
**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 November 3, 2018
or

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

For the transition period from _____ to _____

Commission File Number 1-8897

BIG LOTS, INC.

(Exact name of registrant as specified in its charter)

Ohio

(State or other jurisdiction of incorporation or organization)

06-1119097

(I.R.S. Employer Identification No.)

4900 E. Dublin-Granville Road, Columbus, Ohio

(Address of principal executive offices)

43081

(Zip Code)

(614) 278-6800

(Registrant's telephone number, including area code)

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 7, 2018, was 40,048,581.

BIG LOTS, INC.
FORM 10-Q
FOR THE FISCAL QUARTER ENDED NOVEMBER 3, 2018

TABLE OF CONTENTS

	Page
<u>Part I. Financial Information</u>	<u>2</u>
Item 1. Financial Statements	2
a) Consolidated Statements of Operations and Comprehensive Income for the Thirteen and Thirty-Nine Weeks Ended November 3, 2018 (Unaudited) and October 28, 2017 (Unaudited)	2
b) Consolidated Balance Sheets at November 3, 2018 (Unaudited) and February 3, 2018 (Unaudited)	3
c) Consolidated Statements of Shareholders' Equity for the Thirty-Nine Weeks Ended November 3, 2018 (Unaudited) and October 28, 2017 (Unaudited)	4
d) Consolidated Statements of Cash Flows for the Thirty-Nine Weeks Ended November 3, 2018 (Unaudited) and October 28, 2017 (Unaudited)	5
e) Notes to Consolidated Financial Statements (Unaudited)	6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	15
Item 3. Quantitative and Qualitative Disclosures About Market Risk	23
Item 4. Controls and Procedures	23
<u>Part II. Other Information</u>	<u>24</u>
Item 1. Legal Proceedings	24
Item 1A. Risk Factors	24
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	25
Item 3. Defaults Upon Senior Securities	25
Item 4. Mine Safety Disclosures	25
Item 5. Other Information	25
Item 6. Exhibits	26
Signature	26

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	
	November 3, 2018	October 28, 2017	November 3, 2018	October 28, 2017
Net sales	\$ 1,149,402	\$ 1,109,184	\$ 3,639,554	\$ 3,623,751
Cost of sales (exclusive of depreciation expense shown separately below)	690,228	665,558	2,177,003	2,163,350
Gross margin	459,174	443,626	1,462,551	1,460,401
Selling and administrative expenses	436,826	408,314	1,301,523	1,239,440
Depreciation expense	31,911	29,508	90,936	87,489
Operating (loss) profit	(9,563)	5,804	70,092	133,472
Interest expense	(3,138)	(2,077)	(7,121)	(4,705)
Other income (expense)	59	405	716	323
(Loss) income before income taxes	(12,642)	4,132	63,687	129,090
Income tax (benefit) expense	(6,086)	(240)	14,840	44,086
Net (loss) income and comprehensive (loss) income	\$ (6,556)	\$ 4,372	\$ 48,847	\$ 85,004
Earnings (loss) per common share:				
Basic	\$ (0.16)	\$ 0.10	\$ 1.19	\$ 1.97
Diluted	\$ (0.16)	\$ 0.10	\$ 1.19	\$ 1.95
Weighted-average common shares outstanding:				
Basic	40,021	41,967	41,065	43,155
Dilutive effect of share-based awards	—	557	138	409
Diluted	40,021	42,524	41,203	43,564
Cash dividends declared per common share				
	\$ 0.30	\$ 0.25	\$ 0.90	\$ 0.75

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)

	November 3, 2018	February 3, 2018
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 61,938	\$ 51,176
Inventories	1,073,885	872,790
Other current assets	141,424	98,007
Total current assets	1,277,247	1,021,973
Property and equipment - net	782,771	565,977
Deferred income taxes	22,923	13,986
Other assets	50,075	49,790
Total assets	\$ 2,133,016	\$ 1,651,726
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 479,634	\$ 351,226
Property, payroll, and other taxes	85,775	80,863
Accrued operating expenses	112,458	72,013
Insurance reserves	38,070	38,517
Accrued salaries and wages	28,342	39,321
Income taxes payable	1,295	7,668
Total current liabilities	745,574	589,608
Long-term obligations	488,000	199,800
Deferred rent	61,054	58,246
Insurance reserves	55,769	55,015
Unrecognized tax benefits	12,738	14,929
Synthetic lease obligation	131,644	15,606
Other liabilities	45,505	48,935
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 40,042 shares and 41,925 shares, respectively	1,175	1,175
Treasury shares - 77,453 shares and 75,570 shares, respectively, at cost	(2,506,088)	(2,422,396)
Additional paid-in capital	618,079	622,550
Retained earnings	2,479,566	2,468,258
Total shareholders' equity	592,732	669,587
Total liabilities and shareholders' equity	\$ 2,133,016	\$ 1,651,726

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			
Balance - January 28, 2017	44,259	\$ 1,175	73,236	\$ (2,291,379)	\$ 617,516	\$ 2,323,318	\$ 650,630
Comprehensive income	—	—	—	—	—	85,004	85,004
Dividends declared (\$0.75 per share)	—	—	—	—	—	(33,843)	(33,843)
Adjustment for ASU 2016-09	—	—	—	—	241	(146)	95
Purchases of common shares	(3,437)	—	3,437	(165,732)	—	—	(165,732)
Exercise of stock options	222	—	(222)	7,023	1,391	—	8,414
Restricted shares vested	367	—	(367)	11,520	(11,520)	—	—
Performance shares vested	431	—	(431)	13,523	(13,523)	—	—
Share activity related to deferred compensation plan	—	—	—	(4)	—	—	(4)
Other	—	—	—	—	—	—	—
Share-based employee compensation expense	—	—	—	—	21,100	—	21,100
Balance - October 28, 2017	41,842	1,175	75,653	(2,425,049)	615,205	2,374,333	565,664
Comprehensive income	—	—	—	—	—	104,828	104,828
Dividends declared (\$0.25 per share)	—	—	—	—	—	(10,903)	(10,903)
Purchases of common shares	—	—	—	(25)	—	—	(25)
Exercise of stock options	82	—	(82)	2,636	662	—	3,298
Restricted shares vested	1	—	(1)	42	(42)	—	—
Performance shares vested	—	—	—	—	—	—	—
Share activity related to deferred compensation plan	—	—	—	—	—	—	—
Other	—	—	—	—	—	—	—
Share-based employee compensation expense	—	—	—	—	6,725	—	6,725
Balance - February 3, 2018	41,925	1,175	75,570	(2,422,396)	622,550	2,468,258	669,587
Comprehensive income	—	—	—	—	—	48,847	48,847
Dividends declared (\$0.90 per share)	—	—	—	—	—	(37,539)	(37,539)
Purchases of common shares	(2,635)	—	2,635	(107,827)	(3,920)	—	(111,747)
Exercise of stock options	43	—	(43)	1,395	464	—	1,859
Restricted shares vested	413	—	(413)	13,263	(13,263)	—	—
Performance shares vested	296	—	(296)	9,475	(9,475)	—	—
Share activity related to deferred compensation plan	—	—	—	2	1	—	3
Other	—	—	—	—	—	—	—
Share-based employee compensation expense	—	—	—	—	21,722	—	21,722
Balance - November 3, 2018	40,042	\$ 1,175	77,453	\$ (2,506,088)	\$ 618,079	\$ 2,479,566	\$ 592,732

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	
	November 3, 2018	October 28, 2017
Operating activities:		
Net income	\$ 48,847	\$ 85,004
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization expense	82,666	79,404
Deferred income taxes	(8,937)	(463)
Loss (Gain) on disposition of property and equipment	350	(48)
Non-cash share-based compensation expense	21,722	21,100
Unrealized gain on fuel derivative instruments	(460)	(961)
Change in assets and liabilities, excluding effects of foreign currency adjustments:		
Inventories	(201,095)	(179,466)
Accounts payable	128,409	92,603
Current income taxes	(35,540)	(54,016)
Other current assets	(15,626)	(11,994)
Other current liabilities	7,943	(12,355)
Other assets	1,253	(5,884)
Other liabilities	10,888	16,148
Net cash provided by operating activities	40,420	29,072
Investing activities:		
Capital expenditures	(165,396)	(95,081)
Cash proceeds from sale of property and equipment	367	1,798
Assets acquired under synthetic lease	(116,039)	—
Other	35	(10)
Net cash used in investing activities	(281,033)	(93,293)
Financing activities:		
Net proceeds from borrowings under bank credit facility	288,200	265,500
Payment of capital lease obligations	(2,899)	(2,916)
Dividends paid	(38,592)	(34,193)
Proceeds from the exercise of stock options	1,859	8,414
Payment for treasury shares acquired	(111,747)	(165,732)
Proceeds from synthetic lease	116,039	—
Deferred bank credit facility fees paid	(1,488)	—
Other	3	(4)
Net cash provided by financing activities	251,375	71,069
Increase in cash and cash equivalents	10,762	6,848
Cash and cash equivalents:		
Beginning of period	51,176	51,164
End of period	\$ 61,938	\$ 58,012

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

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

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 community retailer operating in the United States (“U.S.”). At November 3, 2018, we operated 1,415 stores in 47 states. We make available, free of charge, through the “Investor Relations” section of our website (www.biglots.com) under the “SEC Filings” caption, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), as soon as reasonably practicable after we file such material with, or furnish it to, the Securities and Exchange Commission (“SEC”). The contents of our websites are not 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. We have historically experienced, and expect to continue to experience, seasonal fluctuations, with a larger percentage of our net sales and operating profit realized in our fourth fiscal quarter. 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 3, 2018 (“2017 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 2018 (“2018”) is comprised of the 52 weeks that began on February 4, 2018 and will end on February 2, 2019. Fiscal year 2017 (“2017”) was comprised of the 53 weeks that began on January 29, 2017 and ended on February 3, 2018. The fiscal quarters ended November 3, 2018 (“third quarter of 2018”) and October 28, 2017 (“third quarter of 2017”) were both comprised of 13 weeks. The year-to-date periods ended November 3, 2018 (“year-to-date 2018”) and October 28, 2017 (“year-to-date 2017”) were both comprised of 39 weeks.

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 \$45.5 million and \$39.4 million for the third quarter of 2018 and the third quarter of 2017, respectively, and \$131.1 million and \$115.6 million for the year-to-date 2018 and the year-to-date 2017, respectively.

Advertising Expense

Advertising costs, which are expensed as incurred, consist primarily of television and print advertising, digital or internet marketing and advertising, and in-store point-of-purchase presentations. Advertising expenses are included in selling and administrative expenses. Advertising expenses were \$16.4 million and \$15.3 million for the third quarter of 2018 and the third quarter of 2017, respectively, and \$54.7 million and \$51.1 million for the year-to-date 2018 and the year-to-date 2017, 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 2018 and the year-to-date 2017:

(In thousands)	Thirty-Nine Weeks Ended	
	November 3, 2018	October 28, 2017
Supplemental disclosure of cash flow information:		
Cash paid for interest, including capital leases	\$ 6,494	\$ 3,835
Cash paid for income taxes, excluding impact of refunds	59,600	99,037
Gross proceeds from borrowings under bank credit facility	1,376,400	1,246,300
Gross repayments of borrowings under bank credit facility	1,088,200	980,800
Non-cash activity:		
Assets acquired under capital leases	785	90
Accrued property and equipment	\$ 37,440	\$ 15,224

Reclassifications

Merchandise Categories

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

Recent Accounting Pronouncements

In February 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2016-02, *Leases (Topic 842)*. The update requires a lessee to recognize, on the balance sheet, a liability to make lease payments and a right-of-use asset representing a right to use the underlying asset for the lease term. The ASU is effective for fiscal years, and interim periods within those years, beginning after December 15, 2018, with early adoption permitted. The ASU allows for either the modified or full retrospective method of adoption. However, the FASB issued ASU No. 2018-11, *Leases (Topic 842), Targeted Improvements*, which allows entities to apply the transition provisions of the new standard at its adoption date instead of at the earliest comparative period presented in the consolidated financial statements. ASU 2018-11 will allow entities to continue to apply the legacy guidance in Topic 840, *Leases*, including its disclosure requirements, in the comparative periods presented in the year the new leases standard is adopted. Entities that elect this option would still adopt the new leases standard using a modified retrospective transition method, but would recognize a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption rather than in the earliest period presented. We have elected to use the modified retrospective transition method as allowed by ASU 2018-11. We will not early adopt this standard. We are still evaluating the impact that this standard will have on our consolidated financial statements, as we complete the implementation of a new lease system. Currently we anticipate the impact on our balance sheet will be material.

Recently Adopted Accounting Standards

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)*. This update provided a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. Additionally, this guidance expanded related disclosure requirements. During the first quarter of 2018, we adopted the new standard on the retrospective method. The adoption had no impact on the timing of the recognition of our revenue or costs. The adoption did result in an immaterial adjustment to the amount of gross revenue and costs that we had previously reported, as certain of our vendor relationships had different principal versus agent treatment under the new standard. Additionally, we considered the disclosure requirements of the standard and determined that no additional disclosures were necessary.

NOTE 2 – BANK CREDIT FACILITY

On July 22, 2011, we entered into a \$700 million five-year unsecured credit facility, which was amended on May 30, 2013 and May 28, 2015 (as amended, the “2011 Credit Agreement”).

On August 31, 2018, we amended and restated the 2011 Credit Agreement. The amended and restated credit agreement (the “2018 Credit Agreement”) provides for a \$700 million five-year unsecured credit facility. The 2011 Credit Agreement was scheduled to expire on May 30, 2020. 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 agreement.

Borrowings under the 2018 Credit Agreement are available for general corporate purposes, working capital, and to repay certain of our 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. 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 November 3, 2018, we had \$488.0 million of borrowings outstanding under the 2018 Credit Agreement and \$8.6 million was committed to outstanding letters of credit, leaving \$203.4 million available under the 2018 Credit Agreement.

NOTE 3 – FAIR VALUE MEASUREMENTS

In connection with our nonqualified deferred compensation plan, we had mutual fund investments of \$32.4 million and \$33.0 million at November 3, 2018 and February 3, 2018, respectively, which were recorded in other assets. These investments were classified as trading securities and were recorded at their fair value. The fair values of mutual fund investments were Level 1 valuations under the fair value hierarchy because each fund’s quoted market value per share was available in an active market.

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

The carrying value of accounts receivable, accounts payable, and accrued expenses 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 and there were no securities outstanding at November 3, 2018 or October 28, 2017 which were excluded from the computation of earnings per share other than antidilutive stock options, restricted stock awards, restricted stock units, and performance share units. For the third quarter of 2018, there were 0.1 million stock options outstanding that were antidilutive and excluded from the computation of diluted earnings. For the third quarter of 2017, the year-to-date 2018, and the year-to-date 2017, the stock options outstanding that were antidilutive and excluded from the computation of diluted earnings per share were immaterial. Antidilutive stock options generally consist of outstanding stock options with an exercise price per share that 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 awards, restricted stock units, and performance share units that were antidilutive, as determined under the treasury stock method, were immaterial for all periods presented.

Share Repurchase Programs

On March 7, 2018, our Board of Directors authorized a share repurchase program providing for the repurchase of up to \$100 million of our common shares (“2018 Repurchase Program”). The 2018 Repurchase Program was exhausted during the second quarter of 2018.

On June 5, 2018, we utilized the entire authorization under our 2018 Repurchase Program to execute a \$100.0 million accelerated share repurchase transaction (“ASR Transaction”), which reduced our common shares outstanding by 2.4 million during the second quarter of 2018.

Dividends

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

	Dividends Per Share	Amount Declared	Amount Paid
2018:		<i>(In thousands)</i>	<i>(In thousands)</i>
First quarter	\$ 0.30	\$ 12,744	\$ 14,386
Second quarter	0.30	12,474	12,141
Third quarter	0.30	12,321	12,065
Total	\$ 0.90	\$ 37,539	\$ 38,592

The amount of dividends declared may vary from the amount of dividends paid in a period based on certain instruments with restrictions on payment, including restricted stock units and performance share units. 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 awards, restricted stock units, and performance share units under our shareholder-approved equity compensation plans. Our restricted stock awards and restricted stock units, as described below and/or in note 7 to the consolidated financial statements in our 2017 Form 10-K, are expensed and reported as non-vested shares. We recognized share-based compensation expense of \$4.5 million and \$6.6 million in the third quarter of 2018 and the third quarter of 2017, respectively, and \$21.7 million and \$21.1 million for the year-to-date 2018 and the year-to-date 2017, respectively.

Non-vested Restricted Stock

The following table summarizes the non-vested restricted stock awards and restricted stock units activity for the year-to-date 2018:

	Number of Shares	Weighted Average Grant-Date Fair Value Per Share
Outstanding non-vested restricted stock at February 3, 2018	589,843	\$ 44.77
Granted	212,456	47.36
Vested	(365,667)	42.19
Forfeited	(26,597)	43.51
Outstanding non-vested restricted stock at May 5, 2018	410,035	\$ 47.92
Granted	36,243	40.75
Vested	(22,343)	48.52
Forfeited	(10,139)	43.03
Outstanding non-vested restricted stock at August 4, 2018	413,796	\$ 47.38
Granted	104,091	43.08
Vested	(25,003)	43.16
Forfeited	(11,121)	48.15
Outstanding non-vested restricted stock at November 3, 2018	481,763	\$ 46.54

The non-vested restricted stock units granted in the year-to-date 2018 generally vest, and are expensed, on a ratable basis over three years from the grant date of the award, if it is probable that certain threshold financial performance objectives will be achieved and the grantee remains employed by us through the vesting dates.

The non-vested restricted stock awards granted in 2013 met the applicable threshold financial performance objective and vested in the first quarter of 2018.

Non-vested Stock Units to Non-Employee Directors

In the second quarter of 2018, 17,915 common shares underlying the restricted stock units granted in 2017 to the non-employee members of our Board of Directors vested on the trading day immediately preceding our 2018 Annual Meeting of Shareholders. These units were part of the annual compensation to the non-employee members of the Board of Directors. Additionally, in the second quarter of 2018, the chairman of our Board of Directors received an annual restricted stock unit grant having a grant date fair value of approximately \$200,000. The remaining non-employees elected to our Board of Directors at our 2018 Annual Meeting of Shareholders and the new non-employee directors appointed by the Board of Directors during the second quarter of 2018 each received an annual restricted stock unit grant having a grant date fair value of approximately \$135,000. The 2018 restricted stock units will vest on the earlier of (1) the trading day immediately preceding our 2019 Annual Meeting of Shareholders, or (2) the non-employee director's death or disability. However, the restricted stock units will not vest if the non-employee director ceases to serve on our Board of Directors before either vesting event occurs.

Performance Share Units

In the year-to-date 2018, we issued performance share units ("PSUs") to certain members of management, which vest if certain financial performance objectives are achieved over a three-year performance period and the grantee remains employed by us during that period. The financial performance objectives for each fiscal year within the three-year performance period are approved by the Compensation Committee of our Board of Directors during the first quarter of the respective fiscal year.

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

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

Issue Year	Outstanding PSUs at November 3, 2018	Actual Grant Date	Expected Valuation (Grant) Date	Actual or Expected Expense Period
2016	282,083	March 2018		Fiscal 2018
2017	222,323		March 2019	Fiscal 2019
2018	237,422		March 2020	Fiscal 2020
Total	741,828			

The number of shares to be distributed upon vesting of the PSUs depends on our average performance attained during the three-year performance period as compared to the targets defined by the Compensation Committee, and may result in the distribution of an amount of shares that is greater or less than the number of PSUs granted, as defined in the award agreement. At November 3, 2018, we estimate the attainment of an average performance that is slightly lower than the targets established for the PSUs issued in 2016. We recognized \$2.1 million and \$3.6 million in the third quarter of 2018 and the third quarter of 2017, respectively, and \$13.3 million and \$11.7 million in the year-to-date 2018 and the year-to-date 2017, respectively, of share-based compensation expense related to PSUs.

The following table summarizes the activity related to PSUs for the year-to-date 2018:

	Number of Units	Weighted Average Grant- Date Fair Value Per Share
Outstanding PSUs at February 3, 2018	249,324	\$ 51.49
Granted	337,421	55.67
Vested	(247,130)	51.49
Forfeited	(44,146)	43.94
Outstanding PSUs at May 5, 2018	295,469	\$ 55.64
Granted	—	—
Vested	(2,194)	51.49
Forfeited	(2,512)	55.67
Outstanding PSUs at August 4, 2018	290,763	\$ 55.67
Granted	—	—
Vested	—	—
Forfeited	(8,680)	55.67
Outstanding PSUs at November 3, 2018	282,083	\$ 55.67

Stock Options

The following table summarizes stock option activity for the year-to-date 2018:

	Number of Options	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (000's)
Outstanding stock options at February 3, 2018	280,626	\$ 39.04		
Exercised	(625)	31.76		
Forfeited	—	—		
Outstanding stock options at May 5, 2018	280,001	\$ 39.06	1.5	\$ 930
Exercised	—	—		
Forfeited	—	—		
Outstanding stock options at August 4, 2018	280,001	\$ 39.06	1.2	\$ 1,795
Exercised	(42,500)	43.28		
Forfeited	—	—		
Outstanding stock options at November 3, 2018	237,501	\$ 38.30	1.0	\$ 1,136
Vested or expected to vest at November 3, 2018	237,501	\$ 38.30	1.0	\$ 1,136
Exercisable at November 3, 2018	237,501	\$ 38.30	1.0	\$ 1,136

The stock options granted in prior years vested in equal amounts on the first four anniversaries of the grant date and have a contractual term of seven years.

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

	Third Quarter		Year-to-Date	
	2018	2017	2018	2017
(In thousands)				
Total intrinsic value of stock options exercised	\$ 220	\$ 875	\$ 228	\$ 2,952
Total fair value of restricted stock vested	1,042	1,114	19,230	18,943
Total fair value of performance shares vested	—	—	12,792	21,026

The total unearned compensation cost related to all share-based awards outstanding, excluding PSUs issued in 2017 and 2018, at November 3, 2018 was approximately \$19.1 million. This compensation cost is expected to be recognized through October 2020 based on existing vesting terms with the weighted-average remaining expense recognition period being approximately 1.7 years from November 3, 2018.

