpretation  
  
- **ARTICLE II.**  
  2.1 Property.  
  2.2 Lease Term.  
  2.3 Title.  
  
- **ARTICLE III.**  
  3.1 Rent.  
  3.2 Payment of Rent.  
  3.3 Supplemental Rent.  
  3.4 Performance on a Non-Business Day.  
  3.5 Rent Payment Provisions.  
  
- **ARTICLE IV.**  
  4.1 Taxes; Utility Charges.  
  
- **ARTICLE V.**  
  5.1 Quiet Enjoyment.  
  
- **ARTICLE VI.**  
  6.1 Net Lease.  
  6.2 No Termination or Abatement.  
  
- **ARTICLE VII.**  
  7.1 Ownership of the Property.  
  
- **ARTICLE VIII.**  
  8.1 Condition of the Property.  
  8.2 Possession and Use of the Property.  
  8.3 Integrated Property.  
  
- **ARTICLE IX.**  
  9.1 Compliance With Legal Requirements, Insurance Requirements and Manufacturer's Specifications and Standards.  
  
- **ARTICLE X.**  
  10.1 Maintenance and Repair; Return.  
  10.2 Environmental Inspection.  
  
- **ARTICLE XI.**  
  11.1 Modifications.  
  
- **ARTICLE XII.**  
  12.1 Warranty of Title.  
  

ARTICLE XIII.
13.1 Permitted Contests Other Than in Respect of Indemnities.
13.2 Impositions, Utility Charges, Other Matters; Compliance with Legal Requirements.

ARTICLE XIV.
14.1 Commercial General Liability and Workers’ Compensation Insurance.
14.2 Permanent Hazard and Other Insurance.
14.3 Coverage.
14.4 Deductibles and Co-Payment Amounts.

ARTICLE XV.
15.1 Casualty and Condemnation.
15.2 Environmental Matters.
15.3 Notice of Environmental Matters.

ARTICLE XVI.
16.1 Termination Upon Certain Events.
16.2 Procedures.

ARTICLE XVII.
17.1 Lease Events of Default.
17.2 Surrender of Possession.
17.3 Reletting.
17.4 Damages.
17.5 Power of Sale.
17.6 Final Liquidated Damages.
17.7 Environmental Costs.
17.8 Waiver of Certain Rights.
17.9 Assignment of Rights Under Contracts.
17.10 Lessee Purchase to Cure Lease Event of Default.
17.11 Remedies Cumulative.
17.12 Limitation Regarding Certain Lease Events of Default.
17.13 Continuation of Lease.

ARTICLE XVIII.
18.1 Lessor’s Right to Cure Lessee’s Lease Defaults.

ARTICLE XIX.
19.2 No Purchase or Termination With Respect to Less than All of the Property.

ARTICLE XX.
20.1 Purchase Option or Sale Option-General Provisions.
20.2 Lessee Purchase Option.
20.3 Third Party Sale Option.

ARTICLE XXI.
21.1 Sale Procedure.
21.2 Application of Proceeds of Sale.
21.3 Indemnity for Excessive Wear.
21.4 Appraisal Procedure.
ARTICLE XXII.

22.1 Holding Over.

ARTICLE XXIII.

23.1 Risk of Loss.

ARTICLE XXIV.

24.1 Assignment.
24.2 Subleases.

ARTICLE XXV.

25.1 No Waiver.

ARTICLE XXVI.

26.1 Acceptance of Surrender.
26.2 No Merger of Title.
26.3 Estoppel Certificates.

ARTICLE XXVII.

27.1 Notices.

ARTICLE XXVIII.

28.1 Miscellaneous.
28.2 Amendments and Modifications.
28.3 Successors and Assigns.
28.4 Counterparts.
28.5 Headings and Table of Contents.
28.6 Governing Law.
28.7 Calculation of Rent.
28.8 Memorandum of Lease.
28.9 Limitations on Recourse.
28.10 No Merger of Title.
28.11 Exercise of Lessee Rights.
28.12 Submissions to Jurisdiction and Venue.
28.13 Usury Savings Provision.
28.14 Amendments and Modifications.

21.5 Certain Obligations Continue.
EXHIBITS

EXHIBIT A  Legal Description of the Property
EXHIBIT B  Memorandum of Real Property Lease Agreement
THIS REAL PROPERTY LEASE AGREEMENT dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, this “Lease”) is between WACHOVIA SERVICE CORPORATION, a Delaware corporation, having its principal place of business at 301 South College Street, Charlotte, NC 28202, as lessor (the “Lessor”), and AVDC, Inc., an Ohio corporation, having its principal place of business at 300 Phillipi Road, Columbus, Franklin County, OH 43228-5311, as lessee (the “Lessee”).

WITNESSETH:

A. WHEREAS, subject to the terms and conditions of the Participation Agreement and the Agency Agreement, Lessor may (i) purchase a parcel of real property, which will (or may) have existing Improvements thereon, from one (1) or more third parties designated by Lessee and (ii) fund the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Property by the Construction Agent; and

B. WHEREAS, the Term shall commence with respect to the Property upon the Property Closing Date; and

C. WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Property pursuant to this Lease.

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I.

1.1 Definitions.

For purposes of this Lease, capitalized terms used in this Lease and not otherwise defined herein shall have the meanings assigned to them in Appendix A to that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof, the “Participation Agreement”) among Lessee, the various entities parties thereto from time to time, as the Guarantors, Lessor, the various banks and other lending institutions parties thereto from time to time, as Lease Participants, and Wells Fargo Bank, National Association, as the agent for the Lessor Parties and, respecting the Security Documents, as agent for the Secured Parties. Unless otherwise indicated, references in this Lease to articles, sections, paragraphs, clauses, appendices, schedules and exhibits are to the same contained in this Lease.

1.2 Interpretation.

The rules of usage set forth in Appendix A to the Participation Agreement shall apply to this Lease.

ARTICLE II.

2.1 Property.
Subject to the terms and conditions hereinafter set forth, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the Property.

2.2 Lease Term.

The basic term of this Lease with respect to the Property (the “Basic Term”) shall begin upon the Property Closing Date (the “Commencement Date”) and shall end on the seventy-eight (78) month anniversary of the Initial Closing Date (the “Basic Term Expiration Date”), unless the Basic Term is earlier terminated or renewed in accordance with the provisions of this Lease and the other Operative Agreements. Notwithstanding the foregoing, Lessee shall not be obligated to pay Basic Rent until the Rent Commencement Date.

Subject to the consents required pursuant to this Section 2.2 and the other applicable terms and conditions of the Operative Agreements, Lessee may request that the Lease be extended for up to three (3) successive five-year terms (each a “Renewal Term”). Each Renewal Term shall end on the fifth annual anniversary of the commencement of such Renewal Term, unless such Renewal Term is earlier terminated.

To the extent no Lease Default or Lease Event of Default has occurred and is continuing as of the Basic Term Expiration Date or the last day of the first or second Renewal Term only, as applicable, Lessee may, not more than five hundred forty (540) days prior to the Expiration Date and not less than three hundred sixty (360) days prior to the seventy-eight (78) month anniversary of the Initial Closing Date or the last day of the first or second (but not the third) Renewal Term, if any, by irrevocable notice to the Financing Parties make written request to extend the Expiration Date for an additional period of five (5) years. Each of the Financing Parties shall make an irrevocable determination, in the absolute and sole discretion of each such party, within sixty (60) days of receiving a request from Lessee to extend the Term as to whether or not such party will agree to extend the Expiration Date as requested; provided, however, that failure by any such party to make a timely response to Lessee’s request for extension of the Expiration Date shall be deemed to constitute a refusal by such party to the requested extension of the Expiration Date. In response to a request for an extension of the Expiration Date, if (a) all Financing Parties shall each agree to the requested extension by delivering an irrevocable written confirmation of such acceptance of the extension to the Agent, Lessee and Lessor, then, provided no Lease Default or Lease Event of Default has occurred and is continuing as of the Basic Term Expiration Date or the last day of the first or second Renewal Term only, as applicable, the Term shall be extended and shall expire on the date five (5) years after the then current Expiration Date or (b) any Financing Party shall refuse (or be deemed to have refused) to agree to the requested extension, then the Term shall not be extended and shall expire on the then current Expiration Date and unless Lessee properly makes an election of an end of Term option pursuant to Section 20.1, Lessee shall be deemed to have elected the Purchase Option which shall be exercised, and the purchase of the Property shall occur, on the then current Expiration Date. Each Renewal Term, if any, shall commence on the day immediately following the Basic Term Expiration Date or the last day of the first or second Renewal Term, as applicable.

2.3 Title.

Subject to the provisions of Section 5.1 hereof, the Property is leased to Lessee without any representation or warranty, express or implied, by Lessor and subject to the rights of parties in possession (if any), the existing state of title (including the Permitted Liens) and all applicable Legal Requirements. Lessee shall in no event have any recourse against Lessor for any defect in Lessor’s title to the Property or any interest of Lessee therein other than for Lessor Liens.

2
ARTICLE III.

3.1 Rent.

(a) Lessee shall pay Basic Rent in arrears on each Payment Date and all outstanding or accrued Basic Rent on any date on which this Lease shall terminate with respect to the Property during the Term, and Lessee shall pay Supplemental Rent in accordance with Section 3.3; provided, however, Lessee shall have no obligation to pay Basic Rent until the Rent Commencement Date and instead Basic Rent prior to such Rent Commencement Date shall be paid in accordance with Section 5.1(b) of the Participation Agreement.

(b) Except as otherwise provided in Section 3.3, Rent shall be due and payable in lawful money of the United States and shall be paid by wire transfer of immediately available funds on the due date therefor (or within the applicable grace period) to such account or accounts at such bank or banks as the Agent shall from time to time direct so long as such account is at the Agent or another Financing Party.

(c) Lessee’s inability or failure to take possession of all or any portion of the Property when delivered by Lessor, whether or not attributable to any act or omission of Lessor, the Construction Agent, Lessee or any other Person or for any other reason whatsoever, shall not delay or otherwise affect Lessee’s obligation to pay Rent in accordance with the terms of this Lease.

(d) Lessee shall make all payments of Rent prior to 12:00 Noon, New York City time, on the applicable date for payment of such amount.

3.2 Payment of Rent.

Rent shall be paid absolutely net to Lessor or its designee, so that this Lease shall yield to Lessor the full amount thereof, without set-off, deduction (except for deduction or withholding of Impositions as required by Applicable Law, but subject to Section 11.2 of the Participation Agreement) or reduction.

3.3 Supplemental Rent.

Lessee shall pay to the Person entitled thereto any and all Supplemental Rent when and as the same shall become due and payable; provided, if there is no express time period specified for any such payment pursuant to the Operative Agreements or otherwise, Lessee shall make such payment of Supplemental Rent within two (2) Business Days of receipt of notice from Lessor, Agent or any other applicable Person requesting payment of the same. All such payments of Supplemental Rent shall be in the full amount thereof, without set-off, deduction (unless required by Applicable Law but subject to Section 11.2 of the Participation Agreement) or reduction. Lessee shall pay to the appropriate Person, as Supplemental Rent due and owing to such Person, among other things, on demand, (a) any and all payment obligations (except for amounts payable as Basic Rent) owing from time to time under the Operative Agreements by any Person to any Financing Party or any other Person, (b) interest at the applicable Overdue Rate on any installment of Basic Rent not paid when due (subject to the applicable grace period for payments of Basic Rent) for the period for which the same shall be overdue and on any payment of Supplemental Rent not paid when due or demanded by the appropriate Person (subject to any applicable grace period) for the period from the due date or the date of any such demand, as the case may be, until the same shall be paid and (c) amounts referenced as Supplemental Rent obligations pursuant to Section 8.3 of the Participation Agreement. The expiration or other termination of Lessee’s obligations to pay Basic Rent hereunder shall not limit or modify the obligations of Lessee with respect to Supplemental Rent. Unless expressly provided otherwise in this
Lease, in the event of any failure on the part of Lessee to pay and discharge any Supplemental Rent as and when due, Lessee shall also promptly pay and discharge any fine, penalty, interest or cost which may be assessed or added for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent. Lessee shall pay all outstanding or accrued Supplemental Rent on any date on which this Lease shall terminate with respect the Property during the Term.

3.4 Performance on a Non-Business Day.

If any Basic Rent is required hereunder on a day that is not a Business Day, then such Basic Rent shall be due on the next succeeding Business Day (except to the extent Basic Rent is then being calculated based on the LIBOR Rate and such next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day). If any Supplemental Rent is required hereunder on a day that is not a Business Day, then such Supplemental Rent shall be due on the next succeeding Business Day.

3.5 Rent Payment Provisions.

Lessee shall make payment of all Basic Rent and Supplemental Rent when due regardless of whether any of the Operative Agreements pursuant to which the same are calculated and owing shall have been rejected, avoided or disavowed in any bankruptcy or insolvency proceeding involving any of the parties to any of the Operative Agreements. Such provisions of such Operative Agreements and their related definitions are incorporated herein by reference and shall survive any termination, amendment or rejection of any such Operative Agreements.

ARTICLE IV.

4.1 Taxes; Utility Charges.

Lessee shall pay or cause to be paid all Impositions regarding the Property and all other charges regarding the use, occupancy, repair, access, maintenance or operation of the Property and all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents, utilities and operating expenses of any kind or type used in or on the Property during the Term. Upon Lessor’s reasonable request, Lessee shall provide from time to time Lessor with evidence of all such payments referenced in the foregoing sentence. Lessee shall be entitled to receive any credit or refund with respect to any Imposition or utility charge paid by Lessee. Unless a Lease Event of Default shall have occurred and be continuing, the amount of any credit or refund received by Lessor on account of any Imposition or utility charge paid by Lessee, net of the costs and expenses incurred by Lessor in obtaining such credit or refund, shall be promptly paid over to Lessee. All charges for Impositions or utilities imposed with respect to the Property for a period during which this Lease expires or terminates shall be adjusted and prorated on a daily basis between Lessor (to the extent Lessor has retained control of the Property) and Lessee or other purchaser of the Property, and each party shall pay or reimburse the other for such party’s pro rata share thereof.

ARTICLE V.

5.1 Quiet Enjoyment.

Subject to the rights of Lessor contained in Sections 10.1(d), 18.1 and 20.3, Article XVII and the other terms of this Lease and the other Operative Agreements and so long as no Lease Event of Default shall have occurred and be continuing, Lessee shall peaceably and quietly have, hold and enjoy the Property for the applicable Term, free of any claim or other action by Lessor or anyone rightfully claiming by, through or under Lessor (other than Lessee).
ARTICLE VI.

6.1 Net Lease.

This Lease shall constitute a net lease, and the obligations of Lessee hereunder are absolute and unconditional. Lessee shall pay all operating expenses arising out of the use, operation and/or occupancy of the Property. Any present or future law to the contrary notwithstanding, this Lease shall not terminate, nor shall Lessee be entitled to any abatement, suspension, deferment, reduction, set-off, counterclaim, or defense with respect to the Rent (except for deduction or withholding of Impositions as required by Applicable Law, but subject to Section 11.2 of the Participation Agreement), nor shall the obligations of Lessee hereunder be affected for any reason whatsoever, including by reason of: (a) any damage to or destruction of the Property or any part thereof; (b) any taking of the Property or any part thereof or interest therein by Condemnation or otherwise; (c) any prohibition, limitation, restriction or prevention of Lessee’s use, occupancy or enjoyment of the Property or any part thereof, or any interference with such use, occupancy or enjoyment by any Person or for any other reason; (d) any Lien or any matter affecting title to the Property; (e) any eviction by paramount title or otherwise; (f) any default by Lessor hereunder; (g) any action for bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding relating to or affecting any Financing Party, any Credit Party or any Governmental Authority; (h) the impossibility or illegality of performance by Lessor, Lessee or both; (i) any action of any Governmental Authority or any other Person; (j) Lessee’s acquisition of ownership of all or part of the Property; (k) breach of any warranty or representation with respect to the Property or any Operative Agreement; (l) any defect in the condition, quality or fitness for use of the Property or any part thereof; or (m) any other cause or circumstance whether similar or dissimilar to the foregoing and whether or not Lessee shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of Lessee hereunder shall be covenants, agreements and obligations that are separate and independent from any obligations of Lessor hereunder and shall continue unaffected unless such covenants, agreements and obligations shall have been modified or terminated in accordance with an express provision of this Lease. Lessor and Lessee acknowledge and agree that the provisions of this Section 6.1 have been specifically reviewed and subject to negotiation. The provisions of this Section 6.1 shall not preclude Lessee from pursuing lawsuits against any other party to the Operative Agreements regarding such party’s failure to perform its obligations pursuant to the Operative Agreements.

6.2 No Termination or Abatement.

Lessee shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, dissolution, or other proceeding affecting Lessee or any other Person, or any action with respect to this Lease or any Operative Agreement which may be taken by any trustee, receiver or liquidator of Lessee or any other Person or by any court with respect to Lessee or any other Person.

LESSEE HEREBY WAIVES TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL RIGHT (I) TO TERMINATE OR SURRENDER THIS LEASE (EXCEPT AS PROVIDED HEREIN) OR (II) TO AVOID ITSELF OF ANY ABATEMENT, SUSPENSION, DEFERMENT, REDUCTION, SET-OFF, COUNTERCLAIM OR DEFENSE WITH RESPECT TO ANY RENT. LESSEE SHALL REMAIN OBLIGATED UNDER THIS LEASE IN ACCORDANCE WITH ITS TERMS AND TO THE EXTENT WAIVABLE UNDER APPLICABLE LAW, LESSEE HEREBY WAIVES ANY AND ALL RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE OR OTHERWISE TO MODIFY OR TO AVOID STRICT COMPLIANCE WITH ITS OBLIGATIONS UNDER THIS LEASE. NOTWITHSTANDING ANY SUCH STATUTE OR OTHERWISE, LESSEE SHALL BE BOUND BY ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS LEASE.
ARTICLE VII.

7.1 Ownership of the Property.

(a) Lessor and Lessee intend that (i) this Lease will be treated as an “operating lease” pursuant to Accounting Standards Codification No. 840, as amended or replaced from time to time, for Lessee’s financial accounting purposes and (ii) for federal and all state and local income Tax purposes, commercial purposes, bankruptcy purposes and (other than as stated in the foregoing subsection (a)(ii)) all other purposes (A) this Lease together with all other Operative Agreements will be treated as a financing arrangement and (B) Lessee will be treated as the owner of the Property and will be entitled to all Tax benefits ordinarily available to owners of property similar to the Property for such Tax purposes, including for this purpose, Lessee shall claim the cost recovery deductions associated with the Property, and Lessor shall not, unless required by Law, take on its Tax returns a position inconsistent with Lessee’s claim of such deductions. Notwithstanding the foregoing, neither party hereto has made, or shall be deemed to have made, any representation or warranty as to the availability of any of the foregoing treatments under applicable accounting rules, Tax, bankruptcy, regulatory, commercial or real estate law or under any other set of rules.

(b) In order to secure the Company Obligations, Lessee hereby irrevocably conveys, grants, assigns, transfers, hypothecates, mortgages and sets over to Lessor, for the benefit of all Financing Parties, a security interest in and lien on all right, title and interest of Lessee (now owned or hereafter acquired) in and to the Property, to the extent such is personal property and all proceeds thereof (including insurance proceeds). For purposes of the creation and enforcement of this Lease as a security agreement and a fixture filing with respect to the Property and all proceeds thereof (including insurance proceeds), Lessee is the debtor, Lessor is the secured party and Agent is the assignee of Lessor (given that Agent is acting as collateral agent for the Secured Parties). The mailing addresses of the debtor (Lessee herein) and of the secured party (Lessor herein) from which information concerning security interests pursuant to this Lease may be obtained are as set forth on the signature pages of this Lease. A carbon, photographic or other reproduction of this Lease, any memorandum hereof (or short form lease) or of any financing statement related to this Lease shall be sufficient as a financing statement for any of the purposes referenced in this Lease. Lessee authorizes Lessor and Agent, to file UCC financing and fixture filing statements, amendments thereto and renewals thereof without Lessee’s signature, as Lessor or Agent may determine to be necessary or appropriate to perfect and maintain the security interest and lien granted herein.

In order to secure the Company Obligations and for purposes of the creation and enforcement of this Lease as a deed of trust with respect to the Property and all proceeds thereof (including insurance proceeds), LESSEE, as deed of trust grantor, hereby grants, assigns, transfers, hypothecates, mortgages, conveys and sets over a lien on all right, title and interest of Lessee (now owned or hereafter acquired) in the Property and all proceeds thereof (including insurance proceeds), to the extent such is real property, to First American Title Insurance Company (or any other Person appropriately designated from time to time by Lessor), as trustee, IN TRUST AND WITH POWER OF SALE, for the benefit of LESSOR, for the benefit of all Financing Parties, as beneficiary. The lien on the Property and all proceeds thereof (including insurance proceeds) granted and conveyed by Lessee to First American Title Insurance Company (or any other Person appropriately designated from time to time by Lessor), as trustee, pursuant to this Lease and each memorandum hereof (or short form lease) is and shall be a perfected lien.
ARTICLE VIII.

