

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

FORM 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended October 31, 2020  
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 001-08897

**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.)

4900 E. Dublin-Granville Road, Columbus, Ohio 43081  
(Address of Principal Executive Offices) (Zip Code)

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

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common shares	BIG	New York Stock Exchange

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 every Interactive Data File required to be submitted 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 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 an 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 number of the registrant’s common shares, \$0.01 par value, outstanding as of December 4, 2020, was 37,110,016.

**BIG LOTS, INC.**  
**FORM 10-Q**  
**FOR THE FISCAL QUARTER ENDED OCTOBER 31, 2020**

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# Part I. Financial Information

## Item 1. Financial Statements

### BIG LOTS, INC. AND SUBSIDIARIES Consolidated Statements of Operations and Comprehensive Income (Unaudited) (In thousands, except per share amounts)

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	October 31, 2020	November 2, 2019	October 31, 2020	November 2, 2019
Net sales	\$ 1,377,925	\$ 1,167,988	\$ 4,461,271	\$ 3,716,198
Cost of sales (exclusive of depreciation expense shown separately below)	820,032	704,602	2,649,058	2,235,535
Gross margin	557,893	463,386	1,812,213	1,480,663
Selling and administrative expenses	482,307	436,714	1,444,938	1,352,345
Depreciation expense	33,086	34,752	104,750	97,572
Gain on sale of distribution centers	—	(178,534)	(463,053)	(178,534)
Operating profit	42,500	170,454	725,578	209,280
Interest expense	(2,586)	(5,359)	(8,456)	(13,657)
Other income (expense)	(484)	(322)	(2,444)	(201)
Income before income taxes	39,430	164,773	714,678	195,422
Income tax expense	9,520	37,791	183,473	46,722
Net income and comprehensive income	\$ 29,910	\$ 126,982	\$ 531,205	\$ 148,700
Earnings per common share				
Basic	\$ 0.79	\$ 3.25	\$ 13.69	\$ 3.78
Diluted	\$ 0.76	\$ 3.25	\$ 13.46	\$ 3.77
Weighted-average common shares outstanding				
Basic	38,054	39,017	38,807	39,313
Dilutive effect of share-based awards	1,137	77	659	85
Diluted	39,191	39,094	39,466	39,398
Cash dividends declared per common share	\$ 0.30	\$ 0.30	\$ 0.90	\$ 0.90

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

**BIG LOTS, INC. AND SUBSIDIARIES**  
**Consolidated Balance Sheets (Unaudited)**  
(In thousands, except par value)

	October 31, 2020	February 1, 2020
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 547,831	\$ 52,721
Inventories	1,089,068	921,266
Other current assets	84,814	89,962
Total current assets	1,721,713	1,063,949
Operating lease right-of-use assets	1,679,054	1,202,252
Property and equipment - net	721,668	849,147
Deferred income taxes	15,428	4,762
Other assets	66,533	69,171
Total assets	\$ 4,204,396	\$ 3,189,281
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 569,434	\$ 378,241
Current operating lease liabilities	215,027	212,144
Property, payroll, and other taxes	99,399	82,109
Accrued operating expenses	142,162	118,973
Insurance reserves	34,094	36,131
Accrued salaries and wages	40,049	39,292
Income taxes payable	52,813	3,930
Total current liabilities	1,152,978	870,820
Long-term debt	39,434	279,464
Noncurrent operating lease liabilities	1,491,571	1,035,377
Deferred income taxes	9,303	48,610
Insurance reserves	55,089	57,567
Unrecognized tax benefits	10,073	10,722
Other liabilities	189,646	41,257
Shareholders' equity:		
Preferred shares - authorized 2,000 shares; \$0.01 par value; none issued	—	—
Common shares - authorized 298,000 shares; \$0.01 par value; issued 117,495 shares; outstanding 37,088 shares and 39,037 shares, respectively	1,175	1,175
Treasury shares - 80,407 shares and 78,458 shares, respectively, at cost	(2,636,939)	(2,546,232)
Additional paid-in capital	627,301	620,728
Retained earnings	3,264,765	2,769,793
Total shareholders' equity	1,256,302	845,464
Total liabilities and shareholders' equity	\$ 4,204,396	\$ 3,189,281

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

**BIG LOTS, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Shareholders' Equity (Unaudited)**  
(In thousands)

	Common		Treasury		Additional Paid-In Capital	Retained Earnings	Total
	Shares	Amount	Shares	Amount			
Thirteen Weeks Ended November 2, 2019							
Balance - August 3, 2019	39,001	\$ 1,175	78,494	\$ (2,547,556)	\$ 617,993	\$ 2,572,931	\$ 644,543
Comprehensive income	—	—	—	—	—	126,982	126,982
Dividends declared (\$0.30 per share)	—	—	—	—	—	(11,954)	(11,954)
Purchases of common shares	(18)	—	18	(423)	—	—	(423)
Exercise of stock options	—	—	—	—	—	—	—
Restricted shares vested	47	—	(47)	1,526	(1,526)	—	—
Performance shares vested	6	—	(6)	204	(204)	—	—
Other	—	—	—	(2)	—	—	(2)
Share-based employee compensation expense	—	—	—	—	3,178	—	3,178
Balance - November 2, 2019	39,036	\$ 1,175	78,459	\$ (2,546,251)	\$ 619,441	\$ 2,687,959	\$ 762,324
Thirty-Nine Weeks Ended November 2, 2019							
Balance - February 2, 2019	40,042	\$ 1,175	77,453	\$ (2,506,086)	\$ 622,685	\$ 2,575,267	\$ 693,041
Comprehensive income	—	—	—	—	—	148,700	148,700
Dividends declared (\$0.90 per share)	—	—	—	—	—	(36,356)	(36,356)
Adjustment for ASU 2016-02	—	—	—	—	—	348	348
Purchases of common shares	(1,474)	—	1,474	(55,342)	—	—	(55,342)
Exercise of stock options	6	—	(6)	202	(2)	—	200
Restricted shares vested	201	—	(201)	6,521	(6,521)	—	—
Performance shares vested	261	—	(261)	8,459	(8,459)	—	—
Other	—	—	—	(5)	—	—	(5)
Share-based employee compensation expense	—	—	—	—	11,738	—	11,738
Balance - November 2, 2019	39,036	\$ 1,175	78,459	\$ (2,546,251)	\$ 619,441	\$ 2,687,959	\$ 762,324
Thirteen Weeks Ended October 31, 2020							
Balance - August 1, 2020	39,251	\$ 1,175	78,244	\$ (2,537,359)	\$ 617,496	\$ 3,246,848	\$ 1,328,160
Comprehensive income	—	—	—	—	—	29,910	29,910
Dividends declared (\$0.30 per share)	—	—	—	—	—	(11,993)	(11,993)
Purchases of common shares	(2,197)	—	2,197	(100,690)	—	—	(100,690)
Exercise of stock options	—	—	—	10	—	—	10
Restricted shares vested	34	—	(34)	1,102	(1,102)	—	—
Performance shares vested	—	—	—	—	—	—	—
Other	—	—	—	(2)	1	—	(1)
Share-based employee compensation expense	—	—	—	—	10,906	—	10,906
Balance - October 31, 2020	37,088	\$ 1,175	80,407	\$ (2,636,939)	\$ 627,301	\$ 3,264,765	\$ 1,256,302
Thirty-Nine Weeks Ended October 31, 2020							
Balance - February 1, 2020	39,037	\$ 1,175	78,458	\$ (2,546,232)	\$ 620,728	\$ 2,769,793	\$ 845,464
Comprehensive income	—	—	—	—	—	531,205	531,205
Dividends declared (\$0.90 per share)	—	—	—	—	—	(36,233)	(36,233)
Purchases of common shares	(2,316)	—	2,316	(102,641)	—	—	(102,641)
Exercise of stock options	3	—	(3)	101	7	—	108
Restricted shares vested	298	—	(298)	9,679	(9,679)	—	—
Performance shares vested	65	—	(65)	2,107	(2,107)	—	—
Other	1	—	(1)	47	8	—	55
Share-based employee compensation expense	—	—	—	—	18,344	—	18,344
Balance - October 31, 2020	37,088	\$ 1,175	80,407	\$ (2,636,939)	\$ 627,301	\$ 3,264,765	\$ 1,256,302

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

**BIG LOTS, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Cash Flows (Unaudited)**  
**(In thousands)**

	Thirty-Nine Weeks Ended	
	October 31, 2020	November 2, 2019
Operating activities:		
Net income	\$ 531,205	\$ 148,700
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization expense	105,136	98,153
Non-cash lease amortization expense	175,174	171,564
Deferred income taxes	(49,973)	16,842
Non-cash impairment charge	920	3,292
Gain on disposition of property and equipment	(463,191)	(178,431)
Non-cash share-based compensation expense	18,344	11,738
Unrealized loss on fuel derivatives	1,635	126
Change in assets and liabilities:		
Inventories	(167,801)	(147,702)
Accounts payable	191,193	79,092
Operating lease liabilities	(193,818)	(163,970)
Current income taxes	62,204	2,000
Other current assets	(7,738)	(4,880)
Other current liabilities	36,823	48,538
Other assets	2,420	(2,066)
Other liabilities	24,877	(2,448)
Net cash provided by operating activities	267,410	80,548
Investing activities:		
Capital expenditures	(103,000)	(231,889)
Cash proceeds from sale of property and equipment	588,231	190,679
Other	(22)	(21)
Net cash provided by (used in) investing activities	485,209	(41,231)
Financing activities:		
Net (repayments of) proceeds from long-term debt	(239,677)	140,926
Net financing proceeds from sale and leaseback	123,435	—
Payment of finance lease obligations	(2,962)	(72,479)
Dividends paid	(35,825)	(36,707)
Proceeds from the exercise of stock options	108	200
Payment for treasury shares acquired	(102,641)	(55,342)
Payments for debt issuance costs	—	(150)
Other	53	(5)
Net cash used in financing activities	(257,509)	(23,557)
Increase in cash and cash equivalents	495,110	15,760
Cash and cash equivalents:		
Beginning of period	52,721	46,034
End of period	\$ 547,831	\$ 61,794

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

**BIG LOTS, INC. AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Unaudited)**

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**NOTE 1 – BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

All references in this report to “we,” “us,” or “our” are to Big Lots, Inc. and its subsidiaries. We are a neighborhood discount retailer operating in the United States (“U.S.”). At October 31, 2020, we operated 1,411 stores in 47 states and an e-commerce platform. We make available, free of charge, through the “Investor Relations” section of our website ([www.biglots.com](http://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”). The contents of our website are not incorporated into or otherwise part of this report.

The accompanying consolidated financial statements and these notes have been prepared in accordance with the rules and regulations of the SEC for interim financial information. The consolidated financial statements reflect all normal recurring adjustments which management believes are necessary to present fairly our financial condition, results of operations, and cash flows for all periods presented. The consolidated financial statements, however, do not include all information necessary for a complete presentation of financial condition, results of operations, and cash flows in conformity with accounting principles generally accepted in the United States of America (“GAAP”). Interim results may not necessarily be indicative of results that may be expected for, or actually result during, any other interim period or for the year as a whole, including as a result of the COVID-19 coronavirus pandemic, which has disrupted and may continue to disrupt our business. We have historically experienced seasonal fluctuations, with a larger percentage of our net sales and operating profit realized in our fourth fiscal quarter. However, due to demand volatility we have experienced during the COVID-19 coronavirus pandemic, the seasonality of our 2020 results may differ from our historical experience. The accompanying consolidated financial statements and these notes should be read in conjunction with the audited consolidated financial statements and notes included in our Annual Report on Form 10-K for the fiscal year ended February 1, 2020 (“2019 Form 10-K”).

**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 2020 (“2020”) is comprised of the 52 weeks that began on February 2, 2020 and will end on January 30, 2021. Fiscal year 2019 (“2019”) was comprised of the 52 weeks that began on February 3, 2019 and ended on February 1, 2020. The fiscal quarters ended October 31, 2020 (“third quarter of 2020”) and November 2, 2019 (“third quarter of 2019”) were both comprised of 13 weeks. The year-to-date periods ended October 31, 2020 (“year-to-date 2020”) and November 2, 2019 (“year-to-date 2019”) were both comprised of 39 weeks.

**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, treasury bills and commercial paper, 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 aggregate amount of outstanding checks and electronic fund transfers exceed the cash deposited at a given bank. We reclassify book overdrafts, if any, to accounts payable on our consolidated balance sheets.

**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. Our 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. Warehousing, distribution, and outbound transportation costs included in selling and administrative expenses were \$66.3 million and \$48.8 million for the third quarter of 2020 and the third quarter of 2019, respectively, and \$178.3 million and \$137.1 million for the year-to-date 2020 and the year-to-date 2019, respectively.

## Advertising Expense

Advertising costs, which are expensed as incurred, consist primarily of television and print advertising, digital, social media, internet and e-mail marketing and advertising, and in-store point-of-purchase signage and presentations. Advertising expenses are included in selling and administrative expenses. Advertising expenses were \$24.4 million and \$18.2 million for the third quarter of 2020 and the third quarter of 2019, respectively, and \$69.2 million and \$57.9 million for the year-to-date 2020 and the year-to-date 2019, respectively.

## Derivative Instruments

We use derivative instruments to mitigate the risk of market fluctuations in the price of diesel fuel that we expect to consume to support our outbound transportation of inventory to our stores. 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 and comprehensive income.

## Supplemental Cash Flow Disclosures

The following table provides supplemental cash flow information for the year-to-date 2020 and the year-to-date 2019:

(In thousands)	Thirty-Nine Weeks Ended	
	October 31, 2020	November 2, 2019
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest	\$ 5,864	\$ 13,828
Cash paid for income taxes, excluding impact of refunds	171,155	28,379
Gross proceeds from long-term debt	514,500	1,425,400
Gross payments of long-term debt	754,177	1,284,474
Gross financing proceeds from sale and leaseback	133,999	—
Gross repayments of financing from sale and leaseback	10,564	—
Cash paid for operating lease liabilities	264,676	217,935
<b>Non-cash activity:</b>		
Assets acquired under finance leases	—	70,831
Accrued property and equipment	19,608	23,906
Operating lease right-of-use assets obtained in exchange for operating lease liabilities	\$ 661,182	\$ 1,489,449

## Reclassification of 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.

## Recently Adopted Accounting Standards

In August 2018, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2018-15 Intangibles - Goodwill and Other - Internal-Use Software. This update evaluates the accounting for costs paid by a customer to implement a cloud computing arrangement. The new guidance aligns cloud computing arrangement implementation cost accounting with the capitalization requirements for internal-use software development, while leaving the accounting for service elements unchanged. On February 2, 2020, we adopted ASU 2018-15 on a prospective basis. The impact of the adoption was immaterial to the consolidated financial statements.



## NOTE 2 – DEBT

### **Bank Credit Facility**

On August 31, 2018, we entered into a \$700 million five-year unsecured credit facility (“2018 Credit Agreement”). The 2018 Credit Agreement expires on August 31, 2023. In connection with our entry into the 2018 Credit Agreement, we paid bank fees and other expenses in the aggregate amount of \$1.5 million, which are being amortized over the term of the 2018 Credit Agreement.

Borrowings under the 2018 Credit Agreement are available for general corporate purposes, working capital, and to repay certain indebtedness. The 2018 Credit Agreement includes a \$30 million swing loan sublimit, a \$75 million letter of credit sublimit, a \$75 million sublimit for loans to foreign borrowers, and a \$200 million optional currency sublimit. The interest rates, pricing and fees under the 2018 Credit Agreement fluctuate based on our debt rating. The 2018 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 2018 Credit Agreement. The 2018 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. The covenants of the 2018 Credit Agreement do not restrict our ability to pay dividends. Additionally, we are subject to cross-default provisions associated with the synthetic lease for our distribution center in Apple Valley, CA. A violation of any of the covenants could result in a default under the 2018 Credit Agreement that would permit the lenders to restrict our ability to further access the 2018 Credit Agreement for loans and letters of credit and require the immediate repayment of any outstanding loans under the 2018 Credit Agreement. At October 31, 2020, we had no borrowings outstanding under the 2018 Credit Agreement, while \$6.3 million was committed to outstanding letters of credit, leaving \$693.7 million available under the 2018 Credit Agreement.

### **Secured Equipment Term Note**

On August 7, 2019, we entered into a \$70 million term note agreement (“2019 Term Note”), which is secured by the equipment at our Apple Valley, CA distribution center. The 2019 Term Note will expire on May 7, 2024. We are required to make monthly payments over the term of the 2019 Term Note and are permitted to prepay, subject to penalties, at any time. The interest rate on the 2019 Term Note is 3.3%. In connection with our entry into the 2019 Term Note, we paid debt issuance costs of \$0.2 million.

Debt was recorded in our consolidated balance sheets as follows:

<b>Instrument (In thousands)</b>	<b>October 31, 2020</b>	<b>February 1, 2020</b>
2019 Term Note	\$ 53,815	\$ 64,291
2018 Credit Agreement	—	229,200
Total debt	\$ 53,815	\$ 293,491
Less current portion of long-term debt (included in Accrued operating expenses)	\$ (14,381)	\$ (14,027)
Long-term debt	\$ 39,434	\$ 279,464

### NOTE 3 – FAIR VALUE MEASUREMENTS

In 2020, we invested a portion of the proceeds from the sale of four distribution centers (see note 9 for additional information on the sale and leaseback transactions) in money market fund investments and commercial paper investments. These highly liquid investments were recorded in cash and cash equivalents in our consolidated balance sheets at their fair value. The fair values of the money market 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 the commercial paper investments were Level 2 valuations under the fair value hierarchy because the instruments' market values were determined based on quoted market prices in active markets.

In connection with our nonqualified deferred compensation plan, we had mutual fund investments, which 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.

As of October 31, 2020, the fair value of our investments were recorded in our consolidated balance sheets as follows:

<i>(In thousands)</i>	Balance Sheet Location	October 31, 2020	Level 1	Level 2
<b>Assets:</b>				
Money market funds	Cash and cash equivalents	\$ 175,070	\$ 175,070	\$ —
Commercial paper	Cash and cash equivalents	29,996	—	29,996
Mutual funds - deferred compensation plan	Other Assets	\$ 30,777	\$ 30,777	\$ —

As of February 1, 2020, the fair value of our investments were recorded in our consolidated balance sheets as follows:

<i>(In thousands)</i>	Balance Sheet Location	February 1, 2020	Level 1	Level 2
<b>Assets:</b>				
Money market funds	Cash and cash equivalents	\$ —	\$ —	\$ —
Commercial paper	Cash and cash equivalents	—	—	—
Mutual funds - deferred compensation plan	Other Assets	\$ 33,715	\$ 33,715	\$ —

The fair values of our long-term obligations under the 2018 Credit Agreement are estimated based on 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. The carrying value of these instruments was \$0 as of October 31, 2020.

The fair value of our long-term obligations under the 2019 Term Note are based on quoted market prices and are classified as Level 2 within the fair value hierarchy. The carrying value of the instrument approximates its fair value.

The carrying value of accounts receivable and accounts payable approximates fair value because of the relatively short maturity of these items.

## NOTE 4 – SHAREHOLDERS’ EQUITY

### Earnings per Share

There were no adjustments required to be made to the weighted-average common shares outstanding for purposes of computing basic and diluted earnings per share. At October 31, 2020 and November 2, 2019, we excluded from securities outstanding for the computation of earnings per share, antidilutive stock options, restricted stock units, and performance share units, for which the minimum applicable performance conditions had not been attained as of October 31, 2020 and November 2, 2019, respectively. For the third quarter of 2020, it was determined that an immaterial amount of stock options outstanding were antidilutive and excluded from the computation of diluted earnings per share, and for the third quarter of 2019, there were 0.1 million stock options outstanding that were antidilutive. Antidilutive stock options for the year-to-date 2020 and the year-to-date 2019 were immaterial and 0.1 million, respectively. Antidilutive stock options generally consist of outstanding stock options where the exercise price per share is greater than the weighted-average market price per share for our common shares for each period. Antidilutive stock options, restricted stock units and performance share units are excluded from the calculation because they decrease the number of diluted shares outstanding under the treasury stock method. The restricted stock units and performance share units that were antidilutive, as determined under the treasury stock method, were immaterial and 0.5 million for the third quarter of 2020 and the third quarter of 2019, respectively, and immaterial and 0.4 million for the year-to-date 2020 and the year-to-date 2019, respectively.

### Share Repurchase Programs

On August 27, 2020, our Board of Directors authorized the repurchase of up to \$500 million of our common shares (“2020 Repurchase Authorization”). Pursuant to the 2020 Repurchase Authorization, 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 2020 Repurchase Authorization will be available to meet obligations under our equity compensation plans and for general corporate purposes. The 2020 Repurchase Authorization has no scheduled termination date.

During the third quarter of 2020, we acquired approximately 2.2 million of our outstanding common shares for \$100.0 million under the 2020 Repurchase Authorization.

### Dividends

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

	<b>Dividends Per Share</b>	<b>Amount Declared</b>	<b>Amount Paid</b>
<b>2020:</b>		<i>(In thousands)</i>	<i>(In thousands)</i>
First quarter	\$ 0.30	\$ 11,905	\$ 12,478
Second quarter	0.30	12,335	11,807
Third quarter	0.30	11,993	11,540
<b>Total</b>	<b>\$ 0.90</b>	<b>\$ 36,233</b>	<b>\$ 35,825</b>

The amount of dividends declared may vary from the amount of dividends paid in a period due to the vesting of restricted stock units and performance share units, which accrue dividend equivalent rights that are paid when the award vests. 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.

## NOTE 5 – SHARE-BASED PLANS

We have issued nonqualified stock options, restricted stock units, and performance share units under our shareholder-approved equity compensation plans. At October 31, 2020, the number of nonqualified stock options outstanding was immaterial. Our restricted stock units and performance share units, as described below, are expensed and reported as non-vested shares. We recognized share-based compensation expense of \$10.9 million and \$3.2 million in the third quarter of 2020 and the third quarter of 2019, respectively, and \$18.3 million and \$11.7 million for the year-to-date 2020 and the year-to-date 2019, respectively.

### Non-vested Restricted Stock Units

The following table summarizes the non-vested restricted stock units activity for the year-to-date 2020:

	Number of Shares	Weighted Average Grant-Date Fair Value Per Share
Outstanding non-vested restricted stock units at February 1, 2020	648,510	\$ 38.52
Granted	921,309	15.82
Vested	(239,856)	43.07
Forfeited	(1,511)	38.06
Outstanding non-vested restricted stock units at May 2, 2020	1,328,452	\$ 21.95
Granted	74,244	33.20
Vested	(24,498)	27.99
Forfeited	(41,074)	25.26
Outstanding non-vested restricted stock units at August 1, 2020	1,337,124	\$ 22.35
Granted	33,868	49.83
Vested	(33,628)	37.45
Forfeited	(108,120)	21.93
Outstanding non-vested restricted stock units at October 31, 2020	1,229,244	\$ 22.68

The non-vested restricted stock units granted in the year-to-date 2020 generally vest and are expensed on a ratable basis over three years from the grant date of the award, if a threshold financial performance objective is achieved and the grantee remains employed by us through the vesting dates.

### Non-vested Restricted Stock Units Granted to Non-Employee Directors

In the second quarter of 2020, 44,229 common shares underlying the restricted stock units granted in 2019 to the non-employee members of our Board vested on the trading day immediately preceding our 2020 Annual Meeting of Shareholders (“2020 Annual Meeting”). These units were part of the annual compensation of the non-employee directors of the Board. Additionally, in the second quarter of 2020, the chairman of our Board received an annual restricted stock unit grant having a grant date fair value of approximately \$210,000. The remaining non-employees elected to our Board at our 2020 Annual Meeting each received an annual restricted stock unit grant having a grant date fair value of approximately \$145,000. The 2020 restricted stock units will vest on the earlier of (1) the trading day immediately preceding our 2021 Annual Meeting of Shareholders, or (2) the non-employee director’s death or disability. However, the non-employee directors will forfeit their restricted stock units if their service on the Board terminates before either vesting event occurs.

### Performance Share Units

In 2020, we awarded performance share units with a restriction feature to certain members of senior management, which vest based on the achievement of share price performance goals and a minimum service requirement of one year (“RPSUs”). The RPSUs have a contractual term of three years. We use a Monte Carlo simulation to estimate the fair value of the RPSUs on the grant date and recognize expense over the derived service period. If the share price performance goals applicable to the RPSUs are not achieved prior to expiration, the unvested portion of the awards will be forfeited. Shares issued in connection with vested RPSUs are generally restricted from sale, transfer, or other disposition prior to the third anniversary of the grant date except under certain circumstances, including death, disability, or change in control.

Prior to 2020, we awarded performance share units (“PSUs”) to certain members of management, which will vest if certain financial performance objectives are achieved over a three-year performance period and the grantee remains employed by us during the performance period. Typically, the financial performance objectives for each fiscal year within the three-year performance period will be approved by the Compensation Committee of our Board of Directors during the first quarter of the respective fiscal year. In 2020, due to the lack of business visibility resulting from the COVID-19 pandemic, the Compensation Committee chose to defer the establishment of the 2020 performance objectives until the third quarter of 2020.

As a result of the process used to establish the financial performance objectives, we will only meet the requirements for 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.

In the third quarter of 2020, the Compensation Committee established the financial performance objectives for the third fiscal year of PSUs issued in 2018; therefore, the 2018 PSUs were deemed granted in August 2020.

We have begun or expect to begin recognizing expense related to PSUs and RPSUs as follows:

Issue Year	Outstanding PSUs and RPSUs at October 31, 2020	Actual Grant Date	Expected Valuation (Grant) Date	Actual or Expected Expense Period
2018	136,199	August 2020		Fiscal 2020
2019	266,118		March 2021	Fiscal 2021
2020	339,568	April 2020		Fiscal 2020 - 2021
<b>Total</b>	<b>741,885</b>			

The number of shares to be distributed upon vesting of the PSUs depends on the average performance attained during the three-year performance period compared to the performance targets established 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 related award agreement. We recognized \$7.8 million and \$0.2 million in the third quarter of 2020 and 2019, respectively, and \$9.4 million and \$2.5 million in the year-to-date 2020 and 2019 respectively, of share-based compensation expense related to PSUs.

The following table summarizes the activity related to PSUs and RPSUs for the year-to-date 2020:

	Number of Units	Weighted Average Grant-Date Fair Value Per Share
Outstanding PSUs and RPSUs at February 1, 2020	181,922	\$ 31.89
Granted	408,340	11.70
Vested	(181,062)	31.89
Forfeited	(860)	31.89
Outstanding PSUs and RPSUs at May 2, 2020	408,340	\$ 11.70
Granted	4,682	29.44
Vested	—	—
Forfeited	(12,450)	11.70
Outstanding PSUs and RPSUs at August 1, 2020	400,572	\$ 11.90
Granted	167,263	55.71
Vested	—	—
Forfeited	(92,068)	26.81
Outstanding PSUs and RPSUs at October 31, 2020	475,767	\$ 24.42

The following activity occurred under our share-based plans during the respective periods shown:

	Third Quarter		Year-to-Date	
	2020	2019	2020	2019
<i>(In thousands)</i>				
Total intrinsic value of stock options exercised	\$ 4	\$ —	\$ 16	\$ 42
Total fair value of restricted stock vested	1,694	1,051	6,584	6,434
Total fair value of performance shares vested	\$ —	\$ 143	\$ 924	\$ 9,849

The total unearned compensation cost related to all share-based awards outstanding, excluding PSUs issued in 2018 and 2019, at October 31, 2020 was approximately \$25.0 million. This compensation cost is expected to be recognized through September 2023 based on existing vesting terms with the weighted-average remaining expense recognition period being approximately 1.7 years from October 31, 2020.

#### NOTE 6 – INCOME TAXES

We have estimated the reasonably possible expected net change in unrecognized tax benefits through October 30, 2021, based on (1) expected cash and noncash settlements or payments of uncertain tax positions, and (2) 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 \$3.0 million. Actual results may differ materially from this estimate.