NOTE 6 – INCOME TAXES

In 2017, and in accordance with Staff Accounting Bulletin No. 118, we recorded the provisional tax impacts of the Tax Cut and Jobs Creation Act (“TCJA”) on then existing current and deferred tax amounts. During the third quarter of 2018, we made approximately \$0.6 million in adjustments to previously recorded provisional amounts related to the TCJA. During the fourth quarter of 2018, we will complete our accounting for the TCJA.

We have estimated the reasonably possible expected net change in unrecognized tax benefits through November 3, 2019, 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

Shareholder and Derivative Matters

On May 21, May 22 and July 2, 2012, three shareholder derivative lawsuits were filed in the U.S. District Court for the Southern District of Ohio against us and certain of our current and former outside directors and executive officers. The lawsuits were consolidated, and, on August 13, 2012, plaintiffs filed a consolidated complaint captioned *In re Big Lots, Inc. Shareholder Litigation*, No. 2:12-cv-00445 (S.D. Ohio) (the “Consolidated Derivative Action”). The consolidated complaint asserted claims under Ohio law for breach of fiduciary duty, unjust enrichment, misappropriation of trade secrets and corporate waste and sought declaratory relief and disgorgement to us of proceeds from any wrongful sales of our common shares, plus attorneys’ fees and expenses. On October 18, 2013, a different shareholder filed an additional derivative lawsuit captioned *Brosz v. Fishman et al.*, No. 1:13-cv-00753 (S.D. Ohio) (the “Brosz Action”) in the U.S. District Court for the Southern District of Ohio against us and each of the current and former outside directors and executive officers originally named in the 2012 shareholder derivative lawsuit. On December 29, 2016, the Court ordered that the Brosz Action be consolidated with the Consolidated Derivative Action. On December 14, 2017, the parties entered into a Stipulation and Agreement of Settlement and plaintiffs filed an Unopposed Motion for Preliminary Approval of Derivative Settlement with the Court. On August 28, 2018, the Court issued an Order granting final approval of the Settlement.

On July 9, 2012, a putative securities class action lawsuit captioned *Willis, et al. v. Big Lots, Inc., et al.*, 2:12-cv-00604 (S.D. Ohio) was filed in the U.S. District Court for the Southern District of Ohio on behalf of persons who acquired our common shares between February 2, 2012 and April 23, 2012. Effective May 16, 2018, the parties executed a Stipulation of Settlement. On November 9, 2018, the Court issued an Order granting final approval of the Settlement. In connection with the settlement of the Willis class action and the Consolidated Derivative Action, during the first quarter of 2018, we recorded a net charge of \$3.5 million related to the expected cost of the settlements for the funds in excess of our insurance coverage. During the second quarter of 2018, the settlement associated with the Willis class action was paid into escrow pending the final approval by the Court.

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 the electronics, jewelry, hosiery, and toys departments.

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

The following table presents net sales data by merchandise category:

	Third Quarter		Year-to-Date	
<i>(In thousands)</i>	2018	2017	2018	2017
Furniture	\$ 314,085	\$ 277,905	\$ 942,856	\$ 900,278
Soft Home	202,693	188,342	584,016	552,856
Consumables	194,480	198,236	573,215	586,735
Food	185,641	192,462	549,576	568,567
Hard Home	92,275	97,676	271,916	285,835
Seasonal	90,824	83,666	508,397	500,009
Electronics, Toys, & Accessories	69,404	70,897	209,578	229,471
Net sales	\$ 1,149,402	\$ 1,109,184	\$ 3,639,554	\$ 3,623,751

NOTE 9 – DERIVATIVE INSTRUMENTS

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

Our outstanding derivative instrument contracts were comprised of the following:

<i>(In thousands)</i>	November 3, 2018	February 3, 2018
Diesel fuel collars (in gallons)	5,700	3,600

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

<i>(In thousands)</i>	Assets (Liabilities)		
Derivative Instrument	Balance Sheet Location	November 3, 2018	February 3, 2018
Diesel fuel collars	Other current assets	\$ 1,080	\$ 312
	Other assets	452	262
	Accrued operating expenses	(240)	(77)
	Other liabilities	(442)	(107)
Total derivative instruments		\$ 850	\$ 390

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

		Amount of Gain (Loss)			
<i>(In thousands)</i>		Third Quarter		Year-to-Date	
Derivative Instrument	Statements of Operations Location	2018	2017	2018	2017
Diesel fuel collars					
Realized	Other income (expense)	\$ 154	\$ (180)	\$ 279	\$ (678)
Unrealized	Other income (expense)	(102)	611	460	961
Total derivative instruments		\$ 52	\$ 431	\$ 739	\$ 283

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

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 (the “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,” “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, 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 2018 that we believe are key indicators of our operating performance when compared to our operating performance from the third quarter of 2017:

- Net sales increased \$40.2 million, or 3.6%.
- Comparable store sales for stores open at least fifteen months, including e-commerce, increased \$36.5 million, or 3.4%.
- Gross margin dollars increased \$15.6 million, and gross margin rate decreased 10 basis points to 39.9% from 40.0% of sales.
- Selling and administrative expenses increased \$28.5 million. As a percentage of net sales, selling and administrative expenses increased 120 basis points to 38.0% of net sales.
- Operating loss rate was 0.8% in the third quarter of 2018 as compared to an operating profit rate of 0.5% in the third quarter of 2017.
- Diluted earnings per share decreased to a loss of \$(0.16) per share from an earnings of \$0.10 per share in the third quarter of 2017.
- Inventory increased by 3.4%, or \$35.7 million, to \$1,073.9 million from the third quarter of 2017.
- We declared and paid a quarterly cash dividend in the amount of \$0.30 per common share in the third quarter of 2018 compared to a quarterly cash dividend of \$0.25 per common share paid in the third quarter of 2017.

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 2018 and the year-to-date 2017:

	2018	2017
Stores open at the beginning of the fiscal year	1,416	1,432
Stores opened during the period	20	19
Stores closed during the period	(21)	(25)
Stores open at the end of the period	1,415	1,426

We now expect to close 14 net stores during 2018, based on opening approximately 32 stores and closing approximately 46 stores during 2018.

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	
	2018	2017	2018	2017
Net sales	100.0 %	100.0 %	100.0 %	100.0 %
Cost of sales (exclusive of depreciation expense shown separately below)	60.1	60.0	59.8	59.7
Gross margin	39.9	40.0	40.2	40.3
Selling and administrative expenses	38.0	36.8	35.8	34.2
Depreciation expense	2.8	2.7	2.5	2.4
Operating (loss) profit	(0.8)	0.5	1.9	3.7
Interest expense	(0.3)	(0.2)	(0.2)	(0.1)
Other income (expense)	0.0	0.0	0.0	0.0
(Loss) income before income taxes	(1.1)	0.4	1.7	3.6
Income tax (benefit) expense	(0.5)	(0.0)	0.4	1.2
Net (loss) income and comprehensive (loss) income	(0.6)%	0.4 %	1.3 %	2.3 %

THIRD QUARTER OF 2018 COMPARED TO THIRD QUARTER OF 2017

Net Sales

Net sales by merchandise category (in dollars and as a percentage of total net sales) in the third quarter of 2018 and the third quarter of 2017, and the change in net sales (in dollars and percentage) and the change in comparable store sales for stores open at least fifteen months plus the results of our e-commerce net sales (“comp” or “comps”) (in percentage) from the third quarter of 2018 compared to the third quarter of 2017 were as follows:

Third Quarter										
(\$ in thousands)	2018			2017			Change		Comps	
Furniture	\$	314,085	27.4%	\$	277,905	25.0%	\$	36,180	13.0 %	12.5 %
Soft Home		202,693	17.6		188,342	17.0		14,351	7.6	7.5
Consumables		194,480	16.9		198,236	17.9		(3,756)	(1.9)	(1.0)
Food		185,641	16.2		192,462	17.4		(6,821)	(3.5)	(4.4)
Hard Home		92,275	8.0		97,676	8.8		(5,401)	(5.5)	(4.4)
Seasonal		90,824	7.9		83,666	7.5		7,158	8.6	7.9
Electronics, Toys, & Accessories		69,404	6.0		70,897	6.4		(1,493)	(2.1)	(4.1)
Net sales	\$	1,149,402	100.0%	\$	1,109,184	100.0%	\$	40,218	3.6 %	3.4 %

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

Net sales increased \$40.2 million, or 3.6%, to \$1,149.4 million in the third quarter of 2018, compared to \$1,109.2 million in the third quarter of 2017. The increase in net sales was driven by a 3.4% increase in our comps, which increased net sales by \$36.5 million. Additionally, there was a shift in calendar weeks in our fiscal year from 2017 to 2018, as 2017 was a 53-week fiscal year, which positively impacted sales in the third quarter of 2018 by approximately \$3.4 million.

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

- The **Furniture** category experienced increased net sales and comps during the third quarter of 2018, which continued to be driven by improved trends (e.g., sequential quarter growth rates) with new styles and/or colors in all departments. The sales performance was appreciably impacted by the continued success of our third-party Easy Leasing lease-to-own program and our third party, private label credit card offering.
- Our **Seasonal** category had increases in comps and net sales primarily due to strength in our summer, lawn & garden, and harvest departments. The strength in these departments was a result of a favorable response to our fall decor assortment and greater inventory depth (i.e., available for sale), particularly in our summer and lawn & garden departments, entering the third quarter of 2018 as compared to the third quarter of 2017.
- The positive comps and net sales in **Soft Home** were primarily driven by increased selling space and continued improvement in product assortment, quality, and perceived value by our customers, specifically in our home decor, decorative textile, flooring, and bath departments. Additionally, the growth in our Furniture category positively influences Soft Home as Jennifer is interested in updating her decor to complement her new furniture.

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

- Our **Food** and **Consumables** categories had lower comps and net sales as the discount, grocery, and online marketplace continue to be highly price competitive.
- There were decreases in net sales and comps in **Hard Home** and **Electronics, Toys, & Accessories** due to intentionally narrowed product assortments, reduced linear footage allocation, and reduced inventory purchases.

Gross Margin

Gross margin dollars increased by \$15.6 million, or 3.5%, to \$459.2 million for the third quarter of 2018, compared to \$443.6 million for the third quarter of 2017. The increase in gross margin dollars was primarily due to higher sales. Gross margin as a percentage of net sales decreased 10 basis points to 39.9% in the third quarter of 2018, compared to 40.0% in the third quarter of 2017. The slight gross margin rate decrease was attributed to a higher overall markdown rate, partially offset by a higher initial mark-up and a lower shrink rate in the third quarter of 2018 as compared to the third quarter of 2017.

Selling and Administrative Expenses

Selling and administrative expenses were \$436.8 million for the third quarter of 2018, compared to \$408.3 million for the third quarter of 2017. The increase of \$28.5 million in selling and administrative expenses was primarily driven by increases in store-related payroll of \$7.9 million, distribution and outbound transportation costs of \$6.1 million, store-related occupancy costs of \$4.0 million, accrued bonus expense of \$2.8 million, \$1.7 million in corporate wages, corporate headquarters occupancy expense of \$1.6 million, and \$1.3 million in non-payroll costs associated with our store of the future remodel project, partially offset by a decrease in utilities of \$2.5 million. The increase in store-related payroll was due to investment in our store associate wage rates along with the addition of payroll costs associated with our store of the future project activity. The increase in distribution and outbound transportation costs was driven by higher carrier rates, a rise in fuel prices, and our investment in our distribution center associate wage rates. The increase in store-related occupancy costs was driven by normal renewals, growth in the average store size for our new stores, and pre-opening rents associated with leases that we purchased from a bankrupt retailer. The increase in accrued bonus expense was related to our quarterly store bonus program driven by above plan performance on comparable store sales. Corporate wage growth was driven by three items - annual merit increase, a sign-on bonus for our newly hired chief executive officer, and severance costs. Our corporate headquarters occupancy cost increase was due to the lease for our new headquarters, when in the prior year we owned our facility. Associated with our store of the future project, we incurred costs related to supplies, in-store displays, and travel to support the completion of each location, which are not included in the capitalized construction costs. The decrease in utilities was primarily driven by our investment in LED lighting at our stores.

As a percentage of net sales, selling and administrative expenses increased 120 basis points to 38.0% for the third quarter of 2018 compared to 36.8% for the third quarter of 2017.

Depreciation Expense

Depreciation expense increased \$2.4 million to \$31.9 million in the third quarter of 2018, compared to \$29.5 million for the third quarter of 2017. The increase was primarily driven by our store of the future project and our investment in furniture, fixtures, and equipment for our new headquarters. Depreciation expense as a percentage of sales was 2.8% for the third quarter of 2018 compared to 2.7% for the third quarter of 2017.

Interest Expense

Interest expense was \$3.1 million in the third quarter of 2018, compared to \$2.1 million in the third quarter of 2017. The increase in interest expense was driven by increases in both our average interest rate and our average borrowings on our revolving debt, each of which contributed approximately half of the increase, in the third quarter of 2018 compared to the third quarter of 2017. We had total average borrowings (including capital leases) of \$393.2 million in the third quarter of 2018 compared to \$306.8 million in the third quarter of 2017. The increase in total average borrowings (including capital leases) was primarily due to an increase of \$89.4 million to our average revolving debt balance under the 2011 Credit Agreement, which was primarily the result of a higher beginning debt balance in 2018 as compared to 2017.

Other Income (Expense)

Other income (expense) was \$0.1 million in the third quarter of 2018, compared to \$0.4 million in the third quarter of 2017.

Income Taxes

The effective income tax benefit rate for the third quarter of 2018 and the third quarter of 2017 was 48.1% and 5.8%, respectively. The increase in the effective income tax benefit rate was principally attributable to (1) the tax effect of comparing the occurrence of a loss before income taxes in the third quarter of 2018 to income before income taxes in the third quarter of 2017; (2) an increase in favorable state tax settlements; and (3) a favorable adjustment to the provisional amounts that we recorded for the TCJA. The increase in the effective income tax benefit rate was partially offset by a reduction in the U.S. federal statutory tax rate due to the TCJA (which comparatively decreased the tax benefit of the third quarter 2018 due to the loss before income taxes).

YEAR-TO-DATE 2018 COMPARED TO YEAR-TO-DATE 2017

Net Sales

Net sales by merchandise category (in dollars and as a percentage of total net sales) in the year-to-date 2018 and the year-to-date 2017, and the change in net sales (in dollars and percentage) and the change in comps (in percentage) from the year-to-date 2018 compared to the year-to-date 2017 were as follows:

Year-to-Date									
(\$ in thousands)	2018			2017			Change		Comps
Furniture	\$	942,856	25.9%	\$	900,278	24.8%	\$	42,578	4.7 %
Soft Home		584,016	16.0		552,856	15.3		31,160	5.6
Consumables		573,215	15.7		586,735	16.2		(13,520)	(2.3)
Food		549,576	15.1		568,567	15.7		(18,991)	(3.3)
Seasonal		508,397	14.0		500,009	13.8		8,388	1.7
Hard Home		271,916	7.5		285,835	7.9		(13,919)	(4.9)
Electronics, Toys, & Accessories		209,578	5.8		229,471	6.3		(19,893)	(8.7)
Net sales	\$	3,639,554	100.0%	\$	3,623,751	100.0%	\$	15,803	0.4 %

Net sales increased \$15.8 million, or 0.4%, to \$3,639.6 million in the year-to-date 2018, compared to \$3,623.8 million in the year-to-date 2017. The increase in net sales was principally due to a 0.5% increase in comps, which increased net sales by \$16.8 million and the shift in calendar weeks in our fiscal year from 2017 to 2018, as 2017 was a 53-week fiscal year, which positively impacted sales in the year-to-date 2018 by \$18.8 million. These increases were partially offset by a net decrease of 11 stores since the end of the third quarter of 2017, which decreased net sales by \$19.8 million.

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

- The **Soft Home** category experienced increases in net sales and comps due to continued improvement in product assortment, quality, and perceived value by our customers, most notably the flooring, bath, and home decor departments, and increased selling space.
- The increases in net sales and comps in **Furniture** were primarily due to strong performance in our case goods offering, along with an accelerating trend change in our upholstery and mattress departments during the second and third quarters, driven by new styles and colors. The accelerating trend change was enhanced by the continued success of our third party Easy Leasing lease-to-own program and our third party, private label credit card offering.
- The positive comps and increased net sales in our **Seasonal** category were a result of positive results in fall fashion assortments, specifically in the harvest and Halloween departments, and in lawn & garden.

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

- Our **Consumables** and **Food** categories experienced decreases in comps and net sales, as they continue to be highly price competitive in the discount, grocery, and online marketplace.
- The lower comps and net sales in the **Hard Home** and **Electronics, Toys, & Accessories** categories were a result of an intentionally narrowed merchandise assortment and reduced space allocation, specifically in the electronics and former infant accessories departments.

For the fourth quarter of 2018, we expect comparable store sales to be in the range of flat to an increase of 2%. Additionally, total net sales for the fourth quarter of 2018 will be lower than the fourth quarter of 2017 due to the fiscal calendar shift which resulted in the fourth quarter of 2018 having only 13 weeks, while the fourth quarter of 2017 was a 14-week period.

Gross Margin

Gross margin dollars increased \$2.2 million, or 0.1%, to \$1,462.6 million for the year-to-date 2018, compared to \$1,460.4 million for the year-to-date 2017. The increase in gross margin dollars was principally due to an increase in net sales, partially offset by a slightly lower gross margin rate. Gross margin as a percentage of net sales decreased 10 basis points to 40.2% in the year-to-date 2018, compared to 40.3% in the year-to-date 2017. The gross margin rate decrease was the result of a higher markdown rate partially offset by a slightly higher initial mark-up and favorable shrink results compared to the year-to-date 2017.

For the fourth quarter of 2018, we anticipate our gross margin rate will be lower than the fourth quarter of 2017, based on our expectation of an increase in projected markdowns for our Seasonal and weather sensitive merchandise based on lower than expected net sales in that area during the month of November and uncertainty surrounding the impact of tariffs on our initial markup in relation to mix of merchandise sales in the fourth quarter.

Selling and Administrative Expenses

Selling and administrative expenses were \$1,301.5 million for the year-to-date 2018, compared to \$1,239.4 million for the year-to-date 2017. The increase of \$62.1 million, or 5.0%, was primarily driven by costs associated with the retirement of our former chief executive officer, costs associated with the settlement of our shareholder litigation, and increases in distribution and outbound transportation costs of \$15.5 million, store-related payroll of \$12.8 million, store-related occupancy of \$7.8 million, \$3.9 million in non-payroll costs associated with our store of the future project, advertising of \$3.6 million, and corporate headquarters occupancy expense of \$3.1 million, partially offset by decreases in accrued bonus of \$5.9 million and utilities expense of \$3.0 million. Our former chief executive officer retired during the first quarter of 2018, entitling him to certain separation benefits that resulted in \$7.0 million in costs. Additionally, we incurred \$3.5 million in charges related to a settlement of shareholder and derivative litigation matters that were initially filed in 2012. The distribution and outbound transportation cost increase was a result of higher carrier rates, a rise in fuel prices, and investment in our distribution center associate wage rates in the year-to-date 2018 compared to the year-to-date 2017. The increase in store-related payroll was mostly due to growth in the average wage rate along with additional payroll costs associated with our store of the future remodel activity in certain markets, partially offset by a net decrease of 11 stores since the end of the third quarter of 2017. Our store occupancy cost increased due to normal renewals, growth in the average store size for our new stores, and pre-opening rents associated with leases that we purchased from a bankrupt retailer. Associated with our store of the future project, we incurred costs related to supplies, in-store displays, and travel to support the completion of each location, which are not included in the capitalized construction costs. The increase in our advertising expense was due to increased spend in television promotions and production costs, along with the shift in timing of certain events in 2018 as compared to 2017. Our corporate headquarters occupancy cost increase was due to the lease for our new headquarters, when in the prior year we owned our facility. The decrease in accrued bonus expense was driven by lower performance in the year-to-date 2018 relative to our annual operating plan as compared to our year-to-date 2017 performance relative to our annual operating plan. The decrease in utilities was primarily driven by our investment in LED lighting at our stores.

As a percentage of net sales, selling and administrative expenses increased 160 basis points to 35.8% for the year-to-date 2018 compared to 34.2% for the year-to-date 2017.

During the fourth quarter of 2018, we anticipate that our selling and administrative expenses as a percentage of net sales will be higher in comparison to the fourth quarter of 2017, principally due to continued cost pressures on our outbound distribution and transportation costs and continued investment in store payroll in the form of a higher average wage rate.

Depreciation Expense

Depreciation expense increased \$3.4 million to \$90.9 million in the year-to-date 2018, compared to \$87.5 million for the year-to-date 2017. The increase continued to be driven by our store of the future project, as well as our investment in furniture, fixtures, and equipment for our new corporate headquarters. Depreciation expense as a percentage of sales increased by 10 basis points compared to the year-to-date 2017.

We expect that our depreciation expense for the fourth quarter of 2018 will be higher in comparison to the fourth quarter of 2017, principally due to our investment in our store of the future project.

Interest Expense

Interest expense was \$7.1 million in the year-to-date 2018, compared to \$4.7 million in the year-to-date 2017. The increase in interest expense was driven by increases in both our average interest rate and our average borrowings on our revolving debt in the year-to-date 2018 compared to the year-to-date 2017. The increase in average interest rate had a greater impact than the increase in our average borrowings. The increase in our average interest rate was driven by the increase in LIBOR as our 2011 Credit Agreement and 2018 Credit Agreement are both variable based on LIBOR. We had total average borrowings (including capital leases) of \$300.0 million in the year-to-date 2018 compared to total average borrowings of \$231.5 million in the year-to-date 2017. The increase in total average borrowings (including capital leases) was driven by an increase of \$72.0 million to our average revolving debt balance in 2018 as compared to 2017.

We expect that our interest expense for the fourth quarter of 2018 will be higher in comparison to the fourth quarter of 2017, due to increases both in our average borrowing rates and in our average borrowings since the end of the third quarter of 2017.