8.1 Condition of the Property.

FOR PURPOSES OF SECTION 1938 OF THE CALIFORNIA CIVIL CODE, LESSOR HEREBY DISCLOSES TO LESSEE, AND LESSEE HEREBY ACKNOWLEDGES, THAT THE PREMISES HAVE NOT UNDERGONE INSPECTION BY A CERTIFIED ACCESS SPECIALIST (CASP). LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LEASING THE PROPERTY “AS-IS WHERE-IS” WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY LESSOR (EXCEPT THAT LESSOR SHALL KEEP THE PROPERTY FREE AND CLEAR OF LESSOR LIENS AND SHALL COMPLY WITH SECTION 5.1) AND IN EACH CASE SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF (IF ANY), (C) ANY STATE OF FACTS REGARDING ITS PHYSICAL CONDITION OR WHICH AN ACCURATE SURVEY MIGHT SHOW, (D) ALL APPLICABLE LEGAL REQUIREMENTS AND (E) VIOLATIONS OF LEGAL REQUIREMENTS WHICH MAY EXIST ON THE DATE HEREOF. NO FINANCING PARTY HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) (EXCEPT THAT LESSOR SHALL KEEP THE PROPERTY FREE AND CLEAR OF LESSOR LIENS AND SHALL COMPLY WITH SECTION 5.1) OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE, VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE PROPERTY (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OR ANY PART THEREOF), AND NO FINANCING PARTY SHALL BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREON OR THE FAILURE OF THE PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY LEGAL REQUIREMENT. LESSEE HAS OR PRIOR TO THE COMMENCEMENT DATE WILL HAVE BEEN AFFORDED FULL OPPORTUNITY TO INSPECT THE PROPERTY AND THE IMPROVEMENTS THEREON (IF ANY), IS OR WILL BE (INSOFAR AS ANY FINANCING PARTY IS CONCERNED) SATISFIED WITH THE RESULTS OF ITS INSPECTIONS AND IS ENTERING INTO THIS LEASE SOLELY ON THE BASIS OF THE RESULTS OF ITS OWN INSPECTIONS, AND ALL RISKS INCIDENT TO THE MATTERS DESCRIBED IN THE PRECEDING SENTENCE, AS BETWEEN THE FINANCING PARTIES, ON THE ONE HAND, AND LESSEE, ON THE OTHER HAND, ARE TO BE BORNE BY LESSEE.

8.2 Possession and Use of the Property.

(a) At all times during the Term, the Property shall be a Permitted Facility and shall be used by Lessee in the ordinary course of its business. Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Property as contemplated by this Lease. Lessee shall not commit or permit any waste of the Property or any part thereof, normal wear and tear excepted.

(b) Lessee will provide Lessor with prior written notice of any change of its name, its principal place of business or chief executive office or of its location for purposes of the UCC. Regarding the Property, Exhibit A contains an accurate legal description for the Land. The Equipment and Improvements respecting the Property will be located only at the location identified in Exhibit A, subject to Section 10.1(b).

(c) Lessee will not attach or incorporate any item of Equipment to or in any other item of equipment or personal property or to or in any real property in a manner that could give rise to the assertion of any Lien on such item of Equipment by reason of such attachment or the assertion.
of a claim that such item of Equipment has become a fixture and is subject to a Lien in favor of a third party that is prior to the Liens thereon created by the Operative Agreements or is not a Permitted Lien.

(d) Simultaneously with the execution and delivery of this Lease, the Equipment, Improvements and Land and the remainder of the Property shall be deemed to have been accepted by Lessee for all purposes of this Lease and to be subject to this Lease.

(e) At all times during the Term, Lessee will comply with all obligations under and (to the extent no Lease Event of Default exists and provided that such exercise will not impair the value, utility or remaining useful life of the Property) shall be permitted to exercise all rights and remedies under, all operation and easement agreements and related or similar agreements applicable to the Property.

8.3 Integrated Property.

On the Rent Commencement Date, Lessee shall, at its sole cost and expense, cause the Property to constitute (and for the duration of the Term shall continue to constitute) all of the equipment, facilities, rights, other personal property and other real property necessary or appropriate to operate, utilize, maintain and control a Permitted Facility in a commercially reasonable manner. The provisions of this Section 8.3 shall not limit the rights of Lessee to assign and/or sublet the Property pursuant to Article XXIV.

ARTICLE IX.

9.1 Compliance With Legal Requirements, Insurance Requirements and Manufacturer’s Specifications and Standards.

Subject to the terms of Article XIII relating to permitted contests, Lessee, at its sole cost and expense, shall (a) cause the Property at all times to comply with (i) all applicable Legal Requirements (including all Environmental Laws) and (ii) all Insurance Requirements, (b) procure, maintain and comply with all licenses, permits, orders, approvals, consents and other authorizations required for the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Property, and (c) comply with all manufacturer’s specifications and standards, whether or not compliance therewith shall require structural or extraordinary changes in the Property or interfere with the use and enjoyment of the Property unless the failure to procure, maintain and comply with such items identified in subparagraphs (a) (i), (b) and (c), individually or in the aggregate, shall not and could not reasonably be expected to have a Material Adverse Effect. Lessor agrees to take such actions at the sole cost and expense of Lessee as may be reasonably requested by Lessee in connection with the compliance by Lessee of its obligations under this Section 9.1.

ARTICLE X.

10.1 Maintenance and Repair; Return.

(a) Lessee, at its sole cost and expense, shall maintain the Property in good condition, repair and working order and in the same condition as at the Rent Commencement Date, and make all necessary repairs thereto and replacements thereof, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural or unforeseen or unforeseen, in each case as required by Section 9.1 and on a basis consistent with the operation and maintenance of other properties or equipment owned or leased by Lessee or any of the Guarantors comparable
in type and function to the Property, such that the Property is capable of being utilized within a reasonable time by a third party and in compliance with standard industry practice subject, however, to the provisions of Article XV with respect to Casualty and Condemnation and ordinary wear and tear.

(b) Lessee shall not use, move or relocate any component of the Property beyond the boundaries of the Land (comprising part of the Property) described in Exhibit A, except for the temporary removal of Equipment and other personal property for repair or replacement.

(c) If any component of the Property becomes worn out, lost, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use, Lessee, at its own expense, will within a reasonable time replace such component with a replacement component which is free and clear of all Liens (other than Permitted Liens) and has a value, utility and useful life at least equal to the component replaced (assuming the component replaced had been maintained and repaired in accordance with the requirements of this Lease). All components which are added to the Property shall immediately become the property of (and title thereto shall vest in) Lessor and shall be deemed incorporated in the Property and subject to the terms of this Lease as if originally leased hereunder.

(d) Upon reasonable advance notice, Lessor, any other Lessor Party and their respective agents shall have the right to inspect the Property and maintenance records (to the extent available) with respect thereto at any reasonable time during normal business hours but shall not, in the absence of the occurrence and continuance of a Lease Event of Default, materially disrupt the business of Lessee. If a Lease Event of Default has occurred and is continuing, any such inspection shall be at the sole cost and expense of Lessee.

(e) Lessee shall cause to be delivered to Lessor (at Lessee’s sole expense) one (1) or more additional Appraisals (or reappraisals of the Property) as Lessor may request if any Financing Party is required pursuant to any applicable Legal Requirement to obtain such Appraisals (or reappraisals) during the continuance of any Lease Event of Default not cured in accordance with the terms of the Operative Agreements.

(f) Lessor shall under no circumstances be required to build any improvements or install any equipment on the Property, make any repairs, replacements, alterations or renewals of any nature or description to the Property, make any expenditure whatsoever in connection with this Lease or maintain the Property in any way. Lessor shall not be required to maintain, repair or rebuild all or any part of the Property, and Lessee waives the right to (i) require Lessor to maintain, repair, or rebuild all or any part of the Property, or (ii) make repairs at the expense of Lessor pursuant to any Legal Requirement, Insurance Requirement, contract, agreement, covenant, condition or restriction at any time in effect.

(g) Lessee shall, upon the expiration or earlier termination of this Lease, if Lessee shall not have exercised (or been deemed to have exercised) its Purchase Option and purchased the Property, surrender the Property (i) to Lessor pursuant to the exercise of the applicable remedies upon the occurrence and continuance of a Lease Event of Default or (ii) to Lessor pursuant to the second paragraph of Section 21.1(a) hereof or to the third party purchaser, as the case may be, free and clear of Liens (other than as described in Section 5.6 of the Participation Agreement) and otherwise subject to Lessee’s obligations under this Lease (including the obligations of Lessee at the time of such surrender in the condition required by and otherwise in accordance with Sections 9.1, 10.1(a) through (f), 10.2, 11.1, 12.1, 21.1 and 22.1).
10.2 Environmental Inspection.

If Lessee has not given notice of exercise of its Purchase Option as required pursuant to Section 20.1, Lessee elects the Sale Option pursuant to Section 20.1 or for whatever reason Lessee does not purchase the Property in accordance with the terms of this Lease, then not more than one hundred fifty (150) days nor less than ninety (90) days prior to the Expiration Date, Lessee at its expense shall cause to be delivered to Lessor a Phase I environmental site assessment (conducted in accordance with the then applicable ASTM Phase I standard) and (if determined necessary by Lessor in the exercise of its reasonable judgment based on the results of such Phase I environmental site assessment) a Phase II environmental site assessment, in each case recently prepared (no more than thirty (30) days prior to the date of delivery) by an independent recognized professional reasonably acceptable to Lessor, and in form, scope and content reasonably satisfactory to Lessor.

ARTICLE XI.

11.1 Modifications.

Lessee, at its sole cost and expense, at any time and from time to time after the Rent Commencement Date without the consent of Lessor may make modifications, alterations, renovations, improvements and additions to the Property or any part thereof and substitutions and replacements therefor (collectively, “Modifications”), and Lessee, at its sole cost and expense, shall make any and all Modifications required to be made pursuant to all Legal Requirements, Insurance Requirements and manufacturer’s specifications and standards unless the failure to comply with Legal Requirements or manufacturer’s specifications and standards, individually, or in the aggregate, shall not and could not reasonably be expected to have a Material Adverse Effect; provided, that: (i) no completed Modification shall materially impair the value, utility or useful life of the Property from that which existed immediately prior to such Modification (assuming the Property was in the condition required by this Lease); (ii) each Modification shall be done expeditiously and in a good and workmanlike manner; (iii) no Modification shall adversely affect the structural integrity of the Improvements on the Property; (iv) Lessee shall maintain builders’ risk insurance (to the reasonable satisfaction of the Agent) at all times when a Modification is in progress; (v) subject to the terms of Article XIII relating to permitted contests, Lessee shall pay all costs and expenses and discharge any Liens arising with respect to any Modification; (vi) each Modification shall comply with the requirements of this Lease (including Sections 8.2 and 10.1); and (vii) no Improvement shall be demolished or otherwise rendered unfit for use unless Lessee shall finance or cause to be financed the proposed replacement Modification outside of this lease facility and on an unsecured basis; provided, further, Lessee shall not make any Modification (unless required by any Legal Requirement) to the extent any such Modification, individually or in the aggregate, shall or could reasonably be expected to have a Material Adverse Effect. Subject to the last paragraph of this Section 11.1, all Modifications shall immediately and without further action upon their incorporation into the Property (1) become property of Lessor, (2) be subject to this Lease and (3) be titled in the name of Lessor. Lessee shall not remove or attempt to remove any Modification from the Property, except in accordance with the next following paragraph.

At its sole cost, Lessee may remove Modifications from the Property, to the extent (subject to the confirmation of Lessor in its reasonable discretion) (v) the Modification is not required pursuant to any Legal Requirement, Insurance Requirement or manufacturer’s specification or standard, (w) the Modification is not financed by any of the Financing Parties and (x) the Modification may be removed from the Property without materially impairing the value, utility or useful life of the Property from that which existed immediately prior to such Modification. Any such Modification so removed prior to the Expiration Date or earlier termination of this Lease, shall become the property of Lessee after such removal; provided, any such Modification not removed prior to the Expiration Date or earlier termination of this Lease and any
Modification that does not otherwise meet the requirements of the foregoing subsections (v) through (x) shall, without the need for further action, (1) become property of Lessor, (2) be subject to this Lease and (3) be titled in the name of Lessor. In any event, Lessee shall repair, at its expense, all damage to the Property caused by any removal or attempted removal of any Modification.

ARTICLE XII.

12.1 Warranty of Title.

(a) Lessee hereby acknowledges and shall cause title in the Property (including all Equipment, all Improvements, all replacement components to the Property and, subject to Section 11.1, all Modifications) immediately and without further action to vest in and become the property of Lessor and to be subject to the terms of this Lease from and after the Property Closing Date therefor or such date of incorporation into the Property. Lessee agrees that, subject to the terms of Article XIII relating to permitted contests, Lessee shall not directly or indirectly create or allow to remain, and shall promptly discharge at its sole cost and expense, any Lien, defect, title retention agreement or claim upon the Property, any component thereof or any Modifications or any Lien or claim with respect to the Rent or with respect to any amounts held by any Financing Party pursuant to any Operative Agreement, other than Permitted Liens. Lessee shall promptly notify Lessor in the event it receives actual knowledge that a Lien other than a Permitted Lien has occurred with respect to the Property, any component thereof or any Modifications or any Lien or claim with respect to the Rent or with respect to any amounts held by any Financing Party pursuant to any Operative Agreement, and Lessee represents and warrants to, and covenants with, Lessor that the Liens in favor of Lessor and/or the Agent created by the Operative Agreements are (and until the Financing Parties under the Operative Agreements have been paid in full shall remain) first priority perfected Liens subject only to Permitted Liens.

(b) Nothing contained in this Lease shall be construed as constituting the consent or request of Lessor, expressed or implied, to or for the performance by any contractor, mechanic, laborer, materialman, supplier or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Property or any part thereof. NOTICE IS HEREBY GIVEN THAT LESSOR IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE PROPERTY OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANIC’S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN AND TO THE PROPERTY.

ARTICLE XIII.

13.1 Permitted Contests Other Than in Respect of Indemnities.

Except to the extent otherwise provided for in Section 11 of the Participation Agreement, Lessee, on its own or on Lessor’s behalf but at Lessee’s sole cost and expense, may contest, by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Legal Requirement, Imposition imposed on or against Lessee or the Property or utility charge payable pursuant to Section 4.1 or any Lien, and Lessor agrees not to pay, settle or otherwise compromise any such item, provided that (a) the commencement and continuation of such proceedings shall suspend the collection of any such contested amount from, and suspend the enforcement thereof against, the Property and the Financing Parties; (b) there shall not be imposed a Lien (other than
Permitted Liens) on the Property and no part of the Property nor the Rent would be in any danger of being sold, forfeited, lost or deferred; (c) at no time during the permitted contest shall there be a risk of the imposition of criminal liability or material civil liability on any Financing Party for failure to comply therewith; and (d) in the event that, at any time, there shall be a material risk of extending the application of such item beyond the end of the Term, then Lessee shall deliver to Lessor an Officer’s Certificate certifying as to the matters set forth in clauses (a), (b) and (c) of this Section 13.1 and confirm Lessee’s obligation to satisfy the same. Lessor, at Lessee’s sole cost and expense, shall execute and deliver to Lessee such authorizations and other documents as may reasonably be required in connection with any such contest. Lessor will not be required to join in any proceedings pursuant to this Section 13.1 unless a provision of any Applicable Law requires that such proceedings be brought by or in the name of Lessor or it is customary in the applicable jurisdiction for the title holder to join in such proceedings; in which case (A) if the contest relates to an Imposition, the provisions of Section 11.2 of the Participation Agreement will control, or (B) otherwise, Lessor will join in the proceedings or permit them or any part thereof to be brought in its name if and so long as (1) no Event of Default shall have occurred and be continuing and (2) Lessee pays all related expenses and indemnifies the Financing Parties with respect to such proceedings.

13.2 **Impositions, Utility Charges, Other Matters: Compliance with Legal Requirements.**

Except with respect to Impositions on the Property, Legal Requirements, utility charges and such other matters referenced in Section 13.1 which are the subject of ongoing proceedings contesting the same in a manner consistent with the requirements of Section 13.1, Lessee shall cause (a) all Impositions, utility charges and such other matters to be timely paid, settled or compromised, as appropriate, with respect to the Property and (b) the Property to comply with all applicable Legal Requirements, unless the failure to comply with Legal Requirements, individually or in the aggregate, shall not and could not reasonably be expected to have a Material Adverse Effect.

**ARTICLE XIV.**

14.1 **Commercial General Liability and Workers’ Compensation Insurance.**

During the Term, Lessee shall procure and carry, at Lessee’s sole cost and expense (or cause to be procured and carried, at the sole cost and expense of parties other than the Financing Parties), commercial general liability and umbrella liability insurance for claims for injuries or death sustained by persons or damage to property while on the Property during the Construction Period, from and after the Completion Date or respecting the Equipment used or located at the Property. Such insurance at all times shall have a minimum combined single limit per occurrence coverage (i) for commercial general liability (including bodily injury and property damage liability and products and completed operations coverage), of no less than $1,000,000 per occurrence with an aggregate of $2,000,000, (ii) commercial automobile liability with a combined single limit of no less than $1,000,000, (iii) workers compensation insurance in accordance with statutory requirements, including coverage for employers liability with a limit of no less than $1,000,000 per occurrence, $1,000,000 per employee and $1,000,000 per accident/disease, and (iv) umbrella liability of no less than $50,000,000; provided, however, that during the period prior to the Completion Date respecting the Property, such umbrella liability amount shall not be less than $75,000,000. The policies shall name Parent as the insured (but shall also cover Lessee as an insured thereunder) and shall be endorsed to name the Financing Parties and their officers, agents, employees and their Affiliates and the Affiliates’ officers, agents and employees, as additional insureds with respect to the Property. The policies shall also specifically provide that such policies shall be considered primary insurance which shall apply to any loss or claim before any contribution by any insurance which any Financing Party or Affiliate of any Financing Party may have in force. In the operation of the Property, Lessee shall comply with applicable workers’ compensation laws and protect the Financing Parties against any liability under such laws.
14.2 **Permanent Hazard and Other Insurance.**

(a) (i) During the Construction Period, Lessee shall maintain or shall require Contractor to maintain comprehensive builders’ all risk insurance covering all risks on a non-reporting form in amounts no less than the replacement cost of the Property (as increased from time to time for change orders or use of contingency amounts under the Construction Budget) from time to time and insurance for earth movement, in an amount no less than four (4) times the “probable maximum loss” of the Property as set forth in the Seismic Report (subject to a minimum of $50,000,000. Regardless of whether Lessee or Contractor procures the Builder’s Risk coverage, such insurance coverage shall be required to name (A) the Agent (on behalf of the Secured Parties) as loss payee, to the extent of its interests, with respect to the Property and (B) the Financing Parties and their officers, agents, employees and their Affiliates and the Affiliates’ officers, agents and employees, as additional insureds with respect to the Property.

(ii) After the Construction Period, Lessee shall keep the Property insured against all risks of physical loss or damage by fire, earthquake, flood and other risks in amounts no less than replacement cost, with no co-insurance (obtained by any Financing Party or any Affiliate thereof) applied, of the Property from time to time. The policies shall name Parent as the insured (but shall also cover Lessee as an insured thereunder) and shall be endorsed to name the Agent (on behalf of the Secured Parties) as additional insured and loss payee, to the extent of its interests; provided, so long as no Lease Default or Lease Event of Default exists, any loss payable after the Rent Commencement Date respecting the Property under the insurance policies required by this Section 14.2(a)(ii) for losses up to $1,000,000 will be paid to Lessee.

(b) If during the Term the area in which the Property is located is designated a “flood-prone” area pursuant to the Flood Disaster Protection Act of 1973, or any amendments or supplements thereto or is in a zone designated A or V, then Lessee shall comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973. In addition, Lessee will fully comply with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as each may be amended from time to time, and with any other Legal Requirement, concerning flood insurance to the extent that it applies to the Property.

14.3 **Coverage.**

(a) As of the date of this Lease and annually thereafter during the Term, Lessee shall furnish the Agent (on behalf of the Financing Parties) with certificates of insurance prepared by the insurers or insurance broker of Lessee showing the insurance required under Sections 14.1 and 14.2 to be in effect, naming (to the extent of their respective interests) each Financing Party and their officers, agents, employees and their Affiliates and their Affiliates’ officers, agents and employees, as additional insureds on liability policies required above except as respects workers’ compensation insurance and naming the Agent (on behalf of the Financing Parties) as additional insured and loss payee on property and builder’s risk policies and provide a waiver of subrogation in their favor, to the extent of their respective interests, and evidencing the other requirements of this Article XIV. All such insurance shall be at the sole cost and expense of Lessee and provided by (i) nationally recognized, financially sound insurance companies having an A.M. Best’s Key Rating Guide rating of A- or better and a financial size category of VII or higher, unless otherwise approved by the Agent (such approval from the Agent being subject to receipt of instructions from the Majority Secured Parties agreeing to an insurance company with an A.M. Best’s Key Rating Guide rating of less than
A- and/or an insurance company of a financial size category of less than VII), or (ii) other companies acceptable to the Agent, in all cases with regard to subsection (i) or (ii) above with limits and coverage provisions sufficient to satisfy the requirements set forth in this Lease. Lessee shall provide no less than thirty (30) days’ advance written notice to the Agent (on behalf of Lessor and the other beneficiaries of such insurance coverage) in the event of cancellation or material alteration of such insurance. Upon the reasonable request of the Agent (on behalf of the Financing Parties), Lessee shall deliver to the Agent (on behalf of the Financing Parties) copies of all insurance policies required by Sections 14.1 and 14.2.