#### NOTE 7 – CONTINGENCIES

##### *California Wage and Hour Matters*

We currently are defending several wage and hour matters in California. The cases were brought by various current and/or former California associates alleging various violations of California wage and hour laws. During the first quarter of 2019, upon consideration of these matters, including outcomes of cases against other retailers, we determined a loss from these matters was probable and we increased our accrual for litigation by recording a \$7.3 million charge as our best estimate for these matters in aggregate.

During the third quarter of 2020, we reached settlement agreements in our two largest wage and hour class action matters in California and the settlements were preliminarily approved by the court. The settlements were consistent with the previously accrued loss contingencies for these matters. We intend to defend ourselves vigorously against the allegations levied in the remaining lawsuits.

##### *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.

#### NOTE 8 – BUSINESS SEGMENT DATA

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

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.

The following table presents net sales data by merchandise category:

	Third Quarter		Year-to-Date	
(In thousands)	2020	2019	2020	2019
Furniture	\$ 429,305	\$ 344,103	\$ 1,284,743	\$ 1,031,357
Soft Home	253,700	206,493	770,078	606,397
Consumables	216,515	198,467	679,007	581,925
Food	181,710	180,687	570,540	530,970
Seasonal	100,829	94,225	596,850	523,822
Electronics, Toys, & Accessories	100,294	64,180	272,704	198,143
Hard Home	95,572	79,833	287,349	243,584
Net sales	\$ 1,377,925	\$ 1,167,988	\$ 4,461,271	\$ 3,716,198

#### NOTE 9 – GAIN ON SALE OF DISTRIBUTION CENTERS

On June 12, 2020, we completed sale and leaseback transactions for our distribution centers located in Columbus, OH; Durant, OK; Montgomery, AL; and Tremont, PA. The aggregate sale price for the transactions was \$725.0 million. Due to sale-leaseback accounting requirements, the proceeds received in the transactions were allocated between proceeds on the sale of the distribution centers and financing proceeds. Accordingly, aggregate net proceeds, before income taxes, on the sales of the distribution centers were \$586.9 million and the aggregate gain on the sales was \$463.1 million. Additionally, we incurred \$4.0 million of additional selling and administrative expenses in connection with the transaction, which primarily consisted of consulting services. The remainder of consideration received was financing liability proceeds of \$134.0 million. The current portion of the financing liability was recorded in accrued operating expenses in our consolidated balance sheets. The noncurrent portion of the financing liability was recorded in other liabilities in our consolidated balance sheets. Interest expense will be recognized on the financing liability using the effective interest method and the financing liability will be accreted over the duration of the lease agreements. Future payments to the buyer-lessor will be allocated between the financing liability and the lease liabilities.

The leases for the Columbus, OH and Montgomery, AL distribution centers each have an initial term of 15 years and multiple five-year extension options. The leases for the Durant, OK and Tremont, PA distribution centers each have an initial term of 20 years and multiple five-year extension options. At lease commencement, we determined that none of the extension options were reasonably certain to be exercised. Therefore, none of the extension options were included in the computation of the operating lease liabilities and operating lease right-of-use assets. At commencement of the leases, we recorded aggregate operating lease liabilities of \$466.1 million and aggregate operating lease right-of-use assets of \$466.1 million. The weighted average discount rate for the leases was 6.2%. All of the leases are absolute net. Additionally, all of the leases include a right of first refusal beginning after the fifth year of the initial term which allows us to purchase the leased property if the buyer-lessor receives a bona fide purchase offer from a third-party. In connection with our entrance into the sale and leaseback transactions, we agreed to repay all borrowings outstanding under the 2018 Credit Agreement and restrict our borrowings under the 2018 Credit Agreement for 90 days following closing of the transactions.

Aggregate initial annual cash payments to the buyer-lessor, including payments of the financing liability and lease payments, are approximately \$50 million and the payments escalate two percent annually. Aggregate annual straight-line rent expense for the four leases is approximately \$46 million. Aggregate initial annual interest expense on the financing liability, which will decrease over the term, is approximately \$8 million.

In the third quarter of 2019, we completed the sale of our distribution center in Rancho Cucamonga, CA for a gain on the sale of \$178.5 million.

## **Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

### **CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS FOR PURPOSES OF THE SAFE HARBOR PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995**

The Private Securities Litigation Reform Act of 1995 (“Act”) provides a safe harbor for forward-looking statements to encourage companies to provide prospective information, so long as those statements are identified as forward-looking and are accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those discussed in the statements. We wish to take advantage of the “safe harbor” provisions of the Act.

Certain statements in this report are forward-looking statements within the meaning of the Act, and such statements are intended to qualify for the protection of the safe harbor provided by the Act. The words “anticipate,” “estimate,” “approximate,” “expect,” “objective,” “goal,” “project,” “intend,” “plan,” “believe,” “will,” “should,” “may,” “target,” “forecast,” “guidance,” “outlook,” and similar expressions generally identify forward-looking statements. Similarly, descriptions of our objectives, strategies, plans, goals or targets are also forward-looking statements. Forward-looking statements relate to the expectations of management as to future occurrences and trends, including statements expressing optimism or pessimism about future operating results or events and projected sales, earnings, capital expenditures and business strategy. Forward-looking statements are based upon a number of assumptions concerning future conditions that may ultimately prove to be inaccurate. Forward-looking statements are and will be based upon management’s then-current views and assumptions regarding future events and operating performance, and are applicable only as of the dates of such statements. Although we believe the expectations expressed in forward-looking statements are based on reasonable assumptions within the bounds of our knowledge, forward-looking statements, by their nature, involve risks, uncertainties and other factors, any one or a combination of which could materially affect our business, financial condition, results of operations or liquidity.

Forward-looking statements that we make herein and in other reports and releases are not guarantees of future performance and actual results may differ materially from those discussed in such forward-looking statements as a result of various factors, including, but not limited to, developments related to the COVID-19 coronavirus pandemic, the current economic and credit conditions, the cost of goods, our inability to successfully execute strategic initiatives, competitive pressures, economic pressures on our customers and us, the availability of brand name closeout merchandise, trade restrictions, freight costs, the risks discussed in the Risk Factors section of our most recent Annual Report on Form 10-K, and other factors discussed from time to time in our other filings with the SEC, including Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. This report should be read in conjunction with such filings, and you should consider all of these risks, uncertainties and other factors carefully in evaluating forward-looking statements.

Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date they are made. We undertake no obligation to publicly update forward-looking statements whether as a result of new information, future events or otherwise. Readers are advised, however, to consult any further disclosures we make on related subjects in our public announcements and SEC filings.



## OVERVIEW

The discussion and analysis presented below should be read in conjunction with the accompanying consolidated financial statements and related notes. Each term defined in the notes has the same meaning in this item and the balance of this report.

The following are the results from the third quarter of 2020 that we believe are key indicators of our operating performance when compared to our operating performance from the third quarter of 2019:

- Net sales increased \$209.9 million, or 18.0%.
- Comparable sales for stores open at least fifteen months, plus our e-commerce operations, increased \$196.2 million, or 17.8%.
- Gross margin dollars increased \$94.5 million, while gross margin rate increased 80 basis points to 40.5% of net sales.
- Selling and administrative expenses increased \$45.6 million. As a percentage of net sales, selling and administrative expenses decreased 240 basis points to 35.0% of net sales.
- Diluted earnings per share decreased to \$0.76 per share from \$3.25 per share.
- In the third quarter of 2019, we recorded a gain on sale of distribution center of \$178.5 million related to the sale of our distribution center located in Rancho Cucamonga, CA, which increased our diluted earnings per share for the third quarter of 2019 by approximately \$3.49 per share.
- Inventory decreased by 2.5%, or \$28.2 million, to \$1,089.1 million from the third quarter of 2019.
- Cash and cash equivalents increased by \$486.0 million to \$547.8 million from the third quarter of 2019.
- We declared and paid a quarterly cash dividend in the amount of \$0.30 per common share in the third quarter of 2020 consistent with the quarterly cash dividend of \$0.30 per common share paid in the third quarter of 2019.
- We acquired 2.2 million of our outstanding common shares for \$100.0 million under our 2020 Repurchase Authorization.

See the discussion and analysis below for additional details regarding our operating results.

## STORES

The following table presents stores opened and closed during the year-to-date 2020 and the year-to-date 2019:

	2020	2019
Stores open at the beginning of the fiscal year	1,404	1,401
Stores opened during the period	24	50
Stores closed during the period	(17)	(33)
Stores open at the end of the period	1,411	1,418

We do not expect to open any stores, while closing approximately three stores in the fourth quarter of 2020. Therefore, we expect our store count at the end of 2020 to be approximately 1,408 stores.

## RESULTS OF OPERATIONS

The following table compares components of our consolidated statements of operations and comprehensive income as a percentage of net sales at the end of each period:

	Third Quarter		Year-to-Date	
	2020	2019	2020	2019
Net sales	100.0 %	100.0 %	100.0 %	100.0 %
Cost of sales (exclusive of depreciation expense shown separately below)	59.5	60.3	59.4	60.2
Gross margin	40.5	39.7	40.6	39.8
Selling and administrative expenses	35.0	37.4	32.4	36.4
Depreciation expense	2.4	3.0	2.3	2.6
Gain on sale of distribution center	0.0	(15.3)	(10.4)	(4.8)
Operating profit	3.1	14.6	16.3	5.6
Interest expense	(0.2)	(0.5)	(0.2)	(0.4)
Other income (expense)	(0.0)	(0.0)	(0.1)	(0.0)
Income before income taxes	2.9	14.1	16.0	5.3
Income tax expense	0.7	3.2	4.1	1.3
Net income	2.2 %	10.9 %	11.9 %	4.0 %

## THIRD QUARTER OF 2020 COMPARED TO THIRD QUARTER OF 2019

### 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 comparable sales (“comp” or “comps”) in the third quarter of 2020 compared to the third quarter of 2019 were as follows:

Third Quarter										
(\$ in thousands)	2020			2019			Change		Comps	
Furniture	\$	429,305	31.2 %	\$	344,103	29.4 %	\$	85,202	24.8 %	23.7 %
Soft Home		253,700	18.4		206,493	17.7		47,207	22.9	23.0
Consumables		216,515	15.7		198,467	17.0		18,048	9.1	9.8
Food		181,710	13.2		180,687	15.5		1,023	0.6	0.9
Seasonal		100,829	7.3		94,225	8.1		6,604	7.0	7.5
Electronics, Toys, & Accessories		100,294	7.3		64,180	5.5		36,114	56.3	56.1
Hard Home		95,572	6.9		79,833	6.8		15,739	19.7	19.9
Net sales	\$	1,377,925	100.0 %	\$	1,167,988	100.0 %	\$	209,937	18.0 %	17.8 %

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 \$209.9 million, or 18.0%, to \$1,377.9 million in the third quarter of 2020, compared to \$1,168.0 million in the third quarter of 2019. The increase in net sales was primarily driven by a 17.8% increase in our comps, which increased net sales by \$196.2 million. Additionally, our non-comparable sales increased net sales by \$13.7 million, driven by increased sales in our new and relocated stores compared to closed stores. Our comps are calculated based on the results of all stores that were open at least fifteen months plus our e-commerce net sales.

We experienced a favorable impact to net sales during the third quarter of 2020 driven by demand for our home products, which includes our Furniture, Seasonal, Soft Home, and Hard Home merchandise categories, due to customers spending more time at their homes as a result of the ongoing COVID-19 coronavirus pandemic. We also experienced a favorable impact to net sales driven by the addition of The Lot and the Queue Line to approximately 50% of our stores. The Lot is a cross-category presentation solution with a curated assortment to promote life's occasions, which drove increased sales in our Electronics, Toys, and Accessories merchandise category through apparel and toys. The Queue Line offers our customers a streamlined checkout experience with a new and expanded convenience assortment and a smaller footprint. Additionally, we experienced the early benefits of our Pantry Optimization project completed late in the third quarter of 2020, which reallocated linear square footage from our Food merchandise category to our Consumables category. Overall, we believe our net sales in the third quarter of 2020 were favorably impacted by a strong alignment of our product assortment with current customer demand, successful retention of new customers we attracted as a result of our position as an essential retailer during COVID-19 related shutdowns in the earlier part of 2020, and a favorable customer response to our strategic initiatives such as The Lot, Queue Line, and Pantry Optimization.

Consistent with the first and second quarters of 2020, in the third quarter of 2020, we made the decision to cancel our Friends and Family promotion to address social distancing concerns related to the COVID-19 coronavirus pandemic. In response, we ran a "Your Deal, Your Day" promotion to offset the sales decrease caused by cancellation of the Friends and Family promotion.

Throughout the COVID-19 coronavirus pandemic, our stores have remained open and operating, with the exception of a small number of temporary closures for cleaning. We believe the impact of temporary closings and shortened operating hours and selling restrictions due to the COVID-19 coronavirus pandemic was immaterial to our results for the third quarter of 2020 and we expect the impact of shortened operating hours and selling restrictions due to the COVID-19 coronavirus pandemic to be immaterial to our results for the remainder of 2020.

All of our merchandise categories generated increased net sales and positive comps in the third quarter of 2020 compared to the third quarter of 2019:

- Our **Furniture** category experienced increased net sales and positive comps during the third quarter of 2020, driven by increased demand as customers have chosen to invest in home furnishings due to spending more time at their homes as a result of the ongoing COVID-19 coronavirus pandemic. Additionally, our customers have continued to respond positively to our brand-name mattress assortment and our new Broyhill® furniture assortment.
- The **Soft Home** category experienced increased net sales and comps during the third quarter of 2020, driven by an increase in demand as our customers chose to invest more in their home environment due to spending more time at their homes as a result of the ongoing COVID-19 coronavirus pandemic. Additionally, our Soft Home category benefited from a favorable response to our new Broyhill® offerings.
- The **Seasonal** category experienced increased net sales and comps during the third quarter of 2020, driven by our Christmas and harvest departments, partially offset by decreased net sales and comps in our lawn & garden department. The increase in the Christmas and harvest departments resulted from strong alignment of our holiday assortments to customer demand, increased demand due to our customers' desire to invest in their home environments as a result of the ongoing COVID-19 coronavirus pandemic, and favorable response to holiday promotions during the third quarter of 2020. For our Christmas department in particular, we experienced the annual ramp up in Christmas-related net sales activity earlier during the third quarter of 2020 compared to the third quarter of 2019 and years prior. The decrease in net sales and comps in our lawn & garden department was principally due to lower remaining lawn & garden inventory entering the third quarter of 2020 compared to the third quarter of 2019.
- The increased net sales and positive comps in our **Electronics, Toys, & Accessories** category was driven by our toys, apparel, and accessories departments. The increase was driven by the introduction of these products into The Lot and the Queue Line in many of our stores, as well as a traffic-driving, brand-name toy promotion run in the third quarter of 2020. The increased sales and comps in apparel were driven by graphic tees, which were introduced to our stores late in the fourth quarter of 2019, and several brand-name apparel closeouts in the third quarter of 2020.
- The **Hard Home** category experienced increased net sales and comps during the third quarter of 2020, driven by increased net sales in our table top, small appliances, and food prep categories. As a result of various state-wide closures of dine-in restaurants, our customer has chosen to invest in our offerings from these departments to focus on her in-home dining experience. Additionally, our Hard Home net sales and comps increased due to several brand-name closeouts during the third quarter of 2020.

- Our **Consumables** and **Food** categories experienced increased net sales and comps compared to the third quarter of 2019 driven by increased sales in our Consumables category driven by health, beauty, and cosmetics, housekeeping supplies, and household chemicals. We also saw increased sales in our Food category driven by candy & snack and beverage & groceries departments. Additionally, our Consumables category benefited from the completion of our Pantry Optimization project in the third quarter of 2020, which reallocated linear square footage from our Food category to our Consumables category and improved our brand name, “never out” product assortment.

### Gross Margin

Gross margin dollars increased \$94.5 million, or 20.4%, to \$557.9 million for the third quarter of 2020, compared to \$463.4 million for the third quarter of 2019. The increase in gross margin dollars was primarily due to an increase in net sales, which increased gross margin dollars by \$83.3 million. Gross margin as a percentage of net sales increased 80 basis points to 40.5% in the third quarter of 2020 as compared to 39.7% in the third quarter of 2019. The gross margin rate increase was primarily a result of a lower markdown rate and higher comps in our higher margin merchandise categories, partially offset by higher shrink and lower initial markup of products, which was driven by higher freight costs and receipts skewed toward domestic purchases, which carry a slightly lower average initial markup.

### Selling and Administrative Expenses

Selling and administrative expenses were \$482.3 million for the third quarter of 2020, compared to \$436.7 million for the third quarter of 2019. The increase of \$45.6 million in selling and administrative expenses was comprised of increases in distribution and transportation costs of \$17.5 million, store-related payroll of \$11.5 million, accrued bonus expense of \$10.5 million, share-based compensation expense of \$7.7 million, and advertising expense of \$6.2 million, partially offset by a decrease in health benefit costs of \$7.8 million and by the absence of \$3.6 million related to our transformational restructuring initiative announced in 2019, which consisted of consulting expenses and employee separation costs. The increase in distribution and transportation costs was driven by rent expense for our distribution centers, all of which are now leased, higher inbound and outbound shipment volume to support the increased sales, and higher transportation rates. The increase in store-related payroll was primarily due to additional payroll hours to support our increased sales. The increase in accrued bonus expense was driven by increased performance in the third quarter of 2020 and higher anticipated performance for the fourth quarter of 2020 relative to our quarterly and annual operating plans as compared to our performance in the third quarter of 2019 relative to our quarterly and annual operating plans. The increase in share-based compensation expense was driven by a higher grant date fair value, higher estimated performance, and timing of the grant date of the 2018 PSUs for which we will recognize expense during 2020, compared to 2017 PSUs for which expense was recognized in 2019. The increase in advertising expense was driven by increased investments in digital and social media engagement leading into the holiday season and increased investments in our loyalty and rewards programs through purchase intelligence insights. The decrease in health benefit costs was due to a lower amount of benefits claims during the third quarter of 2020.

As a percentage of net sales, selling and administrative expenses decreased 240 basis points to 35.0% for the third quarter of 2020 compared to 37.4% for the third quarter of 2019.

### Depreciation Expense

Depreciation expense decreased \$1.7 million to \$33.1 million in the third quarter of 2020, compared to \$34.8 million for the third quarter of 2019. The decrease in depreciation expense was due to the absence of depreciation for our distribution centers sold in the second quarter of 2020.

Depreciation expense as a percentage of sales decreased 60 basis points compared to the third quarter of 2019.

**Interest Expense**

Interest expense was \$2.6 million in the third quarter of 2020, compared to \$5.4 million in the third quarter of 2019. The decrease in interest expense was primarily driven by a decrease in total average borrowings. We had total average borrowings (including finance leases and the sale and leaseback financing liability) of \$185.9 million in the third quarter of 2020 compared to total average borrowings of \$536.0 million in the third quarter of 2019. The decrease in total average borrowings was driven by our repayment of all outstanding borrowings under the 2018 Credit Agreement during the second quarter of 2020 and payments made toward the 2019 Term Note since the third quarter of 2019, partially offset by the establishment of a financing liability in connection with the sale and leaseback transactions for our distribution centers in the second quarter of 2020.

**Other Income (Expense)**

Other income (expense) was \$(0.5) million in the third quarter of 2020, compared to \$(0.3) million in the third quarter of 2019. The change was driven by increased losses on our diesel fuel derivatives in third quarter of 2020 compared to losses on diesel fuel derivatives during the third quarter of 2019.

**Income Taxes**

The effective income tax rate for the third quarter of 2020 was 24.1% compared to 22.9% in the third quarter of 2019. The increase in the effective income tax rate in the third quarter of 2020 compared to the third quarter of 2019 was primarily attributable to the impact of the gain on sale of distribution center in California in 2019. The tax rate on the gain was less than our normalized tax rate and, thereby reduced our effective tax rate in the third quarter of 2019. The impact of the discrete items on the effective income tax rate in the third quarter of 2020 was not meaningfully different from the impact in the third quarter of 2019.

## YEAR-TO-DATE 2020 COMPARED TO YEAR-TO-DATE 2019

### Net Sales

Net sales by merchandise category (in dollars and as a percentage of total net sales) in the year-to-date 2020 and the year-to-date 2019, and the change in net sales (in dollars and percentage) and the change in comps (in percentage) from the year-to-date 2020 compared to the year-to-date 2019 were as follows:

Year-to-Date								
(\$ in thousands)	2020			2019			Change	Comps
Furniture	\$	1,284,743	28.8 %	\$	1,031,357	27.7 %	\$ 253,386 24.6 %	23.1 %
Soft Home		770,078	17.3		606,397	16.3	163,681 27.0	27.0
Consumables		679,007	15.2		581,925	15.7	97,082 16.7	17.3
Seasonal		596,850	13.4		523,822	14.1	73,028 13.9	14.0
Food		570,540	12.8		530,970	14.3	39,570 7.5	7.7
Hard Home		287,349	6.4		243,584	6.6	43,765 18.0	18.5
Electronics, Toys, & Accessories		272,704	6.1		198,143	5.3	74,561 37.6	38.6
Net sales	\$	4,461,271	100.0 %	\$	3,716,198	100.0 %	\$ 745,073 20.0 %	19.7 %

Net sales increased \$745.1 million, or 20.0%, to \$4,461.3 million in the year-to-date 2020, compared to \$3,716.2 million in the year-to-date 2019. The increase in net sales was driven by comp increases in each of our merchandise categories, with an overall comp increase of 19.7%, which increased net sales by \$694.2 million. Additionally, our non-comparable sales increased net sales by \$50.9 million, driven by increased sales in our new and relocated stores compared to closed stores.

Overall, we experienced a favorable impact to net sales during the year-to-date 2020 due to our position as an “essential retailer” during the COVID-19 coronavirus pandemic and the increased demand for our home products while customers are spending more time at home. In the first quarter of 2020, we experienced a significant increase in demand for “essential products,” which we define as food, consumables, health products, and pet supplies, with the primary impact in our Food and Consumables merchandise categories, as concern over the COVID-19 coronavirus pandemic grew and customers began stocking up on essential products. Beginning in mid-April, we experienced a shift in demand from essential products to products in our Furniture, Seasonal, Soft Home and Hard Home categories driven by the release of government stimulus and enhanced unemployment funds. Despite the conclusion of government stimulus and enhanced unemployment programs at the beginning of the third quarter of 2020, the increased demand continued through the third quarter of 2020. Our customers have chosen to invest more in their homes as a result of spending more time at home and our product assortment has a strong alignment with current customer demand. Furthermore, we have successfully retained many of the new customers we attracted as a result of our position as an essential retailer during COVID-19 and we have seen a positive response to our strategic initiatives.

In the year-to-date 2020, we introduced The Lot and the Queue Line in approximately 50% of our stores, which contributed to the increased net sales and positive comps compared to the year-to-date 2019. Additionally, the early impact of our Pantry Optimization project, which was completed late in the third quarter of 2020, contributed to the increased net sales and positive comps compared to the year-to-date 2019.

All of our merchandise categories generated increased net sales and positive comps in the year-to-date 2020 compared to the year-to-date 2019:

- Our **Furniture** category experienced increased net sales and positive comps during the year-to-date 2020, driven by our customers choosing to invest in home furnishings as a result of spending more time at home during the COVID-19 coronavirus pandemic, as well as a surge in demand following the release of government stimulus and enhanced unemployment funds during the year-to-date 2020. Additionally, our customers have responded positively to our brand-name mattress assortment and Broyhill® furniture offerings in the year-to-date 2020.
- The positive comps and increased net sales in our **Soft Home** category were primarily driven by an increase in demand due to our customers’ decision to invest more in their homes as a result of spending more time at home. Additionally, our Soft Home category benefited from a favorable response to our new Broyhill® assortment.
- Our **Food and Consumables** categories experienced increased sales and positive comps driven by high demand for “essential products” during the early stages of the COVID-19 coronavirus pandemic. While Food and Consumables net sales and comps decelerated in the second and third quarters of 2020, the categories continued to outperform the

second and third quarters of 2019. Additionally, our Consumables category benefited from the completion of our Pantry Optimization project in the third quarter of 2020.

- We experienced increased net sales and positive comps in our **Seasonal** category, driven by the lawn & garden, summer, Christmas, and harvest departments. We experienced an increase in sales of high-ticket items such as patio furniture following the release of government stimulus and enhanced unemployment funds in mid-April 2020. Our customers have chosen to invest in our outdoor furniture, lawn maintenance assortments, and holiday decorations as a result of spending more time at home. Additionally, our customers continue to respond well to our new Broyhill® assortment of patio furniture.
- The increased net sales and positive comps in **Hard Home** was driven by an increase in our small appliances, table top, and food preparation departments. Despite space reductions and the exit from our greeting card offering, we experienced high demand for products that improve our customers' at-home dining experience.
- Our **Electronics, Toys, & Accessories** category experienced increased net sales and positive comps driven by our toys, apparel, and accessories departments. The increased sales and comps were driven by the introduction of these products into the Queue Line and The Lot in the year-to-date 2020.

### Gross Margin

Gross margin dollars increased \$331.5 million, or 22.4%, to \$1,812.2 million for the year-to-date 2020, compared to \$1,480.7 million for the year-to-date 2019. The increase in gross margin dollars was principally due to an increase in net sales, which increased gross margin dollars by \$296.9 million. Gross margin as a percentage of net sales increased 80 basis points to 40.6% in the year-to-date 2020, compared to 39.8% in the year-to-date 2019. This gross margin rate increase was primarily due to a lower markdown rate, higher comps in our higher margin merchandise categories, and the absence of a \$6.0 million impairment of inventory in our greeting cards department, which we chose to exit in the first quarter of 2019. The increase was partially offset by higher shrink costs and a lower initial mark-up compared to the year-to-date 2019, as our receipts have skewed toward domestic purchases, which carry a lower average initial markup. Additionally, our initial mark-up was lower compared to the year-to-date 2019 due to increased freight costs in the third quarter of 2020.

### Selling and Administrative Expenses

Selling and administrative expenses were \$1,444.9 million for the year-to-date 2020, compared to \$1,352.3 million for the year-to-date 2019. The increase of \$92.6 million in selling and administrative expenses was attributable to increases in distribution and transportation costs of \$41.2 million, store-related payroll of \$41.0 million, accrued bonus expense of \$22.9 million, advertising expense of \$11.3 million, transaction fees of \$7.6 million, \$6.9 million of store occupancy costs, \$6.6 million of share-based compensation expense, \$4.6 million in store supplies, \$4.6 million of employee retirement and separation costs, \$4.0 million of sale and leaseback related expenses, and \$3.7 million of proxy contest-related costs, partially offset by the absence of \$38.3 million in costs incurred for our transformational restructuring initiative, the absence of a \$7.3 million loss contingency recorded in the year-to-date 2019, and a decrease in health benefit costs of \$12.9 million. The increase in distribution and transportation expenses was due to the transition from our Rancho Cucamonga, CA distribution center to our new Apple Valley, CA distribution center, rent expense on our leased distribution centers, higher inbound and outbound rates and volume to support the increased year-to-date net sales, and a temporary \$2 per hour wage increase for most of our non-exempt workforce during the COVID-19 coronavirus pandemic. The temporary \$2 per hour wage increase began in March 2020 and continued through early July 2020. The increase in store-related payroll was driven by additional payroll hours allocated to stores to support the increased net sales during the year-to-date 2020 and the aforementioned temporary \$2 per hour wage increase. The increase in accrued bonus expense was driven by increased performance in the year-to-date 2020 and higher anticipated performance for the fourth quarter of 2020 relative to our quarterly and annual operating plans as compared to our performance in the year-to-date 2019 relative to our quarterly and annual operating plans, and a one-time discretionary bonus in the second quarter of 2020 to recognize our non-exempt associates in our stores and distribution centers. Advertising expense increased due to increased investments in social media engagement, our rewards and loyalty program, and video media to promote The Lot and our Store of the Future concept. The increase in transaction fees, which includes credit card fees, debit card fees, and other transaction-driven costs, was primarily due to the increased net sales in the year-to-date 2020 compared to the year-to-date 2019. The increase in store-related occupancy costs was due to new stores opened since the end of the third quarter of 2019, which have higher rents than the stores closed, and normal rent increases resulting from lease renewals. The increase in share-based compensation expense was driven by a higher grant date fair value and higher estimated performance for the 2018 PSUs for which we will recognize expense during 2020, compared to the 2017 PSUs for which expense was recognized in 2019. The increase in store supplies expense was driven by safety and cleaning supplies, such as personal protective equipment, hand sanitizer, and disinfectants, distributed to our stores in the year-to-date 2020 to ensure a safe environment for our customers and associates during the COVID-19 coronavirus pandemic. The increase in employee retirement and separation costs was primarily driven by the retirement and separation of senior executives in the year-to-date 2020. The sale and leaseback related expenses were due to consulting costs incurred in connection with the completion of the sale and leaseback transaction for our four distribution centers in the second quarter of 2020. The proxy contest-related costs were comprised of legal, public relations, and advisory fees, and settlement costs incurred to resolve a proxy contest in the first



quarter of 2020. The costs incurred for our transformational restructuring initiative consisted of consulting expenses and employee separation costs recognized in the year-to-date 2019. The loss contingency recorded in the year-to-date 2019 was associated with wage and hour claims in the state of California. The decrease in health benefits costs was primarily due to lower benefits claim volume in the year-to-date 2020 as many medical care providers suspended non-emergency care and procedures during the year-to-date 2020 due to the COVID-19 coronavirus pandemic.