Other Income (Expense)

Other income (expense) was \$0.7 million in the year-to-date 2018, compared to \$0.3 million in the year-to-date 2017. The increased income was driven by realized gains on the settlement of our expiring diesel fuel contracts as fuel prices rose during the contractual periods, partially offset by the lower unrealized gains on our active diesel fuel contracts as projected diesel fuel price escalation tempered during the third quarter of 2018.

Income Taxes

The effective income tax rate for the year-to-date 2018 and the year-to-date 2017 was 23.3% and 34.2%, respectively. The net decrease in the effective income tax rate was primarily attributable to the impact of the enactment of the TCJA, which lowered our U.S. Federal statutory tax rate and an increase in favorable state tax settlements. This decrease was partially offset by (1) the adverse impact of the adjustment to our fourth quarter 2017 income tax deduction accrual estimate of the guaranteed payout of non-vested restricted stock units and PSUs due to a lower share price at vesting in the first quarter of 2018, (2) a shift from generating net excess tax benefits associated with settlement of share-based payment awards (non-vested restricted stock units and PSUs) in the first quarter of 2017 to generating net excess tax deficiencies associated with settlement of those share-based payment awards in the first quarter of 2018, and (3) an increase in nondeductible expenses due to the TCJA.

Capital Resources and Liquidity

On August 31, 2018, we entered into an amendment and restatement of the 2011 Credit Agreement that provides for a \$700 million five-year unsecured credit facility ("2018 Credit Agreement") and replaces the 2011 Credit Agreement. 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 of our 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. 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 November 3, 2018, we were in compliance with the covenants of the 2018 Credit Agreement.

The primary source of our liquidity is cash flows from operations and, as necessary, borrowings under the 2018 Credit Agreement. Our net income and, consequently, our cash provided by operations are impacted by net sales volume, seasonal sales patterns, and operating profit margins. Our net sales are typically highest during the nine-week Christmas selling season in our fourth fiscal quarter. 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. At November 3, 2018, we had \$488.0 million in outstanding borrowings under the 2018 Credit Agreement and the borrowings available under the 2018 Credit Agreement were \$203.4 million, after taking into account the reduction in availability resulting from outstanding letters of credit totaling \$8.6 million.

In March 2018, our Board of Directors authorized us to repurchase up to \$100.0 million of our outstanding common shares. During the second quarter of 2018, we exhausted the 2018 Repurchase Plan by executing an accelerated share repurchase transaction for the entire \$100.0 million, which resulted in the purchase of approximately 2.4 million common shares at an average price of \$42.11 per share.

In the year-to-date 2018, we have declared and paid three quarterly cash dividends, each of which was \$0.30 per common share for a total paid amount of approximately \$38.6 million.

In December 2018, our Board of Directors declared a quarterly cash dividend of \$0.30 per common share payable on December 28, 2018 to shareholders of record as of the close of business on December 14, 2018.

The following table compares the primary components of our cash flows from the year-to-date 2018 to the year-to-date 2017:

<i>(In thousands)</i>	2018	2017	Change
Net cash provided by operating activities	\$ 40,420	\$ 29,072	\$ 11,348
Net cash used in investing activities	(281,033)	(93,293)	(187,740)
Net cash provided by financing activities	\$ 251,375	\$ 71,069	\$ 180,306

Cash provided by operating activities increased by \$11.3 million to \$40.4 million in the year-to-date 2018 compared to \$29.1 million in the year-to-date 2017. The primary driver of the increase was reduced cash outflows for accounts payable. In the first quarter of 2017, we began partnering with our vendor community, through changes in certain payment terms, that increased our cash outflows for accounts payable. Those partnering activities were anniversaried in the first quarter of 2018. Therefore, the impact of the partnering activities was lessened in the year-to-date 2018. Cash provided by operating activities was favorably impacted by reduced payments of accrued bonuses in the first quarter of 2018 as compared to the first quarter of 2017. Additionally, cash paid for taxes in the year-to-date 2018 was lower than the year-to-date 2017 due to the impact of lower Federal income tax rates as a result of the TCJA and lower taxable income. Partially offsetting the increase in cash provided by operating activities was a decrease in net income of \$36.2 million and the change in inventory position that was partially driven by the change of our fiscal quarter end date as fiscal 2017 was a fifty-three week year, which provided for one additional week of holiday inventory receipts in our distribution centers.

Cash used in investing activities increased by \$187.7 million to \$281.0 million in the year-to-date 2018 compared to \$93.3 million in the year-to-date 2017. The increase was primarily due to an increase in assets acquired under synthetic lease of \$116.0 million and an increase of \$70.3 million in capital expenditures. The increase in assets acquired under synthetic lease was due to our new distribution center in Apple Valley, California, on which we began construction in the fourth quarter of 2017. The increase in capital expenditures was driven by investments in our store of the future project and equipment for our new corporate headquarters and California distribution center.

Cash provided by financing activities increased by \$180.3 million to \$251.4 million in the year-to-date 2018 compared to \$71.1 million in the year-to-date 2017. The primary drivers of this change were an increase in proceeds from the synthetic lease for our California distribution center of \$116.0 million and a reduction of \$50.0 million in cash used to repurchase common shares under our Board-approved share repurchase programs in the year-to-date 2018 compared to the year-to-date 2017.

On a consolidated basis, we now expect cash provided by operating activities less capital expenditures to be in the range of \$10 million to \$20 million for 2018.

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 2017 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 2017 Form 10-K. Had we used estimates, judgments, and assumptions different from any of those discussed in our 2017 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 borrowings of \$488.0 million under the 2018 Credit Agreement at November 3, 2018. An increase of 1% in our variable interest rate on our expected future borrowings could affect our financial condition, results of operations, or liquidity through higher interest expense by approximately \$3.0 million.

We are subject to market risk from exposure to changes in our derivative instruments, associated with diesel fuel. At November 3, 2018, we had outstanding derivative instruments, in the form of collars, covering 5.7 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>
2018	900	900	\$ 245
2019	3,600	3,600	713
2020	1,200	1,200	(108)
Total	5,700	5,700	\$ 850

Additionally, at November 3, 2018, a 10% difference in the forward curve for diesel fuel prices would affect unrealized gains (losses) in other income (expense) by approximately \$1.8 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.

Item 1A. Risk Factors

Except as set forth below, there have been no material changes to the risk factors appearing in our Annual Report on Form 10-K for the year ended February 3, 2018.

We rely on manufacturers located in foreign countries, including China, for significant amounts of merchandise. Additionally, a significant amount of our domestically-purchased merchandise is manufactured abroad. Our business may be materially adversely affected by risks associated with international trade, including the impact of tariffs recently imposed by the U.S. with respect to certain consumer goods imported from China.

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

On March 22, 2018, President Trump, pursuant to Section 301 of the Trade Act of 1974, directed the U.S. Trade Representative (“USTR”) to impose tariffs on \$50 billion worth of imports from China. On June 15, 2018, the USTR announced its intention to impose an incremental tariff of 25% on \$50 billion worth of imports from China comprised of (1) 818 product lines valued at \$34 billion (“List 1”) and (2) 284 additional product lines valued at \$16 billion (“List 2”). The List 1 tariffs went into effect on July 6, 2018 and the List 2 tariffs went into effect on August 23, 2018, (with respect to 279 of the 284 originally targeted product lines). On July 10, 2018, the USTR announced its intention to impose an incremental tariff of 10% on another \$200 billion worth of imports from China comprised of 6,031 additional product lines (“List 3”) following the completion of a public notice and comment period. On August 1, 2018, President Trump instructed the USTR to consider increasing the tariff on the List 3 products from 10% to 25%. On September 17, 2018, the USTR released the final List 3 covering 5,745 full or partial lines of the 6,031 originally targeted product lines and announced that the List 3 tariffs will be implemented in two phases. On September 24, 2018, a 10% incremental tariff went into effect with respect to the List 3 products. The List 3 tariff was scheduled to increase to 25% on January 1, 2019. However, on December 1, 2018, the White House announced that the implementation of the List 3 tariff increase will be delayed until March 1, 2019, to allow Chinese and U.S. leaders to begin negotiations on various policy issues. The List 3 tariffs could increase to 25% on March 1, 2019 or sooner depending on the progress of negotiations.

Certain of our products and components of our products that are imported from China are currently included in the product lines subject to the effective and proposed tariffs. As a result, we are evaluating the potential impact of the effective and proposed tariffs on our supply chain, costs, sales and profitability and are considering strategies to mitigate such impact, including reviewing sourcing options, filing requests for exclusion from the tariffs with the USTR for certain product lines and working with our vendors and merchants. Given the uncertainty regarding the scope and duration of the effective and proposed tariffs, as well as the potential for additional trade actions by the U.S. or other countries, the impact on our operations and results is uncertain and could be significant, and we can provide no assurance that any strategies we implement to mitigate the impact of such tariffs or other trade actions will be successful. To the extent that our supply chain, costs, sales or profitability are negatively affected by the tariffs or other trade actions, our business, financial condition and results of operations may be materially adversely affected.

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 (1)	(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 5, 2018 - September 1, 2018	—	\$ 48.01	—	\$ —
September 2, 2018 - September 29, 2018	1	41.84	—	—
September 30, 2018 - November 3, 2018	11	41.52	—	—
Total	12	\$ 41.65	—	\$ —

(1) In August, September, and October 2018, in connection with the vesting of certain outstanding restricted stock awards and restricted stock units and the exercise of certain stock options, we acquired 190, 720, and 10,759 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. The Exhibit marked with two asterisks (**) is furnished electronically with this Quarterly Report.

Exhibit No.	Document
<u>10.1*</u>	Form of Big Lots 2017 Long-Term Incentive Plan Restricted Stock Units Award Agreement.
10.2	Credit Agreement, dated August 31, 2018, by and among Big Lots, Inc. and Big Lots Stores, Inc., as borrowers, the Guarantors named therein, and the Banks named therein (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated September 5, 2018).
10.3	Offer letter with Bruce Thorn, dated August 21, 2018 (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated August 28, 2018).
<u>10.4*</u>	First Amendment to Certain Operative Agreements.
<u>31.1*</u>	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<u>31.2*</u>	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<u>32.1*</u>	Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
<u>32.2*</u>	Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101**	XBRL Instance Document.

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 12, 2018

BIG LOTS, INC.

By: /s/ Timothy A. Johnson

Timothy A. Johnson

*Executive Vice President, Chief Administrative Officer
and Chief Financial Officer*

(Principal Financial Officer, Principal Accounting Officer and Duly Authorized Officer)

**BIG LOTS 2017 LONG-TERM INCENTIVE PLAN
RESTRICTED STOCK UNITS AWARD AGREEMENT**

Grantee: _____

Grant Date: _____

Number of RSUs: _____

In accordance with the terms of the Big Lots 2017 Long-Term Incentive Plan, as may be amended (“Plan”), this Restricted Stock Units Award Agreement (“Agreement”) is entered into as of the Grant Date by and between you, the Grantee, and Big Lots, Inc., an Ohio corporation (“Company”), in connection with the Company’s grant of these Restricted Stock Units (“RSUs”) and related Dividend-Equivalent Rights (“DERs”) to you. The RSUs and DERs are subject to the terms and conditions of this Agreement and the Plan. Except as otherwise expressly provided herein, capitalized terms used but not defined in this Agreement (including Exhibit A) shall have the respective meanings ascribed to them in the Plan.

This Agreement describes the RSUs and DERs you have been granted and the conditions that must be met before the RSUs vest and you become entitled to receive the Shares underlying the RSUs and any cash accrued under the DERs. To ensure that you fully understand these terms and conditions, you should carefully read the Plan and this Agreement.

Description of the RSUs

Each RSU represents a right to receive one Share after such RSU vests. The Company shall transfer to you one Share for each RSU that vests, provided you comply with the terms of this Agreement and the Plan. However, you shall forfeit any rights to the RSUs and the underlying Shares (i.e., no shares will be transferred to you) to the extent the RSUs do not vest or you do not comply with the terms of this Agreement and the Plan.

No portion of the RSUs that have not vested or been settled, nor any underlying Shares that have not yet been transferred to you may be sold, transferred, assigned, pledged, encumbered or otherwise disposed of by you in any way (including a transfer by operation of law); and any attempt by you to make any such sale, transfer, assignment, pledge, encumbrance or other disposition shall be null and void and of no effect.

Vesting of the RSUs

Subject to the terms and provisions of this Agreement and the Plan, if you are continuously employed by the Company or an Affiliate from the Grant Date through the applicable event(s) described below, which occur after the Grant Date and during your continuous employment, then your RSUs shall vest (if at all) and the underlying Shares shall be transferred to you as indicated below:

- A. If the Performance Trigger, as defined in Exhibit A, is satisfied based on the Company’s performance in the fiscal year immediately preceding the first anniversary of the Grant Date and the Compensation Committee has certified attainment of the Performance Trigger, then: (i) 33% of the RSUs shall vest on the later of the first anniversary of the Grant Date or the second trading day¹ after the Company files a Current Report on Form 8-K (“Form 8-K”) with the U.S. Securities and Exchange Commission reporting measures reflecting the attainment of the Performance Trigger; (ii) 33% of the RSUs shall vest on the later of the second anniversary of the Grant Date or the second trading day after the Company files a Form 8-K reporting its results from the most recently completed fiscal year; and (iii) the remainder of the

¹ As used in this Agreement, a “trading day” shall be as determined by the New York Stock Exchange or other national securities exchange or market that regulates the Shares.

RSUs shall vest on the later of the third anniversary of the Grant Date or the second trading day after the Company files a Form 8-K reporting its results from the most recently completed fiscal year.

- B. If the Performance Trigger was not satisfied based on the Company's performance in the fiscal year immediately preceding the first anniversary of the Grant Date, but is satisfied based on the Company's performance in the fiscal year immediately preceding the second anniversary of the Grant Date and the Compensation Committee has certified attainment of the Performance Trigger, then: (i) two-thirds of the RSUs shall vest on the later of the second anniversary of the Grant Date and the second trading day after the Company files a Form 8-K reporting measures reflecting the attainment of the Performance Trigger; and (ii) the remainder of the RSUs shall vest on the later of the third anniversary of the Grant Date and the second trading day after the Company files a Form 8-K reporting its results from the most recently completed fiscal year.
- C. If the Performance Trigger was not satisfied based on the Company's performance in the two fiscal years immediately preceding either the first anniversary or second anniversary of the Grant Date, but is satisfied based on the Company's performance in the fiscal year immediately preceding the third anniversary of the Grant Date and the Compensation Committee has certified attainment of the Performance Trigger, then all of the RSUs shall vest on the later of the third anniversary of the Grant Date and the second trading day after the Company files a Form 8-K reporting measures reflecting the attainment of the Performance Trigger.
- D. If you die or become Disabled before the Outside Date, a fraction of your RSUs shall vest upon your death or Disability based on the following formula: (i) the total number of RSUs granted herein; multiplied by (ii) a fraction, the numerator of which is the number of days of employment or service that you have completed with the Company or its Affiliates between the Grant Date and the date of your death or Disability and the denominator of which is 1,095; and (iii) reducing that product (such product to be rounded down to the nearest whole unit) by the number of RSUs that had vested prior to the date of your death or Disability.
- E. If your Retirement occurs and the Performance Trigger is satisfied before the Outside Date (and the certification and reporting events occur as described in sections A, B or C above, as applicable), a fraction of your RSUs shall vest upon your Retirement based on the following formula: (i) the total number of RSUs granted herein; multiplied by (ii) a fraction, the numerator of which is the number of days of employment or service that you have completed with the Company or its Affiliates between the Grant Date and the date of your Retirement and the denominator of which is 1,095; and (iii) reducing that product (such product to be rounded down to the nearest whole unit) by the number of RSUs that had vested prior to the date of your Retirement.
- F. If your employment is terminated under circumstances making you eligible for benefits under the Big Lots Executive Severance Plan and the Performance Trigger is satisfied before the Outside Date (and the certification and reporting events occur as described in sections A, B or C above, as applicable), your RSUs shall accelerate and fully vest upon your termination.
- G. If a Change in Control occurs before the Outside Date, then any RSUs subject to this Award Agreement that have not vested prior to the date of the Change in Control shall vest upon the date of such Change in Control.
- H. If the Performance Trigger is not met before the Outside Date occurs or the events described in sections D, E, F or G above do not occur before the Outside Date, this Agreement will expire and all of your rights in the RSUs will be forfeited.

Shares underlying RSUs that vest pursuant to this Agreement shall be transferred to you as soon as administratively practicable after the date the RSUs vest.

Your Rights in the RSUs

Subject to the Company's insider trading policies and applicable laws and regulations, after any underlying Shares are delivered to you in respect of vested RSUs, you shall be free to deal with and dispose of such underlying Shares. You have no rights in the Shares underlying unvested RSUs. You shall have none of the rights of a shareholder (including, without limitation, the right to vote or receive dividends) with respect to any Shares underlying these RSUs until such time as you become the record holder of such Shares.

Notwithstanding the foregoing, for each RSU granted under this Agreement you have been granted one DER. Each DER represents the right to receive the equivalent of all of the cash dividends that would be payable with respect to the Shares underlying the RSUs to which the DERs relate. Such cash dividends shall accrue without interest and shall vest and be paid in cash when the RSUs vest, or shall be forfeited if the RSUs and underlying Shares are forfeited.

Tax Treatment of the RSUs

You should consult with a tax or financial adviser to ensure you fully understand the tax ramifications of your RSUs.

This brief discussion of the federal tax rules that affect your RSUs is provided as general information (not as personal tax advice) and is based on the Company's understanding of federal tax laws and regulations in effect as of the Grant Date. Article 22 of the Plan further describes the manner in which withholding may occur.

You are not required to pay income taxes on your RSUs on the Grant Date. However, you will be required to pay income taxes (at ordinary income tax rates) when, if and to the extent your RSUs and corresponding DERs vest. The amount of ordinary income you will recognize is the value of your RSUs and the cash value accrued under the DERs when the RSUs and DERs vest. You may elect to allow the Company to withhold, upon settlement of the RSUs a number of Shares sufficient to satisfy the withholding obligation, from the Shares to be issued pursuant to your vested RSUs that would satisfy at least the required statutory minimum (or you may elect such higher withholding provided that such higher amount would not have a negative accounting impact on the Company) with respect to the Company's tax withholding obligation. If you wish to make the withholding election permitted by this paragraph, you must give notice to the Company in the manner then prescribed by the Company. All such elections by you shall be irrevocable, made by you in a manner approved by the Committee, and shall be subject to any restrictions or limitations that the Committee, in its sole discretion, deems appropriate. If you have not made an election to satisfy the withholding requirement by paying the taxes in cash or making the withholding election permitted by this paragraph, you shall be deemed to have elected to have the Company withhold a number of Shares that would satisfy the minimum statutory total tax (but no more than such minimum) that could be imposed on the transaction.

Any appreciation of the Shares you receive in connection with vested RSUs may be eligible to be taxed at capital gains rates when you sell the Shares. If your RSUs do not vest, your RSUs and DERs shall expire and no taxes will be due.

This Award is intended to comply with the applicable requirements of Code Section 409A and shall be administered in accordance with Code Section 409A. Refer to Section 24.13 of the Plan for more information on compliance with Code Section 409A, including the applicability of a six (6) month delay on the settlement of the RSUs for "specified employees," within the meaning of Code Section 409A.

No Section 83(b) Election

Because the RSUs are not property under the Internal Revenue Code, you have no right to make an election under Section 83(b) of the Internal Revenue Code with respect to your RSUs.

General Terms and Conditions

Nothing contained in this Agreement obligates the Company or an Affiliate to continue to employ you in any capacity whatsoever or prohibits or restricts the Company or an Affiliate from terminating your employment at any time or for any reason whatsoever; and this Agreement does not in any way affect any employment agreement that you may have with the Company.

This Agreement shall be governed by and construed in accordance with the internal laws, and not the laws of conflicts of laws, of the State of Ohio.

If any provision of this Agreement is adjudged to be unenforceable or invalid, then such unenforceable or invalid provision shall not affect the enforceability or validity of the remaining provisions of this Agreement, and the Company and you agree to replace such unenforceable or invalid provision with an enforceable and valid arrangement which in its economic effect shall be as close as possible to the unenforceable or invalid provision.

You represent and warrant to the Company that you have the full legal power, authority and capacity to enter into this Agreement and to perform your obligations under this Agreement and that this Agreement is a valid and binding obligation, enforceable in accordance with its terms, except that the enforcement of this Agreement may be subject to bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereinafter in effect relating to creditors' rights generally and to general principles of equity. You also represent and warrant to the Company that you are aware of and agree to be bound by the Company's trading policies and the applicable laws and regulations relating to the receipt, ownership and transfer of the Company's securities. The Company represents and warrants to you that it has the full legal power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement and that this Agreement is a valid and binding obligation, enforceable in accordance with its terms, except that the enforcement of this Agreement may be subject to bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereinafter in effect relating to creditors' rights generally and to general principles of equity.

Acceptance

By accepting your RSUs, you acknowledge receipt of a copy of the Plan, as in effect on the Grant Date, and agree that your RSUs are granted under and are subject to the terms and conditions described in this Agreement and in the Plan. You further agree to accept as binding, conclusive and final all decisions and interpretations of the Committee upon any issues arising under this Agreement or the Plan. You also represent and warrant to the Company that you are aware of and agree to be bound by the Company's insider trading policies and the applicable laws and regulations relating to the receipt, ownership and transfer of the Company's securities.

Date: _____

Chair, Compensation Committee

EXHIBIT A

As used in this Agreement, the following terms shall have the meanings set forth below:

Performance Trigger shall mean the Company has had at least one dollar of operating profit for any one of the fiscal years starting with the fiscal year in which the Grant Date occurs and continuing until the last full fiscal year ending immediately prior to the Outside Date.

Outside Date shall mean the third (3rd) anniversary of the date upon which the RSU Award was granted to the Grantee.