(b) Lessee agrees that the insurance policy or policies required by Sections 14.1 and 14.2 shall include an appropriate clause pursuant to which any such policy shall provide that it will not be invalidated should Lessee or any contractor, as the case may be, waive, at any time, any or all rights of recovery against any party for losses covered by such policy or due to any breach of warranty, fraud, action, inaction or misrepresentation by Lessee or any Person acting on behalf of Lessee. Lessee hereby waives any and all such rights against the Financing Parties to the extent of payments made to any such Person under any such policy.

(c) Lessor may carry separate insurance at Lessor’s sole cost so long as Lessee’s insurance is designated as primary and in no event excess or contributory to any insurance Lessor may have in force which would apply to a loss covered under Lessee’s policy.

(d) Lessee shall pay as they become due all premiums for the insurance required by Section 14.1 and Section 14.2 and shall renew or replace, or cause to be renewed or replaced, each policy prior to the expiration date thereof or otherwise maintain, or cause to be maintained, the coverage required by such Sections without any lapse in coverage. Upon renewal or replacement of any policies required, Lessee must provide, or cause to be provided, Lessor with updated certificates of insurance no later than ten (10) days prior to policy renewal.

(e) Lessee hereby agrees to pay, or cause to be paid, all deductibles and co-payment amounts in connection with any loss or claim covered by any insurance policy required to be maintained by Lessee (directly or indirectly) pursuant to this Article XIV. All deductibles shall be the sole responsibility of Lessee; provided, however, during the Construction Period, deductibles may be reimbursed through Advances.

(f) Any exclusion to any insurance policy maintained in accordance with this Article XIV that causes Lessee to fail to comply with the insurance requirements of this Article XIV shall only be applicable if accepted, in writing, by each additional insured and loss payee.

(g) Losses, if any, with respect to the Property under any property damage policies required to be carried under Section 14.2(a) shall be adjusted with the insurance companies, including the filing of appropriate proceedings, by Lessee (after consultation with Lessor), unless a Lease Event of Default shall have occurred and be continuing, in which case such losses shall be adjusted by Lessor.

(h) In no event shall the insurance required of Lessee or maintained by Lessee limit its liability or indemnity obligations.

14.4 Deductibles and Co-Payment Amounts.
Lessee shall have the option to utilize deductibles and co-payment amounts, in each case only to the extent such are reasonably acceptable to the Majority Secured Parties, with respect to the insurance required pursuant to the Operative Agreements; provided, however, that during the period prior to the Completion Date, (a) the deductible for the builder’s risk insurance policy shall not exceed $25,000 and (b) the deductible for the earth movement insurance shall not exceed two percent (2%) of the total project value at risk at the time of loss (subject to a minimum deductible of $250,000).

ARTICLE XV.

15.1 Casualty and Condemnation.

(a) Subject to the provisions of this Article XV and Article XVI (in the event Lessee delivers, or is obligated to deliver or is deemed to have delivered, a Termination Notice), to the extent the Property is no longer a Construction Period Property and prior to the occurrence and continuation of a Lease Default or a Lease Event of Default, Lessee shall be entitled to receive (and Lessor hereby irrevocably assigns to Lessee all of Lessor’s right, title and interest in) any condemnation proceeds, award, compensation or insurance proceeds under Sections 14.2(a) or 14.2(b) hereof to which Lessee or Lessor may become entitled by reason of their respective interests in the Property (i) if all or a portion of the Property is damaged or destroyed in whole or in part by a Casualty or (ii) if the use, access, occupancy, easement rights or title to the Property or any part thereof is the subject of a Condemnation; provided, however, (x) if a Lease Default or a Lease Event of Default shall have occurred and be continuing or if such condemnation proceeds, award, compensation or insurance proceeds shall exceed $1,000,000, then such condemnation proceeds, award, compensation or insurance proceeds shall be promptly paid (and in any event within three (3) Business Days of Lessor’s receipt thereof) directly to Lessor or, if received by Lessee, shall be held in trust for Lessor and be promptly paid over by Lessee to Lessor, and (y) if the conditions of the foregoing subsection (x) do not apply, then any such award, compensation and/or insurance proceeds shall be paid to Lessee. All amounts held by Lessor hereunder on account of any condemnation proceeds, award, compensation or insurance proceeds either paid directly to Lessor or turned over to Lessor shall be, in the case of a Lease Default or a Lease Event of Default, held as security for the performance of Lessee’s obligations hereunder and under the other Operative Agreements until such time as such Lease Default or Lease Event of Default shall have been cured in accordance with the Operative Agreements or applied to the applicable obligations upon the exercise of remedies in connection with the occurrence of any such Lease Event of Default and when all such obligations of Lessee with respect to such matters (and all other obligations of Lessee which should have been satisfied pursuant to the Operative Agreements as of such date) have been satisfied, all amounts so held by Lessor shall be paid over to Lessee.

(b) Lessee may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any condemnation proceeds, award, compensation or insurance proceeds on account of any such Casualty or Condemnation and shall pay all expenses thereof. At Lessee's reasonable request, and at Lessee’s sole cost and expense, Lessor and the Agent shall participate in any such proceeding, action, negotiation, prosecution, adjustment or appeal. Lessor and Lessee agree that this Lease shall control the rights of Lessor and Lessee in and to any such condemnation proceeds, award, compensation or insurance proceeds.

(c) If a Casualty or a Condemnation of the Property or any interest therein occurs and no Lease Default or Lease Event of Default shall have occurred and be continuing, Lessee may at its option, and at its sole cost and expense, reconstruct or restore the Property in conformity with the requirements of Sections 10.1 and 11.1, so as to restore the Property to the same or a greater
remaining economic value, useful life, utility, condition, operation and function as existed immediately prior to such Casualty or
Condemnation (assuming all maintenance and repair standards have been satisfied); provided, that the reconstruction or
restoration of the Property shall be complete at least one hundred eighty (180) days prior to the Expiration Date. In the event of
any Casualty or Condemnation, Lessee shall, not later than forty-five (45) days after Lessee has actual knowledge of such
Casualty or Condemnation, either deliver to Lessor a Termination Notice pursuant to Section 16.1, if applicable, or, at Lessee’s
sole cost and expense, diligently undertake and diligently reconstruct or restore the Property. Upon Lessee’s election to
reconstruct or restore the Property, a Responsible Officer of Lessee shall deliver to the Agent a certificate that such
reconstruction or restoration is reasonably expected to be complete at least one hundred eighty (180) days prior to the
Expiration Date. Upon completion of such reconstruction or restoration of the Property, a Responsible Officer of Lessee
shall deliver a certificate confirming that such reconstruction or restoration of the Property has been completed so as to have
restored the Property to the same or a greater remaining economic value, useful life, utility, condition, operation and function as existed
immediately prior to such Casualty or Condemnation (assuming all maintenance and repair standards have been satisfied). In
such event, title to the Property shall remain with Lessor. To the extent no Lease Default or Lease Event of Default shall have
occurred and be continuing at such time, Lessor shall then remit to Lessee all related condemnation proceeds, awards,
compensation or insurance proceeds previously paid to Lessor as referenced in Section 15.1(a). In the event such a Casualty or
Condemnation occurs and Lessee elects not to reconstruct or restore the Property, or if such reconstruction or restoration is not
complete at least one hundred eighty (180) days prior to the Expiration Date, then Lessee shall be deemed to have delivered a
Termination Notice to Lessor and the provisions of Sections 16.1 and 16.2 shall apply.

(d) In the event of a Casualty or a Condemnation, this Lease shall terminate in accordance with Section 16.1 if Lessee,
within thirty (30) days after such occurrence, delivers to Lessor a notice to such effect.

(e) In no event shall a Casualty or Condemnation affect Lessee’s obligations to pay Rent pursuant to Article III, except
to the extent Lessee has paid the Termination Value.

(f) Notwithstanding anything to the contrary set forth in Section 15.1(a) or Section 15.1(c), if, during the Term, a
Casualty or Condemnation occurs with respect to the Property or Lessee receives notice of a Condemnation with respect to the
Property, and following such Casualty or Condemnation, the Property cannot reasonably be restored, repaired or replaced on or
before the day one hundred eighty (180) days prior to the Expiration Date to the same or a greater remaining economic value,
useful life, utility, condition, operation and function as existed immediately prior to such Casualty or Condemnation (assuming
all maintenance and repair standards have been satisfied) or on or before such day the Property is not in fact so restored,
repaired or replaced, then Lessee shall be deemed to have exercised its Purchase Option, such purchase to be effective on the
next Payment Date (notwithstanding the limits on such exercise contained in Section 20.2) and pay Lessor the Termination
Value; provided, if any Lease Default or Lease Event of Default has occurred and is continuing, Lessee shall also promptly (and
in any event within three (3) Business Days) pay Lessor any condemnation proceeds, award, compensation or insurance
proceeds received on account of any Casualty or Condemnation with respect to the Property; provided, further, that if no Lease
Default or Lease Event of Default has occurred and is continuing, any Excess Proceeds shall be paid to Lessee. If a Lease
Default or a Lease Event of Default has occurred and is continuing and any Lessor Advances or other amounts are owing with
respect thereto, then any Excess Proceeds (to the extent of any such Lessor Advances or other amounts owing with respect
thereto) shall be paid to Lessor, held as security for the performance of Lessee’s obligations hereunder and under the other
Operative Agreements and applied to such obligations upon the exercise of remedies in connection with the occurrence of a
Lease Event of Default, with the remainder of such Excess Proceeds in excess of such Loans or Lessor Advances and other
amounts owing with respect thereto being distributed to Lessee.

(g) The foregoing provisions of Section 15.1(a) – 15.1(f) shall not apply if the Property is a Construction Period
Property, it being acknowledged and agreed that the provisions of the Agency Agreement shall apply instead.

(h) Lessee shall promptly give Lessor written notice of any Condemnation, regardless of the monetary value involved,
or any material Casualty, together with such other information in connection therewith as may be reasonably requested by
Lessor.

15.2 Environmental Matters.

Promptly upon Lessee’s actual knowledge of any Environmental Condition at the Property for which, in the reasonable opinion
of Lessee, the cost to undertake any legally required response, clean up, remedial or other action will or might result in a cost to Lessee
of more than $50,000, Lessee shall notify Lessor in writing of such condition. In the event of any Environmental Condition (regardless
of whether notice thereof must be given), Lessee shall, not later than forty-five (45) days after Lessee has actual knowledge of such
Environmental Condition, either deliver to Lessor a Termination Notice pursuant to Section 16.1, if applicable, or, at Lessee’s sole cost
and expense, promptly and thereafter diligently undertake and diligently complete any investigation, response, clean up, remedial or
other action (including the pursuit by Lessee of appropriate action against any off-site or third party source for contamination)
necessary to investigate, remove, cleanup or remediate the Environmental Condition in accordance with all Environmental Laws. Any
such undertaking shall be timely completed in accordance with prudent industry standards and applicable Environmental Laws and in
any event prior to the Expiration Date. If Lessee does not deliver a Termination Notice pursuant to Section 16.1, Lessee shall, upon
completion of remedial action by Lessee, cause to be prepared by a reputable environmental consultant acceptable to Lessor a report
describing the Environmental Condition and the actions taken by Lessee (or its agents) in response to such Environmental Condition,
and a statement by either the consultant or the Governmental Authority with jurisdiction over such matter that the Environmental
Condition has been remedied in full compliance with applicable Environmental Law or that no further action with respect to such
Environmental Condition is required. Not more than one hundred fifty (150) days and no less than ninety (90) days prior to any time
that Lessee elects to cease operations with respect to the Property, Lessee shall, at its expense, cause to be delivered to Lessor a Phase I
environmental site assessment respecting the Property recently prepared and (if determined necessary by Lessor in the exercise of its
reasonable judgment based on the results of such Phase I environmental site assessment) a Phase II environmental site assessment, in
each case recently prepared (no more than thirty (30) days prior to the date of delivery) by an independent recognized professional
reasonably acceptable to Lessor, and in form, scope and content reasonably satisfactory to Lessor. If such environmental site
assessment reveals any Environmental Condition at the Property, Lessor shall, within thirty (30) days of Lessor having received such
assessment, provide Lessor with a plan designed to remedy the Environmental Condition on or prior to the Expiration Date. Notwithstanding any other provision of any Operative Agreement, if Lessee fails to comply with the foregoing obligation regarding the environmental site assessment and remedy plan or fails to complete such remediation prior to the Expiration Date, Lessee shall be
obligated to purchase the Property for its Termination Value and shall not be permitted to exercise (and Lessor shall have no obligation
to honor any such exercise) any rights under any Operative Agreement regarding a sale of the Property to a Person other than Lessee or
any Affiliate of Lessee.

15.3 Notice of Environmental Matters.
Promptly, but in any event within thirty (30) Business Days from the date Lessee has actual knowledge thereof, Lessee shall provide to Lessor written notice of any pending or threatened material claim, action or proceeding involving any Environmental Law or any Release on or in connection with the Property. All such notices shall describe in reasonable detail the nature of the claim, action or proceeding and Lessee’s proposed response thereto. In addition, Lessee shall provide to Lessor, within five (5) Business Days of receipt, copies of all material written communications with any Governmental Authority relating to any pending or threatened material claim, action or proceeding referenced in the first sentence of this Section 15.3. Lessee shall also promptly provide such detailed reports of any such material environmental claims as may reasonably be requested by Lessor.

ARTICLE XVI.

16.1 Termination Upon Certain Events.

If, after the Rent Commencement Date, Lessee has delivered, or is deemed to have delivered, written notice of a termination of this Lease with respect to the Property to Lessor in the form described in Section 16.2(a) (a “Termination Notice”) pursuant to the provisions of this Lease, then following the applicable Casualty, Condemnation or Environmental Condition, Lessee shall pay Lessor the Termination Value on the Termination Date and upon Lessor’s receipt of the Termination Value, this Lease shall terminate.

16.2 Procedures.

(a) A Termination Notice shall contain: (i) notice of termination of this Lease on a Payment Date not more than sixty (60) days after Lessor’s receipt of such Termination Notice (the “Termination Date”); and (ii) a binding and irrevocable agreement of Lessee to pay the Termination Value and purchase the Property on such Termination Date. To the extent no Lease Default or Lease Event of Default shall have occurred and be continuing, any Termination Notice delivered by Lessee to Lessor may be revoked within fifteen (15) days of delivery thereof. To the extent no Termination Notice is actually delivered by Lessee and (x) in the case of any Casualty or Condemnation regarding the Property, no reconstruction or restoration activity pursuant to Section 15.1 has commenced within eighty-five (85) days of the occurrence of such Casualty or Condemnation and (y) in the case of any Environmental Condition regarding the Property, no remediation activity pursuant to Section 15.2 has commenced within eighty-five (85) days of the occurrence of such Environmental Condition, then, in either such case, a Termination Notice shall be deemed delivered on the last occurring Payment Date not more than ninety (90) days following the applicable Casualty, Condemnation or Environmental Condition.

(b) On each Termination Date, Lessee shall pay to Lessor the Termination Value, and Lessor shall convey the Property or the remaining portion thereof, if any, to Lessee (or Lessee’s designee), all in accordance with Section 20.2.

ARTICLE XVII.

17.1 Lease Events of Default.

If any one (1) or more of the following events (each a “Lease Event of Default”) shall occur:

(a) (i) Except as otherwise provided in this Section 17.1(a), any payment of Basic Rent payable by Lessee shall not be paid when due, and, such payment shall be overdue for a period of three (3) Business Days, (ii) any payment payable by Lessee on the Expiration Date, including any

18
payment described in Article XX or XXI, shall not be paid when due, (iii) any payment of the Termination Value or any
payment of Basic Rent or Supplemental Rent due on the date of any such payment of the Termination Value shall not be paid
when due, or (iv) Lessee shall fail to make payment of any Supplemental Rent (other than Supplemental Rent payable pursuant
to clause (ii) or (iii) of this Section 17.1(a)) due and payable within five (5) Business Days after receipt by Lessee of notice from
Agent demanding payment thereof (as any of the amounts pursuant to this Section 17.1(a) are due and payable, whether at
maturity, by acceleration or otherwise);

(b) Any representation or warranty of any Credit Party contained in any Operative Agreement, or in any certificate,
report furnished or delivered by any Credit Party on its own behalf or on Lessee’s behalf pursuant to the Operative Agreements
to Agent or Lessor is incorrect, incomplete or misleading in any material respect when made or reaffirmed, as the case may be;

(c) Any Credit Party shall default in the observance or performance of any covenant contained in Article XIV of this
Lease (other than the requirement to deliver annual certificates), Sections 8.3A(c), 8.3A(f) or 8.3B of the Participation
Agreement;

(d) Any Credit Party shall default in the performance or observance of any term, covenant (excepting those covenants
described in Section 17.1(c)), condition or agreement on its part to be performed or observed hereunder or under any other
Operative Agreement (and not constituting a Lease Event of Default under any other clause of this Section 17.1), and such
default is of a type that is subject to being cured and shall continue unremedied for a period of fifteen (15) Business Days after
any Credit Party becomes aware of the occurrence thereof (such grace period to be applicable only in the event such default can
be remedied by corrective action of the Credit Parties as determined by Lessor in its sole reasonable discretion);

(e) (i) A breach, default or event of default shall occur at any time under the terms of the Revolving Credit Agreement
or (ii) except as otherwise provided in the foregoing subsection (e)i), a breach, default or event of default shall occur at any time
under the terms of any other agreement involving Indebtedness under which any Credit Party may be obligated as a borrower or
 guarantor in excess of Twenty-Five Million and 00/100 Dollars ($25,000,000.00) in the aggregate, and such breach, default or
event of default consists of the failure to pay (beyond any period of grace permitted with respect thereto, whether waived or not)
any Indebtedness when due (whether at stated maturity, by acceleration or otherwise) or if such breach or default permits or
causes the acceleration of any Indebtedness (whether or not such right shall have been waived) or the termination of any
commitment to lend;

(f) Any final judgments or orders for the payment of money in excess of Twenty-Five Million and 00/100 Dollars
($25,000,000.00) in the aggregate shall be entered against any Credit Party by a court having jurisdiction in the premises, which
judgment is not satisfied, discharged, vacated, bonded or stayed pending appeal within a period of sixty (60) days from the date
of entry;

(g) Any of the Operative Agreements shall cease to be legal, valid and binding agreements enforceable against the
party executing the same or such party’s successors and assigns (as permitted under the Operative Agreements) in accordance
with the respective terms thereof or shall in any way be terminated (except in accordance with its terms) or become or be
declared ineffectve or inoperative or shall in any way be challenged or contested by a Credit Party or cease to give or provide
the remedies, powers or privileges intended to be created thereby;
(h) Any of the Credit Parties’ assets are attached, seized, levied upon or subjected to a writ or distress warrant; or such come within the possession of any receiver, receiver and manager, trustee, custodian, assignee for the benefit of creditors or other similar official and the same is not cured within sixty (60) days thereafter;

(i) (i) A notice of Lien or assessment which is not a Permitted Lien is filed of record with respect to all or any part of Lessee’s interest in any of the Collateral by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, including the PBGC, or any Taxes or debts owing at any time or times hereafter to any one of these becomes payable and the same is not paid within thirty (30) days after the same becomes; or (ii) except as otherwise provided in Section 17.1(i)(i), a notice of Lien or assessment in excess of Twenty-Five Million and 00/100 Dollars ($25,000,000.00) which is not a Revolving Credit Agreement Permitted Lien is filed of record with respect to all or any part of any of the Credit Parties’ assets by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, including the PBGC, or any Taxes or debts owing at any time or times hereafter to any one of these becomes payable and the same is not paid within thirty (30) days after the same becomes payable;

(j) Any Credit Party ceases to be Solvent or admits in writing its inability to pay its debts as they mature; provided, that any Credit Party may dissolve in accordance with Section 8.3B(e) of the Participation Agreement;

(k) Any of the following occurs: (i) any Reportable Event which constitutes grounds for the termination of any Plan by the PBGC or the appointment of a trustee to administer or liquidate any Plan, shall have occurred and be continuing; (ii) proceedings shall have been instituted or other action taken to terminate any Plan, or a termination notice shall have been filed with respect to any Plan; (iii) a trustee shall be appointed to administer or liquidate any Plan; (iv) the PBGC shall give notice of its intent to institute proceedings to terminate any Plan or Plans or to appoint a trustee to administer or liquidate any Plan; and, in the case of the occurrence of (i), (ii), (iii), or (iv) above, Lessor determines in good faith that the amount of the Credit Parties’ liability is likely to exceed ten percent (10%) of its consolidated tangible net worth; (v) the Revolving Credit Agreement US Borrowers or any other member of the ERISA Group shall fail to make any contributions when due to a Plan, Multiemployer Plan or Multiple Employer Plan; (vi) the Revolving Credit Agreement US Borrowers or any other member of the ERISA Group shall commit a contribution failure under Section 303(k)(1) of ERISA and is required to provide notice to the PBGC under Section 303(k)(4) of ERISA; (vii) the Revolving Credit Agreement US Borrowers or any other member of the ERISA Group shall withdraw completely or partially from a Multiemployer Plan or a Multiple Employer Plan; (viii) the Revolving Credit Agreement US Borrowers or any other member of the ERISA Group shall withdraw or be deemed under Section 4062(e) of ERISA to withdraw from a Multiple Employer Plan or cease operations at a facility under the circumstances described in Section 4062(e) of ERISA; or (ix) any Applicable Law is adopted, changed or interpreted by any Official Body with respect to or otherwise affecting one or more Plans, Multiemployer Plans, Multiple Employer Plans or Benefit Arrangements and, with respect to any of the events specified in (v), (vi), (vii), (viii) or (ix), the occurrence of which would be reasonably likely to result in a Material Adverse Effect;

(l) Any Credit Party ceases to conduct its business as contemplated, except as expressly permitted under Section 8.3B(e) or 8.3B(f) of the Participation Agreement, or any Credit Party is enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business and such injunction, restraint or other preventive order is not dismissed within thirty (30) days after the entry thereof;
(m) Any person or group of persons (within the meaning of Section 13(d) or 14(a) of the Exchange Act) shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC under said Act) thirty-three and one-third of one percent (33.33%) or more of the voting capital stock of the Parent, or (ii) within a period of twelve (12) consecutive calendar months, individuals who were directors of the Parent on the first day of such period, together with any directors whose election by such board of directors or whose nomination for election by the shareholders was approved by a vote of the majority of the directors then in office shall cease to constitute a majority of the board of directors of the Parent.