As a percentage of net sales, selling and administrative expenses decreased 400 basis points to 32.4% for the year-to-date 2020 compared to 36.4% for the year-to-date 2019.

### **Depreciation Expense**

Depreciation expense increased \$7.2 million to \$104.8 million in the year-to-date 2020, compared to \$97.6 million for the year-to-date 2019. The increase was driven primarily by investments in our Apple Valley, CA distribution center, new store build-outs, and Store of the Future remodels, and the acquisition of our corporate headquarters facility in the third quarter of 2019, partially offset by a decrease from the sale and leaseback of our four distribution centers in the second quarter of 2020.

Depreciation expense as a percentage of sales decreased by 30 basis points compared to the year-to-date 2019.

### **Gain on Sale of Distribution Centers**

The gain on sale of distribution centers in the year-to-date 2020 was \$463.1 million, compared to \$178.5 million in the year-to-date 2019. The gain on sale of distribution centers in the year-to-date 2020 was attributable to the sale and leaseback of our distribution centers in Durant, OK; Tremont, PA; Montgomery, AL; and Columbus, OH during the second quarter of 2020. The gain on sale of distribution centers in the year-to-date 2019 was attributable to the sale of our Rancho Cucamonga, CA distribution center in the third quarter of 2019.

### **Interest Expense**

Interest expense was \$8.5 million in the year-to-date 2020, compared to \$13.7 million in the year-to-date 2019. The decrease in interest expense was driven by lower total average borrowings (including finance leases and the sale and leaseback financing liability) and a lower average interest rate on our revolving debt. We had total average borrowings of \$282.3 million in the year-to-date 2020 compared to \$490.3 million in the year-to-date 2019. The decrease in total average borrowings was driven by our repayment of all outstanding debt under the 2018 Credit Agreement following the sale and leaseback transaction completed in the second quarter of 2020, partially offset by timing of our entry into the 2019 Term Note, as the 2019 Term Note was only in place for the second half of 2019, and establishment of a financing liability in connection with the sale and leaseback transactions for our distribution centers in the second quarter of 2020. The average interest rate on our revolving debt, which is variable based on LIBOR and our credit rating, decreased due to a significant decline in the LIBOR rate in the year-to-date 2020 as a result of the COVID-19 coronavirus pandemic, partially offset by the impact of a decrease in our credit rating during the first quarter of 2020.

### **Other Income (Expense)**

Other income (expense) was \$(2.4) million in the year-to-date 2020, compared to \$(0.2) million in the year-to-date 2019. The change was primarily driven by unrealized losses on our diesel fuel derivatives due to a sharp decline in current and forward diesel fuel prices in the first quarter of 2020 as a result of the COVID-19 coronavirus pandemic.

### **Income Taxes**

The effective income tax rate for the year-to-date 2020 and the year-to-date 2019 were 25.7% and 23.9%, respectively. The increase in the effective income tax rate was primarily attributable to impact of the sales of our distribution centers. In the year-to-date 2019, the tax rate on the gain of our California distribution center was less than our normalized tax rate, thereby reducing our effective tax rate in the year-to-date 2019. While in the year-to-date 2020, the tax rate on the gains of our non-California distribution centers were similar to our normalized tax rate, thereby having a more muted impact on our effective tax rate in the year-to-date 2020. Additionally, the impact of our discrete items was similar in value in the year-to-date 2020 and the year-to-date 2019, but their impact on the tax rate was significantly curtailed in the year-to-date 2020 by the significant growth in income before income taxes in the year-to-date 2020 as compared to the year-to-date 2019.

### **2020 Guidance**

In March 2020, the World Health Organization declared the COVID-19 coronavirus a pandemic. The rapid spread of the disease throughout the U.S. has significantly impacted the U.S. economy, which has reduced our visibility to future financial results in comparison to prior years. Therefore, in March 2020, the Company withdrew its full year guidance for 2020. At this time, the Company still does not believe it has sufficient visibility to reinstate full year guidance. We expect to provide a business update in early January 2020 when we have greater visibility to expected results for the fourth quarter of 2020.



## Capital Resources and Liquidity

On August 31, 2018, we entered into the 2018 Credit Agreement, which provides for a \$700 million five-year unsecured credit facility. The 2018 Credit Agreement expires on August 31, 2023. Borrowings under the 2018 Credit Agreement are available for general corporate purposes, working capital, and to repay certain indebtedness. The 2018 Credit Agreement includes a \$30 million swing loan sublimit, a \$75 million letter of credit sublimit, a \$75 million sublimit for loans to foreign borrowers, and a \$200 million optional currency sublimit. The interest rates, pricing and fees under the 2018 Credit Agreement fluctuate based on our debt rating. The 2018 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 2018 Credit Agreement without penalty. The 2018 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. The covenants of the 2018 Credit Agreement do not restrict our ability to pay dividends. Additionally, we are subject to cross-default provisions associated with the synthetic lease for our distribution center in Apple Valley, CA. A violation of any of the covenants could result in a default under the 2018 Credit Agreement that would permit the lenders to restrict our ability to further access the 2018 Credit Agreement for loans and letters of credit and require the immediate repayment of any outstanding loans under the 2018 Credit Agreement. At October 31, 2020, we were in compliance with the covenants of the 2018 Credit Agreement.

On August 7, 2019, we entered into the 2019 Term Note, a \$70 million term note agreement, which is secured by the equipment at our California distribution center. The 2019 Term Note will expire on May 7, 2024. We are required to make monthly payments over the term of the 2019 Term Note and are permitted to prepay the note, subject to penalties, at any time. The interest rate on the note is fixed at 3.3%.

The primary source of our liquidity is cash flows from operations and borrowings under the 2018 Credit Agreement, as necessary. 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. However, due to demand volatility we have experienced during the COVID-19 coronavirus pandemic, the seasonality of our 2020 results may differ from our historical experience. 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. However, as a result of the sale and leaseback transactions completed in the second quarter of 2020 and our strong cash flow from operations during the year-to-date 2020, we funded our working capital requirements in the third quarter of 2020 without borrowing under the 2018 Credit Agreement. At October 31, 2020, we had no borrowings under the 2018 Credit Agreement, and the borrowings available under the 2018 Credit Agreement were \$693.7 million, after taking into account the reduction in availability resulting from outstanding letters of credit totaling \$6.3 million. We believe that cash on hand, cash equivalents, cash available from future operations, and our 2018 Credit Agreement will provide us with sufficient liquidity to fund our operations for at least the next twelve months. However, we do not anticipate borrowing under the 2018 Credit Agreement for the remainder of 2020. Cash requirements include among other things, capital expenditures, working capital needs, interest payments, and other contractual commitments.

As a measure to secure additional liquidity during a period of economic uncertainty caused by the COVID-19 coronavirus pandemic, on June 12, 2020, we completed the sale and leaseback transactions relating to our distribution centers located in Columbus, OH; Durant, OK; Montgomery, AL; and Tremont, PA for an aggregate selling price of \$725 million. Due to sale-leaseback accounting requirements, the proceeds received in the transactions were allocated between proceeds on the sale of the distribution centers and financing proceeds. Accordingly, aggregate net proceeds on the sales of the distribution centers was \$586.9 million and the aggregate gain on the sales was \$463.1 million. The remainder of consideration received was financing liability proceeds of \$134.0 million.

In the second quarter of 2020, we invested a portion of the proceeds from the sale and leaseback of our four distribution centers in money market fund investments and commercial paper investments. These highly liquid investments were recorded in cash and cash equivalents in our consolidated balance sheets. Our aggregate money market fund and commercial paper investments were \$205.1 million and \$0 at October 31, 2020 and February 1, 2020, respectively.

As a result of the sale and leaseback transactions and our strong cash flow from operations during the year-to-date 2020, our cash and cash equivalents increased \$486.0 million to \$547.8 million compared to the third quarter of 2019.

In August 2020, our Board of Directors authorized the repurchase of up to \$500 million of our common shares. During the third quarter of 2020, we purchased approximately 2.2 million of our common shares for \$100.0 million under the 2020 Repurchase Authorization, at an average price of \$45.81. Pursuant to the 2020 Repurchase Authorization, 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 2020 Repurchase Authorization will be available to meet obligations under our

equity compensation plans and for general corporate purposes. The 2020 Repurchase Authorization has no scheduled termination date and we intend to fund repurchases under the authorization with cash and cash equivalents on hand and cash generated from operations going forward.

In August 2020, our Board of Directors declared a quarterly cash dividend of \$0.30 per common share payable on September 25, 2020 to shareholders of record as of the close of business on September 11, 2020. The cash dividend of \$0.30 per common share is consistent with our quarterly dividends declared in 2019. In the year-to-date of 2020, we paid approximately \$35.8 million in dividends compared to \$36.7 million in the year-to-date of 2019.

In December 2020, our Board of Directors declared a quarterly cash dividend of \$0.30 per common share payable on December 30, 2020 to shareholders of record as of the close of business on December 16, 2020.

The following table compares the primary components of our cash flows from the year-to-date 2020 compared to the year-to-date 2019:

<i>(In thousands)</i>	2020	2019	Change
Net cash provided by operating activities	\$ 267,410	\$ 80,548	\$ 186,862
Net cash provided by (used in) investing activities	485,209	(41,231)	526,440
Net cash used in financing activities	\$ (257,509)	\$ (23,557)	\$ (233,952)

Cash provided by operating activities increased \$186.9 million to \$267.4 million in the year-to-date 2020 compared to \$80.5 million in the year-to-date 2019. The primary drivers of the increase were an increase of \$382.5 million in net income, a \$112.1 million increase in cash inflows from accounts payable, and a \$60.2 million increase in the change in current income taxes, partially offset by an increase in the add-back for gain on disposition of equipment and property of \$284.8 million, and an increase in the add-back for deferred taxes of \$66.8 million. The increase in net income was primarily due to the gain on sale of distribution centers in the second quarter of 2020 and a \$745.1 million increase in net sales in the year-to-date 2020. Similarly, the increase in the change in current income taxes was due to higher income before income taxes, which primarily resulted from the gain on sale of distribution centers and increased net sales, partially offset by payment in the third quarter of 2020 of a portion of our income tax liability resulting from the gain on sale of distribution centers. The increase in the change in accounts payable was primarily driven by later inventory receipts leading into the holiday season, which increased our accounts payable balance in the third quarter of 2020 compared to the third quarter of 2019. The increase in the add-back for gain on disposition of equipment and property was principally due to an increase in the gain on sale of distribution centers of \$284.6 million compared to the year-to-date 2019. The increase in the add-back for deferred taxes was primarily due to the deferred gain on the sale of our Rancho Cucamonga, CA distribution center in the year-to-date 2019.

Cash provided by (used in) investing activities increased by \$526.4 million to cash provided by investing activities of \$485.2 million in the year-to-date 2020 compared to cash used in investing activities of \$41.2 million in the year-to-date 2019. The increase was primarily due to an increase of \$397.5 million in cash proceeds from sale of property and equipment, coupled with a \$128.9 million reduction in capital expenditures. The increase in cash proceeds from sale of property and equipment was due to the completion of the sale and leaseback transactions for our four distribution centers in the year-to-date 2020, compared to the sale of one distribution center in the year-to-date 2019. The decrease in capital expenditures was driven by our decision to reduce our investments in our Store of the Future concept and new stores in 2020 to preserve liquidity and promote safety during the COVID-19 coronavirus pandemic, and a decrease in investments in our Apple Valley, CA distribution center which opened in late 2019.

Cash used in financing activities increased by \$234.0 million to \$257.5 million in the year-to-date 2020 compared to \$23.6 million in the year-to-date 2019. The primary driver of the increase in cash used in financing activities was an increase in net repayments of long-term debt of \$380.6 million and an increase in payment for treasury shares acquired of \$47.3 million, partially offset by an increase in net financing proceeds from sale and leaseback of \$123.4 million and a decrease in payment of finance lease obligations of \$69.5 million. The increase in net repayments of long-term debt was a result of the repayment of all outstanding borrowings under the 2018 Credit Agreement following the completion of the sale and leaseback transaction for our four distribution centers in the second quarter of 2020. The increase in payment for treasury shares acquired was driven by the repurchase of \$100.0 million of our common shares under the 2020 Repurchase Authorization during the year-to-date 2020, compared to \$50.0 million of our common shares under the 2019 Repurchase Program during the year-to-date 2019. The increase in net financing proceeds from sale and leaseback was driven by the sale and leaseback transactions completed for our four distribution centers in second quarter of 2020. The decrease in payments of finance lease obligations was due to the absence in the year-to-date 2020 of our payment of the remainder of the finance lease obligation for our corporate headquarters facility in the year-to-date 2019.

## CRITICAL ACCOUNTING POLICIES AND 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. On an ongoing basis, management evaluates its estimates, judgments, and assumptions, and bases its estimates, judgments, and assumptions on historical experience, current trends, and various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates. See note 1 to our consolidated financial statements included in our 2019 Form 10-K for additional information about our accounting policies.

The estimates, judgments, and assumptions that have a higher degree of inherent uncertainty and require the most significant judgments are outlined in Management's Discussion and Analysis of Financial Condition and Results of Operations contained in our 2019 Form 10-K. Had we used estimates, judgments, and assumptions different from any of those discussed in our 2019 Form 10-K, our financial condition, results of operations, and liquidity for the current period could have been materially different from those presented.

## Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are subject to market risk from exposure to changes in interest rates on investments that we make from time to time and on borrowings under the 2018 Credit Agreement. We had no borrowings under the 2018 Credit Agreement at October 31, 2020. An increase of 1% in our variable interest rate on our expected future borrowings would not currently affect our financial condition, results of operations, or liquidity.

We are subject to market risk from exposure to changes in our derivative instruments associated with diesel fuel. At October 31, 2020, we had outstanding derivative instruments, in the form of collars, covering 4.6 million gallons of diesel fuel. The below table provides further detail related to our current derivative instruments, associated with diesel fuel.

Calendar Year of Maturity	Diesel Fuel Derivatives		Fair Value	
	Puts	Calls	Asset (Liability)	
	<i>(Gallons, in thousands)</i>		<i>(In thousands)</i>	
2020	960	960	\$	(582)
2021	2,400	2,400		(1,410)
2022	1,200	1,200		(675)
<b>Total</b>	<b>4,560</b>	<b>4,560</b>	<b>\$</b>	<b>(2,667)</b>

Additionally, at October 31, 2020, a 10% difference in the forward curve for diesel fuel prices could affect unrealized gains (losses) in other income (expense) by approximately \$1.2 million.

## Item 4. Controls and Procedures

### Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Principal Executive Officer 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 Exchange Act) as of the end of the period covered by this report. Based on that evaluation, our Principal Executive Officer 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.

### Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as that term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) 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.

## Part II. Other Information

### Item 1. Legal Proceedings

No response is required under Item 103 of Regulation S-K. For a discussion of certain litigated matters, see note 7 to the accompanying consolidated financial statements.

### Item 1A. Risk Factors

During the third quarter of 2020, there were no material changes to the risk factors previously disclosed in our 2019 Form 10-K.

### Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

*(In thousands, except price per share data)*

Period	(a) Total Number of Shares Purchased <sup>(1)(2)</sup>	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	(d) Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
August 2, 2020 - August 29, 2020	—	\$ 50.05	—	\$ 500,000
August 30, 2020 - September 26, 2020	2,185	45.82	2,183	400,000
September 27, 2020 - October 31, 2020	11	51.44	—	400,000
Total	2,196	\$ 45.84	2,183	\$ 400,000

(1) The 2020 Repurchase Authorization is comprised of an August 27, 2020 authorization by our Board of Directors for the repurchase of up to \$500.0 million of our common shares. During the third quarter of 2020, we purchased approximately 2.2 million of our common shares for approximately \$100.0 million under the 2020 Repurchase Authorization. The 2020 Repurchase Authorization has no scheduled termination date.

(2) In August, September, and October 2020, in connection with the vesting of certain outstanding restricted stock units, we acquired 464, 2,496, and 10,664 of our common shares, respectively, which were withheld to satisfy minimum statutory income tax withholdings.

### Item 3. Defaults Upon Senior Securities

None.

### Item 4. Mine Safety Disclosures

None.

### Item 5. Other Information

None.

**Item 6. Exhibits**

Exhibits marked with an asterisk (\*) are filed herewith.

Certain portions of the exhibits marked with a pound sign (#) have been excluded from the exhibit pursuant to Item 601(b)(10)(iv) of Regulation S-K.

Exhibit No.	Document
<a href="#"><u>10.1*#</u></a>	Lease Agreement, as amended, between Big Lots Stores, Inc. and BIGCOOH002, LLC relating to the registrant's distribution center located in Columbus, OH.
<a href="#"><u>31.1*</u></a>	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<a href="#"><u>31.2*</u></a>	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<a href="#"><u>32.1*</u></a>	Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
<a href="#"><u>32.2*</u></a>	Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
<a href="#"><u>101.Def*</u></a>	XBRL Taxonomy Definition Linkbase Document
<a href="#"><u>101.Pre*</u></a>	XBRL Taxonomy Presentation Linkbase Document
<a href="#"><u>101.Lab*</u></a>	XBRL Taxonomy Labels Linkbase Document
<a href="#"><u>101.Cal*</u></a>	XBRL Taxonomy Calculation Linkbase Document
101.Sch	XBRL Taxonomy Schema Linkbase Document
101.Ins	XBRL Taxonomy Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

**Signature**

Pursuant to the requirements 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.

Dated: December 9, 2020

**BIG LOTS, INC.**

By: /s/ Jonathan E. Ramsden

Jonathan E. Ramsden  
*Executive Vice President, Chief Financial and Administrative Officer*  
 (Principal Financial Officer, Principal Accounting Officer and Duly Authorized Officer)

## **Exhibit 10.1**

Certain immaterial portions of this agreement identified with an [\*] have been excluded from the exhibit pursuant to Item 601(b)(10)(iv) of Regulation S-K because public disclosure of such portions would likely cause competitive harm to the registrant.

In addition, pursuant to Instruction 2 to Item 601 of Regulation S-K, the registrant has omitted the following agreements entered into by wholly-owned subsidiaries of the registrant on June 12, 2020, which are substantially identical in all material respects to Exhibit 10.1:

- Lease Agreement between Durant DC, LLC and BIGDUOK001 LLC relating to the registrant's distribution center located in Durant, Oklahoma;
- Lease Agreement between Closeout Distribution, Inc. and BIGTRPA001 LLC relating to the registrant's distribution center located in Tremont, Pennsylvania; and
- Lease Agreement between CSC Distribution LLC and Oak Street Real Estate Capital Fund IV, LP relating to the registrant's distribution center located in Montgomery, Alabama.

**LEASE AGREEMENT  
(COLUMBUS PROPERTY)**

**By and Between**

BIGCOOH002 LLC, a Delaware limited liability company

**(Landlord)**

**and**

BIG LOTS STORES, INC., an Ohio corporation

**(Tenant)**

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## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (this “**Lease**”) is entered into as of the 12th day of June, 2020 (the “Effective Date”), by and between BIGCOOH002 LLC, a Delaware limited liability company (“Landlord”), and BIG LOTS STORES, INC., an Ohio corporation (“Tenant”).

### RECITALS

- A. Tenant and Big Lots, Inc., an Ohio corporation (collectively, “**Seller**”), were the fee simple owners of the Premises prior to the Effective Date.
- B. Landlord purchased the Premises from Seller pursuant to an Agreement for Purchase and Sale of Real Property dated as of April 7, 2020 (the “**Purchase Agreement**”).
- C. Landlord and Tenant are executing this Lease, pursuant to which Landlord shall lease the Premises back to Tenant, on the terms and conditions set forth below.

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

#### 1. **BASIC TERMS.**

- A. “Base Rent”: Base Rent shall be paid in accordance with and in the amounts set forth on **Exhibit “A”** attached hereto and made a part hereof, subject to increases as set forth herein.
- B. “Building”: The building or buildings located on the Property in the approximate square footages set forth on **Exhibit “B.”**
- C. “Commencement Date”: The Effective Date.
- D. “Expiration Date”: The last day of the calendar month in which the fifteen (15) year anniversary of the Commencement Date shall occur, or as otherwise extended pursuant to the terms hereof.
- E. “Option to Renew”: Ten (10) additional periods of five (5) years each under the terms and conditions set forth in Section 37 of this Lease.
- F. “Premises”: Collectively, the Building and the Property.
- G. “Property”: That certain tract or parcel of land, more particularly described on Exhibit “B,” attached hereto and made a part hereof.
- H. “Term”: A period of fifteen (15) years (plus the number of days, if any, to have this Lease expire on the last day of a calendar month), commencing on the Commencement Date and expiring on the Expiration Date, unless extended as hereinafter provided.

## 2. **DEFINITIONS AND BASE PROVISIONS.**

For purposes of this Lease, the following terms shall have the meanings indicated below:

- A. “**ADA**”: The Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., as the same may be amended from time to time and any and all rules and regulations which have become effective prior to the date of this Lease under such statutes.
- B. “**Affiliate**”: With respect to Landlord or Tenant, shall mean a person or entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such person or entity. The term “control” as used in the immediately preceding sentence, means, with respect to an entity that is a corporation, limited liability company, partnership or other entity, the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the ownership interests of the entity, with respect to any non-publicly traded company, and more than ten percent (10%) ownership, or management control, with respect to any publicly traded company.
- C. “**Alterations**”: Defined in Section 13.A hereof.
- D. “**Anti-Money Laundering Laws**”: The BSA and the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (commonly referred to as the USA Patriot Act), P.L. 107-56, as the same may be amended from time to time and any and all rules and regulations which have become effective prior to the date of this Lease under such statutes.
- E. “**Architect**” shall mean an architect selected by Tenant to complete any applicable Tenant’s Work, who is reasonably acceptable to Landlord.
- F. “**Base Rent**”: Defined in Section 1.A hereof.
- G. “**BSA**”: The Bank Secrecy Act (otherwise known as the Currency and Foreign Transactions Reporting Act), 31. U.S.C. §§ 310 et seq., as the same may be amended from time to time and any and all rules and regulations which have become effective prior to the date of this Lease under such statutes.
- H. “**Building**”: Defined in Section 1.B hereof.
- I. “**Commencement Date**”: Defined in Section 1.C hereof.
- J. “**Comparable Buildings**”: Buildings in the Columbus, Ohio market that are comparable in size, design, use, age, location, class and quality to the Building.

- K. “Contract”: Defined in Section 45.C hereof.
- L. “Control” shall mean with respect to an entity that is a corporation, limited liability company, partnership or other entity, the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the ownership interests of the entity.
- M. “Default Rate”: The lesser of (i) the Prime Rate plus five and one-half percent (5.5%) per annum, compounding monthly, or (ii) the highest rate allowed by applicable Law.
- N. “Encumbrance”: Any claim, lien, pledge, option, charge, easement, security interest, deed of trust, mortgage, lease, sublease, attachment, conditional sales agreement, encumbrance, preemptive right, right of first refusal, right of first offer, covenant, condition, restriction, reciprocal easement agreement, declaration or other right of third parties, whether voluntarily incurred or arising by operation of Law, and includes any agreement to give or enter into any of the foregoing.
- O. “Environmental Laws”: Each and every Law pertaining to environmental, health or safety matters or Hazardous Materials applicable to or which otherwise pertains to or affects the Premises or the use, ownership, occupancy or operation of the Premises or any portion thereof, and as the same have been or may be amended, modified or supplemented from time to time, including but not limited to the (1) Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), (2) Hazardous Substances Transportation Act (49 U.S.C. §1802 et seq.), (3) Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), as amended by the Hazardous and Solid Wastes Amendments of 1984, (4) Water Pollution Control Act (33 U.S.C. §1251 et seq.), (5) Safe Drinking Water Act (42 U.S.C. §300f et seq.), (6) Clean Water Act (33 U.S.C. §1321 et seq.), (7) Clean Air Act (42 U.S.C. §7401 et seq.), (8) Solid Waste Disposal Act (42 U.S.C. §6901 et seq.), (9) Toxic Substances Control Act (15 U.S.C. §2601 et seq.), (10) Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11001 et seq.), (11) Radon Gas and Indoor Air Quality Research Act of 1986 (42 U.S.C. §7401 et seq.), (12) National Environmental Policy Act (42 U.S.C. §4321 et seq.), (13) Superfund Amendment Reauthorization Act of 1986 (42 U.S.C. §9601 et seq.), (14) Occupational Safety and Health Act (29 U.S.C. §651 et seq.), (15) Refuse Act of 1999 (33 U.S.C. § 407 et seq.), (16) Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.), (17) Marine Protection, Research and Sanctuaries Act (33 U.S.C. § 1401 et seq.), (18) Noise Control Act (42 U.S.C. § 4902 et seq.), (19) Atomic Energy Act (42 U.S.C. § 2011 et seq.) and (20) Nuclear Waste Policy Act of 1982 (42 U.S.C. § 10101 et seq.), and any similar state or local Laws and any and all rules and regulations in effect under such Laws.

- P. “Event of Default”: Defined in Section 23 hereof.
- Q. “Exercise Period”: Defined in Section 45.B hereof.
- R. “Expiration Date”: Defined in Section 1.D hereof.
- S. “Final Completion” shall mean with respect to any Tenant’s Work (a) the completion of construction of such Tenant’s Work, including all “punch list” items, in accordance with the applicable Plans as certified by the applicable General Contractor, and (b) all permits and licenses required for the legal occupancy of such Tenant’s Work, if any, have been obtained.
- T. “Final Completion Date” shall mean the date that Final Completion of the applicable Tenant’s Work occurs.
- U. “General Construction Contract” shall mean with respect to any Tenant’s Work, the applicable construction contract by and between the applicable General Contractor and Tenant and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.
- V. “General Contractor” shall mean, with respect to any Tenant’s Work, a contractor selected by Tenant to complete such Tenant’s Work and reasonably acceptable to Landlord.
- W. “Guarantor” shall mean Big Lots, Inc., an Ohio corporation.
- X. “Guaranty” Defined in Section 46 hereof.
- Y. “Hazardous Materials”: shall mean (a) any toxic substance or hazardous waste, substance, solid waste or related material, or any pollutant or contaminant; (b) radon gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, radiation, mold or other microbial matter, odors, noise, per- and poly-fluoroalkyl substances, or any petroleum product or additive; (c) any substance, gas, material or chemical which is now or hereafter defined as or included in the definition of “hazardous substances,” “toxic substances,” “hazardous materials,” “hazardous wastes,” “regulated substances” or words of similar import under any Environmental Laws; and (d) any other chemical, material, gas or substance, the exposure to or release of which is or may be prohibited, limited or regulated by any governmental authority, or any chemical, material, gas or substance that does or is reasonably likely to pose a hazard to human health or safety or to the environment.
- Z. “Indemnified Party” shall mean, with respect to any indemnification obligation contained in this Lease, the individual or entity so indemnified by the indemnifying party.