Retirement shall be deemed to have occurred upon the Termination of Employment or Service of a Grantee who, upon the effective date of his or her Termination of Employment or Service, has: (i) attained the age of 55 years or older; (ii) completed at least five years of employment with or service to the Company or its Affiliates; (iii) submitted a written request, in a form satisfactory to the Company, to the Compensation Committee or the Company's human resources department requesting retirement under the terms of this Agreement; and (iv) had such written request approved in writing by a member of the Compensation Committee or an authorized officer of the Company.

FIRST AMENDMENT TO CERTAIN OPERATIVE AGREEMENTS

THIS FIRST AMENDMENT TO CERTAIN OPERATIVE AGREEMENTS (this "Amendment") dated as of August 31, 2018 is by and among AVDC, INC., an Ohio corporation (the "Construction Agent" or "Lessee"); the various entities which are parties to the Participation Agreement (hereinafter defined) from time to time as guarantors (individually, a "Guarantor" and collectively, the "Guarantors"); WACHOVIA SERVICE CORPORATION, a Delaware corporation (the "Lessor"); the various banks and other lending institutions which are parties to the Participation Agreement from time to time as lease participants (individually, a "Lease Participant" and collectively, the "Lease Participants"); and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as the agent for the Lessor Parties and, respecting the Security Documents, as the agent for the Secured Parties (in such capacity, the "Agent").

WITNESSETH

WHEREAS, the Lessee, the Guarantors party thereto, the Lessor, the Lease Participants party thereto and the Agent are party to that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement");

WHEREAS, the Lessee and the Lessor are party to that certain Real Property Lease Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Lease Agreement");

WHEREAS, the Lessee and the Guarantors party thereto are party to that certain Intercompany Subordination Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Intercompany Subordination Agreement")

WHEREAS, various of the parties to this Amendment are parties to certain other Operative Agreements, other than the Participation Agreement, the Lease Agreement and the Intercompany Subordination Agreement;

WHEREAS, the Lessee has requested that the Lessor Parties and the Agent approve certain amendments and modifications to the Participation Agreement, the Lease Agreement, the Intercompany Subordination Agreement and the other Operative Agreements; and

WHEREAS, the Lessor Parties and the Agent have approved the amendments and modifications to the Participation Agreement, the Lease Agreement, the Intercompany Subordination Agreement and the other Operative Agreements requested by the Lessee on the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in Appendix A to the Participation Agreement.

2. Amendments to Certain of the Operative Agreements. Subject to the satisfaction of the condition set forth in Section 4, (a) the Participation Agreement, the Exhibits thereto, the Schedules thereto and Appendix A thereto are hereby amended in their entirety and replaced by Exhibit A hereto, (b) Section 17.1 of the Lease Agreement is hereby amended in its entirety and replaced by Exhibit B hereto, (c) the Intercompany Subordination Agreement is hereby amended in accordance with Section 3 of this Amendment such that the entities referenced in such Section 3 are hereby released from the Intercompany Subordination Agreement as Credit Parties thereunder and are no longer party thereto and (d) except as specified in the foregoing subsections (a) – (c), the Operative Agreements are otherwise deemed to be modified in accordance with Section 3 of this Amendment.

3. Release of Certain of the Guarantors. From and after the effective date of this Amendment, each of the following entities is released from its obligations under the Guaranty set forth in Section 6B of the Participation Agreement and any other of its obligations under the Operative Agreements, and none of them shall be a “Guarantor” or a “Credit Party” for purposes of the Operative Agreements: Big Lots Online LLC, BLSI Property, LLC, Capital Retail Systems, Inc., Industrial Products of New England, Inc., Midwestern Home Products, Inc., Sahara LLC, Sonoran LLC, and Tool and Supply Company of New England, Inc.

4. Conditions Precedent. The effectiveness of this Amendment shall be subject to satisfaction of the following conditions:

(a) Executed Documents. Receipt by the Agent of counterparts of this Amendment duly executed by the Lessee, the Construction Agent, each Guarantor, the Lessor, each Lease Participant and the Agent.

5. Amendment is an “Operative Agreement”. This Amendment is an Operative Agreement and all references to an “Operative Agreement” in the Participation Agreement and the other Operative Agreements (including, without limitation, all such references in the representations and warranties in the Participation Agreement (as amended by this Amendment) and the other Operative Agreements) shall be deemed to include this Amendment.

6. Reaffirmation of Representations and Warranties. Each Credit Party represents and warrants as of the effective date of this Amendment that (a) each of the representations and warranties set forth in the Operative Agreements as amended by this Amendment are true and correct in all material respects as of the effective date of this Amendment (except representations and warranties which (x) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (y) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of the effective date of this Amendment) and (b) both before and immediately following the consummation of the transactions contemplated by this Amendment, no Lease Default or Lease Event of Default has occurred and is continuing.

7. Reaffirmation of Obligations. Each Credit Party (a) acknowledges and consents to all of the terms and conditions of this Amendment, (b) affirms all of its obligations, including, without limitation, all applicable guaranty obligations, under the Operative Agreements and (c) agrees that this Amendment and all documents executed in connection herewith do not operate to reduce or discharge such Credit Party’s obligations under the Operative Agreements.

8. Reaffirmation of Security Interests. Each Credit Party (a) affirms that each of the Liens granted in or pursuant to the Operative Agreements are valid and subsisting and (b) agrees that this

Amendment shall in no manner impair or otherwise adversely affect any of the Liens granted in or pursuant to the Operative Agreements.

9. No Other Changes. Except as modified by this Amendment, all of the terms and provisions of the Operative Agreements shall remain in full force and effect. The execution, delivery and performance of this Amendment shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of any Financing Party under any of the Operative Agreements.

10. Counterparts; Delivery. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Amendment to produce or account for more than one such counterpart for each of the parties hereto. Delivery by facsimile or other electronic imaging means by any of the parties hereto of an executed counterpart of this Amendment shall be as effective as an original executed counterpart hereof and shall be deemed a representation that an original executed counterpart hereof will be delivered.

11. Governing Law. This Amendment shall be a contract under the internal Laws of the State of New York and for all purposes shall be construed in accordance with the internal Laws of the State of New York without giving effect to its principles of conflict of laws, except to the extent that local law is properly applicable for matters of real property.

12. Amendments to UCC Financing Statements. The Agent is hereby authorized and directed to file amendments, in form and substance as reasonably determined by the Agent, regarding (a) the UCC Financing Statement naming the Lessee, as debtor, and the Agent, as secured party, filed with the Office of the Ohio Secretary of State, with a filing date of December 4, 2017 and a file number of OH00217103483, to conform with the modifications made pursuant to this Amendment and (b) the UCC Financing Statement naming the Lessee, as debtor, and the Agent, as secured party, filed with the Office of the Clerk for San Bernardino County, California, with a filing date of December 5, 2017 and a file number of 2017-0514988, to conform with the modifications made pursuant to this Amendment.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Amendment to be duly executed and delivered as of the date first above written.

CONSTRUCTION AGENT AND LESSEE:

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

By: _____
Name: _____
Title: _____

(signature pages continue)

GUARANTORS:

BIG LOTS STORES, INC., as a Guarantor

By: _____
Name: _____
Title: _____

BIG LOTS, INC., as a Guarantor

By: _____
Name: _____
Title: _____

BIG LOTS ECOMMERCE LLC, as a Guarantor

By: _____
Name: _____
Title: _____

BIG LOTS F&S, INC., as a Guarantor

By: _____
Name: _____
Title: _____

(signature pages continue)

BLC LLC, as a Guarantor

By: _____
Name: _____
Title: _____

CLOSEOUT DISTRIBUTION, INC., as a Guarantor

By: _____
Name: _____
Title: _____

CONSOLIDATED PROPERTY HOLDINGS, INC., as a Guarantor

By: _____
Name: _____
Title: _____

CSC DISTRIBUTION, INC., as a Guarantor

By: _____
Name: _____
Title: _____

(signature pages continue)

C.S. ROSS COMPANY, as a Guarantor

By: _____
Name: _____
Title: _____

DURANT DC, LLC, as a Guarantor

By: _____
Name: _____
Title: _____

GREAT BASIN LLC, as a Guarantor

By: _____
Name: _____
Title: _____

MAC FRUGAL'S BARGAINS • CLOSE OUTS, INC., as a Guarantor

By: _____
Name: _____
Title: _____

(signature pages continue)

PNS STORES, INC., as a Guarantor

By: _____
Name: _____
Title: _____

WEST COAST LIQUIDATORS, INC., as a Guarantor

By: _____
Name: _____
Title: _____

(signature pages continue)

FIRST AMENDMENT TO CERTAIN OPERATIVE AGREEMENTS
BIG LOTS

LESSOR PARTIES:

WACHOVIA SERVICE CORPORATION, as the Lessor

By: _____
Name: _____
Title: _____

(signature pages continue)

FIRST AMENDMENT TO CERTAIN OPERATIVE AGREEMENTS
BIG LOTS

BANKERS COMMERCIAL CORPORATION, as a Lease Participant

By: _____
Name: _____
Title: _____

(signature pages continue)

FIRST AMENDMENT TO CERTAIN OPERATIVE AGREEMENTS
BIG LOTS

PNC EQUIPMENT FINANCE, LLC, as a Lease Participant

By: _____
Name: _____
Title: _____

(signature pages continue)

FIRST AMENDMENT TO CERTAIN OPERATIVE AGREEMENTS
BIG LOTS

AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as the Agent

By: _____
Name: _____
Title: _____

(signature pages end)

FIRST AMENDMENT TO CERTAIN OPERATIVE AGREEMENTS
BIG LOTS

EXHIBIT A

PARTICIPATION AGREEMENT

Dated as of November 30, 2017

among

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

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

WACHOVIA SERVICE CORPORATION,
as the Lessor,

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

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as the Agent

TABLE OF CONTENTS

	Page
Section 1. THE FINANCING.	<u>1</u>
1.1 General	1
1.2 Absolute and True Sale; No Fiduciary Duty of the Lessor	2
Section 2. [reserved].	<u>2</u>
Section 3. SUMMARY OF TRANSACTIONS.	<u>2</u>
3.1 Operative Agreements	2
3.2 Property Purchase	3
3.3 Construction of Improvements; Commencement of Basic Rent	3
3.4 Title to the Property	3
Section 4. THE CLOSINGS.	<u>3</u>
4.1 Initial Closing Date	3
4.2 Initial Closing Date; Property Closing Date; Acquisition Advances; Construction Advances	3
Section 5. FUNDING OF LESSOR ADVANCES; CONDITIONS PRECEDENT; REPORTING REQUIREMENTS ON COMPLETION DATE; THE LESSEE’S DELIVERY OF NOTICES; RESTRICTIONS ON LIENS.	<u>4</u>
5.1 General	4
5.2 Procedures for Funding	5
5.3 Conditions Precedent for the Lessor Parties and the Agent Relating to the Initial Closing Date and the Lessor Advances of Funds for the Acquisition of the Property	7
5.4 Conditions Precedent for the Lessor Parties and the Agent Relating to the Lessor Advances of Funds after the Acquisition Advance	11
5.5 Additional Reporting and Delivery Requirements on Completion Date	12
5.6 Restrictions on Liens	14
5.7 Payments	15
5.8 Unilateral Right to Increase the Lessor Parties Commitment	15
5.9 Maintenance of the Lessee as a Wholly-Owned Entity	15
5.10 Percentage Share	15
5.11 Final Advance for Punch List Items	15
5.12 Limitation on Requested Lessor Advances regarding Available Lessor Parties Commitment	16
5.13 Limitation on Purchase Option under the Lease and the Agency Agreement	16
5.14 Environmental Closure Reporting	16
5.15 Final Certificate of Occupancy	17
5.16 Special Provision Regarding the Funding of Uninsured Force Majeure Losses	17
5.17 Construction Consultant	17
5.18 Off-Site Construction Costs	19
5.19 Notices from the Construction Agent/the Lessee	19
5.20 Ratable Reduction of Lessor Parties Commitments	19
SECTION 5A. LESSOR ADVANCE	<u>20</u>
5A.1 Procedure for Lessor Advance.	20

5A.2	Computation of Lessor Yield; Payment Dates.	22
5A.3	Scheduled Return of Lessor Advance.	23
5A.4	Early Return of Lessor Advance.	23
5A.5	Computation of Lessor Yield.	24
5A.6	Termination or Reduction of Lessor Parties Commitments.	26
5A.7	Notice of Amounts Payable; Mandatory Assignment.	26
5A.8	Pro Rata Treatment and Payments.	27
5A.9	Conversion and Continuation Options Respecting the Lessor Advances.	27
Section 6.	REPRESENTATIONS AND WARRANTIES.	28
6.1	Representations and Warranties of Each Credit Party	28
6.1A	Updates to Schedules	39
6.2	Representations and Warranties of the Lessor Parties	39
SECTION 6B.	GUARANTY	41
6B.1.	Guaranty of Payment and Performance.	41
6B.2	Obligations Unconditional.	41
6B.3	Modifications.	42
6B.4	Waiver of Rights.	42
6B.5	Reinstatement.	43
6B.6	Remedies.	43
6B.7	Limitation of Guaranty.	43
6B.8	Payment of Amounts to the Agent.	43
6B.9	Joinder of Guarantors.	44
6B.10	Additional Waivers and Provisions.	44
6B.11	Representations; Separateness.	45
Section 7.	PAYMENT OF CERTAIN EXPENSES.	45
7.1	Transaction Expenses	45
7.2	Fee Calculation	46
7.3	Certain Fees and Expenses	46
7.4	Lessor Parties Unused Fee	46
7.5	Lessor Parties Upfront Fee	47
7.6	Administrative Agency Fee	47
7.7	Structuring Fee	47
Section 8.	OTHER COVENANTS AND AGREEMENTS.	47
8.1	Cooperation with the Lessee	47
8.2	Covenants of the Lessor Parties	47
8.3	Credit Party Covenants, Consent and Acknowledgment	48
8.3A	Affirmative Covenants.	51
8.3B	Negative Covenants.	53
8.3C	Reporting Requirements.	60
8.4	Sharing of Certain Payments	64
8.5	Grant of Easements, Agreement regarding Restrictive Covenants, etc	64
8.6	The Agent	64
8.7	Collection and Allocation of Payments and Other Amounts	67

8.8	Release of Property, etc	71
8.9	Sharing of Lessor Expenses After Rent Commencement Date	71
Section 9.	RIGHTS UNDER SECTION 5A OF THIS AGREEMENT.	72
9.1	[Reserved]	72
9.2	[Reserved]	72
9.3	The Construction Agent's and the Lessee's Rights under Section 5A of this Agreement	72
Section 10.	TRANSFER OF INTEREST.	72
10.1	Restrictions on Transfer	73
10.2	Effect of Transfer	74
10.3	Successor Agent	74
10.4	Participations	75
10.5	Assignments	75
10.6	The Register; Disclosure	78
Section 11.	INDEMNIFICATION.	78
11.1	General Indemnity	78
11.2	General Tax Indemnity	81
11.3	Yield Protection Amount	87
11.4	Funding/Contribution Indemnity	88
11.5	EXPRESS INDEMNIFICATION FOR ORDINARY NEGLIGENCE, STRICT LIABILITY, ETC	88
11.6	Indemnity Prior to Completion Date / Construction Period Termination Date	89
11.7	Additional Provisions Regarding Environmental Indemnification	90
11.8	Increase of Lessor Advances	90
11.9	Survival	90
Section 12.	MISCELLANEOUS.	90
12.1	Survival of Agreements	90
12.2	Notices	90
12.3	Counterparts	91
12.4	Terminations, Amendments, Waivers, Etc; Unanimous Vote Matters	92
12.5	Headings, etc	93
12.6	Parties in Interest	93
12.7	GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL; VENUE	93
12.8	Severability	94
12.9	Liability Limited	94
12.10	Rights of the Credit Parties	95
12.11	Further Assurances	95
12.12	Calculations under Operative Agreements	95
12.13	Confidentiality	96
12.14	Financial Reporting/Tax Characterization	96
12.15	Set-off	97
12.16	Limited Obligation of the Lessee to Pay on behalf of the Lessor	98
12.17	Limitation on Commitments	98

12.18	USA Patriot Act Notice	98
12.19	Acknowledgement and Consent to Bail-In of EEA Financial Institutions	98
12.20	UCC Filing Authorization	98
12.21	Lessor Party Voting Regarding Covenants, Representations and Warranties and Waivers	99
12.22	Lessee to Cause Performance of Obligations by Revolving Credit Agreement Borrowers	99

EXHIBITS

- A Form of Requisition - Section 4.2
- B Form of Officer's Certificate - Section 5.3(t)
- C Form of Secretary's Certificate - Section 5.3(u)
- D Form of Officer's Certificate - Section 5.3(v)
- E Form of Secretary's Certificate - Section 5.3(w)
- F-1 Form of Officer's Certificate (Completion - First Certification) – Section 5.5
- F-2 Form of Officer's Certificate (Completion - Second Certification) – Section 5.5
- G Form of Construction Agent Certificate – Section 5.17(b)(i)(A)
- H Form of Guarantor Joinder and Assumption Agreement – Section 6B.9
- I Form of Officer's Certificate (Permitted Acquisition) – Section 8.3B(e)(iii)(E)
- J Form of Officer's Certificate (Compliance) – Section 8.3C(c)
- K Form of Intercompany Subordination Agreement – Appendix A definition of “Intercompany Subordination Agreement”

SCHEDULES

Schedule I Lessor Parties Commitment

Schedule II Capitalization

Schedule III Credit Parties

Schedule IV New York Potential Tax Claim

Schedule V Owned Real Estate

Schedule VI Consents and Approvals

Schedule VII Insurance Policies

Schedule VIII Employee Benefit Plan Disclosure

Schedule IX Environmental Disclosure

Schedule X Permitted Indebtedness

Schedule XI Existing Guaranties

Schedule XII Excluded Active Subsidiaries

Schedule XIII Excluded Inactive Subsidiaries

Schedule XIV Permitted Investments

Schedule XV Revolving Credit Agreement Permitted Liens

Schedule XVI Notice Information for Lessor Parties

Schedule XVII Settlement Amounts

Schedule XVIII Guarantors as of the First Amendment Closing Date

APPENDICES

Appendix A - Rules of Usage and Definitions

PARTICIPATION AGREEMENT

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

WITNESSETH:

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

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

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

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

Section 1.

THE FINANCING.

1.1 General.

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

and (y) each Lessor Party has acquired (or in the case of the Lessor, has retained), respectively, its Percentage Share in the aggregate Lessor Parties Ownership Interests of all the Lessor Parties.

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

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

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

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

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

Section 2.
[reserved].

Section 3.
SUMMARY OF TRANSACTIONS.

3.1 Operative Agreements.

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

3.2Property Purchase.

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

3.3Construction of Improvements; Commencement of Basic Rent.

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

3.4Title to the Property.

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

Section 4.

THE CLOSINGS.

4.1Initial Closing Date.

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

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

The Construction Agent shall deliver to the Agent a requisition (a "Requisition"), in the form attached hereto as EXHIBIT A or in such other form as is satisfactory to the Agent, in its reasonable discretion, no later than 12:00 noon (Charlotte, North Carolina time) (a) as of the Initial Closing Date regarding the Initial Closing Date Advance, (b) at least three (3) Business Days prior to the date of any proposed Lessor Advance in connection with each Acquisition Advance pursuant to Section 5.3 (except with respect to any Acquisition Advance made as of the Initial Closing Date, as such shall be subject to the consent of the Lessor Parties, in their reasonable discretion (as such consent from each Lessor Party shall be evidenced by its funding of its portion of the Acquisition Advance on the Initial Closing Date), in which case such Requisition shall be

delivered as of the Initial Closing Date) and (c) at least ten (10) days prior to the proposed Lessor Advance, in each case in connection with each Construction Advance pursuant to Section 5.4, including the Punchlist Advance pursuant to Section 5.11 (and in any event the delivery date for such Requisition shall be concurrent with or after the date as of which the Construction Agent has complied with the other delivery requirements of Section 5.17(b)(i)); provided, notwithstanding the foregoing provisions of this subsection (c) or any other provision of the Operative Agreements, (x) the Construction Agent shall not submit any Requisition for any Construction Advance until such time as (i) the Construction Consultant shall have completed its review of the initial Plans and Specifications and found the budget and the construction timeline contained in such Plans and Specifications to be satisfactory, as determined in the reasonable discretion of the Construction Consultant, and (ii) the Lessor Parties shall have completed their review of the initial Plans and Specifications, such that the Majority Secured Parties shall have found the budget and the construction timeline contained in such Plans and Specifications to be satisfactory, as determined in the reasonable discretion of the Majority Secured Parties, and (y) any Requisition for a Construction Advance submitted prior to the approval by the Construction Consultant and the Majority Secured Parties of the budget and the construction timeline contained in the initial Plans and Specifications (as referenced in the foregoing subsection (x)) shall be null and void and of no force or effect and the Lessor Parties shall have no obligation to fund any such Construction Advance as so requested pursuant to such a Requisition. Each Requisition shall (i) specify the desired amount of such Lessor Advance which in the aggregate must be in a minimum amount of \$500,000 and (ii) specify the date of such Lessor Advance. Delivery of a Requisition shall be deemed to be a certification by the Lessee that all applicable conditions precedent (except those relating to performance by the Financing Parties) under Sections 5.3 and/or 5.4 of this Agreement shall have been satisfied by the date of the particular Lessor Advance, unless waived by the Agent (pursuant to instructions from the Majority Secured Parties). No Requisition shall be required for the funding by the Lessor Parties of Lessor Advances to pay Transaction Expenses or for the increase of Lessor Advances described in Section 5.1(b). As a clarification of the foregoing and not in limitation thereof, the Construction Agent shall be permitted to submit Requisitions (and the Lessor Parties shall fund Lessor Advances therefor, subject to the terms of the Operative Agreements) during the Construction Period for Property Costs, including with regard to (w) the costs and expenses required for construction of the Improvements in accordance with the Construction Documents, (x) certain amounts of Supplemental Rent (including, regarding the Property, for Taxes, utilities, insurance premiums, Casualty occurrences and Condemnation occurrences), (y) capitalized Lessor Yield on the Lessor Advances and (z) the Transaction Expenses. The Credit Parties shall ensure that no Requisition shall request any Lessor Advance for the acquisition of, or otherwise in any manner regarding, any Excluded Equipment.