(n) A proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of any Credit Party in an involuntary case under any applicable bankruptcy, insolvency, reorganization or other similar Law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of any Credit Party for any substantial part of its property, or for the winding-up or liquidation of its affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days or such court shall enter a decree or order granting any of the relief sought in such proceeding;

(o) Any Credit Party shall commence a voluntary case under any applicable bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or other similar official) of itself or for any substantial part of its property or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any action in furtherance of any of the foregoing;

(p) Lessee shall fail to deliver a certificate when required pursuant to Section 14.3(a) within five (5) Business Days after receipt of notice from Lessor that such certificate is due under the terms hereof or to maintain insurance to the extent required by Article XIV;

(q) Lessee shall elect the Sale Option and shall not have complied with each of its obligations pursuant to the Operative Agreements by the Expiration Date;

(r) An Agency Agreement Event of Default shall have occurred and be continuing;

(s) Any Operative Agreement shall cease to be in full force and effect;

(t) The guaranty given by the Guarantors under the Participation Agreement shall cease to be in full force and effect, or any Guarantor or any Person acting by or on behalf of any Guarantor shall deny or disaffirm its obligations under such guaranty, or any Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to such guaranty; or

(u) Any Operative Agreement shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on, or security interest in, any of the Collateral purported to be covered thereby, in each case other than in accordance with the express terms hereof or thereof.

then, in any such event, Lessor may, in addition to the rights and remedies provided in the Agency Agreement regarding any Agency Agreement Event of Default and the other rights and remedies provided for in this
Article XVII and in Section 18.1, terminate this Lease by giving Lessee five (5) days’ notice of such termination (provided, notwithstanding the foregoing, this Lease shall be deemed to be automatically terminated without the giving of notice upon the occurrence of a Lease Event of Default under Sections 17.1(n) or (o)), and this Lease shall terminate, and all rights of Lessee under this Lease shall cease. Lessee shall, to the fullest extent permitted by law, pay all costs and expenses incurred by or on behalf of Lessor or any other Financing Party, including fees and expenses of counsel (with such payments to be characterized as Supplemental Rent), as a result of any Lease Event of Default hereunder.

17.2 Surrender of Possession.

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall, upon ten (10) Business Days written notice, surrender to Lessor possession of the Property. Lessor may enter upon and repossess the Property by such means as are available at law or in equity, and may remove Lessee and all other Persons and any and all personal property and Lessee’s equipment and personality and severable Modifications from the Property; provided, that Lessee shall have the right to remove and retain the Excluded Equipment to the extent such is removed from the Property within the above-referenced ten (10) Business Day period. In any event, Lessee shall promptly repair, at its expense, all damage to the Property caused by any removal or attempted removal of any Excluded Equipment. Lessor shall have no liability by reason of any such entry, repossession or removal performed in accordance with Applicable Law. Upon the written demand of Lessor, Lessee shall return the Property promptly to Lessor, in the manner and condition required by, and otherwise in accordance with the provisions of Section 10.1(g).

17.3 Reletting.

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessor may, but shall be under no obligation to, relet the Property, for the account of Lessee or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) and for such purposes as Lessor may determine, and Lessor may collect, receive and retain the rents resulting from such reletting. Lessor shall not be liable to Lessee for any failure to relet the Property or for any failure to collect any rent due upon such reletting.

17.4 Damages.

Neither (a) the termination of this Lease as to the Property pursuant to Section 17.1; (b) the repossession of the Property; nor (c) the failure of Lessor to relet the Property, the reletting of all or any portion thereof, nor the failure of Lessor to collect or receive any rentals due upon any such reletting, shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive any such termination, repossession or reletting. If any Lease Event of Default shall have occurred and be continuing and notwithstanding any termination of this Lease pursuant to Section 17.1, Lessee shall forthwith pay to Lessor all Rent and other sums due and payable hereunder to and including the date of such termination. Thereafter, on the days on which the Basic Rent or Supplemental Rent, as applicable, are payable under this Lease or would have been payable under this Lease if the same had not been terminated pursuant to Section 17.1 and until the end of the Term hereof or what would have been the Term in the absence of such termination, Lessee shall pay Lessor, as current liquidated damages (it being agreed that it would be impossible accurately to determine actual damages) an amount equal to the Basic Rent and Supplemental Rent that are payable under this Lease or would have been payable by Lessee hereunder if this Lease had not been terminated pursuant to Section 17.1, less the net proceeds, if any, which are actually received by Lessor with respect to the period in question of any reletting of the Property or any portion thereof; provided, that Lessee’s obligation to make
payments of Basic Rent and Supplemental Rent under this Section 17.4 shall continue only so long as Lessor shall not have received the amounts specified in Section 17.6. In calculating the amount of such net proceeds from reletting, there shall be deducted all of the Financing Parties’ expenses in connection therewith, including repossession costs, brokerage or sales commissions, fees and expenses for counsel and any necessary repair or alteration costs and expenses incurred in preparation for such reletting. To the extent Lessor receives any damages pursuant to this Section 17.4, such amounts shall be regarded as amounts paid on account of Rent. Lessee specifically acknowledges and agrees that its obligations under this Section 17.4 shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, set-off, defense, counterclaim or recoupment whatsoever.

17.5 Power of Sale.

WITHOUT LIMITING ANY OTHER REMEDIES SET FORTH IN THIS LEASE, LESSOR AND LESSEE AGREE THAT LESSEE HAS GRANTED TO LESSOR, PURSUANT TO THE APPLICABLE PROVISIONS OF THIS LEASE (INCLUDING SECTION 7.1(B)), A LIEN AGAINST THE PROPERTY WITH A POWER OF SALE. A POWER OF SALE MAY ALLOW LESSOR TO TAKE THE PROPERTY AND SELL THE PROPERTY WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON THE OCCURRENCE OF A LEASE EVENT OF DEFAULT. LESSOR AND LESSEE HEREBY FURTHER AGREE THAT UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF ANY LEASE EVENT OF DEFAULT, LESSOR SHALL HAVE THE POWER AND AUTHORITY, TO THE EXTENT PROVIDED BY LAW, TO FORECLOSE ITS INTEREST (OR CAUSE SUCH INTEREST TO BE FORECLOSED) IN ALL OR ANY PART OF THE PROPERTY.

17.6 Final Liquidated Damages.

(a) If a Lease Event of Default other than a Limited Recourse Event of Default shall have occurred and be continuing, whether or not this Lease shall have been terminated pursuant to Section 17.1 and whether or not Lessor shall have collected any current liquidated damages pursuant to Section 17.4, Lessor shall have the right to recover, by demand to Lessee and at Lessor’s election in its sole discretion, and Lessee shall pay to Lessor, as and for final liquidated damages, the Termination Value exclusive of the indemnities payable under Section 11 of the Participation Agreement (which, if requested, shall be paid concurrently), and in lieu of all current liquidated damages beyond the date of such demand (it being agreed that it would be impossible accurately to determine actual damages). If Lessee does not pay the full amount of the Termination Value but exclusive of the indemnities payable under Section 11 of the Participation Agreement (which, if requested, shall be paid concurrently), Lessor shall also have its other remedies at Law, including selling all or any part of the Property at public sale or as otherwise permitted under Applicable Law free and clear of rights of Lessee. Upon payment of the amount specified pursuant to the first sentence of this Section 17.6(a), Lessee shall be entitled to receive from Lessor, either at Lessee’s request or upon Lessor’s election, in either case at Lessee’s cost, a special warranty deed or such other assignment document reasonably acceptable to Lessor as elected by Lessee conveying Lessor’s entire interest in the Property, in each case in recordable form and otherwise in conformity with local custom and free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind). The Property shall be conveyed to Lessee “AS-IS, WHERE-IS” and in its then present physical condition. If any statute or rule of law shall limit the amount of such final liquidated damages to less than the amount agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law; provided, however, Lessee shall not be entitled to receive a warranty deed or any other assignment
of Lessor’s interest in the Property, the Improvements, Fixtures, Modifications, Equipment or the components thereof unless Lessee shall have paid in full the Termination Value. Lessee specifically acknowledges and agrees that its obligations under this Section 17.6(a) shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, set-off, defense, counterclaim or recoupment whatsoever.

(b) If no Lease Event of Default other than a Limited Recourse Event of Default shall have occurred and be continuing, whether or not this Lease shall have been terminated pursuant to Section 17.1 and whether or not Lessor shall have collected any current liquidated damages pursuant to Section 17.4, Lessor shall have the right to recover, by demand to Lessee and at Lessor’s election in its sole discretion, and Lessee shall pay to Lessor, as and for final liquidated damages, but exclusive of the indemnities payable under Section 11 of the Participation Agreement (which, if requested, shall be paid concurrently), and in lieu of all current liquidated damages beyond the date of such demand (it being agreed that it would be impossible accurately to determine actual damages) the Maximum Residual Guarantee Amount. Lessor shall also have its other remedies at law, including, without limitation, selling all or any part of the Property at public sale or as otherwise permitted under Applicable Law free and clear of rights of Lessee. Upon the occurrence of a Limited Recourse Event of Default, Lessor shall be under a continuing obligation to use its commercially reasonable efforts to sell the Property to one or more unrelated third parties; provided, however, that Lessor shall not be required to sell or attempt to sell any portion of the Property (i) in a manner, or under circumstances, that could materially impair Lessor’s ability to enforce any of its rights or remedies (other than collection of costs incurred as a result of Force Majeure Events occurring during the Construction Period) under this Lease (as determined by Lessor in good faith) or (ii) at a time when market conditions render it inadvisable to sell or attempt to sell the Property (as determined by Lessor in good faith). Lessor and/or Lessee may solicit offers for the purchase of Lessor’s rights, title, claims and interest in and to the Property. Lessor shall accept (or match) any purchase offer for a cash purchase price (net of all normal and customary sales and closing costs and the costs of holding, owning, operating, and maintaining the Property), equal to or greater than the Termination Value.

(c) The proceeds derived from any such sale pursuant to Section 17.6(a) or (b), as applicable, (net of all normal and customary sales and closing costs and the costs of holding, owning, operating, and maintaining the Property, including amounts described in Section 8.7(c)(i) and (ii) of the Participation Agreement which shall be paid to the Agent to be allocated pursuant to Section 8.7(c)(i) and (ii) of the Participation Agreement) shall be distributed (x) if the relevant Lease Event of Default is not a Limited Recourse Event of Default and the sale of the Lessor’s interest in the Property occurs on or prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Lease Event of Default, to the Agent to be allocated pursuant to Section 8.7(b)(iii)(x) of the Participation Agreement and (y) if the relevant Lease Event of Default is a Limited Recourse Event of Default and the sale of the Lessor’s interest in the Property occurs on or prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Lease Event of Default, then prior to the allocation pursuant to Section 8.7(b)(iii)(x) of the Participation Agreement, first, to Lessor in the amount of the positive difference (if any) between the Termination Value (less any portion thereof that cannot be capitalized under GAAP, including any amount of Uninsured Force Majeure Loss) and the Maximum Residual Guarantee Amount; second, to Lessor, the unpaid portion, if any, of the Maximum Residual Guarantee Amount, third, to the Lessee, any remaining proceeds up to the amount of the Maximum Residual Guarantee Amount previously paid by Lessee, and fourth, to the Agent to be distributed by the Agent in accordance with Section 8.7(b)(iii)(x) of the Participation Agreement.
If, and to the extent that, there is no sale of Lessor’s interest in the Property on or prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Lease Event of Default, then (x) Lessee shall have no right, title or interest whatsoever in the Property, (y) Lessor shall be the sole owner of its interest in the Property without any obligation to share with Construction Agent or Lessee any proceeds from the sale, conveyance, other transfer or otherwise regarding the Property and (z) if and to the extent Lessor realizes any proceeds with regard to the Property, such proceeds shall be distributed in accordance with Section 8.7(b)(iii)(x) of the Participation Agreement but substituting Lessor in place of Lessee pursuant to subsection “fifth” thereof as Lessee shall have no interest thereunder and no right to any such proceeds. All proceeds derived from any such sale or otherwise paid to Lessor after such second annual anniversary shall be distributed to the Agent for allocation in accordance with Section 8.7(b)(iii)(x) of the Participation Agreement. Lessee specifically acknowledges and agrees that its obligations under this Section 17.6 shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, set-off, defense, counterclaim or recoupment whatsoever.

For purposes of this section, the amount realized by Lessor upon the sale of the Property shall be net of all normal and customary sales and closing costs and the costs of holding, owning, operating, and maintaining the Property (which shall include amounts described in Section 8.7(c)(i) and (ii) of the Participation Agreement) until such time as the Property is sold, which amounts shall be retained by Lessor. Lessor’s obligation to make payments to Lessee and Lessee’s obligation to make payments to Lessor, all as set forth above, shall survive any termination of this Lease.

17.7 **Environmental Costs.**

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall pay directly to any third party (or at Lessor’s election, reimburse Lessor) for the cost of any environmental investigation, response, corrective action or remediation required under any Environmental Law, and shall indemnify and hold harmless Lessor and each other Indemnified Person therefrom. Lessee shall pay all amounts referenced in the immediately preceding sentence within ten (10) days of any request by Lessor for such payment. The provisions of this Section 17.7 shall not limit the obligations of Lessee under any Operative Agreement regarding indemnification obligations, environmental testing, remediation and/or work.

17.8 **Waiver of Certain Rights.**

If this Lease shall be terminated pursuant to Section 17.1, Lessee waives, to the fullest extent permitted by Law, (a) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (b) any right of redemption, re-entry or possession; (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt; and (d) any other rights which might otherwise limit or modify any of Lessor’s rights or remedies under this Article XVII.

17.9 **Assignment of Rights Under Contracts.**

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall upon Lessor’s demand immediately assign, transfer and set over to Lessor all of Lessee’s right, title and interest in and to each agreement executed by Lessee in connection with the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Property (including all right, title and interest of Lessee with respect to all warranty, performance, service and indemnity provisions and any sublease of the
Property), as and to the extent that the same relate to the acquisition, testing, use, operation, maintenance, repair, refurbishment and restoration of the Property.

17.10 **Lessee Purchase to Cure Lease Event of Default.**

Except in all cases with regard to a Lease Event of Default pursuant to Sections 17.1(n) or (o) and subject in all cases to Section 5.13 of the Participation Agreement, Lessee shall have the right to cure a Lease Event of Default hereunder arising solely with respect to the Property by purchasing the Property from, or causing the Property to be purchased by its designee from, Lessor for an amount equal to the Termination Value. After the occurrence of any Lease Event of Default (other than a Lease Event of Default pursuant to Sections 17.1(n) or (o), with respect to which such notice shall be deemed given), Lessor shall notify Lessee of Lessor’s intent to exercise its remedies with respect to such Lease Event of Default and thereafter refrain from exercising any remedy for a period of five (5) Business Days. During such period of five (5) Business Days and at any time thereafter (unless Lessor is legally obligated at such time to sell, lease or otherwise convey an interest in the Property to a Person other than Lessee) prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Lease Event of Default, Lessee may exercise the above-stated purchase option by giving written notice thereof to the Agent. Any such purchase shall close on the date specified therefor in writing by the Agent to Lessee (which date shall be a Business Day after the Agent’s receipt of such notice from Lessee). Any such conveyance to Lessee or its designee shall be conducted in accordance with the mechanics described in Section 20.2 as if the date specified for such conveyance by the Agent under this Section 17.10 were the Election Date specified under Section 20.2.

17.11 **Remedies Cumulative.**

The remedies herein provided shall be cumulative and in addition to (and not in limitation of) any other remedies available at law, equity or otherwise, including any mortgage foreclosure remedies. After all amounts due and owing to all Financing Parties pursuant to the Operative Agreements have been paid, any excess funds held by any Financing Party following the exercise of remedies hereunder shall be paid to Lessee.

17.12 **Limitation Regarding Certain Lease Events of Default.**

Notwithstanding anything contained herein or in any other Operative Agreement to the contrary (but subject to the last paragraph of this Section 17.12), upon the occurrence and during the continuance of a Lease Event of Default attributable solely to a Lease Event of Default under (a) Section 17.1(b) of this Lease, but only to the extent arising under, regarding or pursuant to the last sentence of Section 6.1(i)(i) of the Participation Agreement, (b) Section 17.1(e) of this Lease, but only to the extent arising due to a “Change in Control” or any other comparable term or description referencing a matter similar to what is described in Section 17.1(m) of this Lease but which term or description may use (as compared to Section 17.1(m) of this Lease) different percentage interests or reference a different formulation to describe such matter or (c) Section 17.1(m) of this Lease (each, a “Limited Recourse Event of Default”), the maximum aggregate amount of Lessee’s obligations attributable solely to a Limited Recourse Event of Default (and any liability for amounts due pursuant to Section 11.1(g) of the Participation Agreement for enforcement costs or losses arising as a result of such Limited Recourse Event of Default) shall be an amount equal to the Maximum Residual Guarantee Amount; **provided,** this Section 17.12 shall not in any way limit the liability of Lessee in the event of any other Lease Event of Default (other than a Limited Recourse Event of Default) or any indemnity payment to any Indemnified Person (except as expressly stated above), including the indemnities set forth in Sections 11.1 through 11.9 of the Participation Agreement and such indemnity payment shall not be included in the calculation set forth above.

26
Lessee nonetheless acknowledges and agrees that even though the maximum aggregate recovery from Lessee is limited as aforesaid, neither Lessor’s nor any other Financing Party’s right of recovery from the Property (as opposed to any recovery from Lessee) is so limited and Lessor or any other applicable Financing Party shall be entitled to recover one hundred percent (100%) of the amounts owed to Lessor or such other Financing Party in accordance with the Operative Agreements from its interest in the Property, including from the sale or any other disposition thereof (whether in connection with Lessee’s purchase of the Property as provided herein and in the other Operative Agreements, the exercise of remedies as provided herein and in the other Operative Agreements or otherwise), including, to the extent not duplicative, one hundred percent (100%) of the aggregate Termination Value.

17.13 Continuation of Lease.

Lessor has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee’s breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). Accordingly, Lessor may, at its option, elect not to terminate this Lease with respect to the Property and continue to collect all Basic Rent, Supplemental Rent and all other amounts due Lessor (together with all costs of collection) and enforce Lessee’s obligations under this Lease as and when the same become due, or are to be performed. At the option of Lessor, upon any abandonment of the Property by Lessee, Lessor may, in its sole and absolute discretion, enforce, by suit or otherwise, all covenants and conditions hereof to be performed and complied with by Lessee hereunder and to exercise all other remedies permitted by Section 1951.4 of the California Civil Code (or any amendments thereof or any successor laws which replace Section 1951.4), or elect not to terminate this Lease and make any necessary repairs (and Lessee shall pay the costs of such repairs) in order to relet the Property, and relet the Property or any part thereof (in place, if so elected by Lessor) for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as Lessor in its reasonable discretion may deem advisable; and upon each such reletting, all rentals actually received by Lessor from such reletting shall be applied to Lessee’s obligations hereunder and the other Operative Agreement in such order, proportion and priority as Lessor may elect in Lessor’s sole and absolute discretion (but in all events subject to the requirements of and applications set forth in the Participation Agreement). If such rentals received from such reletting during any period are less than the Rent with respect to the Property to be paid during that period by Lessee hereunder, Lessee shall pay any deficiency, as calculated by Lessor, to Lessor on the next Scheduled Payment Date.