- AA. “Landlord Indemnified Parties”: Landlord and Landlord Mortgagee, and each of their respective successors and assigns, and their respective members, managers, partners, shareholders, officers, directors, agents, attorneys and representatives.
- BB. “Landlord”: Defined in the Preamble hereto.
- CC. “Landlord Claim”: Defined in Section 20.A hereof.
- DD. “Landlord Mortgage”: Defined in Section 25.B hereof.
- EE. “Landlord Mortgagee”: Defined in Section 25.B hereof.
- FF. “Landlord Notice Address”:  
  
c/o Oak Street Real Estate Capital, LLC  
125 S. Wacker Drive, Suite 1220  
Chicago, Illinois 60606  
Attention: James Hennessey  
E-mail: hennessey@oakstreetrec.com
- With a copy to
- Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Attention: David A. Rosenberg  
E-mail: david.rosenberg@kirkland.com
- GG. “Landlord’s Notice”: Defined in Section 45.A hereof.
- HH. “Landlord’s Representatives”: Landlord’s agents, attorneys, representatives, members, directors, officers and employees.
- II. “Late Charge”: Defined in Section 5.D hereof.
- JJ. “Law”: All applicable statutes, ordinances, rules, regulations, codes, orders, requirements, directives, binding written interpretations and binding written policies, common law, rulings, and decrees of all local, municipal, state and federal governments, departments, agencies, commissions, boards or political subdivisions.
- KK. “LC Issuer Requirements”: Defined in Section 21.B hereof.
- LL. “Letter of Credit”: Defined in Section 21.B hereof.
- MM. “Monthly Base Rent Commencement Date”: Defined in Section 5.B hereof.

- NN. “Negotiation Period”: Defined in Section 45.C hereof.
- OO. “OFAC Laws and Regulations”: All Laws administered by the Office of Foreign Asset Control (“**OFAC**”) of the Department of the Treasury, codified at 31 C.F.R. Part 500 (including those named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action regarding persons or entities with whom U.S. persons or entities are restricted from doing business (including persons or entities who have violated the U.S. Foreign Corrupt Practices Act 15 U.S.C. §§78dd-1, 78dd-2 and 78dd-3), as same may be amended from time to time.
- PP. “Option to Renew”: Defined in Section 1.E hereof.
- QQ. “Permitted Encumbrances”: Any and all Encumbrances (i) affecting any portion of the Premises as of the Commencement Date, including, but not limited to, those Encumbrances shown on Landlord’s title policy obtained on the Effective Date, (ii) consisting of any and all leases, subleases, licenses and other occupancy agreements in place with respect to the Premises as of the Effective Date (collectively, the **“Existing Leases”**), (iii) consisting of current taxes and assessments with respect to the Premises, not yet due or payable, (iv) arising or created by municipal and zoning ordinances and (v) arising after the Commencement Date that are approved in writing by Landlord in its sole and absolute discretion.
- RR. “Permitted Guarantor Change of Control”: Defined in Section 21.B hereof.
- SS. “Personal Property”: All personal property on the Premises, which shall include, without limitation, all business machinery and equipment, including, but not limited to, specialized equipment unique to the nature of Tenant’s business, business records, furniture, furnishings, communications equipment, office equipment, computer equipment, computer software, computer tapes, computer program tapes, computer program disks, computer program documentation and manuals, computer program codes, customer accounts, customer lists, customer information, inventory and proprietary information which may belong to Tenant or be in the possession of Tenant, which is located or used upon, in or about the Premises during the Term, or any renewal or extension thereof. Any generator and associated equipment located at the Premises, if any, shall constitute a fixture and shall not constitute Personal Property.
- TT. “Plans” shall mean, with respect to any Tenant’s Work, the plans and specifications prepared by the Architect and approved by Landlord.
- UU. “Premises”: Defined in Section 1.F hereof.

- VV. “Prime Rate”: The interest rate per annum as published, from time to time, in The Wall Street Journal as the “Prime Rate” in its column entitled “Money Rate”. The Prime Rate may not be the lowest rate of interest charged by any “large U.S. money center commercial banks” and Landlord makes no representations or warranties to that effect. In the event The Wall Street Journal ceases publication or ceases to publish the “Prime Rate” as described above, the Prime Rate shall be the average per annum discount rate (the “**Discount Rate**”) on ninety-one (91) day bills (“**Treasury Bills**”) issued from time to time by the United States Treasury at its most recent auction, plus three hundred (300) basis points. If no such 91-day Treasury Bills are then being issued, the Discount Rate shall be the discount rate on Treasury Bills then being issued for the period of time closest to ninety-one (91) days.
- WW. “Prohibited Persons”: Defined in Section 16.B hereof.
- XX. “Property”: Defined in Section 1.G hereof.
- YY. “Purchase Agreement”: Defined in Recital B hereto.
- ZZ. “Real Estate Taxes”: Defined in Section 7.A hereof.
- AAA. “Release”: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, migrating, presence of, exposure to or disposing into the environment of any Hazardous Materials, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Materials.
- BBB. “Renewal Amendment”: Defined in Section 37.C hereof.
- CCC. “Renewal Notice”: Defined in Section 37.A.1 hereof.
- DDD. “Renewal Option”: Defined in Section 37.A hereof.
- EEE. “Renewal Term”: Defined in Section 37.A hereof.
- FFF. “Rent”: Defined in Section 5.C hereof.
- GGG. “Repossessed Premises”: Defined in Section 24.C hereof.
- HHH. “Right of First Refusal”: Defined in Section 45 hereof.
- III. “Security Deposit” Defined in Section 21.B hereof.
- JJJ. “Seller”: Defined in the Recitals hereto.
- KKK. “SNDA”: Defined in Section 25.A hereof.
- LLL. “Substitute Tenant”: Defined in Section 24.C hereof.



MMM. “Taxes”: Defined in Section 7.D hereof.

NNN. “Tenant”: Defined in the Preamble hereto.

OOO. “Tenant Notice Address”:

Big Lots, Inc.  
4900 East Dublin Granville Road  
Columbus, OH 43081  
Attn: Jason Judd  
SVP Corporate Finance & Treasurer  
Email: JJudd@biglots.com

Big Lots, Inc.  
4900 East Dublin Granville Road  
Columbus, OH 43081  
Attn: Ronald A. Robins, Jr. (Rocky)  
EVP, General Counsel & Corporate Secretary  
Email: rrobins@biglots.com

With a copy to:

Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, OH 43215  
Attn: Daniel J. Minor  
Email: djminor@vorys.com

PPP. “Tenant’s Personal Property”: Defined in Section 12 hereof.

QQQ. “Tenant’s Purchase Election”: Defined in Section 45.B hereof.

RRR. “Tenant’s Representatives”: Tenant’s agents, attorneys, representatives, directors, officers and employees and any mortgagee of Tenant’s interest in this Lease or in the Premises.

SSS. “Tenant’s Work”: Defined in Exhibit C hereof.

TTT. “Term”: Defined in Section 1.H hereof.

UUU. “Transfer”: Defined in Section 21.B hereof.

VVV. “U.S. Publicly-Traded Entity”: Defined in Section 16.A hereof.

WWW. “Utility Charges”: Defined in Section 9.A hereof.

### 3. **GRANTING CLAUSE.**

- A. Landlord, in consideration of the covenants and agreements to be performed by Tenant, and upon the terms and conditions contained in this Lease, does hereby lease, demise, let and deliver to Tenant, and Tenant, in consideration of the covenants and agreements to be performed by Landlord and upon the terms and conditions contained in this Lease, does hereby lease from Landlord, the Premises, to have and to hold for the Term. Tenant acknowledges receipt and delivery of complete and exclusive possession of the Premises, subject to the Permitted Encumbrances. Tenant acknowledges and confirms that for a substantial period prior to and up to and including the execution of this Lease, Seller has been in continuous ownership and possession of the Premises, and, accordingly, Tenant is fully familiar therewith, and Tenant has examined and otherwise has knowledge of the condition of the Premises prior to the execution and delivery of this Lease and has found the same to be satisfactory for its purposes hereunder. Regardless, however, of any knowledge, examination or inspection made by Tenant and whether or not any patent or latent defect or condition was revealed or discovered thereby, Tenant is leasing the Premises “as is,” “where is” and “with all faults” in its present condition. Tenant hereby irrevocably, unconditionally and absolutely waives and relinquishes any claim or action against Landlord whatsoever in respect of the condition of the Premises as of the Commencement Date, including any patent or latent defects or adverse conditions not discovered or discoverable or otherwise known or unknown by Tenant as of the Commencement Date.

LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN FACT OR IN LAW, IN RESPECT OF THE PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS MATERIALS, IT BEING AGREED THAT ALL SUCH RISKS, KNOWN AND UNKNOWN, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL CONDITION OF THE PREMISES, ENVIRONMENTAL REMEDIATION AND COMPLIANCE WITH ALL ENVIRONMENTAL LAWS.

Without limiting the foregoing, Tenant realizes and acknowledges that factual matters existing as of the Commencement Date now unknown to it may have given or may hereafter give rise to losses, damages, liabilities, costs and expenses that are presently unknown, unanticipated and unsuspected, and Tenant further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Tenant nevertheless hereby intends to release, discharge and acquit Landlord and Landlord Mortgagee, and each of their respective successors and assigns, and their respective members, managers, partners, shareholders,

officers, directors, agents, attorneys and representatives, from any and all such unknown losses, damages, liabilities, costs and expenses.

- B. Landlord and Tenant covenant and agree that, except to the extent otherwise required by applicable Law: (i) each will treat this Lease in accordance with U.S. generally accepted accounting principles, consistently applied, and as a true lease for state law reporting purposes and for federal, state and local income tax purposes; and (ii) each party will not, nor will it permit any Affiliate to, at any time, take any action or fail to take any action with respect to the preparation or filing of any statement or disclosure to any governmental authority, including without limitation, any income tax return (including an amended income tax return), to the extent that such action or such failure to take action would be inconsistent with the intention of the parties expressed in this Section 3.B; provided, however, that nothing herein shall prevent a party from settling or offsetting any proposed deficiency or adjustment by any governmental authority challenging such intended income tax treatment, and no party will be required to litigate any proposed adjustment by any governmental authority challenging such intended income tax treatment. In the event that the income tax treatment described in this Section 3.B is disputed by any governmental authority, the party receiving the notice of the contest shall provide the other party with prompt written notice thereof (which, in any event, shall be within 30 days of receiving notice of such contest from the governmental authority).
- C. Tenant acknowledges that fee simple title (both legal and equitable) to the Premises is vested in Landlord and that Tenant has only the leasehold right of possession and use of the Premises as provided herein.

4. USE.

- A. Tenant may use the Premises as a distribution center and all ancillary uses associated therewith, in all cases subject to and in compliance with all Laws and Permitted Encumbrances. Tenant shall use the Premises only as provided by and in accordance with all Permitted Encumbrances, subject to Landlord's reservation of rights herein. Tenant shall not use or occupy the Premises, or any part thereof, nor permit or allow the Premises or any part thereof to be used or occupied, for (i) any purpose or in any manner which is in violation of any Law or a violation of the provisions set forth in Section 27 or any other provision of this Lease or (ii) in any manner which violates any certificates of occupancy for the Premises or makes void or voidable any insurance then in force with respect thereto as is required pursuant to Section 15 hereof. Tenant's occupancy of the Premises will be in compliance with all Laws and insurance requirements, and as otherwise provided in this Lease. Tenant shall neither suffer nor permit the Premises or any portion thereof to be used, or otherwise act or fail to act, in such a manner as (I) might impair Landlord's title thereto or to any portion thereof, (II) may make possible a claim of adverse use or possession or an implied dedication of the Premises or any

portion of the Premises, or (III) may subject the Premises or this Lease to any Encumbrances, other than Permitted Encumbrances. Notwithstanding anything herein to the contrary, Tenant shall not (a) permit any unlawful or immoral practice to be carried on or committed in the Premises; (b) make any use of or allow the Premises to be used for any purpose that might invalidate or increase the rate of insurance thereof; (c) deface or injure the Premises; (d) overload the floors, walls or ceilings of the Premises; (e) sell or consume, or allow the sale or consumption of, alcoholic beverages in the Premises; (f) commit or suffer any material waste in or about the Premises; (g) use the Premises in any manner that may diminish the value of the Premises in any material respect; or (h) use the Premises for any of the following purposes without the Landlord's prior consent (in its sole and absolute discretion): (i) bar, nightclub, adult bookstore or video shop or other adult entertainment establishment; (ii) incineration or reduction of garbage or any garbage dumps on the Premises; (iii) mortuary; (iv) fire sale, bankruptcy sale or auction house operation; (v) gas station; (vi) laundry or dry cleaning plant or laundromat; (vii) automobile, truck, trailer or RV repairs on-site; (viii) "flea market", secondhand, surplus or other "off-price" or deep discount store (provided this language shall not be construed to limit Tenant's use of a portion of the Premises for a Big Lots retail store); (ix) massage parlor; (x) carnival; or (xi) gambling or off-track betting operation.

- B. At all times during the first five (5) years of the Term, (i) Tenant shall occupy the Premises and (ii) except during periods when the Premises may be untenable by reason of fire or other casualty or condemnation (provided, however, during all such periods while the Premises are untenable, Tenant shall strictly comply with the terms and conditions of Section 18 and Section 19 of this Lease), Tenant shall operate its business on the Premises in the ordinary course.
- C. Tenant will not enter into any agreements or consent to any transaction or instruments that will create an Encumbrance on the Premises without Landlord's prior written consent in its sole discretion. Tenant shall be responsible for complying with the terms and conditions of, and paying the costs and expenses under, all Encumbrances on the Premises (other than Landlord's obligations to pay debt service to any Landlord Mortgagee under any Landlord Mortgage). Tenant shall not, without Landlord's prior written consent (in Landlord's sole discretion), apply for or otherwise seek or obtain any zoning changes or variances with respect to the Property. If Landlord desires to seek or obtain any zoning changes or variances with respect to the Property, Tenant shall cooperate in all respects therewith, at Landlord's request, provided that such zoning change or variance will not prohibit, restrict or otherwise limit Tenant's use of the Property for its then-current use.

- D. Tenant shall have the right to access and use the Premises twenty-four (24) hours per day, seven (7) days per week.

5. **RENT.**

- A. On the Commencement Date, in connection with Landlord's acquisition of the Premises pursuant to the Purchase Agreement, Tenant shall pay to Landlord the sum of [\*], an amount equal to the Base Rent for the first (1<sup>st</sup>) year of the Term.
- B. On the first (1<sup>st</sup>) anniversary of the Commencement Date (the "Monthly Base Rent Commencement Date"), Tenant shall commence to pay Base Rent to Landlord in the manner provided in Section 5.C in equal consecutive monthly installments in advance on or before the 1st day of each calendar month commencing as of such date and continuing through the Term. If the Monthly Base Rent Commencement Date is a day other than the first day of a calendar month, or if the Term ends on a day other than the last day of a calendar month, the Base Rent for such month shall be prorated by multiplying such Base Rent by a fraction, the numerator of which is the number of days of the Term within such calendar month and the denominator of which is the total number of days within such calendar month. Tenant shall pay its first monthly installment of Base Rent, which may be prorated pursuant to this Section 5.B, on or before the Monthly Base Rent Commencement Date.
- C. For purposes of this Lease, the Base Rent, the Real Estate Taxes, the Utility Charges and any and all other amounts, sums, charges, liabilities and obligations which Tenant assumes or agrees to pay or may become liable for under this Lease at any time and from time to time are sometimes collectively referred to as "**Rent**"; and, in the event of any failure on the part of Tenant to pay any portion of the Rent, every fine, penalty, interest and cost which may be added for nonpayment or late payment of such items, including, without limitation, all amounts for which Tenant is or may become liable to indemnify Landlord and the Landlord Indemnified Parties under this Lease (including reasonable attorneys' fees and court costs) shall be deemed to be Rent. All Rent is payable in lawful money of the United States of America and legal tender for the payment of public and private debts without notice, demand, abatement, deduction, or setoff under any circumstances, in accordance with the wire or ACH information as Landlord designates to Tenant in writing from time to time.
- D. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs and administrative complications not contemplated hereunder, the exact amount and scope of which are presently anticipated to be extremely difficult to ascertain. Accordingly, if any installment of Rent due to Landlord is not paid on the date it is due for any reason, Tenant shall pay Landlord upon demand a late charge equal to the lesser of (i) five and one-half percent (5.5%) of the delinquent installment of

Rent and (ii) the highest amount allowed by applicable Law (each a “**Late Charge**”). The parties agree that this late charge represents a fair and reasonable estimate of the costs and expenses (including economic losses) that Landlord will incur by reason of late payment by Tenant. The parties further agree that such late charge is Rent and not interest and such assessment does not constitute a lender or borrower/creditor relationship between Landlord and Tenant. In addition, any amount of delinquent Rent (including the amount of any Late Charge) due to Landlord shall accrue interest at the Default Rate from the date on which such Rent was due up to the date that such Rent is paid. The payment of such late charge or such interest shall not constitute waiver of, nor excuse or cure, any default under this Lease, nor prevent Landlord from exercising any other rights and remedies available to Landlord. Without limitation of the foregoing, Tenant shall be responsible for payment of all interest, late charges, and other costs and fees imposed by third parties with respect to late payments of Utilities or other third party charges that are the responsibility of Tenant hereunder.

- E. For any non-scheduled payment of Rent hereunder that is payable by Tenant on demand by Landlord, such shall be due ten (10) days following written demand therefor by Landlord, without abatement, deduction, or setoff under any circumstances.

6. **NET LEASE.**

- A. This Lease is intended to be a “true lease” and an “operating lease” and not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of this Lease are those of a true lease. The business relationship created by this Lease and any related documents is solely that of a long term commercial lease between Landlord and Tenant, this Lease has been entered into by both parties in reliance upon the economic and legal bargains contained herein, and none of the agreements contained herein is intended, or shall be deemed or construed, to create a partnership (de facto or de jure) between Landlord and Tenant, to make them joint venturers, to make Tenant an agent, legal representative, partner, subsidiary or employee of Landlord, or to make Landlord in any way responsible for the debts, obligations or losses of Tenant.
- B. Landlord and Tenant acknowledge and agree that (i) this Lease is, and is intended to be, what is commonly referred to as a “net, net, net” or “triple net” lease, and (ii) the Rent shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount or benefit of the installments of Base Rent, Real Estate Taxes and all other Rent throughout the Term with respect to the entire Premises, all as more fully set forth in Section 5. All of the costs, expenses, responsibilities and obligations of every kind and nature whatsoever foreseen and unforeseen relating to the

condition, use, operation, management, maintenance, repair, restoration and replacement of the Premises and all improvements and appurtenances related thereto or any part thereof shall be performed and paid by Tenant, and Landlord shall have no responsibility or liability therefor. The covenants to pay Base Rent, Real Estate Taxes and all other Rent hereunder are independent covenants, and Tenant shall have no right to hold back, offset, deduct, credit against or fail to pay in full any such amounts for claimed or actual default or breach by Landlord of whatsoever nature, for force majeure or for any other reason whatsoever. For the avoidance of doubt, Tenant shall not have, and hereby expressly and absolutely waives, relinquishes, and covenants not to assert, accept or take advantage of, any right to deposit or pay with or into any court or other third-party escrow, depository account or tenant account with respect to any disputed Rent, or any Rent pending resolution of any other dispute or controversy with Landlord. Tenant hereby expressly waives any and all defenses it may have at law or in equity to payment of Rent, including, without limitation, based on any theories of frustration of purpose, impossibility, or otherwise.

7. **REAL ESTATE TAXES.**

- A. During the Term, Tenant shall promptly pay, or cause to be paid, on a cash basis when due to the applicable taxing authority one hundred percent (100%) of all taxes, other than those specifically excluded in Section 7.E, below, including ad valorem tax increases and re-assessments; sales, use, rent or similar taxes imposed upon the Rent or other payments due under this Lease; payments in lieu of taxes pursuant to any statutory service agreement, payment-in-lieu-of-taxes agreement or the like; assessments, including assessments for supplemental assessments and public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term, and including assessments under Encumbrances; water, sewer and other utility levies and charges; excise tax levies imposed upon the Rent or other payments due under this Lease; fees, including license, permit, inspection, authorization and similar fees; and, all other governmental and other charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, in respect of the Building and/or the Property and/or the Rent and all interest and penalties thereon attributable to any failure in payment by Tenant which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon (i) the Premises or any part thereof or any appurtenance thereto, (ii) any Rent reserved or payable hereunder or any other sums payable by Tenant hereunder, (iii) this Lease or the leasehold estate hereby created or the operation, possession, occupancy or use of the Premises or any part thereof, or (iv) any occupancy, operation, use or possession of, or sales from or activity conducted on or in connection with the Premises or the Property or the leasing or use of the Premises or the Property or any part thereof, together with any interest or penalties thereon (all of which are hereinafter called “**Real Estate Taxes**”). Tenant shall make such payments

directly to the taxing authorities and shall promptly furnish to Landlord copies of official receipts or other satisfactory proof evidencing such direct payments. Tenant's obligation to pay Real Estate Taxes shall be absolutely fixed upon the date such Real Estate Taxes become a lien upon the Premises or any part thereof, subject to Section 7.C. Tenant shall also be responsible for all Real Estate Taxes which, on the Commencement Date, are a lien upon the Premises or any part thereof.

- B. If Landlord receives a bill for Real Estate Taxes, Landlord shall provide the bill for each installment of Real Estate Taxes to Tenant promptly upon Landlord's receipt of such bill. Tenant shall pay the Real Estate Taxes set forth on such bill prior to when due. Tenant shall provide Landlord with reasonable evidence that such Real Estate Taxes have been paid. If Tenant shall default in the payment of any Real Estate Taxes, Landlord shall have the right (but not the obligation) to pay the same together with any penalties and interest, in which event the amount so paid by Landlord shall be paid by Tenant to Landlord upon demand with interest thereon at the Default Rate. Tenant may pay any Real Estate Taxes in installments, if payment may be so made without penalty, fine, premium or interest, except that on the termination of this Lease any Real Estate Taxes which Tenant has elected to pay in installments shall be apportioned between Landlord and Tenant based on the time remaining in the Term. All Real Estate Taxes for the tax year in which this Lease shall terminate shall be apportioned between Landlord and Tenant on a cash basis.
- C. Tenant shall have the right of protesting, contesting, objecting to or opposing, formally or informally, at Tenant's sole cost and expense, by appropriate administrative and legal proceedings conducted in good faith and with due diligence, the legality or amount of any such Real Estate Taxes, assessments or assessed valuations in its own or in Landlord's name as the case may be, and upon Tenant's written request, Landlord will, at no cost or expense to Landlord, reasonably cooperate with Tenant; provided, however, that (i) in the case of any unpaid Real Estate Taxes, lien, attachment, levy, encumbrance, charge or claim pursuant to any Law, the commencement and continuation of such proceedings shall suspend the collection or enforcement thereof from or against Landlord and the Premises, which suspension may be caused by the payment by Tenant of a bond or some other form of security for payment; (ii) neither the Premises, the Rent therefrom nor any part or interest in either thereof would be in any danger of being sold, forfeited, attached or lost pending the outcome of such proceedings solely based on the outcome of the proceeding and not if Tenant has the right to make a curative payment following the outcome of the proceeding to avoid any of the foregoing consequences; (iii) in the case of any requirement of Law, neither Landlord nor Tenant would be in any danger of civil or criminal liability for failure to comply therewith pending the outcome of such proceedings; (iv) the insurance coverage required by Section 15 shall be maintained; (v) Tenant shall keep Landlord reasonably informed as to the status of and with copies of all



documents in the proceedings, upon request by Landlord; and (vi) if such contest shall be finally resolved against Landlord or Tenant, Tenant shall promptly pay the amount required to be paid, together with all interest and penalties accrued thereon, or comply with the applicable requirement of law. Landlord shall execute and deliver to Tenant such authorizations and other documents as may reasonably be required in any such contest, provided Tenant shall reimburse Landlord for its actual out-of-pocket costs associated with such execution, and, if reasonably requested by Tenant, Landlord shall join as a party therein (and at no cost or expense to Landlord). The provisions of this Section 7.C shall not be construed to permit Tenant to contest the payment of Rent or any other amount payable by Tenant to Landlord hereunder other than Real Estate Taxes. Without limiting any other provision of this Lease, Tenant shall indemnify, defend, protect and save harmless Landlord and all Landlord Indemnified Parties and the Premises from and against any and all liability, costs, fees, damages, expenses, penalties, fines and charges of any kind (including reasonable attorneys' fees, including those incurred in the enforcement of this indemnity) that may be imposed upon Landlord or the Premises in connection with any such contest and any loss resulting therefrom. Any refund due from any taxing authority in respect of any Real Estate Taxes paid by or on behalf of Tenant shall be paid over to or retained by Tenant.

- D. Tenant will indemnify Landlord and/or any Landlord Indemnified Parties, on an after-tax basis, against any fees or taxes, including, but not limited to, Real Estate Taxes and commercial activity tax ("**Taxes**") imposed by the United States or any taxing jurisdiction or authority of or in the United States or any state in connection with this Lease, Landlord's ownership of the Premises and/or Tenant's use of the Premises.
- E. Landlord and Tenant shall, upon request of the other, promptly provide such data as is maintained by the party to whom the request is made with respect to the Premises as may be necessary to prepare any required tax returns and reports required by a governmental authority.
- F. Notwithstanding anything to the contrary in Section 7.A hereof, in no event will Tenant be required to pay any taxes of Landlord that are (i) imposed on or measured by net income, net profits, net worth or capital stock (however denominated, including any minimum tax), (ii) franchise taxes, (iii) branch profits taxes, (iv) gross receipts taxes or (v) transfer taxes or any taxes imposed with respect to the sale, exchange or other disposition by Landlord, in whole or in part, of the Premises or the Property or Landlord's interest in this Lease (other than transfer or recordation taxes imposed in connection with the transfer of the Premises or the Property to Landlord, or the leaseback of the Premises or the Property from Landlord to Tenant, or the termination of this Lease pursuant to the express provisions of the Purchase

Agreement and the Lease); provided, however that taxes in the nature of rental or property taxes shall not be excluded. In the event that Tenant is required by Law to withhold any amount payable to Landlord under this Lease in respect of a tax excluded under this Section 7.F, the amount so withheld shall be treated for all purposes of this Lease as having been paid to Landlord.

8. **PERSONAL PROPERTY TAXES.**

Tenant shall be liable for and shall promptly pay when due all personal property taxes related to Personal Property and Tenant's Personal Property placed in the Premises. Tenant may, without Landlord's consent, before delinquency occurs, contest any such taxes related to the Personal Property.

9. **OPERATING EXPENSES.**

- A. Utilities. During the Term, Tenant agrees to pay all fees, costs, expenses and charges for electricity, power, gas, oil, water, sanitary and storm sewer, septic system refuse collection, landscaping, telephone, security, and other utilities and services consumed, rendered or used on or about the Premises (or any portion thereof) and such utility franchises as may be appurtenant to the use of the Premises (or any portion thereof) (collectively, "**Utility Charges**"). Landlord acknowledges and agrees that Tenant may enter into contracts for any of the foregoing services or the like without Landlord's prior consent during the Term; provided, that any such contract shall be terminable by Tenant (or Landlord following termination of this Lease in accordance with its terms) at or prior to the expiration or sooner termination of the Lease or upon no more than thirty (30) days' prior notice to the third-party servicer. Any resulting termination premium, fee or penalty shall be the sole responsibility of Tenant.
- B. Third Party Management. Tenant shall have the right to manage and operate the Premises (or any portion thereof) utilizing third parties for the management and operation thereof, without obtaining Landlord's prior written consent of such third party. Notwithstanding the appointment of any third-party manager, Tenant shall remain fully responsible for the Premises in accordance with the terms hereof.