Section 5.

FUNDING OF LESSOR ADVANCES; CONDITIONS PRECEDENT;

REPORTING REQUIREMENTS ON COMPLETION DATE; THE LESSEE'S DELIVERY OF NOTICES; RESTRICTIONS ON LIENS.

5.1 General.

(a) When the Lessor Parties fund their respective Lessor Advances to the Agent pursuant to this Section 5 and Section 5A or if Agent elects to make such Lessor Advances available to the Construction Agent under Section 5A.8(b)(i), then, subject to the final sentence of this Section 5.1(a), the Agent shall distribute the Lessor Advances to the Construction Agent for application by the Construction Agent, in accordance with the Operative Agreements, as follows: (i) from time to time at the direction of the Construction Agent to allow the Lessor to acquire the Property, (ii) to permit the acquisition, testing, engineering, installation, development, construction, modification, design, and renovation, as applicable, of the Property (or components thereof) (including construction of the Improvements and acquisition and installation of the Equipment), (iii) to pay Transaction

Expenses and (iv) otherwise to pay such other amounts payable pursuant to the terms of the Operative Agreements. Notwithstanding the foregoing, if Lessor Advances have been made to the Agent to pay Transaction Expenses (including pursuant to Section 4.2 at a time when no Requisition has been submitted for such items), then (without funding such amounts to the Construction Agent) the Agent may pay such Transaction Expenses as the Agent shall reasonably determine or, if the Agent so desires, as directed by the Majority Secured Parties.

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

5.2 Procedures for Funding.

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

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

(c) (i) Subject to the satisfaction of the conditions precedent set forth in Section 5.3 or 5.4, as applicable, unless waived by the Agent (pursuant to instructions from the Majority Secured Parties), and subject to Section 5.16 hereof with respect to the funding of Uninsured Force Majeure Losses, on the Initial Closing Date and on the Property Closing Date or the date on which the Construction Advance (other than as specified in Section 5.2(c)(ii) or, for the avoidance of doubt, such later date as is requested by Agent pursuant to Section 5A.8(b)(i)) is to be made, as applicable, (A) each Lessor Party shall make a Lessor Advance to the Agent based on its Lessor Party Commitment in an amount such that the aggregate of all Lessor Advances at such time shall be one

hundred percent (100%) of the Requested Funds specified in such Requisition plus (to the extent not so specified) any additional amount of Transaction Expenses, and (B) the total amount of the Lessor Advances made on such date shall (x) be advanced by the Agent to the Construction Agent and used to pay Property Costs (including Transaction Expenses) within three (3) Business Days of the receipt by the Construction Agent of such Lessor Advance, (y) be advanced by the Agent on the date of such Lessor Advances to the Construction Agent to pay Property Costs (including Transaction Expenses), as applicable, previously incurred by the Construction Agent or the Lessee or (z) be applied by the Agent in accordance with the last sentence of Section 5.1(a).

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

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

to the Construction Agent until such amounts are repaid to the Lessor Parties. The foregoing provisions of this Section 5.2(d) shall not impair the right of the Construction Agent, in its final Requisition, to request the Punchlist Advance, as more particularly described in Section 5.11.

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

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

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

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

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

(b) the performance by the parties to this Agreement of their respective agreements contained herein and in the other Operative Agreements to be performed by them on or prior to each such date;

(c) the Agent shall have received a fully executed counterpart copy of the Requisition, appropriately completed;

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

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

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

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

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

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

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

(k) with respect to the Property Closing Date only, the Lessee shall have caused to be delivered to the Agent a Mortgage Instrument in respect of the Property (in such form as is acceptable to the Agent, with revisions as necessary to conform to statutory recording requirements and customary practice under applicable state law) and UCC Financing Statements respecting the Property, all in recordable form;

(l) with respect to the Property Closing Date only, the Lessee shall have delivered to the Agent the Lease and a memorandum thereof (or short form lease), such memorandum or short form lease to be in the form attached to the Lease as Exhibit B or in such other form as is acceptable to the Agent, with modifications as necessary to conform to applicable state law, and in form suitable for recording;

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

(n) [Reserved];

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

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

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

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

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

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

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

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

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

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

(y) as of the Initial Closing Date only, counsel for the Credit Parties acceptable to the Agent shall have issued to the Lessor Parties and the Agent their legal opinion, addressing such issues as identified by the Agent, in such form as is reasonably acceptable to the Agent;

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

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

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

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

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

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

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

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

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

(b) the performance by the parties to this Agreement of their respective agreements contained herein and in the other Operative Agreements to be performed by them on or prior to each such date unless waived in accordance with Section 12.4 of this Agreement;

(c) the Agent shall have received a fully executed counterpart of the relevant Requisition, appropriately completed;

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

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

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

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

(h) [Reserved];

(i) [Reserved];

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

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

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

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

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

5.5 Additional Reporting and Delivery Requirements on Completion Date.

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

Date, the Construction Agent shall notify the Agent of the exact date of the Completion Date.

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

- (i) the address for the Property;
- (ii) the Completion Date;
- (iii) the aggregate Property Cost; and

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

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

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

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

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

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

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

(B) an as-built survey for the Property;

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

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

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

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

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

5.6 Restrictions on Liens.

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

5.7 Payments.

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

5.8 Unilateral Right to Increase the Lessor Parties Commitment.

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

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

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

5.10 Percentage Share.

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

5.11 Final Advance for Punch List Items.

Prior to the Construction Period Termination Date, the Construction Agent in its Requisition for the final Advance may request amounts to pay for punch list items for the Property that have not been completed

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

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

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

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

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

5.14 Environmental Closure Reporting.

On or prior to the Construction Period Termination Date, if the California Department of Toxic Substances Control (the “DTSC”) has not issued a determination letter that no further remedial action is required with respect to known environmental conditions at the Property, or has not provided written

confirmation that such letter is not required, then the Lessee shall arrange for issuance by an independent environmental consultant (who has not worked for the Lessee in the past and is reasonably acceptable to the Majority Secured Parties) of an opinion that all known environmental conditions on the Property comply with Acceptable Regulatory Standards, which shall be delivered no later than sixty (60) days after the Construction Period Termination Date. The consultant shall issue to the Lessor Parties and the Agent a reliance letter containing the consultant's written opinion regarding this matter.

5.15 Final Certificate of Occupancy.

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

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

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

5.17 Construction Consultant.

(a) The Agent shall be permitted to hire the Construction Consultant to act as the Agent's agent (i) to review the submissions by or on behalf of the Construction Agent in connection with the Requisitions and (ii) to oversee construction of the Property. The Construction Consultant may itself provide any or all such services or, in its discretion, the Construction Consultant may contract with one or more third parties to provide any or all such services. Promptly after the Initial Closing Date, the Agent shall, or shall cause the Construction Consultant to, provide the notice information for the Construction Consultant to the Construction Agent. Upon submission by the Agent (on behalf of the Construction Consultant) to the Construction Agent of invoices (including payment instructions) for the services of the Construction Consultant from time to time, the Construction Agent shall include all such invoiced amounts in its next Requisition, unless any such invoice is submitted less than three (3) Business Days prior to the date of submission of the Requisition to the Agent in which case such invoiced amounts shall be included in the next following Requisition. Without the need for any further action, all such invoiced amounts from the Construction Consultant shall constitute Transaction Expenses and once those invoiced amounts are paid, they shall be added to the Property Cost. From and after the Initial Closing Date Advance and the Acquisition Advance and as otherwise more fully described below, and not in limitation of the other conditions precedent of Section 5.4, the Lessor Parties shall have no obligation to fund a Requisition unless the Construction Consultant has approved the funding of such Requisition, such approval not to be unreasonably withheld or delayed.

(b) As referenced in Section 5.4(l) and in addition to the other requirements of Section 5.4, the obligations of the Lessor Parties to make Lessor Advances to the Construction Agent to permit the acquisition, testing, engineering, installation, development, construction, modification, design, and renovation, as applicable, of the Property (or components thereof) in accordance with the terms of the Agency Agreement and the other Operative Agreements (including construction of

the Improvements and acquisition and installation of the Equipment) are subject to the satisfaction or waiver of the following conditions precedent (to the extent such conditions precedent require the delivery of any agreement, certificate, instrument, memorandum, legal or other opinion, appraisal, commitment, title insurance commitment, Lien report or any other document of any kind or type, such shall be in form and substance satisfactory to the Agent, in its reasonable discretion; notwithstanding the foregoing, the obligations of each party shall not be subject to any conditions contained in this Section 5.17 which are required to be performed by such party):

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

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

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

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

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

(E) within ten (10) days of execution, executed copies of all subcontracts and supplier contracts executed to date between the applicable general contractor and a subcontractor or a supplier, as applicable, in each case that provides for an aggregate contract price equal to or greater than \$1,000,000;

(F) such other instruments, documents and information as the Construction Consultant may reasonably request, including unconditional waivers of Lien covering all work by the applicable general contractor or any subcontractors or suppliers (to the extent such subcontractor or suppliers meet the \$1,000,000

threshold of the foregoing subsection (E)) paid with the proceeds of the prior Lessor Advances;

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

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

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

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

5.18 Off-Site Construction Costs-

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

5.19 Notices from the Construction Agent/the Lessee.

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

5.20 Ratable Reduction of Lessor Parties Commitments.

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

SECTION 5A.
LESSOR ADVANCE.

5A.1 Procedure for Lessor Advance.

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

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

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

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

last Payment Date preceding the Rent Commencement Date through the day prior to the Rent Commencement Date shall be added to the outstanding Lessor Advances on the Rent Commencement Date in accordance with Section 5.1(b).

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

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

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

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

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

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

5A.2 Computation of Lessor Yield; Payment Dates.

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

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

(c) If the LIBOR Rate cannot be determined by the Agent in the manner specified in the definition of the term “LIBOR”, the Agent shall give electronic or telephonic notice thereof to the Lessee and the Lessor Parties as soon as practicable thereafter. Until such time as the LIBOR Rate can be determined by the Agent in the manner specified in the definition of such term, (i) no further Eurodollar Lessor Advances shall be made, (ii) no existing Eurodollar Lessor Advances shall be continued as such at the end of the then current Lessor Yield Period, (iii) the Lessee shall not have the right to convert any ABR Lessor Advances to Eurodollar Lessor Advances and (iv) all subsequent Lessor Advances shall be ABR Lessor Advances; provided, to the extent the Agent has made the determination referenced in the first sentence of Section 5A.5(d) and replacement pricing with regard to Lessor Advances has been effected pursuant to an amendment of the Operative Agreements in accordance with Section 5A.5(d), then Lessor Yield shall be determined in accordance with such amendment of the Operative Agreements.

5A.3 Scheduled Return of Lessor Advance.

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

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

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

(b) If on any date any Lessor Party shall receive any payment in respect of the Property or pursuant to the Operative Agreements, then in each case, the Lessor Party shall pay such amount (excluding Excepted Payments which shall be permitted to be retained by the party to whom such payments are owed) to the Agent to be distributed in accordance with Section 8.7 of this Agreement.

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

under the Operative Agreements. Upon the occurrence and during the continuance of any other Event of Default, the Majority Secured Parties may determine to accelerate the obligation to repay the Lessor Advances, together with accrued but unpaid Lessor Yield thereon and all other amounts owing to the Secured Parties under the Operative Agreements.

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

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

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

5A.5 Lessor Yield Rates and Payment Dates.

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

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

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

(d) (i) If the Agent determines (which determination shall be final and conclusive, absent manifest error) that either (A) (1) any LIBOR Impairment Event has arisen and the circumstances giving rise thereto are unlikely to be temporary, or (2) no LIBOR Impairment Event has arisen but the applicable supervisor or administrator (if any) of the LIBOR Rate or an Official Body having jurisdiction over the Agent has made a public statement identifying the specific date after which the LIBOR Rate shall no longer be used for determining interest rates for loans (either such date, a “LIBOR Termination Date”), or (B) a rate other than the LIBOR Rate has become a widely recognized benchmark rate for newly originated loans in Dollars in the U.S. market, then the Agent may (in consultation with BLS) choose a replacement index for the LIBOR Rate and make adjustments to applicable margins and related amendments to the Operative Agreements as referred to below such that, to the extent practicable, the all-in yield rate based on the replacement index will be substantially equivalent to the all-in LIBOR Rate-based yield rate in effect prior to its replacement.

(ii) The Agent and the Credit Parties shall enter into an amendment to the Operative Agreements to reflect the replacement index, the adjusted margins and such other related amendments as may be appropriate, in the discretion of the Agent, for the implementation and administration of the replacement index-based rate. Notwithstanding anything to the contrary in this Agreement or the other Operative Agreements (including Section 12.4), such amendment shall become effective without any further action or consent of any other party to this Agreement at 5:00 p.m. New York City time on the tenth (10th) Business Day after the date a draft of the amendment is provided to the Lessor Parties, unless the Agent receives, on or before such tenth (10th) Business Day, a written notice from the Majority Secured Parties stating that such Lessor Parties object to such amendment.

(iii) Selection of the replacement index, adjustments to the applicable margins, and amendments to the Operative Agreements (A) will be determined with due consideration to the then-current market practices for determining and implementing a rate of interest for newly originated loans in the United States and loans converted from a LIBOR Rate-based rate to a replacement index-based rate, and (B) may also reflect adjustments to account for (1) the effects of the transition from the LIBOR Rate to the replacement index and (2) yield- or risk-based differences between the LIBOR Rate and the replacement index.

(iv) Until an amendment reflecting a new replacement index in accordance with this Section 5A.5(d) is effective, each advance, conversion and renewal of a Eurodollar Lessor Advance will continue to bear yield with reference to the LIBOR Rate (subject to Sections 5A.2(c) and 11.3 of this Agreement and any other applicable provision of the Operative Agreements which provides for a replacement of the LIBOR Rate); provided, however, that if the Agent determines (which determination shall be final and conclusive, absent manifest error) that a LIBOR Termination Date has occurred, then following the LIBOR Termination Date, all Eurodollar Lessor Advances shall automatically be converted to ABR Lessor Advances until such time as an amendment reflecting a replacement index and related matters as described above is implemented.

(v) Notwithstanding anything to the contrary contained herein, if at any time the replacement index is less than zero, at such times, such index shall be deemed to be zero for purposes of the Operative Agreements.

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

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

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

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

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

(b) In the event that (i) any Lessor Party delivers to the Lessee a certificate in accordance with Section 5A.7(a) in connection with amounts payable pursuant to Sections 11.2 or 11.3, (ii) such Lessor Party is required to make Lessor Advances as ABR Lessor Advances in accordance with Section 11.3 or (iii) such Lessor Party is a Defaulting Lessor Party or a Non-Consenting Lessor Party, then, subject to Section 10.1 and to the extent such Lessor Party has been unable to eliminate such claim referenced in the foregoing subsections (i) or (ii), the Lessee may, at its own expense, including the payment to the Agent of the assignment fee pursuant to Section 10.5 (provided, such amounts shall be reimbursed or paid entirely (as elected by the Lessee) by the Lessee, as Supplemental Rent, or, prior to the Construction Period Termination Date, shall be paid by the Construction Agent with the proceeds of Advances) and in the discretion of the Lessee, require such Lessor Party to transfer or assign, in whole, without recourse (in accordance with Section 10.1), all of its Lessor Parties Commitment, interests, rights (except for rights to be indemnified for actions taken while a party hereunder) and obligations under this Agreement to an Eligible Assignee if the Lessee (subject to Section 10.1), with the full cooperation of such Lessor Party, can identify an Eligible Assignee who is ready, willing and able to be such replacement bank or lending institution with respect thereto and such replacement bank or lending institution (which may be another Lessor Party) shall assume such assigned obligations in accordance with the provisions of Section 10.1; provided, however, that (x) subject to Section 10.1, the Lessee (provided, such amounts shall be reimbursed or paid entirely (as elected by the Lessee) by the Lessee, as Supplemental Rent, or, prior to the Construction

Period Termination Date, shall be paid by the Construction Agent with the proceeds of Advances) or such replacement bank or lending institution, as the case may be, shall have paid to such Lessor Party in immediately available funds the outstanding Lessor Advances of such Lessor Party and the Lessor Yield accrued to the date of such payment on such Lessor Advances and all other amounts owed to such Lessor Party pursuant to the Operative Agreements, and (y) such assignment of the Lessor Parties Commitment of such Lessor Party does not conflict with any law, rule or regulation or order of any court or Governmental Authority.

5A.8 Pro Rata Treatment and Payments.

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

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

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

(a) The Lessee may elect from time to time to convert Eurodollar Lessor Advances to ABR Lessor Advances by giving the Agent at least three (3) Business Days' prior irrevocable notice of such election, provided, that any such conversion of Eurodollar Lessor Advances may only be made on the last day of a Lessor Yield Period with respect thereto, and provided, further, to the extent an Event of Default has occurred and is continuing on the last day of any such Lessor Yield Period, the applicable Eurodollar Lessor Advance shall automatically be converted to an ABR Lessor

Advance, and during the continuance of any Event of Default, the Lessee may not elect to convert any Lessor Advance into a Eurodollar Lessor Advance or to continue any Lessor Advance as a Eurodollar Lessor Advance. The Lessee may elect from time to time to convert ABR Lessor Advances to Eurodollar Lessor Advances by giving the Agent at least three (3) Business Days' prior irrevocable notice of such election. Upon receipt of any such notice, the Agent shall promptly notify each Lessor Party thereof. All or any part of outstanding Eurodollar Lessor Advances or ABR Lessor Advances may be converted as provided herein, provided, that no ABR Lessor Advance may be converted into a Eurodollar Lessor Advance after the date that is one (1) month prior to the Expiration Date.

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

Section 6.

REPRESENTATIONS AND WARRANTIES.

6.1 Representations and Warranties of Each Credit Party.

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

(a) Each Credit Party (i) is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization, (ii) has the lawful power to own or lease its properties and to engage in the business it presently conducts or proposes to conduct, and (iii) is duly licensed or qualified and in good standing in each jurisdiction where the property owned or leased by it or the nature of the business transacted by it or both makes such licensing or qualification necessary except to the extent that the failure to be so licensed, qualified or in good standing would not cause a Material Adverse Effect and, except in each case of (i)-(iii), as otherwise expressly permitted pursuant to Section 8.3B(e).

(b) All of the authorized capital stock of the Parent, and the shares (referred to herein as the "Shares") of the Parent that are issued and outstanding have been validly issued and are fully paid and nonassessable. There are no options, warrants or other rights outstanding to purchase any such Shares to be issued after the Initial Closing Date or the Property Closing Date, as applicable,

except as indicated on Schedule II.

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

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

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

(f) Neither the execution and delivery of this Agreement or the other Operative Agreements by any Credit Party nor the consummation of the transactions herein or therein contemplated or compliance with the terms and provisions hereof or thereof by any of them will conflict with, constitute a default under or result in any breach of (i) the terms and conditions of the certificate or articles of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other organizational documents of any Credit Party or (ii) any material Law or any material agreement or instrument or order, writ, judgment, injunction or decree to which any Credit Party is a party or by which it is bound or to which it is subject, or result in the creation or enforcement of any Lien, charge or encumbrance whatsoever upon any property (now or hereafter acquired) of any Credit Party except for Liens created by the Operative Agreements.

(g) There are no actions, suits, proceedings or investigations pending or, to the knowledge of any Credit Party, threatened against such Credit Party at law or equity before any Official Body which individually or in the aggregate would reasonably be expected to result in any

Material Adverse Effect. None of the Credit Parties or any Subsidiaries of any Credit Party is in violation of any order, writ, injunction or any decree of any Official Body which would reasonably be expected to result in any Material Adverse Effect. Schedule IV correctly describes the New York Potential Tax Claim.

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

(i) (i) BLS has delivered to the Agent copies of the Parent's (a) audited consolidated year-end financial statements for and as of the end of the fiscal year ended February 3, 2018 and (b) unaudited consolidated quarter-end financial statements for and as of the end of the fiscal quarter ended May 5, 2018 (collectively, the "Historical Statements"). The Historical Statements were compiled from the books and records maintained by the Parent's management, fairly represent in all material respects the consolidated financial condition of the Parent and its Subsidiaries as of their dates and the results of operations for the fiscal periods then ended and have been prepared in accordance with GAAP consistently applied.

(ii) BLS has delivered to the Agent consolidated financial projections of the Parent and its Subsidiaries for the period from fiscal year 2018 through fiscal year 2020 derived from various assumptions of the Parent's management (the "Financial Projections"). The Financial Projections represent a reasonable estimation of possible results in light of the history of the business, present and foreseeable conditions and the estimates and assumptions of the Parent's management. Such Financial Projections and the assumptions therein were, at the time made, fair; however, actual results may differ materially from such Financial Projections.

(iii) Neither the Parent nor any Subsidiary of the Parent has any liabilities, contingent or otherwise, or forward or long-term commitments that are not disclosed in the Historical Statements or in the notes thereto, and except as disclosed therein there are no unrealized or anticipated losses from any commitments of the Parent or any Subsidiary of the Parent, in each case which would reasonably be expected to cause a Material Adverse Effect. From February 3, 2018 to (A) the First Amendment Closing Date and (B) each Test Date, if applicable, no Material Adverse Effect has occurred.

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

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

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

(m) All federal, state, local and other Tax returns required to have been filed with respect to each Credit Party have been filed, and payment or adequate provision has been made for the payment of all Taxes, fees, assessments and other governmental charges which have or may become due pursuant to said returns or to assessments received, except to the extent that (i) the amount thereof is not individually or in the aggregate in an amount that would reasonably be expected to cause a Material Adverse Effect, or (ii) such Taxes, fees, assessments and other charges are being contested in good faith by appropriate proceedings diligently conducted and for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made.