ARTICLE XVIII.

18.1 Lessor’s Right to Cure Lessee’s Lease Defaults.

Lessor, without waiving or releasing any obligation or Lease Event of Default, may (but shall be under no obligation to) remedy any Lease Event of Default for the account and at the sole cost and expense of Lessee, including the failure by Lessee to maintain the insurance required by Article XIV, and may, to the fullest extent permitted by law, and notwithstanding any right of quiet enjoyment in favor of Lessee, enter upon the Property, and take all such action thereon as may be reasonably necessary or appropriate therefor. No such entry shall be deemed an eviction of Lessee. All out-of-pocket costs and expenses so incurred (including fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid by Lessor, shall be paid by Lessee to Lessor on demand.

ARTICLE XIX.

Subject to Section 19.2, in connection with any termination of this Lease with respect to the Property pursuant to the terms of Section 16.2, or in connection with Lessee’s exercise of its Purchase Option, upon the date on which this Lease is to terminate with respect to the Property, and upon tender by Lessee of the amounts set forth in Sections 16.2(b) or 20.2, as applicable, Lessor shall transfer, at Lessee’s expense, the Property to Lessee (or to Lessee’s designee) by execution and delivery of the documentation referenced in the second paragraph of Section 20.2 and subject to the provisions of Section 20.2.

19.2 No Purchase or Termination With Respect to Less than All of the Property.

Lessee shall not be entitled to exercise its Purchase Option or the Sale Option separately with respect to a portion of the Property.

ARTICLE XX.

20.1 Purchase Option or Sale Option-General Provisions.

Not more than five hundred forty (540) days prior to the Expiration Date and not less than three hundred sixty (360) days prior to the Expiration Date (or, respecting the Purchase Option only with respect to a purchase by Lessee (or its designee) prior to the Expiration Date, not more than one hundred twenty (120) days and not less than ninety (90) days prior to the applicable Payment Date (such Expiration Date or, respecting the Purchase Option only, any such applicable Payment Date being hereinafter referred to as the “Election Date”), Lessee may give Lessor irrevocable written notice (the “Election Notice”) that Lessee is electing to exercise either (a) (i) in the case of the Expiration Date, the option for Lessee (or any designee of Lessee) to purchase the Property on the Expiration Date or (ii) in the case of any Payment Date, the option for Lessee (or any designee of Lessee), subject to Section 5.13 of the Participation Agreement, to purchase the Property on the applicable Payment Date (each of (a)(i) and (ii), the “Purchase Option”) or (b) with respect to an Election Notice given in connection with the Expiration Date only, the option to remarket the Property to a Person other than Lessee or any Affiliate of Lessee and cause a sale of the Property to occur on the Expiration Date pursuant to the terms of Section 21.1 (the “Sale Option”). If Lessee has not renewed this Lease in accordance with Section 2.2 and does not give an Election Notice indicating the Purchase Option or the Sale Option at least three hundred sixty (360) days prior to the Expiration Date, then Lessee shall be deemed to have elected for the Purchase Option to apply, and for the purchase of the Property to occur, on the Expiration Date. If Lessee shall elect (or be deemed to have elected) to exercise the Purchase Option then Lessee shall pay, or cause to be paid, to Lessor on the date on which such purchase is scheduled to occur an amount equal to the Termination Value for the Property and, upon receipt of such amounts and satisfaction of such obligations, Lessor shall transfer to Lessee (or any designee of Lessee) all of Lessor’s right, title and interest in and to the Property in accordance with Section 20.2.

The designation of another Person to purchase the Property on behalf of Lessee pursuant to the Purchase Option shall be subject to the provisions of the second sentence of the first paragraph of Section 20.2.

Notwithstanding the terms of this Section 20.1, Lessee may request a renewal of this Lease from and after the Expiration Date in accordance with Section 2.2.

20.2 Lessee Purchase Option.

Provided that the Election Notice has been appropriately given specifying the Purchase Option for any Payment Date prior to the Expiration Date and if Lessee otherwise elects as of the Expiration Date, Lessee (or any designee of Lessee) shall purchase the Property on the Election Date (i.e., Lessee (or any designee of Lessee) may purchase the Property on any Payment Date and Lessee (or any designee of Lessee)
may purchase the Property on the Expiration Date) at a price equal to the Termination Value. Notwithstanding the designation by Lessee of another Person to purchase the Property pursuant to the Purchase Option, Lessee shall remain fully liable for all its obligations pursuant to the Operative Agreements respecting the Property including any and all obligations which such designated Person might otherwise be expected to perform until Lessee or such designee has purchased the Property and paid the Termination Value therefor. Thereafter, only such provisions which by their express terms survive the expiration or earlier termination of this Lease shall continue to be in force and effect.

Subject to Section 19.2, in connection with any termination of this Lease with respect to the Property pursuant to the terms of Section 16.2, or in connection with Lessee’s exercise of its Purchase Option, upon the date on which this Lease is to terminate, and upon tender by Lessee (or any designee of Lessee) of the amounts set forth in Section 16.2(b) or this Section 20.2, as applicable, Lessor shall execute, acknowledge (where required) and deliver to Lessee, (or any designee of Lessee), at the cost and expense of Lessee (or any designee of Lessee), each of the following: (a) special or limited warranty Deeds conveying the Property (to the extent it is real property titled to Lessor) to Lessee (or any designee of Lessee) free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind); (b) a Bill of Sale conveying the Property (to the extent it is personal property owned by Lessor) to Lessee free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind); (c) any real estate Tax affidavit or other document required by law to be executed and filed in order to record the applicable Deed and such other documents that are customarily obtained in the State where the Property is located; and (d) FIRPTA affidavits. All of the foregoing documentation must be in form and substance reasonably satisfactory to Lessor and Lessee; provided, no Financing Party shall be responsible for any representation or warranty or any other assurance other than the representations and warranties referenced in the foregoing subsections (a) and (b). The Property shall be conveyed to Lessee “AS-IS, WHERE-IS” and in then present physical condition.

On the Election Date on which Lessee has elected to exercise its Purchase Option, Lessee shall pay (or cause to be paid) to Lessor, the Agent and all other parties, as appropriate, the sum of all costs and expenses incurred by any such party in connection with the election by Lessee to exercise its Purchase Option and all Rent and all other amounts then due and payable or accrued under this Lease and/or any other Operative Agreement.

20.3 Third Party Sale Option.

(a) Provided that (i) no Default or Event of Default shall have occurred and be continuing and (ii) the Election Notice has been appropriately given specifying the Sale Option, Lessee shall undertake to cause a sale of the Property on the Election Date (all as specified in the Election Notice), in accordance with the provisions of Section 21.1 hereof. Such Election Date on which a sale is required may be hereafter referred to as the “Sale Date”.

(b) In the event Lessee exercises the Sale Option then Lessee shall deliver the requisite environmental site assessments as required pursuant to Section 10.2. In the event such environmental assessments shall reveal, a recommendation for remediation of any material Hazardous Substances, any material violation of Environmental Laws, other material Environmental Violation or potential material Environmental Violation (with materiality determined in each case by Lessor in its reasonable discretion), then Lessee on the Sale Date at the election of Lessor shall pay to Lessor an amount equal to the Termination Value and any and all other amounts due and owing hereunder. Upon receipt of such payment and all other amounts due under the Operative Agreements, Lessor
shall transfer to Lessee all of Lessor’s right, title and interest in and to the Property in accordance with Section 20.2.

ARTICLE XXI.

21.1 Sale Procedure.

(a) During the Marketing Period, Lessee, on behalf of Lessor, shall market using all commercially reasonable efforts to obtain bids for the cash purchase of the Property in connection with a sale to one (1) or more third party purchasers to be consummated on the Sale Date for the highest price available, shall notify Lessor promptly of the name and address of each prospective purchaser and the cash price which each prospective purchaser shall have offered to pay for the Property and shall provide Lessor with such additional information about the bids and the bid solicitation procedure as Lessor may reasonably request from time to time. All such prospective purchasers must be Persons other than Lessee or any Affiliate of Lessee. On the Sale Date, Lessee shall pay (or cause to be paid) to Lessor and all other parties, as appropriate, the sum of all costs and expenses incurred by Lessor and/or the Agent (as the case may be) in connection with such sale of the Property (regardless of whether such sale actually occurs) and all other amounts payable pursuant to Section 21.1(b).

Lessor (at the direction of the Majority Secured Parties) may reject any and all bids and may solicit and obtain bids by giving Lessee written notice to that effect; provided, however, that notwithstanding the foregoing, Lessor may not reject any bid for the Property submitted by Lessee if such bid is greater than or equal to the Limited Recourse Amount, and represents a bona fide offer from a third party purchaser. If the highest price which a prospective purchaser or the prospective purchasers shall have offered to pay for the Property on the Sale Date is less than the Limited Recourse Amount or if such bid does not represent a bona fide offer from a third party or if there are no bids, Lessor may elect to retain the Property by giving Lessee prior written notice of Lessor’s election to retain the same, and promptly upon receipt of such notice, Lessee shall surrender, or cause to be surrendered, the Property specified in such notice in the condition required by and otherwise in accordance with the terms and conditions of Section 10.1. Upon acceptance of any bid, Lessor agrees, at Lessee’s request and expense, to execute a contract of sale with respect to such sale, so long as the same is consistent with the terms of this Article XXI and provides by its terms that it is nonrecourse to Lessor.

Unless Lessor shall have elected to retain the Property pursuant to the provisions of the preceding paragraph, Lessee shall arrange for Lessor to sell the Property free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind), for cash on the Sale Date to the purchaser offering the highest cash sales price, as identified by Lessee or Lessor, as the case may be. To effect such transfer and assignment, Lessor shall execute, acknowledge (where required) and deliver to the appropriate purchaser each of the following: (a) special or limited warranty Deeds conveying the Property (to the extent it is real property titled to Lessor) to the appropriate purchaser free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind); (b) a Bill of Sale conveying the Property (to the extent it is personal property owned by Lessor) to the appropriate purchaser free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind); (c) any real estate Tax affidavit or other document required by law or customary in the State where the Property is located to be executed and filed in order to record each Deed; and (d) FIRPTA affidavits, as appropriate. All of the foregoing documentation
must be in form and substance reasonably satisfactory to Lessor and Lessee; provided, no Financing Party shall be responsible for any representation or warranty or any other assurance other than the representations and warranties referenced in the foregoing subsections (a) and (b). Lessee shall surrender the Property if it is so sold subject to such documents to each purchaser in the condition required by and otherwise in accordance with Section 10.1, or in such other condition as may be agreed between Lessee and such purchaser. Lessee shall not take or fail to take any action which would have the effect of unreasonably discouraging bona fide third party bids for the Property. If the Property is not sold on the Sale Date in accordance with the terms of this Section 21.1, then Lessee shall be obligated to pay Lessor on the Sale Date an amount equal to the Maximum Residual Guarantee Amount, and Lessee shall transfer all of its right, title and interest in and to the Property to Lessor.

(b) If the Property is sold on a Sale Date to a third party purchaser in accordance with the terms of Section 21.1(a) and the purchase price paid for the Property is less than the GAAP Project Cost (hereinafter such difference shall be referred to as the “Deficiency Balance”), then Lessee hereby unconditionally promises to pay to Lessor on the Sale Date all Rent and all other amounts then due and owing pursuant to the Operative Agreements and the lesser of (i) the Deficiency Balance, or (ii) the Maximum Residual Guarantee Amount. In the case of such a sale to a third party purchaser where the purchase price paid for the Property is equal to or more than the GAAP Project Cost but less than the Termination Value, then Lessor shall retain the sale proceeds, and Lessee shall not share in the sale proceeds. On a Sale Date if (x) Lessor receives the Termination Value from a third party purchaser, (y) Lessor and such other parties receive all other amounts specified in the last sentence of the first paragraph of Section 21.1(a) and (z) there remains any excess proceeds from the sale of the Property, then Lessee may retain such excess. If the Property is retained by Lessor pursuant to an affirmative election made by Lessor pursuant to the provisions of Section 21.1(a) or for whatever other reason (other than a sale to Lessee (or its designee) pursuant to the Purchase Option) there is no sale to a third party purchaser, then Lessee hereby unconditionally promises to pay to Lessor on the Sale Date all Rent and all other amounts then due and owing pursuant to the Operative Agreements and an amount equal to the Maximum Residual Guarantee Amount. Any payment of any of the foregoing amounts described in this Section 21.1(b) shall be made together with a payment of all other amounts referenced in the last sentence of the first paragraph of Section 21.1(a).

(c) In the event that the Property is either sold to a third party purchaser on the Sale Date or retained by Lessor in connection with an affirmative election made by Lessor pursuant to the provisions of Section 21.1(a), then in either case on the applicable Sale Date Lessee shall provide Lessor or such third party purchaser with (i) all permits, certificates of occupancy, governmental licenses and authorizations necessary to use, operate, repair, access and maintain the Property for the purpose it is being used by Lessee, and (ii) such manuals, permits, easements, licenses, intellectual property, know-how, rights-of-way and other rights and privileges in the nature of an easement as are reasonably necessary or desirable in connection with the use, operation, repair, access to or maintenance of the Property. All assignments, licenses, easements, agreements and other deliveries required by clauses (i) and (ii) of this paragraph (c) shall be in form reasonably satisfactory to Lessor or such third party purchaser(s), as applicable, and shall be fully assignable (including both primary assignments and assignments given in the nature of security) without payment of any fee, cost or other charge.

21.2 Application of Proceeds of Sale.
Lessor shall apply the proceeds of sale of the Property as set forth in Section 8.7 of the Participation Agreement.

21.3 **Indemnity for Excessive Wear.**

If the proceeds of the sale described in Section 21.1 shall be less than the Limited Recourse Amount, and at the time of such sale it shall have been reasonably determined (pursuant to the Appraisal Procedure) that the Fair Market Sales Value of the Property shall have been impaired by greater than expected wear and tear during the term of the Lease, Lessee shall pay to Lessor within ten (10) days after receipt of Lessor’s written statement (i) the amount of such excess wear and tear determined by the Appraisal Procedure or (ii) the amount of the Sale Proceeds Shortfall, whichever amount is less.

21.4 **Appraisal Procedure.**

For determining the Fair Market Sales Value of the Property or any other amount which may, pursuant to any provision of any Operative Agreement, be determined by an appraisal procedure, Lessor and Lessee shall use the following procedure (the “Appraisal Procedure”). Lessor and Lessee shall endeavor to reach a mutual agreement as to such amount for a period of ten (10) days from commencement of the Appraisal Procedure under the applicable Section of the Lease, and if they cannot agree within ten (10) days, then two (2) qualified appraisers, one (1) chosen by Lessee and one (1) chosen by Lessor, shall mutually agree thereupon, but if either party shall fail to choose an appraiser within twenty (20) days after notice from the other party of the selection of its appraiser, then the appraisal by such appointed appraiser shall be binding on Lessee and Lessor. If the two (2) appraisers cannot agree within twenty (20) days after both shall have been appointed, then a third appraiser shall be selected by the two (2) appraisers or, failing agreement as to such third appraiser within thirty (30) days after both shall have been appointed, by the American Arbitration Association. The decisions of the three (3) appraisers shall be given within twenty (20) days of the appointment of the third appraiser and the decision of the appraiser most different from the average of the other two (2) shall be discarded and such average shall be binding on Lessor and Lessee; provided, that if the highest appraisal and the lowest appraisal are equidistant from the third appraisal, the third appraisal shall be binding on Lessor and Lessee. The fees and expenses of the appraiser appointed by Lessee shall be paid by Lessee; the fees and expenses of the appraiser appointed by Lessor shall be paid by Lessor (such fees and expenses not being indemnified pursuant to Section 11 of the Participation Agreement or otherwise by Lessee pursuant to the Operative Agreements); and the fees and expenses of the third appraiser shall be divided equally between Lessee and Lessor.

21.5 **Certain Obligations Continue.**

During the Marketing Period, the obligation of Lessee to pay Rent (including the installment of Basic Rent due on the Sale Date), pay indemnities, maintain the Property and maintain insurance shall continue undiminished until payment in full to Lessor of the sale proceeds, if any, the Maximum Residual Guarantee Amount or the Deficiency Balance (as applicable), the amount due under Section 21.3, if any, and all other amounts due to Lessor or any other Person with respect to the Property or any Operative Agreement. Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise to take action in connection with any such sale, other than as expressly provided in this Article XXI.

**ARTICLE XXII.**

22.1 **Holding Over.**
If Lessee shall for any reason remain in possession of the Property after the expiration or earlier termination of this Lease (unless the Property is conveyed to Lessee or Lessee is otherwise lawfully in possession of the Property pursuant to the terms of the Operative Agreements), such possession shall be as a tenancy at sufferance during which time Lessee shall continue to pay Supplemental Rent that would be payable by Lessee hereunder were the Lease then in full force and effect and Lessee shall continue to pay Basic Rent at the lesser of the highest lawful rate and an amount of Basic Rent (calculated at a Lessor Yield for the Lessor Advances at the Overdue Rate). Such Basic Rent shall be payable from time to time upon demand by Lessor and such additional amount of Basic Rent shall be for the account of Lessor and not shall not be shared with Lessee. During any period of tenancy at sufferance, Lessee shall, subject to the second preceding sentence, be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to tenants at sufferance, to continue its occupancy and use of the Property. Nothing contained in this Article XXII shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease as to the Property (unless the Property is conveyed to Lessee) and nothing contained herein shall be read or construed as preventing Lessor from maintaining a suit for possession of the Property or exercising any other remedy available to Lessor at law or in equity.

ARTICLE XXIII.

23.1 **Risk of Loss.**

During the Term, unless Lessee shall not be in actual possession of the Property solely by reason of Lessor’s exercise of its remedies of dispossession under Article XVII, the risk of loss or decrease in the enjoyment and beneficial use of the Property as a result of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise is assumed by Lessee, and Lessor shall in no event be answerable or accountable therefor.

ARTICLE XXIV.

24.1 **Assignment.**

Lessee may not assign this Lease or any of its rights or obligations hereunder or with respect to the Property except in accordance with Section 10.1 of the Participation Agreement.

24.2 **Subleases.**

(a) Promptly, but in any event within five (5) Business Days, following the execution and delivery of any sublease permitted by this Article XXIV, Lessee shall notify Lessor of the execution of such sublease. As of the date of this Lease, Lessee shall lease the Property from Lessor, and any existing tenant respecting the Property shall automatically be deemed to be a subtenant of Lessee and not a tenant of Lessor.

(b) Provided no Lease Default or Lease Event of Default has occurred and is continuing, Lessee may, without the prior written consent of any Financing Party or any other Person and subject to the other provisions of this Section 24.2, sublet the Property or portion thereof to any Subsidiary of the Parent. Lessee may otherwise sublet the Property or portion thereof to any Person (other than to a Subsidiary of the Parent) only with the consent of the Majority Secured Parties (such consent not to be unreasonably withheld or delayed).
(c) No sublease (referenced in this Section 24.2 or otherwise) or other relinquishment of possession to the Property shall in any way discharge or diminish any obligation of any Credit Party to Lessor hereunder or under any of the other Operative Agreements and Lessee shall remain directly and primarily liable under this Lease as to the Property, or portion thereof, so sublet.

(d) No sublease (referenced in this Section 24.2 or otherwise) shall extend beyond the Term of this Lease except with the consent of Majority Secured Parties (such consent not to be unreasonably withheld or delayed) and each such sublease shall be expressly subject and subordinate to this Lease.

(e) No sublease hereunder, whether or not to an Affiliate of Lessee, shall subject any Financing Party to regulation by any Governmental Authority to which any Financing Party would not have been subject but for such sublease, nor shall any sublessee be subject to a proceeding under bankruptcy, insolvency or similar laws at the time of such sublease, nor shall such sublease create a Lease Default or Lease Event of Default hereunder.

ARTICLE XXV.

25.1 No Waiver.

No failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a Lease Default or Lease Event of Default, and no acceptance of full or partial payment of Rent during the continuance of any such Lease Default or Lease Event of Default, shall constitute a waiver of any such Lease Default or Lease Event of Default or of any such term. To the fullest extent permitted by law, no waiver of any Lease Default or Lease Event of Default shall affect or alter this Lease, and this Lease shall continue in full force and effect with respect to any other then existing or subsequent Lease Default or Lease Event of Default.

ARTICLE XXVI.

26.1 Acceptance of Surrender.

No surrender to Lessor of this Lease or of all or any portion of the Property or of any part thereof or of any interest therein shall be valid or effective unless agreed to and accepted in writing by Lessor and no act by Lessor or the Agent or any representative or agent of Lessor or the Agent, other than a written acceptance, shall constitute an acceptance of any such surrender.

26.2 No Merger of Title.

There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, in whole or in part, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate, (b) any right, title or interest in the Property or (c) any Note.