10. **TENANT'S REPAIR AND MAINTENANCE RESPONSIBILITIES.**

- A. Throughout the Term, Tenant, at its sole cost and expense, will keep the Premises in a substantially similar condition as existed on the Commencement Date (reasonable wear and tear, damage from fire or other casualty excepted), whether or not the need for such repairs occurs as a result of Tenant's use, the elements, or the age of the Building, the Property or Tenant's Personal Property, or otherwise, and will commit or allow no physical waste with respect thereto, and with reasonable promptness, will make all necessary and

appropriate repairs and replacements thereto of every kind and nature, including without limitation those necessary to ensure continuing compliance with all Laws and insurance requirements, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. Tenant's maintenance, repair and replacement obligations shall extend to and include, without limitation, all systems serving the Premises and, subject to any Permitted Encumbrances, any parking areas and landscaping on the Property. The necessity for and adequacy of repairs to the Building or other improvements forming a part of the Premises shall be measured by the standard which is appropriate for and equivalent in quality to such Building's Comparable Buildings. Tenant's obligations under this Section 10 shall, without limitation, include the maintenance, repair and replacement (a) at all times, of any and all building systems, machinery and equipment which exclusively serve the Premises, and (b) the bearing walls, floors, foundations, roofs and all structural elements of the Premises. Tenant will not take or omit to take any action the taking or omission of which would reasonably be expected to (i) create (or permit to continue) any dangerous condition, or (ii) create (or permit to continue) any condition which might reasonably be expected to involve any loss, damage or injury to any person or property. All repairs and replacements shall be in quality and class at least equal to the original work and shall be made promptly as and when necessary. Repairs and replacements called for as a result of fire and/or other casualty and condemnation shall be made pursuant to the provisions of Sections 18 and 19 hereof, respectively. In connection with the foregoing, Tenant's obligations shall include without limitation with respect to the Premises, to the extent applicable:

1. Maintaining, repairing, and replacing, as necessary, the roof of the Building on the Premises;
2. Maintaining and repairing the bearing walls, floors, foundations, and all structural elements of the Building on the Premises;
3. Maintaining (including periodic window washing and periodic painting) and repairing the facade and exterior walls of the Building on the Premises;
4. Repairing and replacing, as necessary, the doors (including, without limitation, any overhead doors) and windows of the Building on the Premises, and the mechanisms therefor;
5. Causing the regular removal of garbage and refuse from the Premises;
6. Causing the regular spraying for and control of insect, rodent, animal and pest infestation, and maintaining in good working order and condition all doors (both swinging and roll-up doors), including, without limitation, all weather seals;

7. Servicing, maintaining, repairing and replacing all systems and equipment serving the Premises, including, without limitation, heating, ventilation, and air-conditioning equipment, and generators;
  8. Regular sweeping, cleaning and removal of trash, debris, other materials and stains from the Premises and from the immediately adjacent sidewalks, service drives and loading or delivery areas, if any, of the Premises, as necessary to keep the same clean and in good order and condition;
  9. Regular sweeping, cleaning and washing of the interior of the Building, including, without limitation, floors, windows and fixtures, and periodic washing and painting of interior walls;
  10. Repairing broken, damaged or leaking walls, bathrooms, ceilings, or fixtures and equipment in the interior of the Building, including, without limitation, plate glass windows, windows, floors and lighting fixtures;
  11. Irrigating and performing all gardening and landscaping of all lawns, trees, shrubs and plantings comprising part of the Property or the Premises; and
  12. Tenant shall maintain a contract on at least an annual basis for regular servicing and maintenance (at least once annually) of the heating, ventilating, air conditioning and vertical transportation systems serving the Building, unless Landlord shall otherwise direct. Upon written request of Landlord, Tenant shall submit to Landlord a copy of such fully paid contract and any extensions, renewals or replacements thereof. At a minimum, each maintenance contract for any such equipment shall include a provision that such contractor shall be required to coordinate any activities performed on the roof of the Building by a roofing contractor, so as to not void any roof or related warranties.
- B. Landlord shall not be required to furnish any services or facilities or make any repairs or alterations in or to the Premises, and Landlord shall not under any circumstances be required to (i) build or rebuild any improvements on the Premises; (ii) make any repairs, replacements, alterations, restorations or renewals of any nature to the Premises, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto; or (iii) maintain the Premises (including any parking or common areas which comprise part of the Premises of the Property) in any way. Tenant hereby expressly and unconditionally waives, to the fullest extent now or hereafter permitted by Law, the right to make repairs or perform any maintenance at the expense of Landlord which

right may be provided for in any Law in effect at the time of the execution and delivery of this Lease or which may hereafter be enacted. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises. However, on default of Tenant beyond the expiration of any applicable notice and cure periods in making such repairs or replacements, Landlord may, but shall not be required to, make such repairs and replacements for Tenant's account and the expense thereof shall be paid by Tenant to Landlord upon demand with interest at the Default Rate.

- C. Except as expressly set forth herein, nothing contained in this Lease and no action or inaction by Landlord shall be construed as (i) constituting the consent or request of Landlord, expressed or implied, to any contractor, subcontractor, laborer, materialman or vendor to or for the performance of any labor or services or the furnishing of any materials or other property for the construction, alteration, addition, repair or demolition or maintenance of or to the Premises or any part thereof or any improvements thereto; or (ii) giving Tenant any right, power or permission to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord in respect thereof.

#### **11. COMPLIANCE WITH LAWS.**

Tenant shall, at its sole cost and expense, use and maintain the Premises in compliance with all Laws, and Tenant shall, at its sole cost and expense, comply with all Laws applicable to or having jurisdiction over the use, occupancy, operation, and maintenance of the Premises, including without limitation, all Environmental Laws, the ADA and other access laws and those which require the making of any structural, unforeseen or extraordinary changes and including those which involve a change of policy on the part of the governmental body enacting the same. Tenant shall, at its sole cost and expense, comply with all Encumbrances affecting the Premises (other than Landlord's obligations to pay debt service to any Landlord Mortgagee under any Landlord Mortgage). Tenant, at its sole expense, shall comply with the requirements of policies of special form insurance coverage at any time in force with respect to the Premises as required pursuant to Section 15 hereof and with the provisions of all contracts, agreements and restrictions affecting the Premises or any part thereof in effect as of the date hereof or the ownership, occupancy or use thereof. Without diminishing the obligations of Tenant, if Tenant shall at any time fail to comply as promptly as reasonably practicable with any Law applicable to the Premises, or the use and occupation thereof, Landlord may cause the Premises to so comply and the reasonable costs and expenses of Landlord in such compliance shall be paid by Tenant to Landlord upon demand with interest thereon at the Default Rate.

## **12. SURRENDER OF PREMISES.**

Upon the expiration of this Lease pursuant to its terms (or, in the event of a termination of this Lease on a date other than the scheduled Expiration Date of this Lease, as promptly as commercially practicable thereafter (but in any event within ten (10) days thereafter)), Tenant shall surrender to Landlord the Premises, including all Alterations constructed by Tenant therein, with all fixtures appurtenant thereto (but not including furnishings, trade fixtures, furniture, computers, telephone systems, machinery, equipment and other Personal Property installed or placed on the Premises by Tenant) (collectively, “**Tenant’s Personal Property**”), free and clear of any occupants or tenancies (including subtenancies) (other than subtenants under subleases as in effect on the date hereof) and in compliance with Laws (including, without limitation, Environmental Laws) and in as good (or better) condition and repair as existed as of the Commencement Date, reasonable wear and tear and damage from fire or other casualty excepted, and any new buildings, alterations, improvements, replacements or additions constructed by Tenant and remaining at the Premises, in the same or better condition as when completed, reasonable wear and tear and damage from fire or other casualty excepted. Any of Tenant’s Personal Property installed or placed on the Premises by Tenant or any subtenant or assignee of Tenant, if not removed within ten (10) days after termination or expiration of this Lease shall be deemed abandoned and become the property of Landlord without any payment or offset therefor if Landlord so elects. If Landlord shall not so elect, Landlord may remove such property from the Premises and have it stored at Tenant’s risk and expense. Tenant shall repair and restore and save Landlord harmless from all damage to the Premises caused by such removal by Landlord.

## **13. ALTERATIONS.**

- A. Tenant shall not make any alterations, additions or improvements to the Premises or any portion thereof (“**Alterations**”) without first obtaining the prior written consent of Landlord, provided, however, that so long as no Event of Default has occurred, Landlord’s prior written consent shall not be required, but prior written notice shall be delivered to Landlord accompanied with full and complete drawings and plans prepared by a licensed architect or engineer, if applicable, for any Alterations that are: (i) installations of Tenant’s Personal Property, (ii) installations of HVAC systems and equipment, or (iii) other Alterations that satisfy all of the following conditions: (a) such Alterations will not change the use of the Premises (i.e. Alterations that will not change the Premises from being used as a distribution center and ancillary uses) and (b) such Alterations will not (x) materially affect the structural elements or roof of the Building, including the structural exterior, unless such Alterations are reasonable “like-kind” replacements of previous improvements or installations, (y) materially and adversely affect the proper functioning of the Building’s systems, or (z) materially and adversely affect the value of the Building. In seeking approval from Landlord of any Alterations, requiring approval, Tenant shall provide Landlord with (1) full and complete drawings and plans for the proposed Alterations prepared by a licensed architect or engineer; and (2) notice of whether the Alteration will involve or affect Hazardous Materials. Tenant shall not have the right to seek any zoning changes or variances in connection with any Alterations without

Landlord's approval. Tenant shall reimburse Landlord upon demand for any reasonable out-of-pocket costs, including, without limitation, attorney's fees and engineering advisor's fees, related to Landlord's review of any Alterations request by Tenant.

- B. All Alterations shall be constructed by Tenant, without expense to Landlord, in a good, first-class, professional and workmanlike manner so as not to void or make voidable any roof or other warranties, employing materials of first-class quality free of material defects, and in compliance with all Law, all applicable Encumbrances and all regulations and orders, rules and regulations of the Board of Fire Insurance Underwriters or any other body exercising similar functions, and in compliance with the terms and conditions of this Lease.
- C. Prior to the commencement of construction of any Alteration, Tenant shall deliver to Landlord certificates evidencing the existence of (a) workmen's compensation insurance with coverage limits not less than statutory limits covering all persons employed for such work; (b) a completed operations endorsement to the commercial general liability insurance policy referred to Section 15.B; (c) reasonable comprehensive general liability and property damage insurance naming Landlord, its designees and Tenant as additional insureds, with coverage of at least \$1,000,000 single-limit or such greater amount as may be reasonably requested by Landlord; and (d) builders all risk insurance on a completed value basis (or its equivalent) covering all physical loss, in an amount no less than the full replacement value of the Alterations in question.
- D. Promptly upon the completion of construction of any Alteration that is permanently affixed to the Premises and alters the existing footprint or elevation of the Building, Tenant shall deliver to Landlord one complete set of "as built" drawings thereof (and if the Alterations involve any change to the footprint of the applicable Building or the erection of a new building, an ALTA survey for the Property certified to Landlord and any Landlord Mortgagee), proof of payment for all labor and materials, and if and to the extent commercially obtainable, copies of guarantees, if any, from all major contractors in favor of Landlord and Tenant (jointly and separately) against defects and deficiencies in materials and workmanship, and requiring the correction of the same upon demand of Landlord and Tenant at the expense of such contractor.
- E. All Alterations, whether temporary or permanent in character, made in or upon the Premises either by Landlord or Tenant (other than Tenant's Personal Property installed or placed on the Premises by or on behalf of Tenant) shall be Landlord's property, and will remain with the Premises without compensation to Tenant.

14. **ENTRY BY LANDLORD.**

Landlord or Landlord's Representatives shall have the right to enter, from time to time, the Premises or any portion thereof with reasonable advance notice during normal business hours (or at such other times as approved by Tenant in advance, which approval shall not be unreasonably withheld or delayed, or as may be reasonably necessary in emergency situations) to (i) inspect the Premises, (ii) exercise its rights and/or obligations under this Lease, or (iii) show the Premises to prospective purchasers, lenders or prospective tenants; and Tenant shall not be entitled to any abatement or reduction of Base Rent by reason thereof, nor shall such entry or action by Landlord constitute an actual or constructive eviction or repossession, without Landlord's express intention to do so as expressed in writing. No such entry shall be deemed an eviction of Tenant. At any time during which Landlord or Landlord's Representatives are on the Premises, they shall use commercially reasonable efforts to not unreasonably interrupt or interfere with Tenant's use of the Premises and shall not cause any damage or injury to persons or property on the Premises.

#### **15. TENANT'S INSURANCE OBLIGATIONS.**

- A. During the Term, Tenant shall provide and maintain property insurance on the Building and other improvements on the Property on an all-risk basis against physical loss or damage by fire and all other risks and perils, in amounts no less than the full replacement cost, excluding excavations, footings and foundations, and with a deductible no greater than (i) One Million and No/100 Dollars (\$1,000,000.00) from the Effective Date through May 31, 2021; (ii) Two Million and No/100 Dollars (\$2,000,000.00) from June 1, 2021 through May 31, 2022; and (iii) Five Million and No/100 Dollars (\$5,000,000.00) thereafter. Tenant's property insurance shall also include coverage for the perils of flood, earthquake, windstorm, tornado and hail in amounts of the full insurable value, unless reasonably commercially unavailable. The coverage for the perils of flood, earthquake, windstorm, tornado and hail may have deductibles not to exceed five percent (5%) of the total insurable value of the property per occurrence. Such insurance shall be on terms (i) that have an agreed amount endorsement or with no co-insurance provisions; and (ii) with no exclusions for vandalism, malicious mischief or sprinkler leakage. Boiler and Machinery Coverage shall be procured either by endorsement to the property policy or under a separate placement in an amount no less than 100% of the replacement cost or as otherwise approved in writing by Landlord. The property insurance required hereunder shall, subject to applicable sublimits, (a) cover loss sustained when access to all or a portion of a Building is prevented due to an insured peril at a location in the vicinity of the Premises; (b) cover loss sustained due to the action of a public authority preventing access to the Building provided such order is the direct result of physical damage of the type insured against at the Building or within 1,000 feet of it; (c) insure loss caused by damage or mechanical breakdown; (d) provide an ordinance or law extension; (e) cover loss sustained due to the accidental interruption or failure of supplies of electricity, gas, water or telecommunication up to the terminal point of the utility supplier with the Premises; (f) name Landlord and its lender(s) and other designees as loss payees and contain a lender loss payee endorsement; and (g) contain an



endorsement providing coverage for cleanup of sudden and accidental pollution releases, with a sub-limit of at least One Hundred Thousand and No/100 Dollars (\$100,000.00). In addition to the foregoing coverages on the Building and other improvements upon the Property, Tenant shall maintain property insurance covering Tenant's machinery, equipment, furniture, fixtures, and all other Tenant's Personal Property at a limit of liability determined by Tenant in its sole discretion. During the period of any restoration and repair of the Premises, Tenant shall maintain an "all-risk" Builder's Risk policy, or equivalent insurance coverage, on a completed value basis for the full replacement cost of the property being repaired and restored, if and when there is a structural restoration and/or major repair required at the Building. To the extent any portion of the Premises is located within a Special Flood Hazard Area, Tenant shall maintain flood insurance.

- B. During the Term, Tenant shall also provide and maintain the following insurance at the terms and in the limits specified below:
1. Commercial General Liability Insurance against claims for third party Bodily Injury, Personal/Advertising Injury, Property Damage, and Products/Completed Operations Liability. Such insurance shall be written on an occurrence basis and such coverage shall include, but not be limited to, assumed contractual liability for the performance by Tenant of the indemnity agreements set forth in this Lease to which this insurance applies, cross liability, and/or severability of interests. Limits shall be no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) general aggregate with a deductible no greater than Five Million and No/100 Dollars (\$5,000,000.00). Tenant shall cause Landlord and its lender or other designees to be named as additional insureds under such insurance.
  2. Workers Compensation and Employer's Liability Insurance insuring against and satisfying Tenant's obligations and liabilities under the workers compensation laws of the jurisdiction in which the Premises are located, with Employers Liability minimum limits per insured of Five Hundred Thousand and No/100 Dollars (\$500,000.00) Bodily Injury each accident; Five Hundred Thousand and No/100 Dollars (\$500,000.00) Bodily Injury by disease, each employee; and Five Hundred Thousand and No/100 Dollars (\$500,000.00) Bodily Injury by disease policy limit. Policies shall include Voluntary Coverage.
  3. Automobile Liability Insurance for liability arising out of claims for bodily injury and property damage arising from owned (if any), leased (if any), non-owned and hired vehicles used in the performance of the business upon the Premises, with a combined single limit of One Million and No/100 Dollars (\$1,000,000.00) per accident for bodily

injury and property damage and containing appropriate no-fault insurance provisions wherever applicable.

4. Umbrella or Excess Liability Insurance written on an occurrence basis and covering claims in excess of the underlying insurance described in the foregoing subsections (1), (2) and (3) above, with a Twenty-Five Million and No/100 Dollars (\$25,000,000.00) minimum limit per occurrence. Such insurance shall contain a provision that it will drop down as primary and noncontributory insurance in the event that the underlying insurance policy aggregate is exhausted.
  5. Business interruption or equivalent insurance insuring that the Base Rent will be paid to Landlord for a minimum of twelve (12) months if the Premises are destroyed or rendered untenable by any cause insured against (it being understood that the existence of such insurance does not reduce Tenant's obligation to pay Base Rent without diminution).
- C. The required limits and coverages of all insurance set forth in Sections 15.A and 15.B above may be reasonably adjusted by Landlord, with agreement from Tenant, such agreement not to be unreasonably withheld, from time to time (but not more frequently than once every five (5) years) in conformity with the then prevailing custom of insuring liability in Comparable Buildings.
- D. Tenant shall cause all such property policies to permit Tenant's waiver of claims against Landlord under Section 17 for matters covered thereby. Tenant shall cause Landlord, Landlord Mortgagee and any superior lessor or fee owner to be named as loss payees and/or mortgagees, as their interests may appear, under all property insurance policies and shall cause the coverage to continue for Landlord's benefit notwithstanding any act or omission on Tenant's part. By this Section 15, Tenant intends that the risk of loss or damage to the Premises and all property thereon, including Personal Property and Tenant's Personal Property described above, be borne by responsible property insurance carriers and Tenant hereby agrees to look solely to, and to seek recovery only from, its respective property insurance carriers, in the event of a loss of a type described above to the extent that such coverage is agreed to be provided hereunder. For this purpose, any applicable deductible shall be treated as though it were recoverable under such policies.
- E. All insurance required to be maintained by Tenant pursuant to Section 15.A and 15.B must be maintained with insurers authorized to do business in the jurisdiction in which the Premises are located and which have an A.M. Best Company Rating of at least A/VIII or Standard and Poor's Rating of at least A. Tenant shall provide to Landlord, and at each renewal of expiring policies, such certificates as may be reasonably required to establish that the insurance coverage required by this Section 15 is in effect from time to time and that, to the extent commercially available, the insurer(s) have agreed to give Landlord

and Landlord Mortgagee at least thirty (30) days' notice prior to any non-renewal or cancellation of, or material modification to, the required coverage. Landlord and Tenant shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery. Tenant shall cause all liability and property policies maintained by Tenant to be written as primary policies, not contributing with and not supplemental or excess to any coverage that Landlord or Landlord Mortgagee may carry.

- F. Tenant may provide the insurance required by virtue of the terms of this Lease by means of a combination of primary and excess or umbrella coverage and by means of a policy or policies of blanket property insurance so long as (i) the amount of the total insurance allocated to the Premises under the terms of the blanket policy or policies furnishes protection equivalent to that of separate policies in the amounts required by the terms of this Lease, and (ii) the blanket policy or policies comply in all other respects with the other requirements of this Lease.
- G. If Tenant fails to obtain the insurance coverage, as set forth in this Section 15 and does not cure its failure within ten (10) days after written notice from Landlord, Landlord may, at its option, obtain such insurance for Tenant, and Tenant shall, upon demand, pay, as additional Rent, the cost thereof.
- H. All policies of insurance required to be maintained pursuant to this Lease shall be endorsed, if commercially available, so that if at any time should they be not renewed, canceled, coverage be reduced (by any party including the insured) which affects the interests of the Landlord or Landlord Mortgagee, such non-renewal cancellation or reduction shall not be effective as to Landlord and Landlord Mortgagee for thirty (30) days, except for non-payment of premium which shall be for ten (10) days after receipt by Landlord of written notice from such insurer of such cancellation or reduction. In addition to the foregoing, all policies of insurance required to be maintained pursuant to this Lease shall contain terms in accordance with Tenant's normal business practice and reasonably acceptable to Landlord and shall (i) contain a severability of interest and a cross-liability clause; (ii) name Landlord, Landlord Mortgagee, any ground lessor of the Property and other entities as additional insureds or loss payees, as required by contract; and (iii) be endorsed to waive any rights of subrogation against Landlord, its lenders, and their respective officers, directors, employees, agents, partners, and assigns. If commercially available, all policies of insurance required to be maintained pursuant to this Lease (other than in respect to automobile liability or workers compensation insurance) shall insure the interests of Landlord and Tenant regardless of any breach or violation by Tenant or any other party of warranties, declarations or conditions contained in such policies, any action or inaction of Tenant or others.

- I. Prior to the Commencement Date and on to each policy anniversary, Tenant shall furnish Landlord with certificates of insurance, in a form reasonably acceptable to Landlord, evidencing all of the insurance required by the provisions of this Lease for the benefit of Landlord and required to be in force by the provisions of this Lease. Such certificates of insurance shall be executed by each insurer or by an authorized representative of each insurer where it is not practical for such insurer to execute the certificate itself. Such certificates of insurance/binders shall identify underwriters, the type of insurance, the insurance limits and deductibles and the policy term.

16. **OFAC.**

- A. Tenant has taken all reasonable measures, in accordance with all applicable Anti-Money Laundering Laws, with respect to each holder of a direct or indirect ownership interest in the Tenant, to assure that funds invested by such holders in the Tenant are derived from legal sources; provided, however, none of the foregoing shall apply to any person to the extent that such person's interest in Tenant is in or through an entity whose stock or shares are listed and traded on any recognized stock exchange located in the United States (a "**U.S. Publicly-Traded Entity**").
- B. Tenant hereby represents and warrants that neither Tenant, nor, to the actual knowledge of Tenant, any persons or entities holding any legal or beneficial ownership interest (direct or indirect) whatsoever in Tenant (1) has been designated by the President of the United States or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons" (collectively, "**Prohibited Persons**"), (2) is under investigation by any governmental authority for, or has been charged with, or convicted of, any violation of any Anti-Money Laundering Laws, or drug trafficking, terrorist-related activities or other money laundering predicated crimes or a violation of the BSA, (3) has been assessed civil penalties under these or related laws, or (4) has had any of its funds seized or forfeited in an action under these or related laws; provided, however, none of the foregoing shall apply to any person to the extent that such person's interest is in or through a U.S. Publicly-Traded Entity. If the foregoing representations are untrue at any time during the Term and Landlord suffers actual damages as a result thereof, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant.

- C. Tenant has taken reasonable steps, consistent with industry practice for comparable organizations and in any event as required by Law, to ensure that Tenant is and shall be in compliance with all (1) Anti-Money Laundering Laws and (2) OFAC Laws and Regulations. Tenant will not during the Term knowingly engage in any transactions or dealings, or knowingly be otherwise associated, with any Prohibited Persons in connection with the use or occupancy of the Premises. A breach of the representations contained in this Section 16 by Tenant as a result of which Landlord suffers actual damages shall constitute a material breach of this Lease and shall entitle Landlord to any and all remedies available hereunder, or at law or in equity.

**17. WAIVER OF SUBROGATION.**

Notwithstanding anything to the contrary set forth in this Lease, to the fullest extent permitted by Law, neither Landlord nor Tenant shall be liable (by way of subrogation or otherwise) to the other party (or to any insurance company insuring the other party) for any loss or damage to the property of the releasing party to the extent the loss or damage is covered by property insurance carried or required by this Lease to be carried by the releasing party **EVEN THOUGH SUCH LOSS MIGHT HAVE BEEN OCCASIONED BY THE NEGLIGENCE OR WILLFUL ACTS OR OMISSIONS OF LANDLORD OR TENANT OR THEIR RESPECTIVE EMPLOYEES.** Landlord and Tenant shall give each insurance company which issues policies of insurance, with respect to the items covered by this waiver, written notice of the terms of this mutual waiver, and shall have such insurance policies properly endorsed, if necessary, to prevent the invalidation of any of the coverage provided by such insurance policies by reason of such mutual waiver. For the purpose of the foregoing waiver, the amount of any deductible or self-insured retention applicable to any loss or damage shall be deemed covered by, and recoverable by the insured under the insurance policy to which such deductible or self-insured retention relates. Each party shall pay any additional expense, if any, for obtaining such waiver.

**18. FIRE OR OTHER CASUALTY.**

- A. All proceeds (except business interruption insurance proceeds not allocated to Rent expenses) payable by reason of any property loss, damage, or destruction of or to the Premises by fire or other casualty, or any portion thereof, under any property policy of insurance required to be carried hereunder, where the cost of repair and/or restoration does not exceed Five Million and 00/100 Dollars (\$5,000,000.00)(a "Minor Casualty"), shall be paid to Tenant (except business interruption proceeds not allocated to Rent expenses) and shall be used first for the repair of any damage to the Premises (other than such payment of Rent) to substantially the same condition as existed immediately before the damage or destruction and with materials and workmanship of like kind and quality and to Landlord's reasonable satisfaction, and in accordance with the general terms and conditions of **Exhibit "C"** attached hereto, as applicable (collectively, "**Restoration Standards**"). Tenant shall have the right to reasonably prosecute and settle insurance claims relating to any Minor

Casualty, provided that Tenant shall consult with and involve Landlord in the process of adjusting any insurance claims under this Section 18.

- B. All proceeds (except business interruption insurance proceeds not allocated to Rent expenses) payable by reason of any property loss, damage, or destruction of or to the Premises by fire or other casualty, or any portion thereof, under any property policy of insurance required to be carried hereunder where the cost of repair and/or restoration exceeds Five Million and 00/100 Dollars (\$5,000,000.00)(a "Major Casualty"), shall be paid to Landlord, to be held by Landlord or Landlord Mortgagee for purpose of restoration of the Premises and made available to Tenant upon request, pursuant to the procedures set forth in this Section 18 for the reasonable costs of preservation, stabilization, emergency restoration, business interruption (other than any amount allocated to Rent expenses), reconstruction and repair, as the case may be, of any damage to or destruction of the Premises, or any portion thereof; provided, however, that the portion of such proceeds that are attributable to Tenant's obligation to pay Rent shall be applied against Rent due by Tenant hereunder. All proceeds paid to Tenant shall be used first for the repair of any damage to the Premises (other than such payment of Rent). Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Premises to substantially the same condition as existed immediately before the damage or destruction and with materials and workmanship of like kind and quality and to Landlord's reasonable satisfaction, and in accordance with the Restoration Standards, shall be retained by Landlord. Tenant shall have the right to reasonably prosecute and settle insurance claims for any Major Casualty, provided that Tenant shall consult with and involve Landlord in the process of adjusting any insurance claims under this Section 18.
- C. Subject to the terms of this Section 18, Landlord shall make available to Tenant the insurance proceeds (net of all reasonable administrative and collection costs, including reasonable attorneys' fees) paid to Landlord for the repair and rebuilding of the Premises following a Major Casualty as it progresses (other than business interruption proceeds to be allocated to Rent expenses as aforesaid). Payments shall be made against certification of the architect responsible for the supervision of the repairs and rebuilding that the work had been performed substantially in conformance with the approved plans and specifications therefor and the value of the work in place is equal to not less than one hundred ten percent (110%) of the aggregate amount advanced by Landlord for the payment of such work. Prior to commencing the repairing and rebuilding, Tenant shall deliver to Landlord for Landlord's approval a schedule setting forth the estimated monthly draws for such work. Landlord shall contribute to such payments, out of the insurance proceeds being held by Landlord, an amount equal to the proportion that the total net amount so held by Landlord bears to the total estimated cost of repairing and rebuilding, multiplied by the payment by Tenant on account of such work. Landlord may, however, withhold ten percent (10%) from each payment until the work has been completed and unconditional lien releases and/or other

proof has been furnished to Landlord that no lien or liability has attached, or will attach, to the applicable Building or the Property or to Landlord in connection with repairing, reconstructing and rebuilding. In addition, disbursement of such proceeds to Tenant are subject to any customary conditions of a Landlord Mortgagee.