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

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

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

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

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

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

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

(u) Except as set forth on Schedule VIII:

(i) The Revolving Credit Agreement Borrowers and each other member of the ERISA Group are in compliance in all material respects with any applicable provisions of ERISA with respect to all Benefit Arrangements and Plans. As of the Initial Closing Date, the Revolving Credit Agreement Borrowers and each member of the ERISA Group do not have any obligation to make contributions to any Multiemployer Plans or Multiple Employer Plans. There has been no Prohibited Transaction with respect to any Benefit Arrangement or any Plan or, to the best knowledge of the Revolving Credit Agreement Borrowers and each member of the ERISA Group, with respect to any Multiemployer Plan or Multiple Employer Plan, which could result in any material liability of any Revolving Credit

Agreement Borrower or any other member of the ERISA Group. The Revolving Credit Agreement Borrowers and all other members of the ERISA Group have made when due any and all payments required to be made under any agreement relating to a Multiemployer Plan or a Multiple Employer Plan or any Law pertaining thereto. With respect to each Plan, Multiemployer Plan and Multiple Employer Plan, the Revolving Credit Agreement Borrowers and each other member of the ERISA Group (A) have fulfilled in all material respects their obligations under the minimum funding standards of ERISA, (B) except for required premium payments, have not incurred any liability to the PBGC, and (C) have not had asserted against them any penalty for failure to fulfill the minimum funding requirements of ERISA.

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

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

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

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

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

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

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

(v) Each of the Credit Parties is in compliance with the Labor Contracts and all applicable labor and employment Laws including those related to equal employment opportunity and affirmative action, labor relations, minimum wage, overtime, child labor, medical insurance

continuation, worker adjustment and relocation notices, immigration controls and worker and unemployment compensation, where the failure to comply would reasonably be expected to constitute a Material Adverse Effect. There are no outstanding grievances, arbitration awards or appeals therefrom arising out of the Labor Contracts or current or threatened strikes, picketing, handbilling or other work stoppages or slowdowns at facilities of any of the Credit Parties which in any case would reasonably be expected to constitute a Material Adverse Effect.

(w) Except as disclosed on Schedule IX:

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

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

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

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

(v) Each Credit Party has submitted to an Official Body and/or maintains, as appropriate, all material Environmental Records.

(vi) No structures, improvements, equipment, fixtures, impoundments, pits, lagoons or aboveground or underground storage tanks located on the Revolving Credit Agreement Property contain or use, except in compliance with Environmental Laws and Environmental Permits, Regulated Substances or otherwise are operated or maintained except in compliance with Environmental Laws and Environmental Permits unless such noncompliance would not be reasonably expected to cause a Material Adverse Effect. To the knowledge of each Credit Party, no structures, improvements, equipment, fixtures, impoundments, pits, lagoons or aboveground or underground storage tanks of prior owners, operators or occupants of the Revolving Credit Agreement Property contained or used Regulated Substances, except in compliance with Environmental Laws, Regulated

Substances or otherwise were operated or maintained by any such prior owner, operator or occupant except in compliance with Environmental Laws unless such noncompliance would not be reasonably expected to cause a Material Adverse Effect.

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

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

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

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

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

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

(y) (i) No Covered Entity is a Sanctioned Person, and (ii) no Covered Entity, either in its own right or through any third party, (A) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law, (B) does business in or with, or derives any of its income from investments in or transactions with, any

Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (C) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

(z) [Reserved].

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

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

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

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

(dd) The Plans and Specifications for the Property will be prepared prior to the commencement of construction in accordance with all applicable Legal Requirements (including all applicable Environmental Laws and building, planning, zoning and fire codes), except to the extent the failure to comply therewith, individually or in the aggregate, shall not have and could not reasonably be expected to have a Material Adverse Effect. Upon completion of the Improvements for the Property in accordance with the applicable Plans and Specifications (except with

respect to final completion matters regarding any punch list items for which the Punchlist Advance has been made), such Improvements will be within any building restriction lines and will not encroach in any manner onto any adjoining land (except as permitted by express written easements or those encroachments which have been approved by the Agent).

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

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

(gg) The location of the Construction Agent and the Lessee for purposes of the UCC is the State of Ohio and, respecting the Construction Agent and the Lessee, its principal place of business is located at 4900 E. Dublin-Granville Road, Columbus, Franklin County, OH 43081, and its chief executive office and office where the documents, accounts and records related to the transactions contemplated by this Agreement and each other Operative Agreement are located at 4900 E. Dublin-Granville Road, Columbus, Franklin County, OH 43081. The Construction Agent and the Lessee maintain a mailing address at: AVDC, Inc., c/o Big Lots, Inc., 4900 E. Dublin-Granville Road, Columbus, OH 43081.

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

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

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

(kk) As of the Property Closing Date, the date of each subsequent Lessor Advance and the Rent Commencement Date only, the Property complies with all Legal Requirements as of such

date (including all zoning and land use laws and Environmental Laws), except to the extent that failure to comply therewith, individually or in the aggregate, shall not have and could not reasonably be expected to have a Material Adverse Effect and there is not and has not been any Environmental Condition at the Property, except as shall not and could not reasonably be expected to have a Material Adverse Effect.

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

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

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

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

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

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

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

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

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

6.1A Updates to Schedules.

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

Schedule II - Capitalization
Schedule III - Credit Parties
Schedule V - Owned Real Estate

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

Schedule VII - Insurance Policies

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

6.2 Representations and Warranties of the Lessor Parties.

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

(a) It is an entity duly organized, validly existing and in good standing in the jurisdiction of its formation (and as to the Lessor but not as to any other Lessor Party, the State of California) and has the power and authority to enter into and perform its obligations under each of the Operative Agreements to which it is or will be a party and each other agreement, instrument and document to be executed and delivered by it on or before the Initial Closing Date and the Property Closing Date in connection with or as contemplated by each such Operative Agreement to which it is, or as the case may be, will be a party;

(b) The execution, delivery and performance of each Operative Agreement to which it is or will be a party has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor

compliance by it with any of the terms and provisions thereof (i) does or will require any approval or consent of any holder of any of its indebtedness or obligations or any other consent or approval by any Person that has not previously been obtained, (ii) does or will contravene any Legal Requirement, (iii) does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any of its property (except for the Liens created expressly pursuant to the Security Documents) under (A) its articles of organization or other formation documents or (B) any other agreement or instrument to which it is a property or by which it or its properties may be bound or affected;

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

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

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

(f) [Reserved];

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

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

(i) [Reserved];

(j) It is not engaged principally in, and does not have as one (1) of its important activities, the business of extending credit for the purpose of purchasing or carrying any margin

stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States), and no part of the proceeds of the Lessor Advances will be used by it to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulations T, U, or X of the Board of Governors of the Federal Reserve System of the United States;

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

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

SECTION 6B. GUARANTY

6B.1 Guaranty of Payment and Performance.

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

6B.2 Obligations Unconditional.

The Guarantors agree that the obligations of the Guarantors hereunder are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Operative Agreements, or any other agreement or instrument referred to therein, or any substitution, release or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by Applicable Law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety, guarantor or co-obligor, it being the intent of this Section 6B.2 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. The Guarantors agree that this Section 6B may be enforced by any Financing Party without the necessity at any time of resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse to any of the Operative Agreements or any collateral, if any, hereafter securing the Obligations or otherwise and the Guarantors hereby waive the right to require the Financing Parties to proceed against the Construction Agent, the Lessee or any other Person (including a co-guarantor) or to require the Financing Parties to pursue any other remedy or enforce any other right. The Guarantors further agree that each Guarantor hereby waives any and all right of subrogation, indemnity, reimbursement or contribution against the Construction Agent, the Lessee or any other guarantor of the Obligations for amounts paid under this Section 6B until such time as the Lessor Advances, accrued but unpaid Lessor Yield and all other amounts owing under the Operative Agreements have been paid in full. Without limiting the generality of the waiver provisions of this Section 6B, the Guarantors hereby waive any rights to require the Financing Parties to proceed against the Construction Agent, the Lessee or any co-guarantor or to require the Lessor to pursue any other remedy or enforce any other right, including any and all rights under N.C. Gen. Stat. § 26-7 through 26-9, or any similar statute. Additionally, the Guarantors hereby waive any rights and defenses that are or may become available to any of them by reason of §§ 2787 to 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code. The foregoing waivers and the provisions otherwise set forth in this Section 6B which pertain to North Carolina law or to California law are included solely out of an abundance of caution, and shall not be construed to mean that any such provisions of North Carolina law or California

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

6B.3 Modifications.

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

6B.4 Waiver of Rights.

The Guarantors expressly waive to the fullest extent permitted by Applicable Law: (a) notice of acceptance of this Section 6B by any Financing Party and of all extensions of credit or other Lessor Advances by the Lessor Parties pursuant to the terms of the Operative Agreements; (b) presentment and demand for payment or performance of any of the Obligations; (c) protest and notice of dishonor or of default with respect to the Obligations or with respect to any security therefor; (d) notice of any Financing Party obtaining, amending, substituting for, releasing, waiving or modifying any security interest, Lien or encumbrance, if any, hereafter securing the Obligations, or any Financing Party's subordinating, compromising, discharging or releasing such security interests, Liens or encumbrances, if any; (e) all other notices to which the Guarantors might otherwise be entitled; and (f) the right to seek through any means to have the obligations of the Guarantors under this Section 6B adjudicated invalid or unenforceable. Notwithstanding anything to the

contrary herein, (i) payments from the Guarantors hereunder shall be due two (2) Business Days after written demand by any Financing Party for such payment (unless the Obligations are automatically accelerated pursuant to the applicable provisions of the Operative Agreements in which case payments from the Guarantors shall be automatically due) and (ii) any modification of the Operative Agreements which has the effect of increasing the Obligations shall not be enforceable against the Guarantors unless the Guarantors execute the document evidencing such modification or otherwise reaffirm their guaranty in writing in connection with such modification.

6B.5 Reinstatement.

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

6B.6 Remedies.

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

6B.7 Limitation of Guaranty.

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

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

6B.8 Payment of Amounts to the Agent.

Each Financing Party hereby instructs the Guarantors, and the Guarantors hereby acknowledge and agree, that until such time as the Lessor Advances are paid in full and the Liens evidenced by the Security Documents have been released, any and all Rent (excluding Excepted Payments which shall be payable to

the Lessor or other Person as appropriate) and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable to any Financing Party shall instead be paid directly to the Agent (excluding Excepted Payments which shall be payable to the Lessor or other Person as appropriate) or as the Agent may direct from time to time for allocation and distribution in accordance with the procedures set forth in Section 8.7 hereof.

6B.9 Joinder of Guarantors.

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

6B.10 Additional Waivers and Provisions.

(a) The Guarantors understand, acknowledge and agree that if the Secured Parties foreclose judicially or nonjudicially against any real property security for the Obligations and/or the Obligations, that foreclosure could impair or destroy any ability that any such Guarantor may have to seek reimbursement, contribution, or indemnification from any applicable Person based on any right such Guarantor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by such Guarantor hereunder, including by reason of Sections 2787 through 2855 of the California Civil Code. The Guarantors further understand and acknowledge that in the absence of this paragraph, such potential impairment or destruction of the Guarantors' rights, if any, may entitle the Guarantors, or any of them, to assert a defense to its guaranty obligations under this Section 6B based on Section 580d of the California Code of Civil Procedure as interpreted in *Union Bank v. Gradsy*, 265 Cal. App. 2d 40 (1968). By executing this Agreement, each Guarantor freely, irrevocably, and unconditionally: (i) waives and relinquishes that defense and agrees that it will be fully liable under this Agreement even though the Secured Parties may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations and/or the Obligations; (ii) agrees that it will not assert that defense in any action or proceeding which the Secured Parties may commence to enforce this Section 6B; (iii) acknowledges and agrees that the rights and defenses waived by such Guarantor in this Section 6B include any right or defense that it may have or be entitled to assert based upon or arising out of any one or more of §§ 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or § 2848 of the California Civil Code; and (iv) acknowledges and agrees that the Secured Parties are relying on this waiver in creating the Obligations and the Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Obligations and the Obligations.

(b) The Guarantors waive all rights and defenses that any of them may have because any of the Obligations or the Obligations is secured by real property. This means, among other things: (i) the Secured Parties may collect from any Guarantor without first foreclosing on any real or personal property collateral pledged by the Lessor or the Lessee; and (ii) if the Secured Parties foreclose on any real property collateral pledged by the Lessor or the Lessee: (A) the amount of the Obligations and the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more

than the sale price, and (B) the Secured Parties may collect from any Guarantor even if the Secured Parties, by foreclosing on the real property collateral, have destroyed any right such Guarantor may have to collect from the Lessor or the Lessee. This is an unconditional and irrevocable waiver of any rights and defenses the Guarantors may have because any of the Obligations or the Obligations is secured by real property. These rights and defenses include any rights or defenses based upon § 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

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

6B.11 Representations; Separateness.

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

Section 7.

PAYMENT OF CERTAIN EXPENSES.

7.1 Transaction Expenses.

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

(b) Assuming no Default or Event of Default shall have occurred and be continuing, the Lessor Parties agree on the Property Closing Date, the date of each Construction Advance and on the Completion Date to pay, or cause to be paid, all Transaction Expenses including all Fees, all other reasonable fees, expenses and disbursements of the various legal counsels for the Credit Parties, the Lessor and the Agent in connection with the transactions contemplated by the Operative Agreements and billed in connection with the Property Closing Date, date of Construction Advance or the Completion Date, all amounts described in Section 7.1(a) of this Agreement which have not been previously paid, all fees, expenses and disbursements incurred with respect to the various items referenced in Sections 5.3 and/or 5.4 (including any premiums for title insurance policies and charges for any updates to such policies) and all other fees, expenses and disbursements in connection with the Property Closing Date, date of Construction Advance or Completion Date, including all expenses relating to and all fees, Taxes and expenses for the recording, registration and filing of such documents and in any event all such Taxes, fees and other charges in connection with any and all UCC financing

statements and fixture filings; provided, however, the Lessor Parties shall be obligated to pay such amounts described in this Section 7.1(b) only to the extent of the amount of funds made available by the Lessor Parties as part of the Lessor Advances and without regard to whether such amounts are referenced in any Requisition. On the Property Closing Date, on the date of any Construction Advance and on the Completion Date, after satisfaction of the conditions precedent for such date, the Lessor Parties shall make Lessor Advances sufficient in the aggregate to pay for the Transaction Expenses referenced in this Section 7.1(b). The Lessee shall pay all such amounts if not paid by the Lessor Parties.

7.2 Fee Calculation.

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

7.3 Certain Fees and Expenses.

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

7.4 Lessor Parties Unused Fee.

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

Notwithstanding the foregoing provisions of this Section 7.4:

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

(b) With respect to any Lessor Parties Unused Fee payable to any Defaulting Lessor

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

7.5 Lessor Parties Upfront Fee.

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

7.6 Administrative Agency Fee.

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

7.7 Structuring Fee.

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

Section 8.

OTHER COVENANTS AND AGREEMENTS.

8.1 Cooperation with the Lessee.

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

8.2 Covenants of the Lessor Parties.

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

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

Security Documents or of the sale, forfeiture or loss of, and shall not interfere with the use or disposition of, the Property or title thereto or any interest therein or the payment of Rent;

(b) [Reserved];

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

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

8.3 Credit Party Covenants, Consent and Acknowledgment.

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

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

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

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

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

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

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

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

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

(i) The Lessee hereby covenants and agrees that it shall give prompt notice to the Agent if the location of the Lessee for purposes of the UCC shall cease to be in the State of Ohio, if the Lessee's principal place of business shall cease to be located at 4900 E. Dublin-Granville Road,

Columbus, Franklin County, OH 43081 or if the Lessee's chief executive office or office where the records concerning the account or contract rights relating to the Property are kept shall cease to be located at 4900 E. Dublin-Granville Road, Columbus, Franklin County, OH 43081 or if it shall change its name. The Lessee shall at all times maintain a mailing address at: AVDC, Inc., c/o Big Lots, Inc., 4900 E. Dublin-Granville Road, Columbus, OH 43081.

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

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

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

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

(n) The Lessee covenants and agrees to deliver to the Agent, on or before the Commencement Date, the Lease and a memorandum thereof (or short form lease) (such memorandum or short form lease to be in the form attached to the Lease as Exhibit B or in such other form as is acceptable to the Agent, with modifications as necessary to conform to applicable state law, and in form suitable for recording).

(o) In addition to, and not in limitation of, the requirements of Article XIV of the Lease, Lessee will maintain insurance against loss or damage which to the Lessee's knowledge is similar to the kinds and in the amounts customarily maintained by corporations engaged in the same or similar businesses and which are similarly situated to the Lessee, the failure of which would be reasonably likely to have a Material Adverse Effect.

8.3A Additional Credit Party Affirmative Covenants.

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

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

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

(c) Each Credit Party shall, and shall cause each Excluded Active Subsidiary to, insure its properties and assets against loss or damage by fire and such other insurable hazards as such assets are commonly insured (including fire, extended coverage, property damage, workers' compensation, public liability and business interruption insurance) and against other risks (including errors and omissions) in such amounts as similar properties and assets are insured by prudent companies in similar circumstances carrying on similar businesses, and with reputable and financially sound insurers, including self-insurance to the extent customary, all as reasonably determined by the Agent. At the request of the Agent, the Credit Parties shall deliver to the Agent (i) on the Initial Closing Date and annually thereafter a certificate of insurance signed by the Credit Parties' independent insurance broker describing and certifying as to the existence of the insurance required to be maintained by this Agreement and the other Operative Agreements, and (ii) from time to time a summary schedule indicating all insurance then in force with respect to each of the Credit Parties.

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

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

(f) Each Credit Party shall permit any of the officers or authorized employees or representatives of any Financing Party to visit, no more than twice per year (unless an Event of Default has occurred and is continuing), during normal business hours and inspect any of its properties

and to examine and make excerpts from its books and records and discuss its business affairs, finances and accounts with its officers, all in such detail and at such times and as often as any Lessor Party may reasonably request, provided that each Lessor Party shall provide the Lessee and the Agent with reasonable notice prior to any visit or inspection; provided, further, that such visit or inspection shall be conducted during normal business hours and shall not unreasonably interfere with the business or operations of the applicable Credit Party and all information obtained or observed during such visit or inspection shall be subject to the confidentiality obligations in Section 12.13. In the event any Lessor Party desires to visit and inspect any Credit Party, such Lessor Party shall make a reasonable effort to conduct such visit and inspection contemporaneously with any visit and inspection to be performed by the Agent.

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

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

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

(j) The Credit Parties will use the proceeds of the Lessor Advances for the purposes stated in Section 6.1(j). The Credit Parties shall not use the proceeds of the Lessor Advances for any purposes which contravenes any Applicable Law or any provision hereof.

(k) Each Credit Party shall cause any intercompany Indebtedness, loans or advances owed by any Credit Party to any other Credit Party to be subordinated pursuant to the terms of the Intercompany Subordination Agreement.

(l) (i) No Covered Entity will become a Sanctioned Person; (ii) no Covered Entity, either in its own right or through any third party, will (A) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law, (B) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law, (C) engage in any dealings or transactions prohibited by any Anti-Terrorism Law or (D) use the proceeds of the Lessor Advances to fund any operations in, finance any investments or activities

in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (iii) each Covered Entity shall comply with all Anti-Terrorism Laws; and (iv) the Lessee shall promptly notify the Agent in writing upon the occurrence of a Reportable Compliance Event.

(m) Each Credit Party shall provide to the Financing Parties such information and documentation as may reasonably be requested by any Financing Party from time to time for purposes of compliance by any such Financing Party with Applicable Laws (including the USA Patriot Act and other “know your customer” and anti-money laundering rules and regulations), and any policy or procedure implemented by any such Financing Party to comply therewith.

8.3B Additional Credit Party Negative Covenants.

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

- (a) Each of the Credit Parties shall not at any time create, incur, assume or suffer to exist any Indebtedness, except:
 - (i) Indebtedness under the Revolving Credit Agreement Loan Documents;
 - (ii) Existing Indebtedness as set forth on Schedule X (including any extensions or renewals thereof, provided there is no increase in the amount thereof, or an increase in the effective interest rate thereof, or an earlier maturity date for any payment payable thereunder, or the provision of any security or guarantees therefor, or other significant change in the terms thereof unless otherwise specified on Schedule X);
 - (iii) Indebtedness in respect of Capital Leases and Synthetic Lease Obligations or any sale-leaseback transaction;
 - (iv) Indebtedness secured by Purchase Money Security Interests or by security interests in proceeds granted in connection with securities lending transactions or reverse repurchase agreements involving United States Treasury bonds, provided that the aggregate amount as of any date of all such Indebtedness permitted by this Section 8.3B(a)(iv) shall not exceed Ten Million and 00/100 Dollars (\$10,000,000.00);
 - (v) Indebtedness of a Credit Party to another Credit Party which is subordinated in accordance with the provisions of Section 8.3A(k);
 - (vi) Any Bank-Provided Hedge or other Qualified Hedge Agreement; and
 - (vii) Any unsecured Indebtedness not otherwise permitted by (i)-(vi) above; provided, that
 - (A) such Indebtedness is pari passu in right of payment with the Obligations,
 - (B) such Indebtedness complies with Section 8.3B(q), and

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

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

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

- (i) existing Guaranties as set forth on Schedule XI;
 - (ii) Guaranties of Indebtedness of the Credit Parties permitted in Section 8.3B(a);
 - (iii) other Guaranties to the extent the Indebtedness represented by such Guaranties is permitted in Section 8.3B(a);
- and
- (iv) Guaranties by any Credit Party of the obligations, to the extent not prohibited by the Revolving Credit Agreement or by the Operative Agreements, of any other Credit Party.