26.3 Estoppel Certificates.

At any time and from time to time, but not more than once in any three hundred and sixty-five (365) day period, upon not less than ten (10) Business Days’ prior request by Lessor or Lessee (the “Requesting Party”), the other party (whichever party shall have received such request, the “Certifying Party”) shall furnish to the Requesting Party a certificate signed by an authorized officer of the Certifying Party (or, in the case of Lessee, a Responsible Officer) certifying that this Lease is in full force and effect (or that this
Lease is in full force and effect as modified and setting forth the modifications; the dates to which the Basic Rent and Supplemental Rent have been paid; to the best knowledge of the signer of such certificate, whether or not the Requesting Party is in default under any of its obligations hereunder (and, if so, the nature of such alleged default); and such other matters under this Lease as the Requesting Party may reasonably request. Any such certificate furnished pursuant to this Section 26.3 may be relied upon by the Requesting Party and any existing or prospective mortgagee, purchaser and any accountant or auditor, of, from or to the Requesting Party (or any Affiliate thereof).

ARTICLE XXVII.

27.1 Notices.

All notices required or permitted to be given under this Lease shall be in writing and delivered as provided in the Participation Agreement.

ARTICLE XXVIII.

28.1 Miscellaneous.

Anything contained in this Lease to the contrary notwithstanding, all claims against and liabilities of Lessee or Lessor arising from events occurring prior to the expiration or earlier termination of this Lease shall survive such expiration or earlier termination. If any provision of this Lease shall be held to be unenforceable in any jurisdiction, such unenforceability shall not affect the enforceability of any other provision of this Lease in such jurisdiction or of such provision or of any other provision hereof in any other jurisdiction.

28.2 Amendments and Modifications.

This Lease may not be amended, waived, discharged or terminated except in accordance with the provisions of Section 12.4 of the Participation Agreement.

28.3 Successors and Assigns.

All the terms and provisions of this Lease shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

28.4 Headings and Table of Contents.

The headings and table of contents in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

28.5 Counterparts.

This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one (1) and the same instrument.

28.6 GOVERNING LAW.

THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCEPT TO THE
EXTENT THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED ARE REQUIRED TO APPLY.

28.7 Calculation of Rent.

All calculation of Rent payable hereunder shall be computed based on the actual number of days elapsed over a year of three hundred sixty (360) days or, to the extent such Rent is based on the ABR, three hundred sixty-five (365) (or three hundred sixty-six (366), as applicable) days.

28.8 Memorandum of Lease.

This Lease shall not be recorded; provided, Lessor and Lessee shall promptly after the Commencement Date record (a) a memorandum of this Lease (in substantially the form of Exhibit B attached hereto) or a short form lease (in form and substance reasonably satisfactory to Lessor) regarding the Property in the local filing office with respect thereto, in all cases at Lessee’s cost and expense, and as required under Applicable Law to sufficiently evidence this Lease in the applicable real estate filing records.

28.9 Allocations Among the Financing Parties.

Notwithstanding any other term or provision of this Lease to the contrary, the allocations of the proceeds of the Property and any and all other Rent and other amounts received hereunder shall be subject to the intercreditor provisions among the Financing Parties set forth in Section 8.7 of the Participation Agreement.

28.10 Limitations on Recourse.

The limitations on recourse set forth in Section 12.9 of the Participation Agreement shall apply regarding this Lease.

28.11 WAIVERS OF JURY TRIAL.

EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LEASE AND FOR ANY COUNTERCLAIM THEREIN.


Lessor and Lessee hereby acknowledge and agree that (a) the Agent shall, in its discretion, direct and/or act on behalf of Lessor pursuant to the Participation Agreement, including the provisions of Sections 8.2(c) and 8.6 of the Participation Agreement, (b) all notices to be given to Lessor shall be given to the Agent and (c) all notices to be given by Lessor may be given by the Agent, at its election.

28.13 SUBMISSION TO JURISDICTION AND VENUE.

THE PROVISIONS OF THE PARTICIPATION AGREEMENT RELATING TO SUBMISSION TO JURISDICTION AND VENUE ARE HEREBY INCORPORATED BY REFERENCE HEREIN, MUTATIS MUTANDIS.
28.14 USURY SAVINGS PROVISION.

IT IS THE INTENT OF THE PARTIES HERETO TO CONFORM TO AND CONTRACT IN STRICT COMPLIANCE WITH APPLICABLE USURY LAW FROM TIME TO TIME IN EFFECT. TO THE EXTENT ANY RENT OR PAYMENTS HEREUNDER ARE HEREAFTER CHARACTERIZED BY ANY COURT OF COMPETENT JURISDICTION AS THE REPAYMENT OF PRINCIPAL AND INTEREST THEREON, THIS SECTION 28.14 SHALL APPLY. ANY SUCH RENT OR PAYMENTS SO CHARACTERIZED AS INTEREST MAY BE REFERRED TO HEREIN AS “INTEREST.” ALL AGREEMENTS AMONG THE PARTIES HERETO ARE HEREBY LIMITED BY THE PROVISIONS OF THIS PARAGRAPH WHICH SHALL OVERRIDE AND CONTROL ALL SUCH AGREEMENTS, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER WRITTEN OR ORAL. IN NO WAY, NOR IN ANY EVENT OR CONTINGENCY (INCLUDING PREPAYMENT OR ACCELERATION OF THE MATURITY OF ANY OBLIGATION), SHALL ANY INTEREST TAKEN, RESERVED, CONTRACTED FOR, CHARGED, OR RECEIVED UNDER THIS LEASE OR OTHERWISE, EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMISSIBLE UNDER APPLICABLE LAW. IF, FROM ANY POSSIBLE CONSTRUCTION OF ANY OF THE OPERATIVE AGREEMENTS OR ANY OTHER DOCUMENT OR AGREEMENT, INTEREST WOULD OTHERWISE BE PAYABLE IN EXCESS OF THE MAXIMUM NONUSURIOUS AMOUNT, ANY SUCH CONSTRUCTION SHALL BE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH AND SUCH AMOUNTS UNDER SUCH DOCUMENTS OR AGREEMENTS SHALL BE AUTOMATICALLY REDUCED TO THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED UNDER APPLICABLE LAW, WITHOUT THE NECESSITY OF EXECUTION OF ANY AMENDMENT OR NEW DOCUMENT OR AGREEMENT. IF LESSOR SHALL EVER RECEIVE ANYTHING OF VALUE WHICH IS CHARACTERIZED AS INTEREST WITH RESPECT TO THE OBLIGATIONS OWED HEREUNDER OR UNDER APPLICABLE LAW AND WHICH WOULD, APART FROM THIS PROVISION, BE IN EXCESS OF THE MAXIMUM LAWFUL AMOUNT, AN AMOUNT EQUAL TO THE AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE INTEREST SHALL, WITHOUT PENALTY, BE APPLIED TO THE REDUCTION OF THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL AND NOT TO THE PAYMENT OF INTEREST, OR REFUNDED TO LESSEE OR ANY OTHER PAYOR THEREOF, IF AND TO THE EXTENT SUCH AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE EXCEEDS THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL. THE RIGHT TO DEMAND PAYMENT OF ANY AMOUNTS EVIDENCED BY ANY OF THE OPERATIVE AGREEMENTS DOES NOT INCLUDE THE RIGHT TO RECEIVE ANY INTEREST WHICH HAS NOT OTHERWISE ACCRUED ON THE DATE OF SUCH DEMAND, AND LESSOR DOES NOT INTEND TO CHARGE OR RECEIVE ANY UNEARNED INTEREST IN THE EVENT OF SUCH DEMAND. ALL INTEREST PAID OR AGREED TO BE PAID TO LESSOR SHALL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BE AMORTIZED, PRORATED, ALLOCATED AND SPREAD THROUGHOUT THE FULL STATED TERM (INCLUDING ANY RENEWAL OR EXTENSION) OF THIS LEASE SO THAT THE AMOUNT OF INTEREST ON ACCOUNT OF SUCH PAYMENTS DOES NOT EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED BY APPLICABLE LAW.
IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed and delivered as of the date first above written.

WACHOVIA SERVICE CORPORATION,
as Lessor

By: ______________
Name: ______________
Title: ______________

Wachovia Service Corporation
MAC: D1053-124
301 South College Street, 12th Floor
Charlotte, NC 28202
Attention: Matthew Kuhn/Karla Brewer
Phone: 704-410-2459

{signature pages continue}
AVDC, INC., as Lessee

By: ____________
Name: ____________
Title: ____________

AVDC, Inc.
c/o Big Lots, Inc.
300 Phillipi Road
Columbus, OH 43228-5311

[signature pages continue]
Receipt of this original counterpart of the foregoing Lease is hereby acknowledged as the date hereof

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as the Agent

By: ____________
Name: ____________
Title: ____________

Wells Fargo Bank, National Association
10 South Wacker Drive, 22nd Floor
Chicago, IL 60606
Attention: Peter R. Martinets
Telephone: 312-845-8602
Fax: 312-553-4783

[signature pages end]
EXHIBIT A TO THE REAL PROPERTY LEASE AGREEMENT

(Legal Description of the Property)

A-1
MEMORANDUM OF REAL PROPERTY LEASE AGREEMENT

THIS MEMORANDUM OF REAL PROPERTY LEASE AGREEMENT, dated as of _____, 20__, (this “Memorandum”), is by and between WACHOVIA SERVICE CORPORATION, a Delaware corporation, with an office at 301 South College Street, Charlotte, NC 28202 (hereinafter referred to as “Lessor”), and AVDC, INC., an Ohio corporation, with an office at _____ (hereinafter referred to as “Lessee”).

For purposes of provisions of the Lease and this Memorandum related to the creation and enforcement of the Lease and this Memorandum as a deed of trust, LESSEE, as deed of trust grantor, hereby grants and conveys all Lessee’s right, title and interest in the Property (as hereinafter defined) and all proceeds thereof (including insurance proceeds) to First American Title Insurance Company (or any other Person appropriately designated from time to time by Lessor), as trustee, IN TRUST AND WITH POWER OF SALE, for the benefit of LESSOR, as beneficiary. The Lien granted and conveyed by Lessee to First American Title Insurance Company (or any other Person appropriately designated from time to time by Lessor), as trustee, pursuant to the Lease and this Memorandum is and shall be a perfected Lien.

WITNESSETH:

That for value received, Lessor and Lessee do hereby covenant, promise and agree as follows:

B-1
1. **Demised Premises and Date of Lease.** Lessor has leased to Lessee, and Lessee has leased from Lessor, for the Term (as hereinafter defined), certain real property and other property located in _____, which is described in the attached Schedule 1 (the “Property”), pursuant to the terms of a Real Property Lease Agreement between Lessor and Lessee dated as of November 30, 2017 (as such may be amended, modified, extended, supplemented, restated and/or replaced from time to time, “Lease”).

The Lease shall constitute a mortgage, deed of trust and security agreement and financing statement under the laws of the state in which the Property is situated. The maturity date of the obligations secured thereby shall be _____, unless extended to not later than _____.

For purposes of provisions of the Lease related to the creation and enforcement of the Lease as a security agreement and a fixture filing, Lessee is the debtor, Lessor is the secured party and Agent is the assignee of Lessor (given that Agent is acting as collateral agent for the Secured Parties). The mailing addresses of the debtor (Lessee herein) and of the secured party (Lessor herein) from which information concerning security interests hereunder may be obtained are as set forth on the signature pages hereof. A carbon, photographic or other reproduction of this Memorandum or of any financing statement related to the Lease shall be sufficient as a financing statement for any of the purposes referenced herein.

2. **Term, Renewal, Extension and Purchase Option.** The term of the Lease for the Property (“Term”) commenced as of _____, 20__ and shall end as of _____, 20__, unless the Term is extended or earlier terminated in accordance with the provisions of the Lease. The Lease contains provisions for renewal and extension. The tenant has a purchase option under the Lease.

3. **Mortgage; Power of Sale.** Without limiting any other remedies set forth in the Lease, in the event that a court of competent jurisdiction rules that the Lease constitutes a mortgage, deed of trust or other secured financing as is the intent of the parties, then Lessor and Lessee agree that Lessee has granted, pursuant to the terms of the Lease, a Lien in all Lessee’s right, title and interest in the Property WITH POWER OF SALE, and that, upon the occurrence and during the continuance of any Lease Event of Default, Lessor shall have the power and authority, to the extent provided by law, after prior notice and lapse of such time as may be required by law, to foreclose its interest (or cause such interest to be foreclosed) in all or any part of the Property.

4. **Effect of Memorandum.** The purpose of this instrument is to give notice of the Lease and its respective terms, covenants and conditions to the same extent as if the Lease were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or determine the intent of the parties under the Lease.

5. **Counterpart Execution.** This Memorandum may be executed in any number of counterparts and by each of the parties hereto in separate counterparts, all such counterparts together constituting but one (1) and the same instrument.

    [the remainder of this page has been intentionally left blank]
IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first written.

LESSOR:

WACHOVIA SERVICE CORPORATION,
as Lessor

By: _____________
Name: _____________
Title: _____________

Wachovia Service Corporation
c/o Wells Fargo Securities, LLC
MAC D1086-051
550 South Tryon Street
Charlotte, NC 28202

[signature pages continue]

B-3
LESSEE:

AVDC, INC., as Lessee

By: __________
Name: __________
Title: __________

AVDC, Inc.
c/o Big Lots, Inc.
300 Phillipi Road
Columbus, OH 43228-5311

[signature pages continue]
SCHEDULE 1

(Description of Property)

B-5
On ____________________, 2017, before me, ____________________, Notary Public, personally appeared ____________________, as ____________________, of WACHOVIA SERVICE CORPORATION, a Delaware corporation, on behalf of the corporation, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________ [SEAL]

On ____________________, 2017, before me, ____________________, Notary Public, personally appeared ____________________, as ____________________, of AVDC, INC., an Ohio corporation, on behalf of the corporation, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________ [SEAL]

B-6
CONSTRUCTION AGENCY AGREEMENT

Dated as of November 30, 2017

between

AVDC, INC.,
as the Construction Agent

and

WACHOVIA SERVICE CORPORATION,
as the Lessor
# TABLE OF CONTENTS

| ARTICLE I DEFINITIONS; RULES OF USAGE | 1 |
| 1.1 Definitions | 1 |
| 1.2 Interpretation | 1 |
| ARTICLE II APPOINTMENT OF THE CONSTRUCTION AGENT | 2 |
| 2.1 Appointment | 2 |
| 2.2 Acceptance and Undertaking | 2 |
| 2.3 Term | 2 |
| 2.4 Scope of Authority | 2 |
| 2.5 Delegation of Duties | 3 |
| 2.6 Covenants of the Construction Agent | 3 |
| ARTICLE III THE PROPERTY | 5 |
| 3.1 Construction | 5 |
| 3.2 Amendments; Modifications | 5 |
| 3.3 Force Majeure Events | 6 |
| 3.4 Casualty Occurrences | 6 |
| 3.5 Condemnation Occurrences | 7 |
| ARTICLE IV PAYMENT OF FUNDS | 8 |
| 4.1 Right to Receive Construction Cost | 8 |
| ARTICLE V EVENTS OF DEFAULT | 9 |
| 5.1 Events of Default | 9 |
| 5.2 Damages | 10 |
| 5.3 Remedies; Remedies Cumulative | 10 |
| 5.4 Limitation on Recourse | 13 |
| ARTICLE VI THE LESSOR’S RIGHTS | 14 |
| 6.1 [Reserved] | 14 |
| 6.2 The Lessor’s Right to Cure the Construction Agent’s Defaults | 14 |
| ARTICLE VII MISCELLANEOUS | 15 |
| 7.1 Notices | 15 |
| 7.2 Successors and Assigns | 15 |
| 7.3 GOVERNING LAW | 15 |
| 7.4 SUBMISSION TO JURISDICTION; VENUE; WAIVERS | 15 |
| 7.5 Amendments and Waivers | 15 |
| 7.6 Counterparts | 15 |
| 7.7 Severability | 15 |
| 7.8 Headings and Table of Contents | 15 |
| 7.9 WAIVER OF JURY TRIAL | 16 |
| 7.10 No Construction Agency Fee | 16 |
| WAIVER OF JURY TRIAL | 16 |
CONSTRUCTION AGENCY AGREEMENT

THIS CONSTRUCTION AGENCY AGREEMENT, dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Agreement”), between WACHOVIA SERVICE CORPORATION, a Delaware corporation (the “Lessor”), and AVDC, INC., an Ohio corporation (the “Construction Agent”).

PRELIMINARY STATEMENT

A. The Lessor and the Construction Agent are parties to that certain Real Property Lease Agreement dated as of even date herewith (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Lease”), pursuant to which the Construction Agent, as lessee (in such capacity, the “Lessee”) has agreed to lease certain Land, Improvements and Equipment.

B. In connection with the execution and delivery of the Participation Agreement, the Lease and the other Operative Agreements, and subject to the terms and conditions hereof, (i) the Lessor desires to appoint the Construction Agent as its sole and exclusive agent in connection with the identification and acquisition of the Property (provided, title to the Property shall be held in the name of the Lessor) and the development, acquisition, installation, construction and testing of the Improvements and the Equipment in accordance with the Plans and Specifications and (ii) the Construction Agent desires, for the benefit of the Lessor, to identify and acquire the Property and to cause the development, acquisition, installation, construction and testing of the Improvements, the Equipment and the other components of the Property in accordance with the Plans and Specifications and to undertake such other liabilities and obligations as are herein set forth.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS; RULES OF USAGE

1.1 Definitions.

For purposes of this Agreement, capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in Appendix A to that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof, the “Participation Agreement”) among the Construction Agent, the various entities party thereto from time to time, as the Guarantors, Lessor, the various banks and other lending institutions parties thereto from time to time, as Lease Participants, and Wells Fargo Bank, National Association, as agent for the Lessor Parties, and respecting the Security Documents, as agent for the Secured Parties. Unless otherwise indicated, references in this Agreement to articles, sections, paragraphs, clauses, appendices, schedules and exhibits are to the same contained in this Agreement.

1.2 Interpretation.

The rules of usage set forth in Appendix A to the Participation Agreement shall apply to this Agreement.
ARTICLE II
APPOINTMENT OF THE CONSTRUCTION AGENT

2.1  Appointment.

Subject to the terms and conditions hereof, the Lessor hereby irrevocably designates and appoints the Construction Agent as its exclusive agent, in connection with the identification and acquisition from time to time of the Property (provided, title to the Property shall be held in the name of the Lessor) and the design, development, acquisition, installation, construction and testing of the Improvements, the Equipment and the other components of the Property in accordance with the Plans and Specifications on the Land, and pursuant to the terms of the Operative Agreements. Subject to the terms and conditions of this Agreement and the other Operative Agreements, during the Construction Period, the Construction Agent shall have sole management responsibility for the benefit of the Lessor over, and responsibility for, the construction, means, methods, sequences and procedures with respect to the Construction Period Property. As between the Lessor, any other Indemnified Person and the Construction Agent, the Construction Agent shall be responsible for the acts and omissions of its subcontractors and agents. Notwithstanding any provisions hereof or in any other Operative Agreement to the contrary, the Construction Agent acknowledges and agrees that the Lessor Parties shall advance no more than the aggregate Lessor Parties Commitment in regard to the Property (including for any and all Advances).

2.2  Acceptance and Undertaking.

The Construction Agent hereby unconditionally accepts the agency appointment and undertakes, for the benefit of the Lessor, to identify and acquire the Property (provided, title to the Property shall be held in the name of the Lessor) and the design, development, acquisition, installation, construction and testing of the Improvements, the Equipment and the other components of the Property in accordance with the Plans and Specifications and the Operative Agreements.

2.3  Term.

This Agreement shall commence on the date hereof. The Property shall be subject to this Agreement from the date Lessor obtains title thereto until the Completion Date.

2.4  Scope of Authority.

(a)  The Lessor hereby expressly authorizes the Construction Agent, or any agent or contractor of the Construction Agent, and the Construction Agent unconditionally agrees for the benefit of the Lessor, subject to Section 2.4(b), to take all action necessary or desirable for the performance and satisfaction of any and all of the Lessor’s obligations under any construction agreement, purchase and sale contract or option contract and to fulfill all of the obligations of the Construction Agent including:

(i)  the identification and assistance with the acquisition of Property in accordance with the terms and conditions of the Participation Agreement;

(ii)  all due diligence review and analysis, design and supervisory functions relating to the design, development, acquisition, installation, construction and testing of the related Improvements, Equipment and other components of the Property and performing all engineering work related thereto;
(iii) (A) negotiating, entering into, performing and enforcing all contracts and arrangements to acquire the Property and (B) negotiating, executing, performing and enforcing all contracts and arrangements to design, develop, acquire, install, construct and test the Improvements, the Equipment and the other components of the Property on such terms and conditions as are customary and reasonable in light of local and national standards and practices and the businesses in which the Lessee is engaged;

(iv) obtaining all necessary permits, licenses, consents, approvals, development rights, clearing title and survey exceptions, entitlements and other authorizations, including all of the foregoing required for the Property and the use and occupancy thereof and those required under Applicable Law (including Environmental Laws), from all Governmental Authorities in connection with the design, development, acquisition, installation, construction and testing of the Improvements, the Equipment and the other components of the Property in accordance with the Plans and Specifications;

(v) maintaining all books and records with respect to the Property and the construction, operation and management thereof; and

(vi) performing any other acts necessary in connection with the identification and acquisition of the Property and the design, development, acquisition, installation, construction and testing of the related Improvements, Equipment and all other additional components of the Property in accordance with the Plans and Specifications.