- D. If the Premises are damaged by fire or other casualty, whether or not from a risk covered by insurance, Tenant shall give Landlord prompt written notice thereof and Rent shall continue unabated notwithstanding any casualty. Tenant waives any statutory rights of termination which may arise by reason of any damage or destruction of the Premises.
- E. In the event of a fire or other casualty, Tenant shall, at its expense regardless of the amount of any such damage or destruction and whether or not the insurance proceeds attributable such damage or destruction made available to Tenant, if any, shall be sufficient for the purpose, cause the Premises to be repaired, restored and replaced in accordance with all Law, this Section 18.D and the Restoration Standards, as expeditiously as practicable using reasonable diligence to a condition as nearly as practicable to that which existed immediately prior to occurrence of the fire or other casualty and otherwise in a good workmanlike manner, using new materials of like quality.
- F. No damage or destruction of the Premises as a result of fire or any other hazard, risk or casualty whatsoever shall relieve Tenant from Tenant's liability and obligation to timely pay the full Rent payable under this Lease and Rent shall continue unabated notwithstanding any casualty.
- G. The provisions of this Lease, including this Section 18 constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, and any Law with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any similar or successor Laws now or hereinafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises.

#### 19. CONDEMNATION.

- A. Tenant and Landlord shall promptly give the other written notice upon knowledge of the actual or threatened commencement of any condemnation or eminent domain proceeding or other governmental taking affecting the Premises, and, to the extent not otherwise received, shall deliver to the other copies of any and all papers served in connection therewith. Subject to the remainder of this Section 19, if during the Term all or any part of the Premises shall be taken for any public or any quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof, all compensation awarded or paid as a result thereof shall belong to and be the property of Landlord without any participation by Tenant and without any

deduction therefrom for any estate hereby vested in or owned by Tenant and Tenant hereby irrevocably assigns to Landlord any award or payment to which Tenant may be or become entitled by reason of any taking of the Premises or any part thereof, subject to the other provisions of this Section 19. Landlord shall have the exclusive power to collect, receive and retain any such award proceeds and to make any compromise or settlement in connection with such award. Nothing herein shall be deemed to preclude Tenant from prosecuting any claim directly against the condemning authority in such condemnation proceeding for loss of business or depreciation to, damage to or cost of removal of, or for value of, stock, trade fixtures, furniture, machinery, equipment and other personal property belonging to Tenant (including, without limitation, Tenant's Personal Property), provided that no such claim shall diminish or otherwise adversely affect Landlord's award. Tenant agrees to execute any and all further documents that may be reasonably required in order to facilitate collection by Landlord of any and all awards. Tenant, in cooperation with Landlord, shall have the right to participate in any condemnation proceedings for the purpose of protecting Tenant's interest hereunder.

- B. If during the Term all or substantially all of the Premises shall be taken for any public or any quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof, then Tenant may, not later than thirty (30) days after any such taking, give notice to Landlord of its intention to terminate this Lease on any business day specified in such notice which occurs not less than thirty (30) nor more than one hundred eighty (180) days after such taking. In such event, this Lease shall terminate on the date set forth in the notice provided by Tenant and upon such termination neither party shall have any obligation to the other under this Lease. A taking of substantially all of the Premises under this Section 19.B shall be deemed to have occurred if (i) twenty percent (20%) or more of the square footage of the Building shall have been subject to a taking or (ii) there shall have been a permanent loss of access, ingress or egress, parking capacity or any other appurtenance necessary for the operation of the Premises substantially in the manner in which it had previously been operated and there is no reasonably equivalent replacement therefor.
- C. If during the Term all or any part of the Premises shall be taken for any public or any quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof and if the Lease is not terminated pursuant to Section 19.B as expressly provided in Section 19.B, then this Lease shall continue in full effect without abatement or reduction of Rent or other sums payable by Tenant under this Lease (except to the limited extent provided below), notwithstanding such taking or private purchase. Tenant shall, promptly after any such taking and at its expense (regardless of whether any awards are available as a result of such taking), repair any damage caused by any such taking in accordance with this Section 19 and the Restoration Standards and so that, after the completion of such repair, the Premises shall



be, as nearly as possible, in a condition as good as the condition thereof immediately prior to such taking, except for ordinary wear and tear. In the event of any such lesser taking as described in Section 19.B, all of the net award collected by Landlord pursuant to Section 19.A shall be held by Landlord (or Landlord Mortgagee) and applied and paid over toward the cost of repair of damage due to such taking against certificates of Tenant, signed by an authorized officer of Tenant, delivered to Landlord from time to time as such repair progresses or is completed, each such certificate describing such repair for which Tenant is requesting payment, the cost incurred by Tenant in connection therewith and stating that Tenant has not theretofore received payment for such repair. If the cost of repairs shall exceed the net award collected by Landlord, Tenant shall pay the deficiency. Any balance remaining in the hands of Landlord after payment of such costs of demolition, repair and restoration shall be allocated between Landlord and Tenant based on the fair market value of the respective estates of Landlord and Tenant in the Property.

- D. If the use or occupancy of the Premises or any portion thereof shall be temporarily requisitioned by any governmental authority, civil or military, then this Lease shall continue in full effect notwithstanding such requisition, without abatement or reduction of Rent or other sums payable by Tenant hereunder, and Tenant shall be entitled to receive the entire net award payable by reason of such temporary requisition. Any requisition of twenty four (24) months or longer shall be considered a taking of substantially all of the Premises under this Section 19.B, and Tenant shall be afforded the termination rights as and to the extent set forth in said Section 19.B.

## **20. INDEMNIFICATION**

Notwithstanding the existence of any insurance required to be provided hereunder (but not in duplication thereof), and without regard to the policy limits of any such insurance, and in addition to and not in limitation of any other indemnity provided in this Lease, Tenant shall protect, indemnify, defend and hold harmless all Landlord Indemnified Parties from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, losses, costs, fees and expenses, including without limitation reasonable counsel fees and court costs, to the maximum extent permitted by Law, imposed upon, asserted against or suffered or incurred by any Indemnified Party directly or indirectly by reason of any claim, suit or judgment obtained or brought by or on behalf of any person or persons against any Landlord Indemnified Party, for damage, loss or expense, which arise out of, are occasioned by, or are in any way attributable to or related to the following: (i) Tenant's use or occupancy of the Premises; (ii) the conduct of Tenant's business at the Premises; (iii) any activity, work or thing done or permitted by or on behalf of Tenant or its agents, contractors or subtenants in or about the Premises; (iv) the condition of the Premises; (v) the Lease or any breach or default in the performance of any obligation to be performed by Tenant under the terms of this Lease or arising from any act, neglect, fault or omission of Tenant or Tenant's Representatives; or (vi) the Premises or any accident, injury to or

death of any person or damage to any property howsoever caused in or on the Premises, except to the extent that any of the foregoing are directly caused by the gross negligence or willful misconduct of Landlord and/or any Landlord Indemnified Parties. Tenant, at its expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against any Landlord Indemnified Party ("**Landlord Claim**"). If at any time a Landlord Indemnified Party shall have received written notice of or shall otherwise be aware of any Landlord Claim which is subject to indemnity under this Section 20.A, such Landlord Indemnified Party shall give reasonably prompt written notice of such Landlord Claim to Tenant; provided, that, except to the extent Tenant is materially prejudiced in its defense of such Landlord Claim, (I) such Landlord Indemnified Party shall have no liability for a failure to give notice of any Landlord Claim, and (II) the failure of such Landlord Indemnified Party to give such a notice to Tenant shall not limit the rights of such Landlord Indemnified Party or the obligations of Tenant with respect to such Landlord Claim. Tenant's liability under this Section 20 shall survive the expiration or earlier termination of this Lease. Except to the extent prohibited by Law or caused by the gross negligence or willful misconduct of Landlord or any Landlord Indemnified Parties, Tenant hereby expressly releases Landlord and Landlord Mortgagee and all other Landlord Indemnified Parties from, and waives all claims for, damage or injury to person, theft, loss of use of or damage to property and loss of business sustained by Tenant and resulting from the Premises, including the Building, Property, Personal Property or Tenant's Personal Property or any part thereof or any equipment therein or appurtenances thereto becoming in disrepair, or resulting from any damage, accident or event in or about the Premises. Without limiting the generality of the foregoing, this Section 20.B shall apply particularly, but not exclusively, to flooding, damage caused by Building equipment and apparatuses, water, snow, frost, steam, excessive heat or cold, broken glass, sewage, gas, odors, excessive noise or vibration, death, loss, conversion, theft, robbery, or the bursting or leaking of pipes, plumbing fixtures or sprinkler devices.

## **21. ASSIGNMENT AND SUBLETTING.**

- A. Landlord shall have the right to sell or convey the Premises subject to this Lease or to assign its right, title and interest as Landlord under this Lease in whole or in part. In the event of any such sale or assignment other than a security assignment, Tenant shall attorn to such purchaser or assignee and Landlord shall be relieved, from and after the date of such transfer or conveyance, of liability for the performance of any obligation of Landlord contained herein, except for obligations or liabilities accrued prior to such assignment or sale.
- B. Tenant acknowledges that Landlord has relied both on the business experience and creditworthiness of Tenant and upon the particular purposes for which Tenant intends to use the Premises in entering into this Lease. Without the prior written consent of Landlord, which consent may not be unreasonably withheld or delayed: (i) Tenant shall not assign, transfer, convey, pledge or mortgage this Lease or any interest therein, whether by operation of law or otherwise; (ii) no direct or indirect transfer of fifty percent (50%) or more of an interest in Tenant (whether by stock, partnership interest or otherwise, voluntarily or by operation of law) shall occur except for any such transfer to an Affiliate; (iii) no direct or indirect interest in Tenant shall be pledged,

encumbered, hypothecated or assigned as collateral for any obligation of Tenant; and (iv) no change of Control of Guarantor shall occur, provided that Landlord consent shall not be required (but prior written notice to Landlord shall be required) under this clause (iv) for any Permitted Guarantor Change of Control (each of items (i) through (v) are hereinafter referred to as a “**Transfer**”). For purposes of this Agreement, the term “**Permitted Guarantor Change of Control**” shall mean any change of Control of Guarantor with respect to which either of the following conditions is satisfied: (1) immediately following such change of Control of Guarantor, Guarantor (or the successor to Guarantor, if applicable) has an investment grade rating (public or private) pursuant to ratings established by at least two (2) of the following Nationally Recognized Statistical Ratings Organizations (NRSRO): Standard & Poor’s, Moody’s, Fitch, Morningstar, Kroll, and Egan-Jones; or (2) prior to such change of Control of Guarantor, both of the following conditions are satisfied: (x) this Lease is amended (by written instrument reasonably acceptable to Landlord and Tenant) to increase the then-applicable Base Rent by five percent (5%) (and which Base Rent, as so increased, shall continue to increase by two percent (2%) each year during the Term and each Renewal Term), and (y) Tenant delivers to Landlord an irrevocable standby letter of credit in form and substance reasonably acceptable to Landlord (“**Letter of Credit**”) in an amount equal to the aggregate Base Rent scheduled to be paid by Tenant to Landlord hereunder from the date of delivery of such Letter of Credit until the date that is twenty-four (24) months thereafter (the “**Security Deposit**”), to be held by Landlord for the balance of the Term. Upon Tenant’s failure to timely pay Rent or any other sums due under this Lease, Landlord may, without limiting any other rights Landlord may have herein, draw on such Letter of Credit to satisfy any such unpaid monetary obligation of Tenant, and Tenant shall, immediately upon written notice from Landlord thereof, deposit with Landlord an amount in cash sufficient to replenish the Security Deposit to its original amount. The Letter of Credit shall be issued (the following collectively, the “**LC Issuer Requirements**”): (a) by a commercial bank with a net worth of at least Ten Billion Dollars (\$10,000,000,000), (b) that is chartered under the laws of the United States, any State thereof or the District of Columbia, and which is insured by the Federal Deposit Insurance Corporation, (c) whose long-term, unsecured and unsubordinated debt obligations are rated in the following categories by at least two of Fitch Ratings Ltd. (Fitch), Moody’s Investors Services, Inc. (Moody’s) and Standard & Poor’s Ratings Services (S&P) (the “Rating Agencies”) or their respective successors: (1) AAA to A from Fitch, (2) Aaa to A2 from Moody’s and (3) AAA to A from S&P, (d) which has a short term deposit rating in the highest category from at least two Rating Agencies (which shall mean F1 from Fitch, P-1 from Moody’s and A-1 from S&P), and (e) which is not insolvent and is not placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, or any successor or similar entity, and for which no trustee, receiver or liquidator is appointed. If at any time following the delivery of the Letter of Credit by Tenant pursuant to this Section 5.E the LC Issuer Requirements are not

satisfied, then Tenant shall, no later than ten (10) business days thereafter, deliver to Landlord either a replacement Letter of Credit which meets the LC Issuer Requirements or cash in the amount of the Security Deposit. If Tenant fails to deliver a replacement Letter of Credit from an institution that satisfies the LC Issuer Requirements or such cash Security Deposit to Landlord within such ten (10) business day period, Landlord, at its option, upon the delivery of written notice to Tenant may draw upon the Letter of Credit and instruct the Letter of Credit issuer to deliver the full amount of the Letter of Credit to Landlord as a cash Security Deposit. It is Tenant's responsibility to maintain and renew the Letter of Credit such that it is in effect at all times until the return of the Letter of Credit to Tenant in accordance herewith. Tenant shall renew such Letter of Credit no later than thirty (30) days prior to any expiration date thereof or replace such Letter of Credit with a replacement Letter of Credit which otherwise meets the LC Issuer Requirements or with a cash Security Deposit. If Tenant has not renewed the Letter of Credit (and delivered the original of such renewal documentation to Landlord) or delivered a satisfactory replacement Letter of Credit or cash Security Deposit to Landlord at least thirty (30) days prior to the expiration date of the Letter of Credit, Landlord, at its option, may draw upon the Letter of Credit and instruct the Letter of Credit issuer to deliver the full amount of the Letter of Credit to Landlord as a cash Security Deposit. In lieu of the Letter of Credit, Tenant may elect to deliver to Landlord a rental insurance product, issued by an investment-grade insurer, which will "credit wrap" all of the Tenant's obligations under this Lease for the entire Term. In addition, no interest in Tenant, or in any individual or person owning directly or indirectly any interest in Tenant, shall be transferred, assigned or conveyed to any individual or person whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations and/or who is in violation of any of the OFAC Laws and Regulations, and any such transfer, assignment or conveyance shall not be effective until the transferee has provided written certification to Tenant and Landlord that (A) the transferee or any person who owns directly or indirectly any interest in transferee, is not an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of the OFAC Laws and Regulations, and (B) the transferee has taken reasonable measures to assure that any individual or entity who owns directly or indirectly any interest in transferee, is not an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of the OFAC Laws and Regulations; provided, however, the covenant contained in this sentence shall not apply to any person to the extent that such person's interest is in or through a U.S. Publicly-Traded Entity.

- C. Landlord's consent to a Transfer shall be subject to the satisfaction of such conditions as Landlord shall determine in its reasonable judgment, including, without limitation, the proposed transferee having satisfactory creditworthiness as determined by Landlord. In addition, any such consent

shall be conditioned upon the payment by Tenant to Landlord of all out-of-pocket costs and expenses incurred by Landlord in connection with such consent, including, without limitation, reasonable attorneys' fees. The provisions of this Section 21 shall apply to every Transfer regardless of whether voluntary or not, or whether or not Landlord has consented to any previous Transfer. Except as hereinafter provided, no Transfer shall relieve Tenant of its obligations under this Lease or any guarantor of this Lease of any of its obligations under the Guaranty, it being understood that the initial Tenant under this Lease and the Guarantor always shall remain liable and responsible for the obligations of the tenant hereunder. Any Transfer in violation of this Section 21 shall be voidable at the sole option of Landlord.

- D. Notwithstanding anything in this Section 21 to the contrary, Tenant shall be permitted to cause, suffer, or permit, without Landlord's consent, any Transfer that satisfies all of the terms and conditions set forth in this Section 21.D, all of which must be satisfied on or before the effective date (or earlier closing) of such proposed Transfer (each a "Permitted Transfer"):

(1) Tenant shall be permitted to sublet all or any part of the Premises so long as, in each instance, the following conditions precedent have all been satisfied: (i) no Event of Default has occurred and is continuing as of the date such proposed sublease becomes effective; (ii) the proposed sublease is not reasonably expected to result in a violation of a material term or condition of this Lease; and (iii) the proposed sublease does not relieve Tenant of its obligations under this Lease or the Guarantor of any of its obligations under the Guaranty, it being understood that the initial Tenant under this Lease and the Guarantor always remain primarily liable and responsible for the obligations of the Tenant hereunder.

(2) Tenant shall be permitted to assign its entire interest under this Lease to an entity which has expressly assumed all the obligations and liabilities of Tenant under this Lease, actual, contingent and accrued, in a manner reasonably acceptable to Landlord and otherwise in accordance with the terms and conditions of this Lease so long as the following conditions precedent have all been satisfied: (i) no Event of Default has occurred and is continuing as of the date such proposed assignment becomes effective; (ii) the proposed assignment is not reasonably expected to result in a violation of a material term or condition of this Lease; (iii) the proposed assignee is experienced in management and operation of facilities similar to the Premises and has a favorable business and operational reputation and character (as reasonably determined by Landlord); and (iv) the proposed assignment does not relieve Tenant of its obligations under this Lease or the Guarantor of its obligations under the Guaranty, it being understood that the initial Tenant under this Lease and the Guarantor always remain primarily liable and responsible for the obligations of the Tenant hereunder.

(3) Tenant shall be permitted to assign its entire interest under this Lease to an entity which has expressly assumed all the obligations and liabilities of Tenant under this Lease, actual, contingent and accrued, in a manner reasonably acceptable to Landlord and otherwise in accordance with the terms and conditions of this Lease so long as the following conditions precedent have all been satisfied: (i) no Event of Default has occurred and is continuing as of the date such proposed assignment becomes effective; (ii) the proposed assignment is not reasonably expected to result in a violation of a material term or condition of this Lease; (iii) the proposed assignee is experienced in management and operation of facilities similar to the Premises and has a favorable business and operational reputation and character (as reasonably determined by Landlord); and (iv) immediately after the proposed assignment, the assignee has an investment grade rating (public or private) pursuant to ratings established by either (x) Standard & Poor's; (y) Moody's; or (z) at least two (2) of the following Nationally Recognized Statistical Ratings Organizations (NRSRO): Fitch, Morningstar, Kroll, and Egan-Jones, in which case the Tenant and the Guarantor will be released from liability under this Lease and the Guaranty to the extent accruing from and after such assignment.

Tenant shall, at Tenant's sole cost and expense, execute and deliver to Landlord any reasonable instruments and documents requested by Landlord in connection with any Permitted Transfer and pay to Landlord all out-of-pocket costs and expenses incurred by Landlord in connection with such Permitted Transfer, including, without limitation, reasonable attorneys' fees.

- E. Any Transfer shall not relieve Tenant, or any person claiming by, through or under Tenant, of the obligation to obtain the consent of Landlord, pursuant to this Section 21, to any further Transfer. In the event of a sublease, if there exists an Event of Default, Landlord may collect rent from the subtenant without waiving any rights under this Lease while such Event of Default is continuing. Any rent Landlord may collect from any such subtenant will be first applied to the Rent due and payable under this Lease and any other amounts then due and payable and then applied to the Rent as it becomes due and payable under this Lease. The collection of the Rent and any other sums due and payable under this Lease, from a person other than Tenant shall not be a waiver of any of Landlord's rights under this Section 21.E, an acceptance of assignee or subtenant as Tenant, or a release of Tenant from the performance of Tenant's obligations under this Lease. No Transfer shall affect the liability of Guarantor under the Guaranty.
- F. No Transfer shall impose any additional obligations on Landlord under this Lease. Tenant shall reimburse Landlord (and Landlord's Mortgagee, if applicable) for Landlord's reasonable costs and expenses (including reasonable attorneys' fees) incurred in conjunction with the reviewing and processing and documentation of any Transfer requiring Landlord's consent that is actually consummated.

## 22. LIENS.

Tenant will not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any mechanic's, supplier's or vendor's lien, encumbrance or charge on the Premises or any part hereof. The existence of any mechanic's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation of this Section 22 if payment is not yet due upon the contract or for the goods or services in respect of which any such lien has arisen or, if Tenant is protesting or challenging such lien in good faith and has, within thirty (30) days after Tenant receives actual notice of such lien, bonded over such lien. Nothing contained in this Lease shall be construed as constituting the consent or request of Landlord, expressed or implied, of any contractor, subcontractor, laborer, materialman or vendor to or for the performance of any labor or services or the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Premises or any part thereof, and any such contractor, subcontractor, laborer, materialman or vendor shall look solely to Tenant and Tenant's interest in the Premises to secure the payment of any bills for any labor, services, or materials furnished. Notice is hereby given that Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Premises or any part thereof through or under Tenant, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to the Premises. If Tenant has not removed any such lien or other encumbrance described above within thirty (30) days after written notice thereof to Tenant, Landlord may, but shall not be obligated to, pay the amount of such lien or other encumbrance or discharge the same by deposit, and the amount so paid or deposited shall constitute additional Rent and be collectible upon demand with interest at the Default Rate. Landlord hereby consents to the granting of a lien or security interest on the fixtures, furnishings, trade fixtures, furniture, computers, telephone systems, machinery, equipment and other of Tenant's Personal Property installed or placed on the Premises by Tenant in connection with any credit facility that Tenant has or may have during the Term hereof, and Tenant shall give Landlord written notice of any such lien.

## 23. TENANT'S DEFAULT.

Each of the following events shall be deemed to be an "**Event of Default**" under this Lease: (i) failure to pay Rent or any other monetary obligation as and when due, and such failure continues for three (3) business days after Tenant's receipt of Landlord's written notice thereof; (ii) Tenant abandons the Premises; (iii) Guarantor or Tenant becomes insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under state or federal bankruptcy laws (or successor laws) or Guarantor or Tenant shall be adjudged bankrupt or insolvent in proceedings filed against Guarantor or Tenant; (iv) a writ of attachment or execution is levied on this Lease, or a receiver is appointed with authority to take possession of the Premises, which attachment, execution or receiver is not removed within thirty (30) days of filing or appointment of a receiver; (v) Guarantor or Tenant shall be liquidated or dissolved; (vi) Tenant shall violate Section 22 hereof; (vii) the estate or interest of Tenant in the Premises or any part thereof shall be levied upon or attached in any proceeding relating to more than One Hundred Thousand and No/100 Dollars (\$100,000.00), and the same shall not be vacated, discharged or stayed pending appeal (or bonded or otherwise similarly secured payment) within the earlier of sixty (60) days after commencement thereof or thirty (30) days after receipt by Tenant of notice thereof from Landlord or any earlier period provided by Law for obtaining any

stay pending appeal or to prevent foreclosure or sale; provided, however, that such notice shall be in lieu of and not in addition to any notice required under applicable Law; (viii) Tenant fails to maintain any insurance required by this Lease; (ix) failure by Tenant to perform any other covenant, agreement or undertaking of the Tenant contained in this Lease if the failure to perform is not cured within thirty (30) days after Tenant's receipt of Landlord's written notice thereof; provided, however, if the breach cannot reasonably be cured within thirty (30) days, the same shall not result in an Event of Default if Tenant commences to cure the breach within thirty (30) days of receipt of Landlord's written notice and diligently and in good faith continues to prosecute the cure of said breach to completion, provided such breach is cured within sixty (60) days after Tenant's receipt of Landlord's written notice thereof; (x) to the extent required under the Guaranty, Guarantor fails to deliver the financial statements required to be delivered by Guarantor to Landlord if such failure is not cured within ten (10) days after Tenant's receipt of Landlord's written notice thereof; (xi) an event of default beyond all applicable notice and cure periods by Guarantor under the Guaranty; and (xii) an event of default beyond all applicable notice and cure periods by Tenant under Section 23(i) through Section 23(xi) of a lease agreement by and between Landlord (or an Affiliate of Landlord) and Tenant (or an Affiliate of Tenant) dated on or about the date hereof in substantially the same form as this Lease (each, a "**Portfolio Lease**"), or the subsection thereof analogous to Section 23(i) through Section 23(xi) hereof (provided, however, the Event of Default described in this clause (xii) shall be of no further force or effect from and after the date that is twenty four (24) months after the Commencement Date).

#### **24. REMEDIES OF LANDLORD.**

- A. From and after the occurrence of any Event of Default, Landlord shall have the option to pursue any one or more of the following remedies as well as any other remedy available at Law or in equity for such Event of Default: (i) terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord; (ii) using lawful means, enter upon and take possession of the Premises without terminating this Lease and without being liable for prosecution or claim for damages, and relet, upon reasonable terms, all or a portion of the Premises (if Landlord elects to enter and relet the Premises, Landlord may at any time thereafter elect to terminate this Lease); (iii) sue periodically to recover damages during the period corresponding to the portion of the Term for which suit is instituted, and if Landlord elects to sue and is successful in such suit, Landlord shall be entitled to recover all costs and expenses of such suit, including reasonable attorneys' fees, together with interest at the Default Rate; (iv) re-enter the Premises or any portion thereof and attempt to cure any default of Tenant, or make any such payment or perform such act for the account of and at the expense of Tenant, in which event Tenant shall, upon demand, reimburse Landlord as additional Rent for all reasonable costs and expenses which Landlord incurs to cure such default, together with interest at the Default Rate accruing from the date such costs and expenses were incurred, and Tenant agrees that no such entry or action by Landlord shall constitute an actual or constructive eviction or repossession, without Landlord's express intention to do so as expressed in writing, and no such entry shall be deemed an eviction of Tenant; (v) to the extent permitted



by applicable Law, accelerate and recover from Tenant all Rent and other monetary sums scheduled to become due and owing under this Lease after the date of such breach for the entire Term and any Renewal Term that has been exercised, discounted to present value at an assumed per annum interest rate equal to the then-applicable "Prime Rate" published in The Wall Street Journal (or, if such rate is no longer published in The Wall Street Journal, the average discount rate on 3-month treasury bills issued by the United States Treasury at its most recent auction; and (vi) enforce the provisions of this Lease by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy. Tenant shall reimburse Landlord for any out-of-pocket expenses which Landlord actually incurs in complying with the terms of this Lease on behalf of Tenant, together with interest at the Default Rate.