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

- (i) trade credit extended on usual and customary terms in the ordinary course of business;
- (ii) advances to employees to meet expenses incurred by such employees in the ordinary course of business;
- (iii) Permitted Investments;
- (iv) investments in a Credit Party;
- (v) investments not otherwise permitted in (i)-(iv) above or (vi)-(x) below in an amount which should not exceed One Hundred Twenty Five Million and 00/100 Dollars (\$125,000,000.00) in the aggregate;
- (vi) investments in notes and other securities received in settlement of overdue Indebtedness and accounts payable owed to a Credit Party in the ordinary course of business and for amounts which, individually and in the aggregate, are not material to the Credit Parties;

(vii) investments in the nature of seller financing or other consideration received in any disposition (including any sale, lease, assignment or transfer) of assets or property by any Credit Party, provided that the aggregate value of all such investments, other than any such investments in a Credit Party, at any time (based on the value at the time of acquisition thereof but reduced by payments or other realization thereon) shall not exceed Ten Million and 00/100 Dollars (\$10,000,000.00); provided, that, for the avoidance of doubt, sale-leaseback transactions shall be governed by Sections 8.3B(a) and 8.3B(f) and not by this Section 8.3B(d);

(viii) investments in Bank-Provided Hedges or Qualified Hedge Agreements;

(ix) Permitted Acquisitions;

(x) Investments (including equity or debt obligations) in trade receivables or received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement (including settlements of litigation) of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business; and

(xi) investments in the Big Lots Supplemental Savings Plan and such other similar non-qualified plan as the Credit Parties may create or enter into from time to time.

(e) Each of the Credit Parties shall not dissolve, liquidate or wind-up its affairs, or become a party to any merger or consolidation, or acquire by purchase, lease or otherwise all or substantially all of the assets or capital stock of any other Person, provided, that:

(i) any Credit Party other than a Revolving Credit Agreement Borrower may consolidate or merge into another Credit Party which is directly or indirectly wholly-owned by one or more of the other Credit Parties; provided, that the Lessee may not so consolidate or merge into another Credit Party unless the requirements of Section 10.1 (regarding assignment and other transfers (directly or indirectly pursuant to a merger or other transaction) by the Lessee or the Construction Agent) are satisfied to the satisfaction of the Agent, in its reasonable discretion, as if such Section 10.1 were reconstituted to apply to consolidation and merger of the Lessee and the Construction Agent, in a manner as the Agent shall determine, in its reasonable discretion;

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

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

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

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

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

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

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

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

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

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

(iii) any sale, transfer, lease or other conveyance of properties or assets by any Credit Party to another Credit Party, including a Subsidiary that will be merged or

consolidated with a Credit Party pursuant to a series of transactions that are integrated with such sale, transfer, lease or other conveyance;

(iv) any sale, transfer or lease of properties or assets in the ordinary course of business which are replaced by substitute properties or assets acquired or leased or any disposition of any real property in connection with (A) a sale-leaseback transaction permitted under Section 8.3B(a), or (B) a like-kind exchange described in Section 1031 of the Code and the Treasury Department regulations promulgated thereunder;

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

(vi) any sale, transfer, lease or other conveyance of properties or assets, other than those specifically excepted pursuant to clauses (i) through (v) above, provided that:

(A) there shall not exist any Event of Default or Default immediately prior to and after giving effect to such sale; and

(B) the Credit Parties shall be in compliance with all of the covenants herein applicable to any Credit Party and with respect to any sale the proceeds of which exceed Ten Million and 00/100 Dollars (\$10,000,000.00), BLS shall deliver a Compliance Certificate to the Agent for the benefit of the Lessor Parties at least ten (10) Business Days before such sale confirming the same.

(g) None of the Credit Parties shall enter into or carry out any transaction with any Affiliates of any Credit Party (including purchasing property or services from or selling property or services to any Affiliate of any Credit Party) unless such transaction (i) is not otherwise prohibited by the Revolving Credit Agreement or the Operative Agreements, (ii) is entered into in the ordinary course of business upon terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arm's length transaction with a Person other than an Affiliate and (iii) is in accordance with all Applicable Law in all material respects.

(h) Each of the Credit Parties shall not, and shall not permit any of its Subsidiaries to, own or create directly or indirectly any Subsidiaries other than (i) any Subsidiary which has joined this Agreement as a Guarantor on the Initial Closing Date and has otherwise joined the Revolving Credit Agreement in accordance with the terms thereof; (ii) any Excluded Inactive Subsidiary; (iii) any Excluded Active Subsidiary; (iv) any Subsidiary formed or acquired after the Initial Closing Date which joins this Agreement as a Guarantor pursuant to Section 6B.9 or which merges or consolidates with a Credit Party pursuant to a series of transactions that are integrated with such Subsidiary's formation; or (v) the Lessee; provided, however, no Subsidiary shall be required to join this Agreement as a Guarantor pursuant to Section 6B.9 if the execution of the Guarantor Joinder would cause material adverse Tax consequences to any Credit Party or any Affiliate of a Credit Party (pursuant to Section 956 of the Code and the United States Income Tax Regulations promulgated thereunder, or otherwise) as demonstrated to the reasonable satisfaction of the Agent. The parties to this Agreement acknowledge and agree that, pursuant to the First Amendment, the entities designated on Schedule XVIII are the only Guarantors as of the First Amendment Closing Date.

(i) Except for investments permitted by Section 8.3B(d), each of the Credit Parties shall not become or agree to (i) become a general or limited partner in any general or limited partnership, except that the Credit Parties may be general or limited partners in other Credit Parties,

(ii) become a member or manager of, or hold a limited liability company interest in, a limited liability company, except that the Credit Parties may be members or managers of, or hold limited liability company interests in, other Credit Parties, or (iii) become a joint venturer or hold a joint venture interest in any joint venture. The Credit Parties shall not permit any Excluded Inactive Subsidiary to acquire or hold any material assets, incur or suffer to exist any material liabilities or to conduct any material business.

(j) None of the Credit Parties shall engage in any business other than the distribution of and the wholesale and retail sale of general merchandise and ancillary or value-added activities and functions in support of or as an enhancement to the foregoing businesses, substantially as conducted and operated by such Credit Party during the present fiscal year, and such Credit Party shall not permit any material change in such business. This Section 8.3B(j) shall not prohibit the Parent, BLS or any Subsidiary thereof from engaging in a business which provides services common to the retail or wholesale trade in general merchandise to the Parent, BLS or any Subsidiary thereof or to any Person engaged in the sale of general retail merchandise.

(k) Each of the Credit Parties and each member of the ERISA Group shall not:

- (i) fail to satisfy the minimum funding requirements of ERISA and the Code with respect to any Plan;
- (ii) request a minimum funding waiver from the Internal Revenue Service with respect to any Plan;
- (iii) engage in a Prohibited Transaction with any Plan, Benefit Arrangement, Multiemployer Plan or Multiple Employer Plan which, alone or in conjunction with any other circumstances or set of circumstances resulting in liability under ERISA, would constitute a Material Adverse Effect;
- (iv) permit any Plan to be in “at risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), determined as of the most recent actuarial valuation report for each Plan using the actuarial assumptions required under Section 412 of the Code for purposes of funding;
- (v) fail to make when due any contribution to any Multiemployer Plan or Multiple Employer Plan that any Revolving Credit Agreement Borrower or any member of the ERISA Group may be required to make under any agreement relating to such Multiemployer Plan or Multiple Employer Plan, or any Law pertaining thereto;
- (vi) withdraw (completely or partially) from any Multiemployer Plan or withdraw (or be deemed under Section 4062(e) of ERISA to withdraw) from any Multiple Employer Plan, where any such withdrawal would result in a Material Adverse Effect;
- (vii) terminate, or institute proceedings to terminate, any Plan, where such termination would result in a Material Adverse Effect;
- (viii) permit the imposition of a Lien under Section 303(k)(1) of ERISA; or

(ix) fail to give any and all notices and make all disclosures and governmental filings required under ERISA or the Code, where such failure would result in a Material Adverse Effect.

(l) The Parent shall not, and shall not permit any Subsidiary of the Parent to, change its fiscal year from the fifty-two (52)/fifty-three (53) week fiscal year beginning on the Sunday closest to February 1 of each calendar year and ending on the Saturday closest to January 31 of the following calendar year.

(m) Each of the Credit Parties (other than the Parent) shall not, and shall not permit any of its Subsidiaries to, issue any additional shares of its capital stock or other equity interests or any options, warrants or other rights in respect thereof other than to another Credit Party or Subsidiary of a Credit Party.

(n) Except in connection with the dissolution of a Credit Party as permitted in Section 8.3B(e), each of the Credit Parties shall not amend in any material respect its certificate or articles of incorporation, by-laws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other organizational documents without providing at least five (5) calendar days' prior written notice to the Revolving Credit Agreement Administrative Agent, the Revolving Credit Agreement Banks and the Financing Parties and, in the event such change would be adverse to (i) the Revolving Credit Agreement Banks as determined by the Revolving Credit Agreement Administrative Agent in its sole reasonable discretion, obtaining the prior written consent of the Revolving Credit Agreement Required Banks or (ii) the Financing Parties as determined by the Agent in its sole reasonable discretion, obtaining the prior written consent of the Majority Secured Parties; provided, however, that any Credit Party (other than the Parent) may convert from one form of entity to another form of entity, reincorporate, re-domesticate, or change its name without prior written notice to the Agent so long as such change would not have a Material Adverse Effect.

(o) The Credit Parties shall not at any time permit the Leverage Ratio, calculated as of the end of each fiscal quarter for the period equal to the four (4) fiscal quarters then ended, to exceed the ratio set forth below for the periods specified below:

Four (4) Consecutive Fiscal Quarters Ending (Nearest) of Each Year that this Agreement is in Effect)	Maximum Total Leverage Ratio
April 30	3.00 to 1.00
July 31	3.25 to 1.00
October 31	3.50 to 1.00
January 31	3.00 to 1.00

(p) The Credit Parties shall not permit the Fixed Charge Coverage Ratio, calculated as of the end of each fiscal quarter for the period equal to the four (4) fiscal quarters then ended, to be less than 1.50 to 1.00.

(q) No Credit Party shall directly or indirectly enter into or assume or become bound by, or permit any Subsidiary to enter into or assume or become bound by, any agreement, other than the Revolving Credit Agreement, the other Revolving Credit Agreement Loan Documents, this

Agreement, the other Operative Agreements and any operative documents in connection with any other Synthetic Lease Obligations (collectively, the Operative Agreements and any other such operative documents may be referred to as the “Synthetic Lease Documents”), or any provision of any certificate of incorporation, bylaws, partnership agreement, operating agreement or other organizational formation or governing document prohibiting the creation or assumption of any Lien or encumbrance upon any such Credit Party’s or Subsidiary’s properties, whether now owned or hereafter created or acquired, or otherwise prohibiting or restricting any transaction contemplated hereby; provided, that the foregoing shall not apply to (i) restrictions and conditions imposed by any Law or by any Revolving Credit Agreement Loan Document and the Synthetic Lease Documents, (ii) restrictions or conditions imposed by any agreement relating to secured Indebtedness or other obligations permitted by both this Agreement and the Synthetic Lease Documents but, (y) solely with respect to the specific assets that secure the Synthetic Lease Obligations, any restriction or condition imposed by the Synthetic Lease Documents and, (z) with respect to any other assets, only to the extent such restriction or condition is limited to the specific assets subject to a Revolving Credit Agreement Permitted Lien, (iii) customary provisions in leases or other agreements restricting assignment thereof, or (iv) restrictions or conditions imposed by any agreement relating to the issuance by any Credit Party of Indebtedness represented by publicly or privately placed notes as permitted by Section 8.3B(a)(vii).

8.3C Additional Credit Party Reporting Requirements.

The Credit Parties, jointly and severally, covenant and agree that until Payment in Full, the Credit Parties will furnish or cause to be furnished to the Agent:

(a) As soon as available and in any event within forty-five (45) calendar days after the end of each of the first three (3) fiscal quarters in each fiscal year of the Parent, unaudited financial statements of the Parent, consisting of: (i) a consolidated balance sheet as of the end of such fiscal quarter and as of the end of the prior fiscal year; (ii) a consolidated statement of operations for such fiscal quarter and the year-to-date period of the then-current fiscal year, and for the corresponding fiscal quarter and year-to-date period of the prior fiscal year; (iii) a consolidated statement of shareholders’ equity as of the end of such fiscal quarter, as of the end of the corresponding fiscal quarter of the prior fiscal year, and as of the end of the prior fiscal year; and (iv) a consolidated statement of cash flows for the year-to-date period of the then-current fiscal year and the corresponding year-to-date period of the prior fiscal year. Each of the aforementioned financial statements shall be in reasonable detail and certified (subject to normal year-end audit adjustments) by an Authorized Officer of the Parent as having been prepared in accordance with GAAP. The Credit Parties will be deemed to have complied with the delivery requirements of this Section 8.3C(a) if the Credit Parties have complied with the portion of Section 8.3C(h) (iv) that relates to Form 10-Q reporting and the financial statements contained in such Form 10-Q reports meet the requirements described in this Section 8.3C(a).

(b) As soon as available and in any event within ninety (90) days after the end of each fiscal year of the Parent, financial statements of the Parent consisting of a consolidated balance sheet as of the end of such fiscal year, and related consolidated statements of operations, shareholders’ equity and cash flows for the fiscal year then ended, all in reasonable detail and setting forth in comparative form the financial statements as of the end of and for the preceding fiscal year, and audited by independent certified public accountants of nationally recognized standing. The Credit Parties shall deliver with such financial statements a certifying letter of such accountants to the Agent for the benefit of each Financing Party which shall: (i) be to the effect that such consolidated financial

statements fairly present in all material respects the financial condition and results of operations of the Parent and its Subsidiaries on a consolidated basis in accordance with GAAP, (ii) not contain a “going concern” or like qualification or exception, (iii) not contain a qualification or exception as to the scope of such audit (other than as is customary), and (iv) not indicate the occurrence or existence of any event, condition or contingency which would materially impair the prospect of payment or performance of any covenant, agreement or duty of any Credit Party under any of the Revolving Credit Loan Documents or any Operative Agreements. The Credit Parties will be deemed to have complied with the delivery requirements of this Section 8.3C(b) if (i) the Credit Parties have complied with the portion of Section 8.3C(h)(iv) that relates to Form 10-K reporting and the financial statements contained in such Form 10-K meet the requirements described in this Section 8.3C(b) and (ii) the Parent delivers to the Agent the certifying letter of accountants as described above.

(c) Concurrently with the financial statements of the Parent furnished to the Agent for the benefit of the Financing Parties pursuant to Sections 8.3C(a) and 8.3C(b), a certificate (each a “Compliance Certificate”) of the Revolving Credit Agreement Borrowers signed by an Authorized Officer of each Revolving Credit Agreement Borrower, in the form of EXHIBIT J, to the effect that, except as described pursuant to Section 8.3C(d), (i) the representations and warranties of the Credit Parties contained in Section 6.1 and in the other Operative Agreements are true in all material respects on and as of the date of such certificate with the same effect as though such representations and warranties had been made on and as of such date (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date) and the Credit Parties have performed and complied with all covenants and conditions of the Operative Agreements, (ii) no Event of Default or Default exists and is continuing on the date of such certificate and (iii) containing calculations in sufficient detail to demonstrate compliance as of the date of such financial statements with all financial covenants contained in Sections 8.3B(o) and 8.3B(p).

(d) Promptly after any officer of any Credit Party has learned of the occurrence of an Event of Default or Default, a certificate signed by an Authorized Officer of such Credit Party setting forth the details of such Event of Default or Default and the action which such Credit Party proposes to take with respect thereto.

(e) Promptly after the commencement thereof, notice of all actions, suits, proceedings or investigations before or by any Official Body or any other Person against any Credit Party or Subsidiary of any Credit Party, which involve a claim or series of claims, or which the Credit Party or Subsidiary reasonably determines would be, in excess of Twenty-Five Million and 00/100 Dollars (\$25,000,000.00) or which if adversely determined would constitute a Material Adverse Effect.

(f) Written notice to the Agent:

(i) at least ten (10) Business Days prior thereto, with respect to any proposed sale or transfer of assets pursuant to Section 8.3B(f)(vi);

(ii) within the time limits set forth in Section 8.3B(n), any material amendment to the organizational documents of any Credit Party; and

(iii) promptly following any change in organizational documents as permitted in Section 8.3B(n).

(g) Within two (2) Business Days after S&P's or Moody's announces a change in the Debt Rating, notice of such change. BLS will deliver together with such notice a copy of any written notification which any Credit Party received from the applicable rating agency regarding such change of Debt Rating.

(h) Promptly upon their becoming available to any Credit Party:

(i) any forecasts or projections of the Parent, to be supplied not later than thirty (30) days prior to commencement of the fiscal year to which any of the foregoing may be applicable,

(ii) any reports including management letters submitted to the Parent by independent accountants in connection with any annual, interim or special audit,

(iii) any reports or notices generally distributed by the Parent to its shareholders on a date no later than the date supplied to such shareholders,

(iv) periodic or current reports, including Forms 10-K, 10-Q and 8-K, proxy statements, registration statements and prospectuses (but excluding statements regarding beneficial ownership on Forms 3, 4 and 5), filed by the Parent with the SEC,

(v) a copy of any order in any proceeding to which the Parent or any of its Subsidiaries is a party issued by any Official Body which would reasonably be expected to result in a Material Adverse Effect, and

(vi) such other reports and information as any of the Financing Parties may from time to time reasonably request. BLS shall also notify the Financing Parties promptly of the enactment or adoption of any Law which would reasonably be expected to result in a Material Adverse Effect.

Information required to be delivered pursuant to sub-clause (iv) above shall be deemed to have been delivered on the date on which the Credit Parties provide notice to the Agent that such information has been posted on the Internet at www.biglots.com, www.sec.gov or another website identified in such notice and accessible by the Agent without charge; provided, that (i) such notice may be included in a certificate delivered pursuant to Section 8.3C(c) and (ii) BLS shall deliver paper copies of the information referred to in sub-clause (iv) above to the Agent if it so requests.

In the event that the Parent shall for any reason cease to be subject to the reporting requirements of the Exchange Act, it shall nonetheless furnish to the Agent reports containing substantially the same information at substantially the same times as would otherwise be required by the foregoing provisions of sub-clause (iv) above.

(i) Promptly upon becoming aware of the occurrence thereof, notice (including the nature of the event and, when known, any action taken or threatened by the Internal Revenue Service or the PBGC with respect thereto) of:

(i) any Reportable Event with respect to any Revolving Credit Agreement Borrower or any other member of the ERISA Group (regardless of whether the obligation to report said Reportable Event to the PBGC has been waived),

(ii) any Prohibited Transaction which could subject any Revolving Credit Agreement Borrower or any other member of the ERISA Group to a material civil penalty assessed pursuant to Section 502(i) of ERISA or a material Tax imposed by Section 4975 of the Code in connection with any Plan, any Benefit Arrangement or any trust created thereunder,

(iii) any assertion of material withdrawal liability with respect to any Multiemployer Plan or Multiple Employer Plan,

(iv) any partial or complete withdrawal from a Multiemployer Plan or Multiple Employer Plan by any Revolving Credit Agreement Borrower or any other member of the ERISA Group under Title IV of ERISA (or assertion thereof), where such withdrawal is likely to result in material withdrawal liability,

(v) any cessation of operations (by any Revolving Credit Agreement Borrower or any other member of the ERISA Group) at a facility in the circumstances described in Section 4062(e) of ERISA,

(vi) any withdrawal by any Revolving Credit Agreement Borrower or any other member of the ERISA Group from a Multiple Employer Plan,

(vii) a failure by any Revolving Credit Agreement Borrower or any other member of the ERISA Group to make a payment to a Plan required to avoid imposition of a Lien under Section 303(k)(1) of ERISA,

(viii) a determination that any Plan is, or is expected to be, in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code, or

(ix) any change in the actuarial assumptions or funding methods used for any Plan, where the effect of such change is to materially reduce the Plan's funding target attainment percentage or materially increase the obligation to make periodic contributions.

(j) Promptly after receipt thereof, copies of (a) all notices received by any Revolving Credit Agreement Borrower or any other member of the ERISA Group of the PBGC's intent to terminate any Plan administered or maintained by any Revolving Credit Agreement Borrower or any member of the ERISA Group, or to have a trustee appointed to administer any such Plan; and (b) at the request of the Agent or any other Financing Party each annual report (IRS Form 5500 series) and all accompanying schedules, the most recent actuarial reports, the most recent financial information concerning the financial status of each Plan administered or maintained by any Revolving Credit Agreement Borrower or any other member of the ERISA Group, and schedules showing the amounts contributed to each such Plan by or on behalf of any Revolving Credit Agreement Borrower or any other member of the ERISA Group in which any of their personnel participate or from which such personnel may derive a benefit, and each Schedule B (Actuarial Information) to the annual report filed by any Revolving Credit Agreement Borrower or any other member of the ERISA Group with the Internal Revenue Service with respect to each such Plan.

(k) Promptly upon the filing thereof, copies of any Form 500, or any successor or equivalent form to Form 500, filed with the PBGC in connection with the standard termination of any Plan.

8.4 Sharing of Certain Payments.

Except for Excepted Payments, the parties hereto acknowledge and agree that all payments due and owing by any Credit Party to any Lessor Party under the Lease or any of the other Operative Agreements (including pursuant to Section 5.3(c) of the Agency Agreement and Section 17.6(c) of the Lease) shall be made by such Credit Party directly to the Agent as more particularly provided in Section 8.3(b) hereof. The Financing Parties and the Credit Parties acknowledge the terms of Section 8.7 of this Agreement regarding the allocation of payments and other amounts made or received from time to time under the Operative Agreements and agree, that all such payments and amounts are to be allocated as provided in Section 8.7 of this Agreement.

8.5 Grant of Easements, Agreement regarding Restrictive Covenants, etc.

The Financing Parties hereby agree that, so long as no Event of Default shall have occurred and be continuing, the Lessor shall, from time to time at the request of the Lessee (and with the prior consent of the Agent, except with regard to that certain water easement requested by the Town of Apple Valley, California and consisting of a rectangular easement area near the northeast corner of the Property (the “Water Utility Easement”) which shall not require any such consent from the Agent), in connection with the transactions contemplated by the Agency Agreement, the Lease or the other Operative Agreements, (i) grant easements and other rights in the nature of easements with respect to the Property, including the Water Utility Easement, (ii) release existing easements or other rights in the nature of easements which are for the benefit of the Property, (iii) execute and deliver to any Person any instrument appropriate to confirm or effect such grants or releases, and (iv) execute and deliver to any Person such other documents or materials in connection with the acquisition, development, construction, testing or operation of the Property, including reciprocal easement agreements, construction contracts, operating agreements, development agreements, plats, replats or subdivision documents; provided, that each of the agreements referred to in this Section 8.5 (including the Water Utility Easement) shall be of the type normally executed by the Lessee in the ordinary course of the Lessee’s business and shall be on commercially reasonable terms so as not to diminish the value or limit the use of the Property in any material respect.