(b) Neither the Construction Agent nor any of its Affiliates or agents shall enter into any contract or consent to any contract in the name of the Lessor without the Lessor’s prior written consent, such consent to be given or withheld in the exercise of the Lessor’s reasonable discretion; provided, however, that (i) no such contract will increase the obligations of the Lessor beyond the obligations of the Lessor as are expressly set forth in the Operative Agreements and (ii) each such contract shall be expressly non-recourse to the Lessor on terms and conditions that are reasonably acceptable to the Lessor.

(c) Subject to the terms and conditions of this Agreement and the other Operative Agreements, the Construction Agent shall have sole management responsibility over the installation, construction and testing means, methods, sequences and procedures with respect to the Property.

2.5 Delegation of Duties.

The Construction Agent may execute any of its duties under this Agreement by or through agents, contractors, employees or attorneys-in-fact; provided, however, that no such delegation shall limit or reduce in any way the Construction Agent’s duties and obligations under this Agreement.

2.6 Covenants of the Construction Agent.

The Construction Agent hereby covenants and agrees that it will:

(a) following the Construction Commencement Date, cause the design, development, acquisition, installation, construction and testing of the Property to be prosecuted in a good and workmanlike manner, and respecting the Property substantially in accordance with the applicable Construction Documents, prevalent industry practices and otherwise in accordance with Section 3.1
hereof, all with such changes, subject to Section 3.2, as the Construction Agent may deem necessary or advisable;

(b) cause the date on which Completion for the Property occurs to be on or before the Construction Period Termination Date, free and clear (by removal or bonding) of Liens or claims for materials supplied or labor or services performed in connection with the development, acquisition, installation, construction or testing thereof;

(c) cause all outstanding punch list items with respect to such Improvements to be completed promptly following Completion thereof;

(d) at all times subsequent to the initial Advance respecting the Property (i) cause good and marketable title to the Property to vest in the Lessor, (ii)(A) promptly execute and deliver to the Agent all additional documents reasonably requested by the Agent under the applicable real property law and/or Article 9 of the Uniform Commercial Code to perfect the Liens granted by the Construction Agent pursuant to the Security Documents and (B) promptly consent to the execution and delivery by the Lessor to the Agent of all additional documents from the Lessor reasonably requested by the Agent to carry out and effectuate the intent and purposes of the Operative Agreements and (iii) not permit Liens (other than Permitted Liens) to be filed or maintained respecting the Property;

(e) procure insurance for the Property during the Construction Period in compliance with Article XIV of the Lease as though the provisions of Article XIV of the Lease were stated herein;

(f) on or before the Construction Period Termination Date, (i) cause Completion to occur with respect to the Property in compliance with the terms and provisions of the Operative Agreements or (ii) in the context of the Lessor electing the remedy set forth in Section 5.3(b) in connection with the occurrence of an Agency Agreement Event of Default, purchase the Property for an amount equal to the Termination Value, but subject to the limitations of Section 5.4;

(g) cause all Improvements on the Property to be constructed (x) substantially in accordance with the applicable Plans and Specifications (as amended or modified from time to time in accordance with the Operative Agreements), except to the extent that failure to do so does not have, and could not reasonably be expected to have, a Material Adverse Effect, (y) in compliance with all Applicable Laws unless the failure to do so does not (i) have, and could not reasonably be expected to have, a Material Adverse Effect or (ii) give rise to a Claim against the Lessor for which the Construction Agent has no obligation to indemnify the Lessor pursuant to the Operative Agreements and (z) in compliance with all Insurance Requirements;

(h) ensure that all Land acquired pursuant to the Operative Agreements and all Improvements constructed on the Land shall be in compliance with all Applicable Laws unless the failure to do so does not (i) have, and could not reasonably be expected to have, a Material Adverse Effect or (ii) give rise to a Claim against the Lessor for which the Construction Agent has no obligation to indemnify the Lessor pursuant to the Operative Agreements, and fit for use as a property of the type specified in the Appraisal of the Property (if any) delivered in connection with the Property Closing Date therefor and other purposes attendant thereto;

(i) ensure that on or prior to the Construction Period Termination Date, all water, sewer, electric, gas, telephone and drainage facilities, all other utilities required to adequately service the Improvements for the intended use and means of access between such Improvements
and public highways for pedestrians and motor vehicles will be available pursuant to adequate permits (including any that may be required under applicable Environmental Laws), and all utilities serving the Property, or proposed to serve the Property in accordance with the Plans and Specifications, are or will be located in, and vehicular access to the Improvements on the Property will be provided by, either public rights-of-way abutting the Property or appurtenant rights;

(j) ensure that all necessary licenses, approvals, authorizations, consents, permits (including building, demolition and environmental permits, licenses, approvals, authorizations and consents), easements and rights of way, including dedication required for (i) the use, treatment, storage, transport, disposal or disposition of any Hazardous Substances on, at, under, or from the Property during the construction of the applicable Improvements thereon, and (ii) construction of the Improvements in accordance with the Plans and Specifications and this Agreement will be obtained from the appropriate Governmental Authorities having jurisdiction or from private parties, as the case may be, prior to the time required by such Governmental Authority or private party, except where the failure to obtain such licenses, approvals, authorization, consents, permits, easements, rights of way or dedication could not reasonably be expected to (i) have a Material Adverse Effect or (ii) give rise to a Claim against the Lessor for which the Construction Agent has no obligation to indemnify the Lessor pursuant to the Operative Agreements;

(k) notify the Lessor in writing not less than ten (10) Business Days after the occurrence of each Force Majeure Event with respect to the Property that Construction Agent reasonably believes will cause disruption or delay in construction of the Property of at least one (1) month;

(l) ensure at all times that the total Property Costs remaining to be expended for Completion of the Property does not exceed in the aggregate the Available Lessor Parties Commitment; and

(m) commence construction of the Improvements no later than January 31, 2018 and thereafter effect construction and development of the Property with diligence and continuity and ensure that at no point in time shall construction of the Property cease for a period in excess of sixty (60) days or more.

ARTICLE III
THE PROPERTY

3.1 Construction.

The Construction Agent shall cause the Improvements, the Equipment and all other components of the Property to be designed, developed, acquired, installed, constructed and tested in compliance with all Legal Requirements, all Insurance Requirements, all manufacturer’s specifications and standards and the standards maintained by the Construction Agent or any Guarantor for similar properties owned or operated by the Construction Agent or any Guarantor, and all specifications and standards applicable to properties of the Lessee or any Guarantor which are similar to the Permitted Facility, unless non-compliance, individually or in the aggregate, does not have, and could not reasonably be expected to have, a Material Adverse Effect.

3.2 Amendments; Modifications.

(a) Except as set forth in the following provisos, the Construction Agent may at any time revise, amend or modify the Plans and Specifications and/or the Construction Budget without the consent of the Lessor; provided, no amendment to the Plans and Specifications and/or the
Construction Budget is permitted to the extent the Lessor, in its reasonable discretion, determines that such amendment would result in (i) Completion for the Property occurring on or after the Construction Period Termination Date, (ii) the unfunded cost for Completion of the Property (including such costs which are Transaction Expenses to be funded by the Lessor Parties pursuant to the Operative Agreements) exceeding an amount equal to the then Available Lessor Parties Commitment or (iii) a likelihood, as determined by the Lessor in its commercially reasonable discretion, that the Property has lesser value, utility or useful life than that contemplated in accordance with the Construction Documents as such documents existed as of the Initial Closing Date (without regard to any modifications thereto from and after the Initial Closing Date); provided, further, no amendment to the Plans and Specifications and/or the Construction Budget which would reduce the contingency line item in the Construction Budget to an amount less than $2,500,000 shall be permitted except upon obtaining the prior consent of the Lessor. For clarification, pursuant to Section 8.2(c) of the Participation Agreement, the determination by the Lessor in both the foregoing provisos shall be made at the direction of the Agent (as determined by the Majority Secured Parties).

(b) The Construction Agent agrees that it will not implement any revision, amendment or modification to the Plans and Specifications for the Property if the aggregate effect of such revision, amendment or modification, when taken together with any previous or contemporaneous revision, amendment or modification to the Plans and Specifications for the Property, would cause a material reduction in value in excess of the cost reduction of such revision, amendment or modification of the Property when completed, unless such revision, amendment or modification is required by Legal Requirements.

3.3 **Force Majeure Events.**

If at any time prior to Completion of the Property there occurs a Force Majeure Event with respect to the Property and the Construction Agent reasonably determines that such Force Majeure Event will cause Completion of the Property to occur later than eighteen (18) months after the Initial Closing Date, then (as referenced in the definition of Construction Period Termination Date) the aforementioned eighteen (18) month period may be extended for up to three (3) additional months as is reasonably necessary to achieve Completion of the Property in light of the event or circumstances giving rise to such Force Majeure Event. The Construction Agent shall deliver to the Agent and the Lessor a notice in writing of the date to which the originally contemplated Construction Period Termination Date is to be extended, which notice shall contain a certification by the Construction Agent with respect to the Property describing the facts and circumstances giving rise to such Force Majeure Event, the expected duration of such delay resulting in such Force Majeure Event and the date the Construction Agent reasonably believes Completion will be achieved.

3.4 **Casualty Occurrences.**

(a) In the event of a Casualty with respect to the Construction Period Property, insurance awards for losses with respect to the Construction Period Property under any builder’s risk insurance or, to the extent required hereby, insurance for earthquake or flood, required to be carried hereunder, shall be adjusted with the insurance companies, including the filing of appropriate proceedings, as follows: (i) so long as no Lease Event of Default or Agency Agreement Event of Default shall have occurred and be continuing, such insurance awards for losses shall be adjusted by the Construction Agent (or, if such insurance awards relate to a Force Majeure Event, adjusted jointly by the Construction Agent and the Lessor) for payment to the Agent and shall be available to reimburse the Construction Agent for the continued construction of the Construction Period Property in accordance with the Operative Agreements, and (ii) if any Lease Event of
Default or Agency Agreement Event of Default shall have occurred and be continuing, such losses shall be adjusted by the Agent. The party which shall be entitled to adjust losses may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any award, compensation or insurance payment on account of any Casualty; provided, that the Construction Agent shall pay all expenses thereof, subject to Section 5.4 hereof and Section 11.6 of the Participation Agreement. At the request of the party entitled to adjust any such losses, and at the Construction Agent’s sole cost and expense (subject to Section 5.4 hereof and Section 11.6 of the Participation Agreement), the other party shall participate in any such proceeding, action, negotiation, prosecution or adjustment. The parties hereto agree that this Agreement shall control the rights of the parties hereto in and to such award, compensation or insurance payment relating to any Casualty affecting the Property during the Construction Period.

(b) Subject to the last two sentences of this paragraph, all proceeds of insurance maintained pursuant to the requirements hereof on account of any damage to or destruction of the Property during the Construction Period or any part thereof shall be paid over to the Agent and distributed as follows: (i) if no Lease Event of Default or Agency Agreement Event of Default shall have occurred and be continuing, then such proceeds shall be held by the Agent and, so long as the Construction Agent is diligently repairing the damage to the Property caused by the applicable Casualty, disbursed to the Construction Agent monthly, as construction and restoration proceeds to effect the repair of the Property, or (ii) if a Lease Event of Default or Agency Agreement Event of Default shall have occurred and be continuing, such proceeds shall be distributed in accordance with Section 8.7(b)(ii) of the Participation Agreement. If a Casualty occurs during the Construction Period with respect to all, or substantially all, of the Property and the Lessor has determined, in its commercially reasonable discretion, that there is no reasonable means by which Completion may be achieved on or prior to the Construction Period Termination Date and that no additional Advances will be made to restore the Property, then all such proceeds of insurance referenced in this Section 3.4(b) shall be distributed as set forth in Section 8.7(b)(i) of the Participation Agreement. If a Casualty occurs during the Construction Period and the Lessor has determined, in its commercially reasonable discretion, that there is no reasonable means by which Completion may be achieved on or prior to the Construction Period Termination Date such that the Property shall have the value, utility and useful life as originally contemplated in accordance with the Construction Documents as such documents existed as of the Initial Closing Date (without regard to any modifications thereto from and after the Initial Closing Date), then all such proceeds of insurance referenced in this Section 3.4(b) shall be distributed as set forth in Section 8.7(b)(i) of the Participation Agreement.

3.5 Condemnation Occurrences.

(a) The Construction Agent hereby agrees that it shall, within five (5) Business Days after the date on which the Construction Agent shall have notice thereof, give notice to the Lessor and the Agent of each action or proceeding by any Governmental Authority with respect to any actual, pending or threatened Condemnation affecting the Property during the Construction Period. All awards, compensation or insurance proceeds to be paid on account of such Condemnation shall (i) so long as no Lease Event of Default or Agency Agreement Event of Default shall have occurred and be continuing, be negotiated, prosecuted, adjusted or appealed by the Construction Agent (or, if such awards, compensation or insurance proceeds relate to a Force Majeure Event, negotiated, prosecuted, adjusted or appealed jointly by the Construction Agent and the Lessor) for payment to the Agent and shall be available to reimburse the Construction Agent for the continued construction of the Construction Period Property in accordance with the Operative Agreements, and (ii) if any Lease Event of Default or Agency Agreement Event of Default shall have occurred and be continuing, be negotiated, prosecuted, adjusted or appealed by the Agent. The party which shall
be entitled to adjust losses may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any award, compensation or insurance payment on account of any such Condemnation; provided, that the Construction Agent shall pay all expenses thereof, subject to Section 5.4 hereof and Section 11.6 of the Participation Agreement. At the request of the party entitled to adjust any such losses, and at the Construction Agent’s sole cost and expense (subject to Section 5.4 hereof and Section 11.6 of the Participation Agreement), the other party shall participate in any such proceeding, action, negotiation, prosecution or adjustment. The parties hereto agree that this Agreement shall control the rights of the parties hereto in and to such award, compensation or insurance payment relating to any Condemnation affecting the Property during the Construction Period.

(b) Subject to the last two sentences of this paragraph, during the Construction Period, all awards, compensation and insurance payments on account of any Condemnation affecting the Property shall be paid directly to the Agent or, if received by the Construction Agent, shall be held in trust for the Agent and shall promptly be paid over by the Construction Agent to the Agent. All amounts held by the Agent on account of any award, compensation or insurance payment described in this Section 3.5(b) shall be held by the Agent and, so long as the Construction Agent is diligently restoring or replacing the Property, shall be disbursed from time to time to the Construction Agent to effect the repair or replacement of the Property and, upon completion of such restoration or replacement (as evidenced by an Officer’s Certificate of the Construction Agent) distribute any funds then remaining in such account to the Construction Agent; provided, however, that if a Condemnation occurs during the Construction Period and (i) a Lease Event of Default or an Agency Agreement Event of Default shall have occurred and be continuing or (ii) the Construction Agent shall have elected not to restore or replace the portion of the Property so affected by such Condemnation, then all such awards, compensation and insurance payments referenced in this Section 3.5(b) shall be distributed as set forth in Section 8.7(b)(ii) of the Participation Agreement. If a Condemnation occurs during the Construction Period with respect to all, or substantially all, of the Property and the Lessor has determined, in its commercially reasonable discretion, that there is no reasonable means by which Completion may be achieved on or prior to the Construction Period Termination Date and that no additional Advances will be made to restore the Property, then all such awards, compensation and insurance payments referenced in this Section 3.5(b) shall be distributed as set forth in Section 8.7(b)(i) of the Participation Agreement. If a Condemnation occurs during the Construction Period and the Lessor has determined, in its commercially reasonable discretion, that there is no reasonable means by which Completion may be achieved on or prior to the Construction Period Termination Date such that the Property shall have the value, utility and useful life as originally contemplated in accordance with the Construction Documents as such documents existed as of the Initial Closing Date (without regard to any modifications thereto from and after the Initial Closing Date), then such awards, compensation and insurance payments referenced in this Section 3.5(b) shall be distributed as set forth in Section 8.7(b)(i) of the Participation Agreement.

ARTICLE IV
PAYMENT OF FUNDS

4.1 Right to Receive Construction Cost.

(a) In connection with the design, development, acquisition, installation, construction and testing of the Property and during the course of the construction of the Improvements on the Property, the Construction Agent may request that the Lessor Parties advance funds for the payment of Property Acquisition Costs or other Property Costs, and the Lessor Parties will comply with such request to the extent provided for under the Participation Agreement. The Construction Agent and
the Lessor acknowledge and agree that the Construction Agent’s right to request such funds and the Lessor Parties’ obligation to advance such funds for the payment of Property Acquisition Costs or other Property Costs is subject in all respects to the terms and conditions of the Participation Agreement and each of the other Operative Agreements. Without limiting the generality of the foregoing it is specifically understood and agreed that in no event shall the aggregate amounts advanced by the Lessor Parties for Property Acquisition Costs or other Property Costs and any other amounts due and owing hereunder or under any of the other Operative Agreements exceed the aggregate Lessor Parties Commitment, including such amounts owing for (i) design, development, acquisition, installation, construction and testing of the Property, (ii) additional amounts which accrue or become due and owing regarding the Advances prior to the Completion Date or (iii) any other purpose.

(b) The proceeds of any funds made available by the Lessor Parties to pay Property Acquisition Costs or other Property Costs shall be made available to the Construction Agent in accordance with the Requisition relating thereto and the terms of the Participation Agreement. The Construction Agent will use such proceeds only to pay the Property Acquisition Costs or other Property Costs set forth in the Requisition relating to such funds.

ARTICLE V
EVENTS OF DEFAULT

5.1 Events of Default.

If any one (1) or more of the following events (each an "Agency Agreement Event of Default") shall occur:

(a) the Construction Agent fails to apply any funds paid by the Lessor Parties to the Construction Agent in a manner consistent with the requirements of the Operative Agreements and as specified in the applicable Requisition for the design, development, acquisition, installation, construction and testing of the Property and related Improvements and Equipment or otherwise respecting the Property to the payment of Property Acquisition Costs or other Property Costs;

(b) Completion shall fail to occur for any reason on or prior to the Construction Period Termination Date or the Construction Agent shall abandon or permanently discontinue the construction and development of the Construction Period Property (which abandonment or permanent discontinuance shall be deemed to have occurred if no work at the Construction Period Property is undertaken or completed during a continuous period of sixty (60) days or more); provided, that beginning January 1, 2019, the Construction Agent may not abandon or permanently discontinue the construction and development of the Construction Period Property without the mutual agreement with (or consent of) the Lessor and each other Financing Party.

(c) any Lease Event of Default shall have occurred and not be cured within any cure period expressly permitted under the Lease;

(d) (i) any representation or warranty of any Credit Party contained in any Operative Agreement, or in any certificate, report furnished or delivered by any Credit Party to Agent or Lessor is incorrect, incomplete or misleading in any material respect when made or reaffirmed, as the case may be, or (ii) any Credit Party shall fail to observe or perform any term, covenant or condition of any Operative Agreement other than as set forth in paragraphs (a), (b) or (c) of this Section 5.1 and such failure to observe or perform any such term, covenant or condition is of a type that is subject to being cured and shall continue for more than thirty (30) days after the Credit Party
either has gained knowledge thereof or has received notice thereof; provided, to the extent the Credit Party shall be diligently attempting to cure any such failure to observe or perform, then the Credit Party shall have an additional thirty (30) days to effect such cure after the end of the initial thirty (30) day period; and

(e) except as permitted in accordance with Section 3.2, the Construction Agent shall cause or permit the Improvements to be constructed and equipped in a manner which deviates from the applicable Plans and Specifications, except to the extent that such deviation does not have, and could not reasonably be expected to have, a Material Adverse Effect, then, in any such event, the obligations of the Lessor or any other Lessor Party to make Construction Advances for obligations, amounts or expenses incurred or expended by the Construction Agent after the date of such Agency Agreement Event of Default shall terminate (unless the Lessor and the other Lessor Parties elect to continue making Construction Advances) and the Lessor may, in addition to the other rights and remedies provided for in this Agreement or otherwise available, including at law and/or in equity, terminate this Agreement by giving the Construction Agent written notice of such termination and upon the expiration of the time fixed in such notice and the payment of all amounts owing by the Construction Agent hereunder (including any amounts specified under Section 5.3 hereof), this Agreement shall terminate. The Construction Agent shall pay all costs and expenses incurred by or on behalf of the Lessor, including fees and expenses of counsel, as a result of any Agency Agreement Event of Default hereunder; provided, however, the liability of the Construction Agent shall be limited to the Construction Period Guarantee Amount with regard to any Agency Agreement Event of Default arising under Section 5.1(c) pursuant to a Lease Event of Default under (a) Section 17.1(m) of the Lease or (b) Section 17.1(e) of the Lease, but only to the extent arising due to a Change in Control or any other comparable term or description referencing a matter similar to what is described in Section 17.1(m) of the Lease but which term or description may use (as compared to Section 17.1(m) of the Lease) different percentage interests or reference a different formulation to describe such matter.