- B. If Landlord elects to terminate this Lease, Landlord shall be entitled to recover from Tenant all Rent accrued and unpaid for the period up to and including such termination date, as well as all other additional Rent payable by Tenant, or for which Tenant is liable or for which Tenant has agreed to indemnify Landlord, which may be then owing and unpaid, and all costs and expenses, including court costs and reasonable attorneys' fees, incurred by Landlord in the enforcement of its rights and remedies hereunder, together with interest at the Default Rate. In addition, Landlord shall be entitled to recover as damages for loss of the bargain and not as a penalty the lesser of (i) the sum of (1) the aggregate sum which at the time of such termination represents the present value of the aggregate Rent which would have been payable after the termination date had this Lease not been terminated for the remainder of the Term or Renewal Term, as applicable, during which such termination occurred, such present value to be computed on the basis of the rate of U.S. Treasury Bills with the closest maturity date correlating with the amount of time left in the Term or Renewal Term, as applicable, had this Lease not been terminated, and (2) any damages in addition thereto, including without limitation reasonable attorneys' fees and court costs, which Landlord sustains as a result of the breach of any of the covenants of this Lease other than for the payment of Rent, and interest at the Default Rate or (ii) the greatest amount permitted by applicable Law.
- C. Unless required by applicable Law, Landlord shall have no obligation to mitigate damages upon the occurrence of an Event of Default. However, if Landlord is required by applicable Law to mitigate Tenant's damages, Landlord's obligation shall be satisfied in full if Landlord undertakes to lease the Premises (the "**Reposessed Premises**") to another tenant (a "**Substitute Tenant**") in accordance with the following criteria: (1) Landlord shall have no obligation to solicit or entertain negotiations with any other prospective tenants for such Reposessed Premises until Landlord obtains full and complete possession of such Reposessed Premises including, without limitation, the final and unappealable legal right to relet such Reposessed

Premises free of any claim of Tenant; (2) Landlord shall not be obligated to lease or show such Repossessed Premises, on a priority basis, or offer such Repossessed Premises to a prospective tenant when other premises in the applicable Building or any other building owned by Landlord suitable for that prospective tenant's use are (or will be) available; (3) Landlord shall not be obligated to lease such Repossessed Premises to a Substitute Tenant for a rent less than the current fair market rent then prevailing for similar uses in Comparable Buildings for such Repossessed Premises, nor shall Landlord be obligated to enter into a new lease under other terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the applicable Building or for a building belonging to Landlord in the vicinity; (4) Landlord shall not be obligated to enter into a lease with a Substitute Tenant whose use would: (i) violate any restriction, covenant, or requirement contained in the lease of another tenant of the applicable Building; or (ii) adversely affect the reputation of the applicable Building; and (5) Landlord shall not be obligated to enter into a lease with any proposed Substitute Tenant which does not have, in Landlord's reasonable opinion, sufficient financial resources to operate such Repossessed Premises in a first-class manner and to fulfill all of the obligations in connection with the lease thereof as and when the same become due. No reletting shall be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous default and/or exercise its rights under Section 24.A and Section 24.B.

- D. Pursuit of any of the above stated remedies by Landlord after an Event of Default shall not preclude pursuit of any other remedy provided in this Lease or at Law or in equity, nor shall pursuit of any remedy constitute forfeiture or waiver of any payment due to Landlord. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of any other violation or default. Once an Event of Default occurs, Landlord shall not be obligated to accept any cure of such Event of Default, and such Event of Default shall continue unless and until Landlord states in writing, in its sole and absolute discretion, that no Event of Default exists under this Lease.

## **25. SUBORDINATION/ATTORNMENT**

- A. Landlord Mortgage. Landlord may mortgage its fee interest in the Premises, at any time, and from time to time, in accordance with the terms hereof. Notwithstanding anything to the contrary contained herein, Landlord and Tenant agree that this Lease shall be subordinate to any Landlord Mortgage

and the rights of any Landlord Mortgagee; provided, however, in the event of a foreclosure under any such Landlord Mortgage, or conveyance or assignment in lieu of foreclosure or by deed in lieu of foreclosure, such Landlord Mortgagee and its successors and assigns shall not disturb the occupancy or other rights of Tenant under the terms of this Lease so long as no Event of Default exists hereunder. Tenant shall recognize and attorn to any party succeeding to Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, or otherwise, upon such party's request, as Tenant's direct landlord under the Lease. Such attornment and recognition shall be self-operative without the need for further documentation; provided that Tenant shall execute such agreements and/or instruments as such successor landlord shall reasonably request to evidence such attornment and recognition. If requested by Landlord, Tenant shall, promptly and in no event later than fifteen (15) days after a request from Landlord, enter into a reasonable and customary subordination, non-disturbance and attornment agreement ("**SNDA**") with Landlord Mortgagee to effectuate the subordination, non-disturbance and attornment rights contemplated by this Section 25.A.

B. For the purposes of this Lease, the following definitions shall apply:

"**Landlord Mortgage**" shall mean any financing obtained by Landlord, as evidenced by any mortgage, deed of trust, assignment of leases and rents, financing statement or other instruments, and secured by the interest of Landlord in the Property, including any extensions, modifications, amendments, replacements, supplements, renewals, refinancings and consolidations thereof.

"**Landlord Mortgagee**" shall mean the mortgagee (and its successors and assigns) under any Landlord Mortgage.

## 26. **ESTOPPEL CERTIFICATE.**

A. At any time, and from time to time, Tenant shall, promptly and in no event later than fifteen (15) days after a request from Landlord, execute, acknowledge and deliver to Landlord a certificate in the form attached hereto as **Exhibit "D"** or such other form as may be supplied by Landlord certifying: (i) that Tenant has accepted the Premises; (ii) that this Lease is in full force and effect and has not been modified (or if modified, setting forth all modifications); (iii) the commencement and expiration dates of the Term, including the terms of any extension options of Tenant; (iv) the date to which the rentals have been paid under this Lease and the amount thereof then payable; (v) whether there are then any existing defaults by Landlord in the performance of its obligations under this Lease, and, if there are any such defaults, specifying the nature and extent thereof; (vi) that Tenant is not in default under this Lease beyond any grace or cure periods, except as to defaults specified in the certificate; (vii) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same

on behalf of Tenant; (viii) that Landlord has no actual involvement in the management or control of decision making related to the operational aspects or the day-to-day operations of the Premises; and (ix) any other information reasonably requested by Landlord.

- B. At any time, and from time to time, Tenant shall, at Landlord's request, use commercially reasonable efforts to obtain estoppel certificates, in a form requested by Landlord or any Landlord Mortgagee, from any applicable counterparties under any applicable declarations, covenants, conditions and restrictions, reciprocal easement agreements or other encumbrances.

## **27. HAZARDOUS MATERIALS.**

Notwithstanding anything contained herein to the contrary:

- A. Tenant covenants and agrees that it shall not cause, conduct, authorize or allow (i) the presence, generation, transportation, storage, treatment, or usage at the Premises, or any portion thereof, of any Hazardous Material in violation of or as would give rise to liability under Environmental Laws; (ii) a Release or threat of Release of any Hazardous Material on, under, about or in the Premises; or (iii) any violation of or liability under any Environmental Law at or with respect to the Premises or activities conducted thereon. For avoidance of doubt, nothing in this Section 27.A shall prohibit Tenant from using at the Premises (I) cleaning materials, pesticides, and other common household and office products, and/or (II) materials in connection with any fuel tanks, generators or the like on the Premises, solely to the extent, with respect to each of the preceding clauses (I) and (II), that any such use thereof is in compliance with Environmental Laws. Further, nothing in this Section 27.A shall prohibit Tenant from storing and distributing products which contain or are Hazardous Materials, to the extent, with respect to the preceding clause, that any such storage and distribution are in compliance with Environmental Laws and are in the ordinary course of Tenant's business.
- B. Tenant shall, at its own cost, comply and ensure that the Premises and all operations and activities at the Premises comply with all Environmental Laws and the terms of this Lease with respect to Hazardous Materials. Tenant shall, at its own cost, obtain all permits, licenses and authorizations required under Environmental Laws for the operations and activities conducted at the Premises.
- C. Tenant shall promptly provide Landlord with notice of any actual or potential violation of Environmental Laws, any Release of Hazardous Materials in or around the Premises that could impact the Premises or require any investigation, remediation or other response action under Environmental Law, and any claim or threat of a claim asserting any liability under Environmental Laws relating to the Premises, and copies of all reports, site assessments, and material communications, permits or agreements to, from or with any

governmental authority or other third party relating to such violation, Release or claim; and

- D. Landlord and Landlord's Representatives, including such environmental consultants as Landlord may designate, shall have the right upon reasonable prior notice, and subject to Section 14 hereof, to enter the Premises and/or conduct appropriate tests and investigations for the purpose of assessing the condition of the Premises or ascertaining that Tenant complies with the terms of this Lease and with all applicable Environmental Laws that relate in any way to the Premises.
- E. If the presence, Release, threat of Release, presence or placement on, in or around the Premises, or the generation, transportation, storage, use, treatment, or disposal at or around the Premises of any Hazardous Material by Tenant, Tenant's Representatives, or by any third party other than Landlord or Landlord's Representatives: (i) gives rise to liability or obligation (including, but not limited to, any investigatory, remedial, removal, reporting, or other response action) under any Environmental Law, (ii) causes or threatens to cause a material and adverse effect on public health or occupational safety and health, (iii) pollutes or threatens to pollute the environment, or endanger human health, or (iv) otherwise violates Environmental Law, Tenant shall promptly take any and all remedial and removal actions required by Environmental Laws or otherwise necessary to clean up the Premises to comply with all environmental standards applicable to the Premises given its use at the time of the remediation and mitigate exposure to liability arising from the Hazardous Material.
- F. Tenant shall promptly notify Landlord upon Tenant becoming aware of: (i) any enforcement action, investigation, cleanup, notice of violation, or other regulatory action taken or threatened against either party or otherwise related to the Premises by any governmental authority with respect to the presence of any Hazardous Material at the Premises, or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any governmental authority or other person against either party hereto or otherwise relating to any actual or alleged violation of or liability under Environmental Laws or relating to any loss or injury resulting from any Hazardous Material or based on Environmental Laws, (iii) any Release of Hazardous Materials, unlawful discharge, or non-routine, improper or unlawful disposal or transportation of any Hazardous Material on or from the Premises, and (iv) any matters where Tenant is required by Environmental Law to give a notice to any governmental authority respecting any Hazardous Materials in, at, on, under or about the Premises, and Tenant shall thereafter keep Landlord reasonably apprised with respect to the status and Tenant's actions to resolve such matters, and shall furnish Landlord with such other documents and information as Landlord may reasonably request with respect thereto. At such times as Landlord may reasonably request, Tenant shall provide Landlord with a written list identifying any Hazardous Material then

actually known by Tenant to be used, stored, or maintained in, on or upon the Premises. In such case, Tenant shall if requested by Landlord provide Landlord with information with respect to the use and approximate quantity of each such material, a copy of any Material Safety Data Sheet issued by the manufacturer therefor, written information concerning the removal, transportation, and disposal of the same, and such other information as the Landlord may reasonably require or as may be required by Environmental Laws.

- G. Tenant shall indemnify, defend and hold Landlord and the Landlord Indemnified Parties harmless, in the manner specified in Section 20, from and against any and all liability, claim, expense, cause of action, fines, judgments, settlements, investigation, monitoring and remediation costs, penalties, losses and damages (including reasonable attorney's, consultant's and contractor's fees) resulting or arising from (i) the breach by Tenant of its covenants and agreements set forth in this Section 27, (ii) the presence, Release, placement on, in or around the Premises, or the generation, transportation, storage, use, treatment or disposal at or around the Premises of any Hazardous Materials before or during the Term and any Renewal Term, as applicable, by Tenant or any third party other than Landlord or Landlord's Representatives, (iii) any violation of or obligation under Environmental Law before or during the Term and any Renewal Term, as applicable, by Tenant or any third party other than Landlord or Landlord's Representatives, and (iv) claims by governmental authorities or other third parties associated with Hazardous Materials or violations of or obligations under Environmental Laws by Tenant or any third party other than Landlord or Landlord's Representatives, or Hazardous Materials present at, on, under or about the Premises before or during the Term and any Renewal Term, as applicable, including, without limitation those that were discovered during the Term and any Renewal Term, as applicable, which were caused prior to the Term by Tenant or its agents, representatives, employees, contractors, subcontractors, licensees or invitees or any third party other than Landlord or Landlord's Representatives. The foregoing indemnity obligations shall survive the expiration or earlier termination of this Lease.
- H. At Landlord's request, at any time (1) during the last year of the Term (or any Renewal Term, as applicable), (2) in connection with any future sale, financing or other transaction by Landlord related to the Premises, or (3) Landlord receives information indicating the presence of an environmental condition at the Premises requiring investigation, Tenant shall commission and provide to Landlord, or Landlord may commission, in each event, at Tenant's sole cost and expense, a Phase I site assessment and, if warranted in Landlord's sole discretion, a Phase II site assessment of the Premises at Tenant's sole cost and expense, for purposes of confirming the environmental condition of the Premises and Tenant's compliance with the terms of the Lease with respect to environmental matters.

## **28. PRESS RELEASES.**

Except for any announcement intended solely for internal distribution by Landlord or Tenant or any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the disclosing party, all media releases or public announcements (including, but not limited to, promotional or marketing material) by Landlord or Tenant or either party's employees or agents relating to this Lease or its subject matter, or including the name, trade name, trade mark, or symbol of Tenant or an Affiliate of Tenant, or Landlord or an Affiliate of Landlord, shall be coordinated with and approved in writing by the other party prior to the release thereof; provided, that nothing herein is intended to require Tenant's consent to the identification of Tenant or the particulars of this Lease in connection with any marketing of the Premises by Landlord.

## **29. HOLDING OVER.**

Except as set forth below, if Tenant continues to occupy the Premises after the expiration or other termination of this Lease or the termination of Tenant's right of possession with respect to the Premises, such occupancy shall be that of a tenancy at sufferance. Tenant shall, throughout the entire holdover period, be subject to all the terms and provisions of this Lease (other than provisions relating to length of the Term) and shall pay for its use and occupancy an amount (on a per month basis without reduction for any partial months during any such holdover) equal to (i) one hundred percent (100%) of the additional Rent due under this Lease for the holdover period, and (ii) two hundred percent (150%) of the monthly Base Rent due in the month immediately prior to the expiration or earlier termination of the Term. Except as set forth below, no holding over by Tenant or payments of money by Tenant to Landlord after the expiration of the Term shall be construed to extend the Term or prevent Landlord from recovery of immediate possession of the Premises by summary proceedings or otherwise. In the event that Tenant continues to occupy the Premises after the expiration or termination of this Lease, such occupancy shall be that of a tenancy at sufferance and Tenant shall be liable to Landlord for all direct and consequential damages which Landlord may suffer by reason of any holding over by Tenant.

30. **FINANCIAL STATEMENTS.** Within ninety (90) days after the end of each fiscal year of Guarantor, Tenant shall deliver to Landlord complete audited financial statements of the Guarantor, including, without limitation, a balance sheet (together with all notes thereto), profit and loss statement, statement of annual cash flows, all in reasonable detail, prepared in accordance with GAAP and audited by a "Big Four" accounting firm. So long as all such financial statements of Guarantor and other information required by this Section 30 is publicly available via EDGAR or Guarantor's website, Tenant shall not be required to separately deliver such information to Landlord pursuant to this Section 30.

## **31. QUIET ENJOYMENT.**

So long as Tenant is not in default under this Lease, Landlord shall not take any action to disturb in any material respect Tenant's quiet enjoyment of the Premises (subject, however, to the exceptions, reservations and conditions of this Lease). Except to the extent expressly set forth in this Section 31, Tenant hereby waives any right or defense it may have at law or in equity

relating to Tenant's quiet enjoyment of the premises.

**32. NOTICES.**

Any notice, demand, request, or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three (3) business days after mailing; (c) if by Federal Express or other nationally recognized overnight courier service, on the next business day after delivered to such courier service for delivery on the next business day; or (d) if by facsimile or e-mail transmission, on the day of transmission so long as a copy is sent on the same day (or prior thereto) by Federal Express or other nationally recognized overnight courier service for delivery on the next business day, to the addresses set forth in Section 2 hereof, or at such other address as the party to be served with notice has furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Attorneys for either party hereto may provide notice of behalf of such party, provided that all other requirements of this Section 32 are satisfied.

**33. PERSONAL LIABILITY.** Notwithstanding anything to the contrary provided in this Lease, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Lease by Landlord, that (i) there shall be absolutely no personal liability on the part of the direct and indirect members, partners, shareholders, officers, directors, employees and agents of Landlord and its successors or assigns, to Tenant with respect to any of the terms, covenants and conditions of this Lease, (ii) Tenant waives all claims, demands and causes of action against the direct and indirect members, partners, shareholders, officers, directors, employees and agents of Landlord and its successors or assigns in the event of any breach by Landlord of any of the terms, covenants and conditions of this Lease to be performed by Landlord, and (iii) Tenant shall look solely to Landlord's interest in the Premises for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord of any of the terms, covenants and conditions of this Lease to be performed by Landlord, or any other matter in connection with this Lease or the Premises, such exculpation of liability to be absolute and without any exception whatsoever. No breach by Landlord of any provision of this Lease shall give rise to a right of Tenant to terminate this Lease, it being understood and agreed that Tenant's sole remedy for any such breach shall be a claim for actual damages (if any). Furthermore, Tenant hereby knowingly, voluntarily and intentionally waives any right it may have to seek punitive, consequential, special and indirect damages from Landlord and any of such Landlord's direct and indirect members, partners, shareholders, officers, directors, employees and agents of Landlord and its successors or assigns with respect to any matter arising out of or in connection with this lease or any document contemplated herein or related hereto. The waiver by Tenant of any right it may have to seek punitive, consequential, special and indirect damages has been negotiated by the parties hereto and is an essential aspect of their bargain.

**34. ENTIRE AGREEMENT.**

This Lease represents the entire agreement and understanding between Landlord and Tenant with respect to the subject matter herein, and there are no representations,



understandings, stipulations, agreements or promises not incorporated in writing herein.

35. **AMENDMENTS.**

No amendments or modifications of this Lease shall be effective unless such amendment or modification is in writing and executed and delivered by and between Tenant and Landlord, nor shall any custom, practice or course of dealing between the parties be construed to waive the right to require specific performance by the other party in compliance with this Lease.

36. **LEGAL INTERPRETATION.**

Each of Landlord and Tenant hereby agree that the State of Illinois has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects (including, without limiting the foregoing, matters of construction, validity and performance), this Lease and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of Illinois applicable to contracts made and performed therein and all applicable law of the United States of America; except that, at all times, the provisions for the creation of the leasehold estate created by this Lease, enforcement of Landlord's rights and remedies with respect to right of re-entry and repossession, surrender, delivery, ejectment, dispossession, eviction or other in-rem proceeding or action regarding the Premises pursuant to Section 24 hereunder shall be governed by and construed according to the Laws of the State in which the Premises is located, it being understood that, to the fullest extent permitted by law of such State where the Premises is located, the law of the State of Illinois shall govern the validity and enforceability of this Lease, and the obligations arising hereunder. To the fullest extent permitted by law, Tenant and Landlord hereby unconditionally and irrevocably waive any claim to assert that the law of any other jurisdiction governs this Lease. Words of any gender shall be construed to include any other gender, and words in the singular number shall be construed to include the plural, unless the context otherwise requires. The headings of the sections have been inserted for convenience only and are not to be considered in any way in the construction or interpretation of this Lease. Except as otherwise herein expressly provided, the terms of this Lease shall apply to, inure to the benefit of, and be binding upon, the parties and their respective assigns, successors and legal representatives. Any legal suit, action or proceeding against Tenant arising out of or relating to this Lease may be instituted in any federal court in the Northern District of Illinois or state court sitting in Cook County, State of Illinois, and Landlord and Tenant each waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding in such federal district or county and state, and Landlord and Tenant each hereby expressly and irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding. In this Lease, the words "include", "includes" or "including" mean "include without limitation", "includes without limitation" and "including without limitation", respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

37. **OPTION TO RENEW.**

- A. Tenant shall have the right, at its election made in its sole discretion, to extend the Term (the "**Renewal Option**") for the additional periods set forth in Section 1.E (each, a "**Renewal Term**"), provided that each of the following

occurs:

1. Landlord receives irrevocable written notice of exercise of the Renewal Option (the “**Renewal Notice**”), not less than twelve (12) full months prior to the expiration of the then existing Term (or Renewal Term, as case may be); and
  2. There is no uncured Event of Default beyond any applicable notice and cure period at the time that Tenant delivers the Renewal Notice.
- B. The Renewal Term shall be upon the same terms and conditions as in this Lease except Base Rent for the first year of the applicable Renewal Term shall be equal to one hundred two percent (102%) of the Base Rent for the year immediately preceding the first year of the applicable Renewal Term. The Base Rent shall increase by two percent (2%) annually during each Renewal Term.
- C. If Tenant is entitled to and properly exercises its Renewal Option, Landlord and Tenant shall execute an amendment (the “**Renewal Amendment**”) to reflect changes in the Base Rent, the Term, the Expiration Date and other appropriate terms; provided that an otherwise valid exercise of the Renewal Option shall be fully effective whether or not the Renewal Amendment is executed. During any validly exercised Renewal Term, references to the Term in this Lease shall mean and refer to the Term as extended by the Renewal Term.

### 38. **AUTHORITY TO ENTER INTO LEASE.**

Each of Tenant and Landlord represents and warrants (a) that the individual executing this Lease on its behalf is duly authorized to execute and deliver this Lease on behalf of the corporation, limited liability company or partnership, as the case may be, and (b) that this Lease is binding on the corporation, limited liability company and the partnership in accordance with its terms.

### 39. **PARTIES BOUND.**

The preparation and submission of a draft of this Lease by either party to the other party shall not constitute an offer, nor shall either party be bound to any terms of this Lease or the entirety of this Lease, until both parties have fully executed a final document. Until such time as described in the previous sentence, either party is free to terminate negotiations without penalty or any further obligation to the other party.

### 40. **COUNTERPARTS; ELECTRONIC SIGNATURES.**

This Lease may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other party. Signatures to this Lease, any amendment hereof and any notice given hereunder, delivered electronically

via .pdf, .jpeg, .TIF, .TIFF or similar electronic format shall be deemed an original signature and fully effective as such for all purposes. Each party agrees to deliver promptly an executed original of this Lease (and any amendment hereto) with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Lease (or any amendment hereto), it being expressly agreed that each party to this Lease shall be bound by its own electronically transmitted signature and shall accept the electronically transmitted signature of the other party to this Lease.

41. **SEVERABILITY.**

If any term or other provision of this Lease is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all of the other conditions and provisions of this Lease will nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Lease so as to reflect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

42. **WAIVER OF JURY TRIAL; CONSEQUENTIAL DAMAGES.**

LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. IN ADDITION, LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO CONSEQUENTIAL DAMAGES ARISING OUT OF ANY BREACH OF THE TERMS OF THIS AGREEMENT, OTHER THAN WITH RESPECT TO A BREACH BY TENANT OF THE PROVISIONS OF SECTION 29 HEREIN.

43. **MEMORANDUM OF LEASE.** This Lease shall not be recorded, either independently or as an exhibit, schedule, annex, or addendum to any other document. However, at Tenant's or Landlord's election, a Memorandum of Lease in the form annexed hereto as **Exhibit "E,"** shall be executed, acknowledged and delivered for recording in the county in which the Premises are located by both parties with the costs of recording the Memorandum of Lease to be borne by Tenant. Tenant shall execute, acknowledge and deliver to Landlord a release of the Memorandum of Lease in recordable form within five (5) days following the expiration or earlier termination of this Lease in accordance with its terms. If Tenant fails to so execute, acknowledge and deliver the release within such five (5) day period, Landlord shall hereby be deemed to be Tenant's attorney-in-fact for the sole purpose of executing and recording

the release on behalf of Tenant. Tenant shall pay any and all recording and other costs, fees and taxes in connection with the execution and recordation of the Memorandum of Lease.

44. **BROKERS**. Tenant warrants that it has had no dealings with any other broker or agent in connection with this Lease. Tenant covenants and agrees to pay, hold harmless and indemnify Landlord and Landlord Mortgagee for any compensation, commissions and charges claimed by any other broker or agent with respect to this Lease, based on Tenant's actions. Landlord warrants that it has had no dealings with any other broker or agent in connection with this Lease other than Broker. Landlord covenants and agrees to pay, hold harmless and indemnify Tenant for any compensation, commissions and charges claimed by any other broker or agent with respect to this Lease, based on Landlord's actions.

45. **RIGHT OF FIRST REFUSAL TO PURCHASE**.

Provided that no Event of Default has occurred under this Lease, commencing and effective from and after the date that is five (5) years after the Effective Date, Tenant shall have a right of first refusal ("**Right of First Refusal**") to purchase the Property from Landlord pursuant to the terms of this Section 45. The Right of First Refusal is subject to the following terms and conditions:

- A. If Landlord receives a bona fide written offer from a third party to purchase the Property, and Landlord desires to accept such offer, Landlord shall give Tenant written notice thereof, including the stated purchase price and other material economic terms (if any), which notice may include the applicable letter of intent, purchase and sale agreement or a similar document reflecting the material terms of such offer from such third party ("**Landlord's Notice**").
- B. Tenant may then deliver to Landlord written notice of its election ("**Tenant's Purchase Election**") to purchase the Property on the terms described in Landlord's Notice on or before the date that is fifteen (15) business days after delivery by Landlord to Tenant of Landlord's Notice (the "**Exercise Period**").
- C. Upon Landlord's receipt of Tenant's Purchase Election, the parties shall negotiate reasonably and in good faith for a period of fifteen (15) days (the "**Negotiation Period**") in order to finalize and execute a mutually acceptable purchase and sale agreement setting forth such terms (the "**Contract**"), it being agreed that, if Landlord's Notice included a purchase and sale agreement negotiated by Landlord with the applicable third party, then Tenant shall be required to accept such purchase and sale agreement (with solely ministerial changes to reflect Tenant (or its designee) as purchaser) as the Contract. In the event a Contract is not executed by the parties prior to the expiration of the Negotiation Period, then Tenant shall be deemed to have waived the Right of First Refusal to purchase the Property under the terms of Landlord's Notice and Landlord shall thereafter have the right to enter into a purchase and sale agreement with a third party for the Property on terms and conditions of the Landlord's Notice or any other terms and conditions, subject to Section 45.E, and consummate the sale of the Property pursuant thereto.

- D. If Tenant does not deliver a Tenant's Purchase Election prior to the expiration of the Exercise Period, then Tenant shall be deemed to have waived the Right of First Refusal to purchase the Property under the terms of Landlord's Notice, and Landlord shall thereafter have the right to enter into a purchase and sale agreement with a third party for the Property on terms and conditions of the Landlord's Notice or any other terms and conditions, subject to Section 45.E, and consummate the sale of the Property pursuant thereto.
- E. In the event that Tenant declines or waives (or is deemed to have waived) its Right of First Refusal to purchase the Property pursuant to this Section 45, Landlord shall have the right to sell the Property and Tenant shall not have a further Right of First Refusal unless (i) there shall be a material decrease in the purchase price from the purchase price provided in the initial Landlord's Notice or (ii) the other material economic terms of such sale (taken as a whole) are materially more favorable to the third-party purchaser as compared to those set forth in the initial Landlord's Notice. For the purposes of this Section 45.E, a "**material decrease**" shall mean a decrease of ten (10%) percent or more of the purchase price for the Property in the Landlord's Notice. Notwithstanding the foregoing, Landlord shall re-institute the procedure set forth in this Article 45 if Landlord fails to (x) execute and deliver a bona fide contract with a third party for the proposed sale within one hundred eighty (180) days after Tenant declines or waives (or is deemed to have waived) its Right of First Refusal to purchase the Property or (y) consummate the proposed sale pursuant to such contract.
- F. Tenant's Right of First Refusal pursuant to this Article 45 shall be a one-time right, and, accordingly, if Tenant declines or waives (or is deemed to have waived) its Right of First Refusal to purchase the Property pursuant to this Article 45 and the sale of the Property by Landlord is subsequently consummated pursuant to this Article 45, then, thereafter, the terms and conditions of this Article 45 shall automatically be of no further force or effect.
- G. Notwithstanding anything herein to the contrary, Tenant's right to purchase the Property pursuant to this Article 45 is and shall be subject and subordinate to any Landlord Mortgage and shall not be applicable to any foreclosure sale, transfer by deed-in-lieu of foreclosure or similar transfer of the Property or to any subsequent transfer or sale of the Property by any Landlord Mortgagee or its nominee, in each case, whether such transfer or sale affects the Property or the ownership interests in Landlord.

46. **GUARANTY**. Simultaneously with the execution of this Lease, Tenant shall deliver to Landlord a fully executed copy of the Unconditional Guaranty of Payment and Performance attached hereto as **Exhibit "F"** (the "**Guaranty**") signed by the Guarantor named in Section 2 hereof.

**[Signatures on following page]**

**IT WITNESS WHEREOF**, the undersigned have executed this Lease Agreement effective as of the date first written above.

LANDLORD:

BIGCOOH002 LLC,  
a Delaware limited liability company

By: /s/ James Hennessey  
Name: James Hennessey  
Title: Authorized Representative

TENANT:

BIG LOTS STORES, INC.,  
an Ohio corporation

By: /s/ Jonathan E. Ramsden

Name: Jonathan E. Ramsden

Its: Executive Vice President and Chief  
Financial and Administrative Officer

**EXHIBIT “A”**  
**TO**  
**LEASE AGREEMENT**  
**BASE RENT SCHEDULE**

[REDACTED]



**EXHIBIT “B”**  
**TO**  
**LEASE AGREEMENT**

**PREMISES**

[REDACTED]

**EXHIBIT "C"**  
**TO**  
**LEASE AGREEMENT**

**GENERAL REQUIREMENTS AND CONDITIONS**

All provisions of this Exhibit are expressly subject to the provisions in the Lease above governing any work performed by Tenant (or an Affiliate of Tenant, as the case may be) on its own behalf, including Alterations or any casualty or condemnation restoration ("**Tenant's Work**"). In the event of any conflict between the Lease and this Exhibit, the Lease shall control.

Tenant's Work will be performed by Tenant in substantial accordance with final Plans approved by Landlord (where such approval is provided for in the Lease). Tenant's contractor(s) shall secure and pay for all necessary permits, inspections, certificates, legal approvals, certificates of occupancy and/or fees required by public authorities and/or utility companies with respect to Tenant's Work.

**A. General Requirements**

1. All Tenant's Work shall be completed in a good and workmanlike manner and in accordance with the Plans as approved by Landlord, the terms of the General Construction Contract and the budget applicable to such Tenant's Work.
2. Tenant and Tenant's contractors shall provide all insurance required by Landlord as set forth in this Lease, or as is otherwise maintained in the ordinary course by prudent and reputable contractors and/or property owners, prior to the start of any construction work within the Premises. Landlord and Landlord Mortgagee shall each be named as an additional insured in all such insurance.
3. Tenant shall, at all times, keep or cause to be kept the Premises and the surrounding area free from accumulations of waste materials and/or rubbish caused by it or its contractors' employees or workers. Tenant and/or its contractors shall provide dumpsters and maintenance of said dumpsters during the construction period in a secure, neat and orderly condition and shall remove and empty the same on a regular basis to avoid unsightly, obstructive or hazardous accumulations or conditions.

**B. Construction Procedures**

1. When submitting construction plans and specifications (preliminary, completed or final), Tenant or Tenant's appointed representative shall issue Tenant's plans, specifications and supporting documents electronically via emails to Landlord's construction coordinator.
2. Once the applicable Plans are approved by Landlord, except for (A) changes required by governmental authorities having jurisdiction over the Premises or (B) interior changes requested by Tenant, and in each case which would not lessen the value of the Premises, Tenant shall not amend, modify or supplement the

applicable General Construction Contract in any respect, except pursuant to change orders approved by Landlord, and shall not attempt to terminate, whether by legal proceedings or otherwise, the applicable General Construction Contract without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed.

3. Not later than ninety (90) days after the Final Completion of the applicable Tenant's Work, Tenant shall deliver or cause to be delivered to Landlord (with a copy to Landlord's consultant) each of the following (1) a certificate addressed to Landlord, signed by a duly authorized officer of Tenant and the applicable Architect or General Contractor (but only if such General Contractor is a design-builder for the applicable Tenant's Work), stating that the Tenant's Work (and any equipment therein) including all "punch list" items have been completed and installed in accordance with the applicable Plans therefor; (2) a complete release of liens for the Premises signed by the General Contractor and all subcontractors of the Tenant's Work and Tenant shall, if a release is not obtainable, in lieu of such release cause such lien to be removed of record by bond or otherwise so that such lienor has no recourse for recovery from or collection out of the Premises; (3) evidence of receipt of a certificate of occupancy, if available, or comparable instruments, by all governmental authorities whose approval is required of the applicable completed Tenant's Work for the occupancy thereof and the intended uses thereof; (4) if applicable, a volume containing all warranties and indemnities from the applicable contractor or manufacturer for the applicable Tenant's Work or equipment therein (excepting therefrom any of Tenant's Personal Property), each of which shall be enforceable by Landlord and all in customary form for the jurisdiction in which the Premises is situated; (5) final as-built Plans and, in the event that the Tenant's Work has modified the footprint of the Building, an as-built ALTA-ACSM Land Title Survey for the Premises indicating the applicable Tenant's Work thereon, together with a surveyor's certification in a customary form as reasonably satisfactory to Landlord; and (6) a title commitment dated no earlier than the date that is thirty (30) days after Final Completion and which title commitment shall not disclose any mechanics' liens affecting the Property, except that with respect to any bona fide dispute with the applicable General Contractor or any such subcontractor that has resulted in a lien, Tenant shall, if a release is not obtainable, in lieu of such release cause such lien to be removed of record by bond or otherwise so that such lienor has no recourse for recovery from or collection out of the Premises.
4. Tenant hereby agrees to indemnify, save harmless, pay, protect and defend Landlord from and against any and all liabilities, losses, damages, penalties, costs, expenses (including Landlord's reasonable counsel fees and costs of suit), causes of action, suits, claims, demands or judgments of any nature whatsoever under this Lease or Landlord's ownership of the Premises arising from or in connection with (a) any General Construction Contract, if any, and any and all construction contracts or architect's agreement or resulting from the failure of Tenant to discharge Tenant's obligations thereunder or resulting from the failure of Tenant to perform its obligations under this Lease with respect to any instance of

Tenant's Work, and (b) construction and completion of Tenant's Work, whether by reason of any act or omission of Tenant, the General Contractor, Architect or by any other contractor, subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

5. Tenant's Work shall comply in all respects with applicable Law.

**EXHIBIT "D"**  
**TO**  
**LEASE AGREEMENT**

**FORM ESTOPPEL CERTIFICATE**  
**ESTOPPEL CERTIFICATE**

This ESTOPPEL CERTIFICATE (this "Estoppel") is made as of \_\_\_\_\_, by [ ], a [ ] ("Tenant"), based upon the following facts and understandings of Tenant:

**RECITALS**

- A. Tenant is the tenant under that certain Lease Agreement (the "Lease"), dated as of \_\_\_\_\_, 2020, between Tenant and [ ], a [ ], as landlord ("Landlord") of certain real property commonly known as \_\_\_\_\_, and as more particularly described in the Lease (the "Property").
- B. Big Lots, Inc., an Ohio corporation ("Guarantor") is the guarantor under that certain Unconditional Guaranty of Payment and Performance, dated as of \_\_\_\_\_, 2020, by Guarantor in favor of Landlord (the "Guaranty", and together with the Lease, collectively, the "Agreements").
- C. Landlord has requested that Tenant provide this Estoppel pursuant to Section 26 of the Lease and Section XX of the Guaranty.
- D. [IF APPLICABLE] Landlord has agreed to convey the Property to \_\_\_\_\_, a \_\_\_\_\_ ("Purchaser"). As a condition to Purchaser purchasing the Property, Purchaser has required that Tenant furnish certain assurances to, and make certain agreements with, Purchaser, as set forth below.
- E. [IF APPLICABLE] [Landlord] [Purchaser], as borrower or as co-borrower with one or more other co-borrower(s), has applied to \_\_\_\_\_, a \_\_\_\_\_ (together with its successors and assigns, "Lender") for a loan ("Loan"), which will be secured by, among other things, a mortgage, encumbering the Property. As a condition to making the Loan, Lender has required that Tenant furnish certain assurances to, and make certain agreements with, Lender, as set forth below.
- F. Capitalized terms used but not otherwise defined herein shall have the definitions given such terms pursuant to the terms of the Lease.

THEREFORE, [as a material inducement to Lender to make the Loan and Purchaser to purchase the Property], Tenant warrants and represents to, and agrees with, Landlord [Lender] and [Purchaser] as follows:

1. **ESTOPPEL.**

Tenant and Guarantor each warrants and represents to Landlord [Lender] and [Purchaser], as of the date hereof, that:

- 1.1 Agreements Effective. Attached hereto as Exhibit A-1 is a true, complete and accurate copy of the Lease. Attached hereto as Exhibit A-2 is a true, complete and accurate copy of the Guaranty. The Agreements have been duly executed and delivered by Tenant and are in full force and effect, the obligations of Tenant thereunder are valid and binding, and there have been no modifications or additions to the Agreements, written or oral, other than those, if any, which are attached on Exhibit A-1 and Exhibit A-2 attached hereto and made a part hereof. There are no other promises, agreements, understandings or commitments between Landlord and Tenant relating to the Property, and Tenant has not given Landlord any notice of termination under the Lease.
- 1.2 Possession. Except as set forth in Exhibit B attached hereto and made a part hereof, Tenant is in full and complete possession of the Property and has accepted the Property, including any tenant improvements or other work of Landlord performed thereon pursuant to the terms and provisions of the Lease, and the Property is in compliance with the Lease. There are no contributions, credits, free rent, rent abatements, deductions, concessions, rebates, unpaid or unreimbursed construction allowances, offsets or other sums due to Tenant from Landlord under the Lease, except \_\_\_\_\_.
- 1.3 Minimum Rent. The current *monthly* Base Rent under the Lease is \$ \_\_\_\_\_, subject to any escalation and/or additional Rent charges provided in the Lease, and such Base Rent is current as of the date hereof.
- 1.4 Additional Rent. The current *monthly* additional Rent under the Lease is \$ \_\_\_\_\_, and such additional Rent is current within thirty (30) days as of the date hereof.
- 1.5 Rental Payment Commencement Date. The Base Rent stated in Section 1.3 above began on \_\_\_\_\_, 2020.
- 1.6 Rentable Area. The rentable area of the Building located upon the Premises is \_\_\_\_\_ square feet.
- 1.7 Commencement Date. The Term of the Lease commenced on \_\_\_\_\_, 2020.
- 1.8 Expiration Date. The Term of the Lease will expire on \_\_\_\_\_ (unless sooner terminated or extended in accordance with the Lease).
- 1.9 Options to Renew or Extend. Tenant has no option to renew or extend the Term of the Lease, except as follows: \_\_\_\_\_ (if none, write "None").
- 1.10 No Default. There exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or

default under the Agreements by Tenant or, to Tenant's knowledge, Landlord, except as follows: \_\_\_\_\_ (if none, write "None"). Tenant has no existing claims, defenses or offsets against Rent due or to become due under the Lease, except as follows: \_\_\_\_\_ (if none, write "None").

- 1.11 Entire Agreement. The Agreements constitute the entire agreement between Landlord and Tenant with respect to the Property, and Tenant claims no rights of any kind whatsoever with respect to the Property, other than as set forth in the Lease, except as follows: \_\_\_\_\_ (if none, write "None").
- 1.12 No Deposits or Prepaid Rent. No deposits, including security deposits, or prepayments of Rent have been made in connection with the Lease, except: \_\_\_\_\_ (if none, write "None"). None of the Rent has been paid more than one (1) month in advance.
- 1.13 No Purchase Option or Preferential Right to Purchase. Tenant does not have any option or preferential right to purchase all or any part of the Property, except as follows: \_\_\_\_\_.
- 1.14 Authority. The undersigned representatives of Tenant are each duly authorized and fully qualified to execute this instrument on behalf of Tenant thereby binding Tenant.
- 1.15 Financial Condition; Bankruptcy. There are no voluntary or involuntary actions pending against Tenant under the bankruptcy laws of the United States or any state thereof.

2. **HEIRS, SUCCESSORS AND ASSIGNS**. The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto. Whenever necessary or appropriate to give logical meaning to a provision of this Estoppel, the term "Landlord" shall be deemed to mean the then current owner of the Property and the landlord's interest in the Lease.

**[Signature Page to Follow]**

IN WITNESS WHEREOF, Tenant has executed this instrument as of the date first listed above.

**TENANT:**

[\_\_\_\_\_] ,  
a [\_\_\_\_\_]

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

**GUARANTOR:**

[\_\_\_\_\_] ,  
a [\_\_\_\_\_]

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



**Exhibit A-1**

**LEASE AND AMENDMENTS (IF ANY)**

**[Attached]**

**Exhibit A-2**

**GUARANTY AND AMENDMENTS (IF ANY).**

**[Attached]**

**Exhibit B**

**SUBLEASES (IF ANY)**

**[Attached]**

**EXHIBIT "E"**  
**TO**  
**LEASE AGREEMENT**

(ABOVE LINE FOR RECORDER'S USE ONLY)

**MEMORANDUM OF LEASE**

This MEMORANDUM OF LEASE (this "**Memorandum**") dated for reference purposes only this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, is made pursuant to Section 5301.251 of the Ohio Revised Code for recording purposes. The undersigned Landlord and Tenant certify that they have entered into a Lease dated as of \_\_\_\_\_, 2020 (the "**Lease**"), s more fully set forth below:

1. The Landlord is \_\_\_\_\_ whose address is \_\_\_\_\_.
2. The Tenant is \_\_\_\_\_ whose address is \_\_\_\_\_.
3. The leased Premises are described in Exhibit A attached to this Memorandum.
4. The Landlord holds title to the leased Premises by deed recorded at Official Record Book \_\_\_\_\_, Page \_\_\_\_\_ of the Franklin County, Ohio Official Records.
5. The initial Term of the Lease commenced on \_\_\_\_\_. The initial term of the Lease ends on \_\_\_\_\_.
6. The Lease establishes that Tenant shall have options to renew the Lease for \_\_\_\_\_ terms of \_\_\_\_\_ years each.
7. The Tenant has a right of first refusal option to purchase the leased Premises as provided in the Lease.
- 8.
9. The Lease shall be subordinate at all times to any Landlord Mortgage and the rights of any Landlord Mortgagee; provided, however, in the event of a foreclosure under any such Landlord Mortgage, or conveyance or assignment in lieu of foreclosure or by deed in lieu of foreclosure, such Landlord Mortgagee and its successors and assigns shall not disturb the occupancy or other rights of Tenant under the terms of the Lease so long as no Event of Default exists thereunder.

10. This Memorandum contains only selected provisions of the Lease, and reference is made to the full text of the Lease for the full terms and conditions, including capitalized terms used herein and not defined herein. This Memorandum does not, in any way, amend or supersede the terms and conditions of the Lease.

11. This Memorandum may be signed in counterparts with the same effect as if the signature to each counterpart copy were on a single instrument. Each counterpart shall be deemed an original as to any party whose signature it bears and all such counterparts shall constitute one instrument.

[SIGNATURE PAGE TO FOLLOW]

**COUNTERPART SIGNATURE PAGE TO  
MEMORANDUM OF LEASE**

**IN WITNESS WHEREOF**, the parties have executed this Memorandum as of the day and year first set forth above.

**LANDLORD:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

)

SS.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2020 by \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ limited liability company, on behalf of such company. This is an acknowledgement, and no oath or affirmation was administered to the signer of this instrument.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )

)

SS.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_ 2020 by \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ limited liability company, on behalf of such company. This is an acknowledgement, and no oath or affirmation was administered to the signer of this instrument.

\_\_\_\_\_  
Notary Public

This instrument prepared by:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT A

**EXHIBIT "F"**  
**TO**  
**LEASE AGREEMENT**

**FORM OF GUARANTY**

**UNCONDITIONAL GUARANTY OF PAYMENT AND PERFORMANCE**

**THIS UNCONDITIONAL GUARANTY OF PAYMENT AND PERFORMANCE** (this "**Guaranty**") is made as of June \_\_, 2020 by BIG LOTS, INC., an Ohio corporation ("**Guarantor**"), to BIGCOOH002 LLC, a Delaware limited liability company ("**Landlord**").

**RECITALS**

A. Landlord has been requested by Big Lots Stores, Inc., an Ohio corporation ("**Tenant**"), to enter into that certain Lease Agreement, dated as of the date hereof (the "**Lease**"), for the Premises (as defined in the Lease).

B. Tenant is a direct or indirect subsidiary of Guarantor and Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

**NOW, THEREFORE**, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

A. Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Base Rent, additional Rent and all other sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including out of pocket costs and expenses of collection (collectively, the "**Monetary Obligations**"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii) are collectively referred to herein as the "**Obligations**"). If Tenant defaults under the Lease (subject to any applicable grace periods), Guarantor will promptly pay and perform all of the Obligations and pay to Landlord, when and as due, all



Monetary Obligations payable by Tenant then due under the Lease, together with all damages and out of pocket costs and expenses to which Landlord is entitled pursuant to any or all of the Lease and this Guaranty.

- B. Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an “**Action**”) commenced by Landlord against Guarantor to collect Base Rent, additional Rent and any other sums and charges due under the Lease for any month or months shall not prejudice in any way Landlord’s rights to collect any such amounts due for any subsequent month or months throughout the Lease Term in any subsequent Action, (ii) Landlord may, at its option, without prior notice or demand, join Guarantor in any Action against Tenant in connection with or based upon either or both of the Lease and any of the Obligations, (iii) Landlord may seek and obtain recovery against Guarantor in an Action (to the extent related to or based upon either or both of the Lease and any of the Obligations) against Tenant or in any independent Action (to the extent related to or based upon either or both of the Lease and any of the Obligations) against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim against Tenant or against any security of Tenant held by Landlord under the Lease, (iv) Landlord may (but shall not be required to) exercise its rights against each of Guarantor and Tenant concurrently, and (v) Guarantor will be conclusively bound by a final non-appealable judgment by a court of competent jurisdiction in any Action (to the extent related to or based upon either or both of the Lease and any of the Obligations) in favor of Landlord against Tenant, as if Guarantor were a party to such Action, irrespective of whether or not Guarantor is entered as a party or participates in such Action.
- C. Guarantor agrees that, in the event of the rejection or disaffirmance of the Lease by Tenant or Tenant’s trustee in bankruptcy, pursuant to bankruptcy law or any other law affecting creditors’ rights, Guarantor will, if Landlord so requests, assume all obligations and liabilities of Tenant under the Lease, to the same extent as if Guarantor was a party to such document and there had been no such rejection or disaffirmance, and Guarantor will confirm such assumption, in writing, at the request of Landlord upon or after such rejection or disaffirmance. Guarantor, upon such assumption, shall have all rights of Tenant under the Lease to the fullest extent permitted by law.

3. **GUARANTOR’S OBLIGATIONS UNCONDITIONAL.**

- A. This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

- B. This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.
- C. This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant; (iv) any extension of time that may be granted by Landlord to Tenant; (v) any assignment or transfer of all or any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof); (viii) any other dealings or matters occurring between Landlord and Tenant; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant or any other persons or entities; (x) the release by Landlord of any other guarantor; (xi) Landlord's release of any security provided under the Lease; (xii) Landlord's failure to perfect any Landlord's lien or other lien or security interest available under any applicable statutes, ordinances, rules, regulations, codes, orders, requirements, directives, binding written interpretations and binding written policies, rulings, and decrees of all local, municipal, state and federal governments, departments, agencies, commissions, boards or political subdivisions ("**Laws**"); (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease, or Tenant's assignment of any or all of its rights and interests under the Lease; (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of either or both of this Guaranty and the Lease (including, but not limited to, any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than the full release and complete discharge of all of the Obligations. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into

any or all of the foregoing actions or omissions.

- D. Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease or by relief of Tenant from any of Tenant's obligations under the Lease or otherwise by (i) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (ii) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; or (iii) the rejection, disaffirmance or other termination of the Lease in any such proceeding. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, including, without limitation, the insolvency, bankruptcy, liquidation or reorganization of Tenant, Guarantor or otherwise, all as though such payment had not been made, and, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned.

4. **WAIVERS.**

- A. Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law or equity, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Base Rent, additional Rent or any other charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, and (v) any requirement that Landlord protect, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant or any other person or entity (including any additional guarantor or Guarantor) or against any collateral.
- B. GUARANTOR AND LANDLORD HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH: (A) THIS GUARANTY; (B) THE LEASE; (C) ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY

PORTION THEREOF; (D) ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); (E) ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR (F) ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES (OR ANY PORTION THEREOF). GUARANTOR SHALL NOT IMPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY, EXCEPT TO THE EXTENT ANY SUCH COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION ARE MANDATORY PURSUANT TO APPLICABLE LAWS. GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL. IN ADDITION, EXCEPT AS OTHERWISE PROVIDED IN THE LEASE, LANDLORD AND GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO CONSEQUENTIAL DAMAGES ARISING OUT OF ANY BREACH OF THE TERMS OF THIS GUARANTY.

- C. Guarantor expressly waives any and all rights to defenses arising by reason of (i) any “one-action” or “anti-deficiency” law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord’s commencement or completion of any action against Tenant; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING, WITHOUT LIMITATION, ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR’S SUBROGATION RIGHTS OR GUARANTOR’S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant (other than the full release and complete discharge of all of the Obligations), of any other guarantor other than the full release and complete discharge of all of the Obligations (or any other Guarantor), or of any other person or entity other than the full release and complete discharge of all of the Obligations, or by reason of the cessation of Tenant’s liability from any cause whatsoever; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Tenant, any other guarantor (or Guarantor) or surety, or any of their respective officers, directors or other agents in executing and delivering

any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) the recovery from Tenant or any other Person (including without limitation any other guarantor) becoming barred by any statute of limitations or being otherwise prevented (ix) the benefits of any and all applicable statutes, laws, rules or regulations which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

5. **SUBORDINATION AND SUBROGATION.** Until the full release and complete discharge of all of the Obligations, Guarantor hereby subordinates and postpones any claim or right against Tenant by way of subrogation or otherwise to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

6. **REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

- A. Guarantor is a company incorporated under the laws of the State of Ohio; has all requisite power and authority to enter into and perform its obligations under this Guaranty; and this Guaranty is valid and binding upon and enforceable against Guarantor, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, without the requirement of further action or condition.
- B. The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Laws, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, nor (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its

properties or assets.

- C. No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.
- D. There is no action, suit or proceeding pending or, to Guarantor's knowledge, threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.
- E. Guarantor's principal place of business is Columbus, Ohio.
- F. Tenant is directly or indirectly owned and controlled by Guarantor.
- G. Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

7. **FINANCIAL STATEMENTS.** Guarantor shall deliver to Landlord the following financial information: (a) on or before forty-five (45) days after the end of each of Guarantor's first three (3) fiscal quarters in each fiscal year during the term of the Lease, unaudited financial statements for such fiscal quarter including a balance sheet, income statement, profit and loss statement, statement of cash flows and all other related schedules, prepared in accordance with GAAP and certified to be accurate and complete by Guarantor (or the Treasurer or other appropriate officer of Guarantor), and (b) on or before one hundred twenty (120) days after the end of each of Guarantor's fiscal years during the term of the Lease, audited financial statements for such fiscal year including, without limitation, a balance sheet (together with all notes thereto), income statement, profit and loss statement, statement of annual cash flows, all in reasonable detail, prepared in accordance with GAAP and audited by any "Big Four" accounting firm. Notwithstanding the foregoing, so long as all such financial statements of Guarantor and other information required by this Section 7 is publicly available via EDGAR or Guarantor's website, Guarantor's obligations to deliver financial reports pursuant to this Section 7 shall be deemed to be satisfied.

8. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor (as applicable) may designate by notice given to the other in accordance with the provisions of this Section 8:

If to Guarantor:

Big Lots, Inc.  
4900 East Dublin Granville Road  
Columbus, OH 43081  
Attn: General Counsel

With a copy to:

Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, OH 43215

If to Landlord:

c/o Oak Street Real Estate Capital, LLC  
125 South Wacker Drive, Suite 1220  
Chicago, IL 60606  
Attn: James Hennessey  
Email: hennessey@oakstreetrec.com

With a copy to:

Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, IL 60654  
Attn: David A. Rosenberg, Esq.  
Email: david.rosenberg@kirkland.com

9. **GOVERNING LAW; CONSENT TO JURISDICTION.** Guarantor and Landlord hereby agree that this Guaranty and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of Illinois applicable to contracts made and performed therein. Any legal suit, action or proceeding arising out of or relating to this Guaranty may be instituted in any federal court in the Northern District of Illinois or state court sitting in Cook County, State of Illinois, and Landlord and Guarantor each waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding in such federal district or county and state, and Landlord and Guarantor each hereby expressly and irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

10. **ESTOPPEL CERTIFICATE.** Guarantor shall, from time to time within fifteen (15) days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord an estoppel certificate in the form attached to the Lease as Exhibit "D". Such certificate may be relied upon by Landlord and any prospective purchaser, landlord or lender of all or a portion of the Premises (or any portion thereof).

12. **MISCELLANEOUS.**

- A. Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part to the extent permitted by the Lease. If Landlord disposes of its interest in the Lease in accordance with the Lease, "**Landlord**," as used in this Guaranty, shall mean Landlord's successors and assigns.
- B. Guarantor promises to pay all out of pocket costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity.

- C. If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.
- D. The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its successors and assigns (it being understood that Guarantor shall not have the right to assign its obligations under this Guaranty without the prior written consent of Landlord in Landlord's sole and absolute discretion), and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.
- E. Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.
- F. Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.
- G. The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty.

SIGNATURE PAGE TO FOLLOW



IN WITNESS WHEREOF, the parties hereto have executed this Unconditional Guaranty of Payment and Performance effective as of the date first written above.

**GUARANTOR:**

BIG LOTS, INC., an Ohio corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

**LANDLORD:**

BIGCOOH002 LLC, a Delaware limited liability  
company

By: \_\_\_\_\_

Name: James Hennessey

Its: Authorized Representative

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Bruce K. Thorn, certify that:

1. I have reviewed this quarterly report on Form 10-Q 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: December 9, 2020

By: /s/ Bruce K. Thorn

Bruce K. Thorn

*President and Chief Executive Officer*  
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jonathan E. Ramsden, certify that:

1. I have reviewed this quarterly report on Form 10-Q 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: December 9, 2020

By: /s/ Jonathan E. Ramsden

Jonathan E. Ramsden

*Executive Vice President, Chief Financial and  
Administrative Officer*

(Principal Financial Officer)

**CERTIFICATION OF PRINCIPAL EXECUTIVE 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 quarterly report on Form 10-Q (the “Report”) for the quarter ended October 31, 2020, of Big Lots, Inc. (the “Company”). I, Bruce K. Thorn, President and Chief Executive 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: December 9, 2020

By: /s/ Bruce K. Thorn

Bruce K. Thorn

*President and Chief Executive Officer*  
(Principal Executive Officer)

**CERTIFICATION OF 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 quarterly report on Form 10-Q (the “Report”) for the quarter ended October 31, 2020, of Big Lots, Inc. (the “Company”). I, Jonathan E. Ramsden, Executive Vice President, Chief Financial and Administrative 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: December 9, 2020

By: /s/ Jonathan E. Ramsden

Jonathan E. Ramsden

*Executive Vice President, Chief Financial and  
Administrative Officer*

(Principal Financial Officer)