5.2 Damages.

The termination of the Lessor Parties’ obligations to make Construction Advances after an Agency Agreement Event of Default pursuant to Section 5.1 shall in no event relieve the Construction Agent of its liability and obligations hereunder arising during the term of this Agreement, all of which shall survive any such termination; provided, notwithstanding any such termination, the Lessor shall continue to have the right to enforce its rights and remedies pursuant to this Agreement regarding matters arising prior to such termination.

5.3 Remedies; Remedies Cumulative.

(a) Upon the occurrence and during the continuance of an Agency Agreement Event of Default, the Lessor shall have all rights available to the Lessor under the Lease and the other Operative Agreements and all other rights otherwise available at law, equity or otherwise. No failure to exercise and no delay in exercising, on the part of Lessor, any right, remedy, power or privilege under this Agreement or under any other Operative Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power of privilege under this Agreement or under any other Operative Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The remedies described in Sections 5.3(a) through 5.3(h) with respect to Agency Agreement Events of Default are subject to the provisions of Section 5.4; provided, as described in Section 5.4, regarding any Full Recourse Event of Default, then in any such case the limitations contained in Section 5.4 shall not apply and the Construction Agent shall be liable for Termination Value.
Upon the occurrence and during the continuance of an Agency Agreement Event of Default, the Lessor shall have (in addition to its rights otherwise described in this Agreement or existing at law, equity or otherwise) the option to transfer and convey to the Construction Agent upon a date designated by the Lessor all right, title and interest of the Lessor in and to the Property (including any Land and/or any Improvements, any interest in any Improvements, any Equipment and the Property then under construction) for which the Rent Commencement Date has not yet occurred (a "Construction Period Property"). On any transfer and conveyance date specified by the Lessor pursuant to this Section 5.3(b), (i) the Lessor shall transfer and convey (at the cost of the Construction Agent) all right, title and interest of the Lessor in and to the Construction Period Property free and clear of the Lien of the Lease and the other Operative Agreements and all Lessor Liens, (ii) the Construction Agent hereby covenants and agrees that it will accept such transfer and conveyance of right, title and interest in and to the Construction Period Property and (iii) the Construction Agent hereby promises to pay to the Lessor, as liquidated damages (it being agreed that it would be impossible accurately to determine actual damages), an aggregate amount equal to the Termination Value of the Construction Period Property, but subject to the limitations of Section 5.4. The Construction Agent specifically acknowledges and agrees that its obligations under this Section 5.3(b), including its obligations to accept the transfer and conveyance of the Construction Period Property and its payment obligations described in subparagraph (iii) of this Section 5.3(b), shall be absolute and unconditional under any and all circumstances and shall be performed and/or paid, as the case may be, upon notice from the Lessor as required by Applicable Law and without any abatement, reduction, diminution, set-off, defense, counterclaim or recoupment whatsoever.

Upon the occurrence and during the continuance of an Agency Agreement Event of Default, Lessor may elect (and shall be deemed automatically, and without any further action, to have exercised such option upon the occurrence of any Lease Event of Default arising under Sections 17.1(n) or (o) of the Lease) to terminate this Agreement and the Lease (or not to terminate the Lease, except with respect to any Lease Event of Default arising under Sections 17.1(n) or (o) of the Lease) and at such time to require Construction Agent to pay (i) in the case of any Agency Agreement Event of Default that is a Full Recourse Event of Default, the Termination Value and (ii) in the case of any Agency Agreement Event of Default that is not a Full Recourse Event of Default, the Construction Period Guarantee Amount. In any case that Lessor does not receive the Termination Value, Lessor shall use diligent and commercially reasonable efforts in good faith to sell its interest in the Property to an unaffiliated third party for a period of two (2) years from and after the date Lessor receives notice of, or otherwise has knowledge of, the Agency Agreement Event of Default. Lessor and/or Construction Agent may solicit offers for the purchase of Lessor’s rights, title, claims and interest in and to the Property. Lessor shall accept (or match) any purchase offer for a cash purchase price (net of all normal and customary sale and closing costs and the net cost of owning, operating and maintaining the Property) equal to or greater than the Termination Value.

The proceeds from the sale or other disposition of its interest in the Property (net of all normal and customary sales and closing costs and the costs of holding, owning, operating, and maintaining the Property, including amounts described in Section 8.7(c)(i) and (ii) of the Participation Agreement) shall be distributed (x) if the relevant Agency Agreement Event of Default is a Full Recourse Event of Default and the sale or other disposition of the Lessor’s interest in the Property occurs on or prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Agency Agreement Event of Default, to the Agent to be allocated pursuant to Section 8.7(b)(iii)(x) of the Participation Agreement and (y) if the relevant Agency Agreement Event of Default is not a Full Recourse Event of Default and the sale or other disposition of Lessor’s interest in the Property occurs on or prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge
of the Agency Agreement Event of Default, then prior to the allocation pursuant to Section 8.7(b)(iii)(x) of the Participation Agreement, first, to Lessor, in the amount of the positive difference (if any) between the Termination Value (less any portion thereof that cannot be capitalized under GAAP, including any amount of Uninsured Force Majeure Loss) and the Construction Period Guarantee Amount, second, to Lessor, the unpaid portion of the Construction Period Guarantee Amount, third, to the Construction Agent, any remaining proceeds up to the amount of the Construction Period Guarantee Amount previously paid by Construction Agent, and fourth, to the Agent. (For clarification, all such amounts payable to Lessor or the Agent pursuant to this paragraph shall be allocated by the Agent in accordance with Section 8.7(b)(iii)(x) of the Participation Agreement; provided, regarding each of the foregoing clauses (x) and (y) and in both cases prior to the allocation to the Lessee pursuant to clause third of Section 8.7(b)(iii)(x), the Agent shall allocate to the Lessor an amount equal to the first one percent (1%) of the amount by which net proceeds from the sale or other disposition of Lessor’s interest in the Property exceeds Termination Value.) Notwithstanding the foregoing provisions of this Section 5.3(c), the Lessor shall have the right in its sole discretion to rescind any exercise or deemed exercise of its option under this Section 5.3(c) upon the giving of its written confirmation of such rescission to the Construction Agent on or prior to the date one hundred and twenty (120) days after the date the Lessor has given or is deemed to have given notice of its intent to exercise its rights under this Section 5.3(c).

If, and to the extent that, there is no sale or other disposition of Lessor’s interest in the Property on or prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Agency Agreement Event of Default, then (x) Construction Agent shall have no right, title or interest whatsoever in the Property, (y) Lessor shall be the sole owner of its interest in the Property without any obligation to share with Construction Agent or Lessee any proceeds from the sale, conveyance, other transfer or otherwise regarding the Property and (z) if and to the extent Lessor realizes any proceeds with regard to the Property, such proceeds shall be distributed in accordance with Section 8.7(b)(iii)(x) of the Participation Agreement but substituting Lessor in place of Lessee pursuant to subsection third thereof as Lessee shall have no interest thereunder and no right to any such proceeds. Construction Agent specifically acknowledges and agrees that its obligations under this Section 5.3(c) shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, set-off, defense, counterclaim or recoupment whatsoever.

(d) Upon the occurrence and during the continuance of an Agency Agreement Event of Default, Lessor may elect to terminate this Agreement and the Lease, in which case the Construction Agent shall have no continuing obligation under this Agreement or the Lease, including (i) to function as either a construction agent under this Agreement or a lessee under the Lease or (ii) to pay the Construction Period Guarantee Amount in connection with a remarketing of the Property. In such event, Lessor (without the need for further action at such time by any Person) shall be the owner of the Property, all of which shall constitute the property of the Lessor. In the sole discretion of the Lessor and the other Financing Parties, the Lessor may assign, sell, convey or otherwise transfer its interest in the Property for its own account, and in such case, the Construction Agent shall have no right to share in the proceeds of any such assignment, sale, conveyance or other transfer and no continuing interest in the Property.

(e) Upon the occurrence and during the continuance of an Agency Agreement Event of Default, Lessor may elect to terminate this Agreement with respect to the Construction Period Property (upon which event Construction Agent shall have no further obligations under this Agreement), but not the Lease, and in that event shall notify the Construction Agent and the other
Financing Parties of Lessor’s intention to continue construction activities in order to effect Completion of the Construction Period Property substantially in accordance with the Plans and Specifications (subject to alterations to the extent otherwise permitted under Applicable Law) and the Lessor Parties shall pay all related Property Costs, and in such event, upon Completion by Lessor (as confirmed by Lessor and without any requirement for the delivery of a Completion Certificate by the Construction Agent), the Rent Commencement Date of the Lease shall occur in the same manner as if the Construction Agent had pursued construction of the Construction Period Property through Completion. In such a case, all amounts so expended by the Lessor Parties for the Completion of the Property (whether or not in excess of the Lessor Parties Commitment) shall constitute Property Costs.

(f) Upon the occurrence and during the continuance of an Agency Agreement Event of Default, Lessor may elect, without terminating this Agreement or the Lease, to extend the Construction Period by the amount of time necessary to effect the Completion of the Construction Period Property and/or to provide and obtain additional Lessor Parties Commitment, in which event the Lessor Parties shall commit to pay all costs (whether or not in excess of the Lessor Parties Commitment) necessary for the Construction Agent to effect Completion of the Construction Period Property substantially in accordance with the Plans and Specifications (subject to alterations to the extent otherwise permitted under Applicable Law) and pay all related Property Costs, and in such event, upon Completion, the Rent Commencement Date of the Lease shall occur in the same manner as if the Construction Agent had pursued construction of the Construction Period Property through Completion. In such a case, all amounts so expended by the Lessor Parties for the Completion of the Property (whether or not in excess of the Lessor Parties Commitment) shall constitute Property Cost.

(g) [Reserved].

(h) No failure to exercise and no delay in exercising, on the part of the Lessor, any right, remedy, power or privilege under this Agreement or under the other Operative Agreements shall operate as a waiver thereof; nor shall any single or partial exercise of any right remedy, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided in this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

5.4 Limitation on Recourse.

Notwithstanding anything contained herein or in any other Operative Agreement to the contrary, upon the occurrence and during the continuance of an Agency Agreement Event of Default relating solely to the Construction Period Property (other than as a result of a Full Recourse Event of Default, then in any such case the limitations contained in this Section 5.4 shall not apply and the Construction Agent shall be liable for one hundred percent (100.0%) of the Termination Value), the maximum aggregate amount that the Lessor, or any person or entity acting by or through the Lessor, including the Agent and the other Lessor Parties, shall be entitled to recover from the Construction Agent or any of the other Credit Parties on account of such Agency Agreement Event of Default shall be an amount (collectively, the "Construction Period Guarantee Amount") equal to the sum of (a) eighty-nine and nine tenths percent (89.9%) of the aggregate Property Cost for the Construction Period Property (excluding any such Property Cost with respect to which a Full Recourse Event of Default exists, which is fully recoverable as referenced in the first parenthetical phrase of this Section 5.4), exclusive of (i) the portion of the aggregate Property Cost expended for the purchase of the Land related to the Construction Period Property (the "Land Cost") and (ii) eighty-nine and nine tenths percent (89.9%) of the aggregate Property Cost attributable to costs or expenses that cannot be
capitalized under GAAP plus (b) one hundred percent (100.0%) of the Land Cost for the Construction Period Property, minus (c) any amount expended by the Construction Agent on behalf of the Lessor if the Lessor is obligated to reimburse the Construction Agent for such amount but such reimbursement has not yet occurred.

The Construction Agent nonetheless acknowledges and agrees that (x) even though the maximum aggregate recovery from the Credit Parties is limited as aforesaid, the Financing Parties’ right of recovery from the Construction Period Property (as opposed to any recovery from the Construction Agent and/or the Lessee) is not so limited and the Financing Parties shall be entitled to recover one hundred percent (100.0%) of the amounts owed to the Financing Parties in accordance with the Operative Agreements from their interests in the Property and (y) the provisions of this Section 5.4 shall in no way limit or otherwise affect the obligations of the Construction Agent and/or the Lessee (or the recourse of the Financing Parties against the Construction Agent and/or the Lessee) with respect to the Property if it is not a Construction Period Property (whether such obligations or recourse arise under the Operative Agreements or otherwise).

Not in limitation of the foregoing but as a clarification with respect thereto (but subject to the first parenthetical phrase in the first paragraph of this Section 5.4), to the extent the Property Cost exceeds the Construction Budget for the Property or if Completion is not effected on or prior to the Construction Period Termination Date, then in either such case, the maximum amount recoverable directly from the Construction Agent with respect to any Agency Agreement Event of Default caused by such occurrence shall be the Construction Period Guarantee Amount, with the Financing Parties otherwise entitled to recover the remainder of amounts owed to the Financing Parties in accordance with the Operative Agreements from their interests in the Property (as described in more detail in the second paragraph of this Section 5.4).

Further, the Construction Agent acknowledges and agrees that notwithstanding the above referenced limitations regarding payment of the Construction Period Guarantee Amount in certain circumstances, (x) Indemnified Persons are always entitled to receive one hundred percent (100.0%) of the amount for Claims or other indemnity payment amounts of such Indemnified Persons under or with respect to any Operative Agreement, including pursuant to Section 11.7 of the Participation Agreement, in connection with any Environmental Violation related to the Construction Period Property and (y) Lessor is always entitled to receive one hundred percent (100.0%) of the amount for Claims or other indemnity payment amounts of Lessor under or with respect to any Operative Agreement, including pursuant to Section 11 of the Participation Agreement, related to the Construction Period Property.

ARTICLE VI
THE LESSOR’S RIGHTS

6.1 [Reserved].

6.2 The Lessor’s Right to Cure the Construction Agent’s Defaults.

The Lessor, without waiving or releasing any obligation or Agency Agreement Event of Default, may (but shall be under no obligation to) remedy any Agency Agreement Event of Default for the account of and at the sole cost and expense of the Construction Agent. All out-of-pocket costs and expenses so incurred (including fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid by the Lessor, shall be paid by the Construction Agent to the Lessor on demand.
ARTICLE VII
MISCELLANEOUS

7.1 Notices.

All notices required or permitted to be given under this Agreement shall be in writing and delivered as provided in Section 12.2 of the Participation Agreement.

7.2 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Lessor, the Construction Agent and their respective successors and permitted assigns. Neither the Lessor nor the Construction Agent may assign this Agreement or any of its rights or obligations hereunder or with respect to the Property, except in accordance with Section 10.1 of the Participation Agreement.

7.3 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

7.4 Submission to Jurisdiction; Venue; Waivers.

THE PROVISIONS OF THE PARTICIPATION AGREEMENT RELATING TO SUBMISSION TO JURISDICTION AND VENUE ARE HEREBY INCORPORATED BY REFERENCE HEREIN, MUTATIS MUTANDIS.

7.5 Amendments and Waivers.

This Agreement may not be terminated, amended, supplemented, waived or modified except in accordance with the provisions of Section 12.4 of the Participation Agreement.

7.6 Counterparts.

This Agreement may be executed in any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one (1) and the same instrument.

7.7 Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

7.8 Headings and Table of Contents.

The headings and table of contents contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.
7.9 **WAIVER OF JURY TRIAL.**

TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, THE LESSOR AND THE CONSTRUCTION AGENT IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND ANY COUNTERCLAIM THEREUNDER.

7.10 **No Construction Agency Fee.**

The Construction Agent shall not be entitled to any compensation from the Lessor or any other Person in connection with the performance of the Construction Agent’s obligations under this Agreement.

[signature page follows]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

AVDC, INC., as the Construction Agent

By: ____________________________

Name: __________________________

Title: __________________________

(signature pages continue)
WACHOVIA SERVICE CORPORATION, as the Lessor

By: __________________________________________
Name: _________________________________________
Title: __________________________________________

(signature pages end)
## SUBSIDIARIES

<table>
<thead>
<tr>
<th>Name</th>
<th>Jurisdiction</th>
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<tbody>
<tr>
<td>Big Lots Capital, Inc.</td>
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<td>Industrial Products of New England, Inc.</td>
<td>ME</td>
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<td>Midwestern Home Products, Inc.</td>
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<td>Fashion Bonanza, Inc.</td>
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<td>Big Lots eCommerce LLC</td>
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<td>AVDC, Inc.</td>
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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements listed below on Form S-8 of our reports dated April 3, 2018, relating to the consolidated financial statements of Big Lots, Inc. and subsidiaries (the “Company”), and the effectiveness of the Company’s internal control over financial reporting, appearing in this Annual Report on Form 10-K of the Company for the year ended February 3, 2018.

1) Post-Effective Amendment No. 1 to Registration Statement No. 33-42502 on Form S-8 pertaining to Big Lots, Inc. Director Stock Option Plan;
2) Post-Effective Amendment No. 1 to Registration Statement No. 33-42692 on Form S-8 pertaining to Big Lots, Inc. Supplemental Savings Plan;
3) Post-Effective Amendment No. 2 to Registration Statement No. 33-19309 on Form S-8 pertaining to Big Lots, Inc. Savings Plan;
4) Post-Effective Amendment No. 1 to Registration Statement No. 333-32063 on Form S-8 pertaining to Big Lots, Inc. 1996 Performance Incentive Plan;
5) Registration Statement No. 333-140181 on Form S-8 pertaining to the Big Lots 2005 Long-Term Incentive Plan;
6) Registration Statement No. 333-152481 on Form S-8 pertaining to the Big Lots 2005 Long-Term Incentive Plan;
7) Registration Statement No. 333-172592 on Form S-8 pertaining to the Big Lots 2005 Long-Term Incentive Plan;
8) Registration Statement No. 333-179836 on Form S-8 pertaining to the Big Lots 2005 Long-Term Incentive Plan;
9) Registration Statement No. 333-181619 on Form S-8 pertaining to the Big Lots 2012 Long-Term Incentive Plan; and
10) Registration Statement No. 333-218262 on Form S-8 pertaining to the Big Lots 2017 Long-Term Incentive Plan;

/s/ DELOITTE & TOUCHE LLP

Columbus, Ohio
April 3, 2018
Each director of Big Lots, Inc. (the “Company") whose signature appears below hereby appoints Ronald A. Robins, Jr. as the undersigned's attorney to sign, in the undersigned's name and behalf of each such director and in any and all capacities stated below, and to cause to be filed with the Securities and Exchange Commission (the “Commission”), the Company's Annual Report on Form 10-K (the “Form 10-K") for the fiscal year ended February 3, 2018, and likewise to sign and file with the Commission any and all amendments thereto, including any and all exhibits and other documents required to be included therewith, and the Company hereby also appoints Ronald A. Robins, Jr. as its attorney-in-fact with like authority to sign and file the Form 10-K and any amendments thereto granting to such attorneys-in-fact full power of substitution and revocation, and hereby ratifying all that any such attorneys-in-fact or their substitutes may do by virtue hereof.

IN WITNESS WHEREOF, each of the undersigned has executed this instrument to be effective as of March 7, 2018.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Title</th>
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<tbody>
<tr>
<td>/s/ Jeffrey P. Berger</td>
<td>Director</td>
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<td>Jeffrey P. Berger</td>
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<td>/s/ James R. Chambers</td>
<td>Director</td>
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<td>James R. Chambers</td>
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<td>/s/ Marla C. Gottschalk</td>
<td>Director</td>
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<td>Marla C. Gottschalk</td>
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<tr>
<td>/s/ Cynthia T. Jamison</td>
<td>Director</td>
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<td>Cynthia T. Jamison</td>
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<td>/s/ Philip E. Mallott</td>
<td>Director</td>
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<td>/s/ Nancy A. Reardon</td>
<td>Director</td>
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<td>/s/ Wendy L. Schoppert</td>
<td>Director</td>
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<tr>
<td>/s/ Russell E. Solt</td>
<td>Director</td>
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<td>Russell E. Solt</td>
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</tbody>
</table>
I, Lisa M. Bachmann, certify that:

1. I have reviewed this annual report on Form 10-K of Big Lots, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: April 3, 2018

By: /s/ Lisa M. Bachmann

Lisa M. Bachmann

Executive Vice President, Chief Merchandising and Operating Officer
(Principal Executive Officer)
CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Timothy A. Johnson, certify that:

1. I have reviewed this annual report on Form 10-K of Big Lots, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: April 3, 2018

By: /s/ Timothy A. Johnson

Timothy A. Johnson

Executive Vice President, Chief Administrative Officer
and Chief Financial Officer

(Principal Executive Officer and Principal Financial Officer)
This certification is provided pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and accompanies the annual report on Form 10-K (the “Report”) for the year ended February 3, 2018, of Big Lots, Inc. (the “Company”). I, Lisa M. Bachmann, Executive Vice President, Chief Merchandising and Operating Officer of the Company, certify that:

(i) the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: April 3, 2018

By: /s/ Lisa M. Bachmann

Lisa M. Bachmann
Executive Vice President, Chief Merchandising
and Operating Officer
(Principal Executive Officer)
CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

This certification is provided pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and accompanies the annual report on Form 10-K (the “Report”) for the year ended February 3, 2018, of Big Lots, Inc. (the “Company”). I, Timothy A. Johnson, Executive Vice President, Chief Administrative Officer and Chief Financial Officer of the Company, certify that:

(i) the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: April 3, 2018

By: /s/ Timothy A. Johnson

Timothy A. Johnson

Executive Vice President, Chief Administrative Officer
and Chief Financial Officer

(Principal Executive Officer and Principal Financial Officer)