8.6 The Agent.

(a) Each Lessor Party hereby designates and appoints the Agent as administrative agent and collateral agent of such Lessor Party to act as specified herein and in the other Operative Agreements, and each such Lessor Party hereby authorizes the Agent as the administrative agent and collateral agent for such Lessor Party, to take such action on its behalf under the provisions of this Agreement and the other Operative Agreements and to exercise such powers and perform such duties as are expressly delegated by the terms hereof and of the other Operative Agreements, together with such other powers as are reasonably incidental thereto. Such delegation of authority shall include the execution and delivery by the Agent of release instruments in recordable form releasing the Lien of the Operative Agreements in accordance with the requirements thereof. Notwithstanding any provision to the contrary in any of the Operative Agreements, the Agent shall not have any duties or responsibilities, except those expressly set forth herein and therein, or any fiduciary relationship with any Lessor Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any of the other Operative Agreements, or shall otherwise exist against the Agent. The provisions of this Section 8.6 are solely for the benefit of the Agent and the Lessor Parties and no other Person shall have any rights as a third party beneficiary of the provisions hereof. Except as otherwise provided in this Section 8.6, in performing its functions and duties under this Agreement and the other Operative Agreements, the Agent shall act solely as Agent of the Lessor Parties. The Agent does not assume and shall not be deemed to have assumed any obligation or relationship of agency or trust with or for any Credit Party or any other Person.

(b) The Agent may execute any of its duties hereunder or under the other Operative Agreements by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) Neither the Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection herewith or in connection with any of the other Operative Agreements (except for its or such Person's own gross negligence or willful misconduct), or (ii) responsible in any manner to any Lessor Party for any recitals, statements, representations or warranties contained herein or in any of the other Operative Agreements or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection herewith or in connection with the other Operative Agreements, or enforceability or sufficiency of any of the other Operative Agreements, or for any failure of any party (not including the Agent) to any Operative Agreement to perform its obligations hereunder or thereunder. The Agent shall not be responsible to any Lessor Party for the effectiveness, genuineness, validity, enforceability, collectability or sufficiency of this Agreement, or any of the other Operative Agreements or for any representations, warranties, recitals or statements made herein or therein or made by any Credit Party in any written or oral statement or in any financial or other statements, instruments, reports, certificates or any other documents in connection herewith or therewith furnished or made by the Agent to any Lessor Party or by or on behalf of any Credit Party to the Agent or any Lessor Party or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the purchases or of the existence or possible existence of any Default or Event of Default or to inspect the properties, books or records of any of the Credit Parties.

(d) The Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, facsimile, email, cablegram, telegram, telecopy, telex, teletype or electronic message, statement, order or other document or

conversation believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to any Credit Party), independent accountants and other experts selected by the Agent with reasonable care. The Agent may deem and treat the Lessor Parties as the owner of their respective interests hereunder for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Agent in accordance with Section 10 or any other applicable provision of the Operative Agreements. The Agent, acting in its capacity as Agent, shall be fully justified in failing or refusing to take any action under this Agreement or under any of the other Operative Agreements unless it shall first receive such advice or concurrence of the Majority Secured Parties as it deems appropriate or it shall first be indemnified to its satisfaction by the Lessor Parties against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or under any of the other Operative Agreements in accordance with a request of the Majority Secured Parties or all the Lessor Parties if such request is a Unanimous Vote Matter and such request, and any action taken or failure to act pursuant thereto shall be binding upon all the Lessor Parties (including their successors and assigns).

(e) The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Agent has received notice from a Lessor Party, the Construction Agent or the Lessee referring to the Operative Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” In the event that the Agent receives such a notice, the Agent shall give prompt notice thereof to the Lessor Parties. Subject to this Section 8.6 of the Participation Agreement, the Agent shall take such action with respect to such Default or Event of Default as shall be directed by the Majority Secured Parties.

(f) Each Lessor Party expressly acknowledges that neither the Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates has made any representations or warranties to it and that no act by the Agent or any affiliate thereof hereafter taken, including any review of the affairs of the Credit Parties, shall be deemed to constitute any representation or warranty by the Agent to any Lessor Party. Each Lessor Party represents to the Agent that it has, independently and without reliance upon the Agent or any other Lessor Party, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties and made its own decision to make its purchases hereunder and enter into this Agreement. Each Lessor Party also represents that it will, independently and without reliance upon the Agent or any other Lessor Party, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties. Except for notices, reports and other documents expressly required to be furnished to the Lessor Parties by the Agent pursuant to this Agreement, the Agent shall not have any duty or responsibility to provide any Lessor Party with any credit or other information concerning the business, operations, assets, property, financial or other conditions, prospects or creditworthiness of the Credit Parties which may come into the possession of the Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

(g) The Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Credit Parties as though the Agent were not Agent hereunder.

(h) The provisions of Section 10.3 shall govern with respect to the replacement of the Agent.

(i) Regarding the Agent functioning as the collateral agent for the Secured Parties, each of the Lessor (and to the extent necessary, each of the other Lessor Parties) hereby assigns to the Agent the Lien granted by the Lessee pursuant to the Lease to secure the Lessor Advances. The Secured Parties acknowledge, agree and direct that the rights and remedies of the Secured Parties in connection with an Event of Default, including as beneficiaries of the Lien of the Security Documents, shall be exercised by the Agent on behalf of the Secured Parties as directed from time to time (a) by the Majority Secured Parties; provided, notwithstanding the foregoing, the Agent shall not take any action concerning the exercise of remedies or otherwise under any of the Operative Agreements with respect to the Property (regardless of whether a Default or Event of Default has occurred and is continuing) unless the Lessor has expressly consented to such action or (b) pursuant to Sections 8.2(c) and 12.4, by the Lessor Parties; provided, that for the avoidance of doubt, nothing in this Section 8.6 shall affect any automatic acceleration, right of acceleration or right to terminate the Lessor Parties Commitment exercised in accordance with the applicable Operative Agreements; and provided further, in all cases, the Agent shall allocate payments and other amounts received in accordance with Section 8.7. Except in the case of Excepted Payments and other rights expressly reserved by the Lessor pursuant to the Operative Agreements and subject to Section 12.4, the Agent is further appointed to provide notices under the Operative Agreements on behalf of the Lessor (as determined by the Agent, in its reasonable discretion with regard to matters concerning the Collateral) and to receive notices under the Operative Agreements on behalf of the Lessor with regard to matters concerning the Collateral. The Agent hereby accepts such appointments. The Agent hereby further agrees promptly to provide notices and other documentation received from time to time from the Credit Parties to the Lessor Parties. The parties hereto hereby agree to the provisions contained in this Section 8.6. For the avoidance of doubt and notwithstanding anything contained in this Agreement or any other Operative Agreement to the contrary, each Financing Party agrees that no Secured Party (other than the Agent) shall have the right to individually seek to realize upon any Lien granted by any Security Document, it being understood and agreed that such rights and remedies may be exercised solely by the Agent for the benefit for the Secured Parties upon the terms of the Operative Agreements; provided, if any action requires the participation of the Lessor (given the Lessor is the holder of legal title to the Property), then the Lessor shall participate in such action as reasonably requested by the Agent.

8.7 Collection and Allocation of Payments and Other Amounts.

(a) Each Credit Party has agreed pursuant to Section 5.7 and otherwise in accordance with the terms of this Agreement to pay to (i) the Agent any and all Rent (excluding Excepted Payments) and any and all other amounts of any kind or type under any of the Operative Agreements, in each case, due and owing or payable to any Financing Party and (ii) each Person as appropriate the Excepted Payments. Promptly after receipt, the Agent shall apply and allocate, in accordance with the terms of this Section 8.7, such amounts received from any Credit Party and all other payments, receipts and other consideration of any kind whatsoever received by the Agent or any Lessor Party in connection with the Collateral, the Security Documents or any of the other Operative Agreements. Ratable distributions among the Lessor Parties under this Section 8.7 shall be made based on the ratio of the various Lessor Party's outstanding Lessor Advances to the aggregate Property Cost. If, and to the extent that both Eurodollar Lessor Advances and ABR Lessor Advances are outstanding at a point in time at which payments and other amounts are to be applied and allocated pursuant to this Section 8.7, then such payments

and amounts shall first be applied and allocated to the ABR Lessor Advances and next to the Eurodollar Lessor Advances.

(b) Payments and other amounts received by the Agent from time to time in accordance with the terms of subparagraph (a) shall be applied and allocated as follows (subject in all cases to Sections 8.7(c)(i), (ii) and (iii)):

(i) Any such payment or amount identified as or deemed to be Basic Rent, any amount in respect of a Casualty referenced in the last two sentences of Section 3.4(b) of the Agency Agreement or any amount in respect of a Condemnation referenced the last two sentences of Section 3.5(b) of the Agency Agreement shall be applied and allocated by the Agent:

first, ratably to the Lessor Parties for application and allocation to the payment of accrued Lessor Yield with respect to the Lessor Advances and thereafter ratably to the outstanding Lessor Advances which are due and payable on such date;

second, if a Default or Event of Default is in effect, such excess (if any) shall be held by the Agent until the earlier of (I) the first date thereafter on which no Default or Event of Default shall be in effect (in which case such payments or returns shall then be made pursuant to “third” below) and (II) the Expiration Date (or, if earlier, the date of any acceleration), in which case such amounts shall be applied and allocated in the manner contemplated by Section 8.7(b)(iv); and

third, any excess shall be paid to the Lessee.

(ii) Except as otherwise specified pursuant to (A) Section 3.4(b) of the Agency Agreement, Section 3.5(b) of the Agency Agreement or Section 15.1(a) of the Lease (regarding amounts payable to the Construction Agent or the Lessee, as applicable) and (B) Section 8.7(b)(i) (regarding allocation of amounts referenced in the last two sentences of Section 3.4(b) of the Agency Agreement and the last two sentences of Section 3.5(b) of the Agency Agreement), if (other than as specified in the foregoing subsection (A) or (B)) on any date the Agent or the Lessor shall receive any amount in respect of any Casualty or Condemnation pursuant to Section 3.4 or 3.5 of the Agency Agreement or Section 15.1(a) of the Lease, then such amount shall be applied and allocated in accordance with Section 8.7(b)(iii)(x) hereof.

(iii) (x) An amount equal to the proceeds from the RVI Policy and an amount equal to any payment identified as proceeds of the sale or other disposition (or lease upon the exercise of remedies) of the Property or any portion thereof, including pursuant to (i) the exercise of remedies under the Security Documents (other than proceeds in an amount equal to the Termination Value which shall be allocated pursuant to Section 8.7(b)(iv)), (ii) the exercise of remedies set forth in the Agency Agreement, (iii) the exercise of remedies set forth in the Lease, or (iv) any payment in respect of excess wear and tear pursuant to Section 21.3 of the Lease, in each case shall be applied and allocated (subject to the following provisos) by the Agent, in accordance with clauses first, second and third of this Section 8.7(b)(iii)(x);

provided, prior to such allocation in accordance with clauses first, second and third of this Section 8.7(b)(iii)(x), allocations shall be made in connection with the exercise of remedies

under clause (y) of the second paragraph of Section 5.3(c) of the Agency Agreement, (a) with the Construction Agent retaining the amounts allocable to it under the waterfall provisions of clause (y) of such second paragraph of such Section 5.3(c) and the other amounts thereunder being allocated pursuant to the first paragraph of this Section 8.7(b) (which first paragraph precedes Section 8.7(b)(i)) and thereafter to the following provisions of this Section 8.7(b)(iii)(x); and (b) with the Agent retaining in favor of the Lessor Parties the one percent (1%) interest as referenced in such second paragraph of such Section 5.3(c) regarding any sale or other disposition of the Lessor's interest in the Property to the extent occurring on or prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Agency Agreement Event of Default;

provided, further, in connection with the exercise of remedies under the third paragraph of Section 5.3(c) of the Agency Agreement or Section 5.3(d) of the Agency Agreement, there shall be no allocation pursuant to clause third below and in substitution for such clause third, an allocation shall be made ratably to the Lessor Parties based on their respective Lessor Advances outstanding immediately prior to the allocation of proceeds received pursuant to such third paragraph of such Section 5.3(c) or such Section 5.3(d), as applicable; and

provided, prior to such allocation in accordance with clauses first, second and third of this Section 8.7(b)(iii)(x), allocations shall be made in connection with the exercise of remedies under Section 17.6 of the Lease, with the Lessee retaining the amounts allocable to it under such Section 17.6(c) and the other amounts thereunder being allocated pursuant to the first paragraph of this Section 8.7(b) (which first paragraph precedes Section 8.7(b)(i)) and thereafter to the following provisions of this Section 8.7(b)(iii)(x):

first, ratably to the payment to the Lessor Parties of the Lessor Yield with respect to the Lessor Advances and then to the advance amount balance of the Lessor Advances;

second, to the extent moneys remain after application and allocation pursuant to clause first above, to all other amounts owing under the Operative Agreements to the Lessor Parties then outstanding; and

third, to the extent moneys remain after application and allocation pursuant to clause first through second above, to the Lessee.

(y) Notwithstanding any provision in any Operative Agreement to the contrary (including the provisions of clause (x) of this Section 8.7(b)(iii)), any amount paid by a third party purchaser for the purchase of the Property on the Expiration Date pursuant to the election by the Lessee of the Sale Option shall be applied and allocated by the Agent in the following order of priority:

first, so much of such amount as shall be required to pay actual and reasonable costs of the Financing Parties of selling and transferring the Property, including all recordation fees, legal fees and expenses, finders' and brokers' fees and sales commissions allocable to the Property;

second, ratably to the payment to the Lessor Parties of the Lessor Yield with respect to the Lessor Advances, then to the advance balance of

the Lessor Advances and then to all other amounts owing under the Operative Agreements to the Lessor Parties then outstanding; and

third, to the extent monies remain after application and allocation pursuant to clauses first through second above, to the Lessee.

(iv) An amount equal to (A) any such payment identified as a payment pursuant to the Maximum Residual Guarantee Amount or the Deficiency Balance, as may be required under the Lease, or the Construction Period Guarantee Amount, as may be required under the Agency Agreement, (B) any other amount payable upon any exercise of remedies after the occurrence and continuance of an Event of Default not covered by Section 8.7(b)(i) or 8.7(b)(iii) above (including any amount received in connection with an acceleration which does not represent proceeds from the sale or liquidation of the Property), (C) any amounts payable by the Guarantors pursuant to Section 6B and (D) any payment of the Termination Value under the Agency Agreement or the Lease, including in connection with Article V of the Agency Agreement, Article XVII of the Lease or the exercise of the Purchase Option under Articles XVI or XX of the Lease, in each case shall be applied and allocated by the Agent:

first, ratably to the payment to the Lessor Parties of the Lessor Yield with respect to the Lessor Advances and then to the advance amount balance of the Lessor Advances; and

second, to the extent moneys remain after application and allocation pursuant to clause first above, to all other amounts owing under the Operative Agreements to the Lessor Parties then outstanding.

(v) An amount equal to any such payment identified as Supplemental Rent shall be applied and allocated by the Agent to the payment of any amounts then owing to the Financing Parties and the other parties to the Operative Agreements (or any of them) (other than any such amounts payable pursuant to the preceding provisions of this Section 8.7(b)) for which such payment is made in accordance with the provisions of Operative Agreements; provided, however, that Supplemental Rent received upon the exercise of remedies after the occurrence and continuance of an Event of Default in lieu of or in substitution of the Maximum Residual Guarantee Amount or as a partial payment thereon shall be applied and allocated as set forth in Section 8.7(b)(iv).

(vi) Any such payment or amount payable to the Agent pursuant to Section 5.11 shall be applied and allocated by the Agent ratably to the Lessor Parties for application and allocation to the payment of accrued Lessor Yield with respect to the Lessor Advances and thereafter ratably to the outstanding Lessor Advances on such date.

(vii) The Agent in its reasonable judgment shall identify the nature of each payment or amount received by the Agent and apply and allocate each such amount in the manner specified above.

(c) It is agreed that, prior to the application and allocation of amounts received by the Agent in the order described in Section 8.7(b) above or any distribution of money to the Lessee, any such amounts shall first be applied and allocated to the payment of (i) any and all sums advanced by the Agent or the Lessor (regarding the Lessor, only to the extent such amounts have not otherwise

been funded by the Lessor Parties in accordance with Section 8.9) in order to preserve the Collateral or to preserve its Lien thereon, (ii) the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing or realizing on the Collateral, or of any exercise by the Agent or the Lessor (regarding the Lessor, only to the extent such amounts have not otherwise been funded by the Lessor Parties in accordance with Section 8.9) of its rights under the Security Documents, together with reasonable attorneys' fees and expenses and court costs and (iii) any and all other amounts reasonably owed to the Agent under or in connection with the transactions contemplated by the Operative Agreements (including any accrued and unpaid administration fees).

(d) [Reserved].

8.8 Release of Property, etc.

(a) If the Lessee shall at any time purchase the Property pursuant to the Lease, or the Construction Agent shall purchase the Property pursuant to the Agency Agreement, or if the Property shall be sold in accordance with Article XXI of the Lease, then, upon payment of all amounts then due and owing by the Lessee and the Construction Agent under the Operative Agreements, the Agent is hereby authorized and directed to release the Property from the Liens created by the Operative Agreements to the extent of its interest therein. In addition, upon the Payment in Full (unless the Secured Parties retain rights in the Property at such time in accordance with the Operative Agreements), the Agent is hereby authorized and directed to release the Property from the Liens created by the Operative Agreements to the extent of its interest therein. Upon request of the Lessor or the Lessee following any such release, the Agent shall, at the sole cost and expense of the Lessee, execute and deliver to the Lessor and the Lessee such documents as the Lessor or the Lessee shall reasonably request to evidence such release.

(b) Each of the Lessor Parties irrevocably authorizes the Agent, at its option and in its discretion, to release any Guarantor from its obligations under the Guaranty set forth in Section 6B of this Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder. Upon request by the Agent at any time, the Majority Secured Parties will confirm in writing the Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this Section 8.8(b). In each case as specified in this Section 8.8(b), the Agent will, at the Lessee's expense, execute and deliver to the applicable Lessor Party such documents as such Lessor Party may reasonably request (provided, such are in form and substance reasonably satisfactory to the Agent) to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Operative Agreements and this Section 8.8(b).

8.9 Sharing of Lessor Expenses After Rent Commencement Date.

From and after the Rent Commencement Date, the Lessor Parties shall share costs and expenses (if any) to be paid by the Lessor pursuant to the Lease ratably based on their then current Lessor Parties Ownership Interest.

Section 9.

RIGHTS UNDER SECTION 5A OF THIS AGREEMENT.

9.1~~[Reserved]~~.

9.2~~[Reserved]~~.

9.3The Construction Agent's and the Lessee's Rights under Section 5A of this Agreement.

Notwithstanding anything to the contrary contained in any Operative Agreement, the Credit Parties and the Lessor Parties hereby agree that, prior to the occurrence and continuation of any Default or Event of Default, the Construction Agent and the Lessee shall have the following rights (provided, that the Lessee shall have the right to receive all notices and certificates referenced in this Section 9.3 notwithstanding the occurrence and continuance of any Default or Event of Default):

- (a) the right to provide any notices of repayment or prepayment pursuant to Section 5A.4 of this Agreement; and
- (b) the right to receive any notice and any certificate, in each case issued pursuant to Section 5A.1 through 5A.5 of this Agreement in addition to the other parties referenced therein to receive such notices and certificates.

Section 10.

TRANSFER OF INTEREST.

10.1Restrictions on Transfer.

Each Lessor Party may participate, assign or transfer all or a portion of its interest hereunder and under the other Operative Agreements in accordance with Sections 10.4 and 10.5; provided, that in the event any Lessor Party assigns or transfers all or a portion of its interest hereunder and under the other Operative Agreements, such Lessor Party shall deliver to the Agent a copy of any such assignment agreement or other documents referenced in Section 10.5; provided, further, that any such participation, assignment or other transfer by the Lessor shall be subject to the rights of the Lessee under the Lease and the other Operative Agreements and to the Lien of the applicable Security Documents and (provided, no Default or Event of Default has occurred and is continuing) shall require the consent of the Lessee (which consent may not be unreasonably withheld or delayed); provided, further, notwithstanding the foregoing, there shall be no such requirement to obtain the consent of the Lessee with regard to the matters effected pursuant to the Lessor Assignment Agreement. If any assignment of an interest of any Lessor Party to Section 10.5 or of the Lessor's interest pursuant to this Section 10.1 is made at such time that an Event of Default shall have occurred and be continuing, then the Lessee shall pay the expenses incurred in connection with such assignment. The requirements of this Agreement that the Lessor assign or transfer its right, title or interest in or to the Property only to an Eligible Assignee shall not apply to the obligations of the Lessor to transfer the Property to the Lessee or a third party purchaser pursuant to the Lease or the Agency Agreement upon payment for the Property in accordance with the terms and conditions of the Lease or the Agency Agreement.

Subject to the proviso to this sentence, no Guarantor may assign or otherwise transfer (directly or indirectly pursuant to a merger or other transaction) any of the Operative Agreements or any of their respective rights or obligations thereunder or with respect to the Property in whole or in part to any Person without the prior written consent of the Agent and the Lessor Parties; provided, however, that no such consent shall be

required for a Guarantor to engage in a transaction permitted by Sections 8.3B(e)(i), (e)(ii) or (f). Subject to the provisos to this sentence, neither the Construction Agent nor the Lessee may assign or otherwise transfer (directly or indirectly pursuant to a merger or other transaction) any of the Operative Agreements or any of their respective rights or obligations thereunder or with respect to the Property in whole or in part to any Person (other than any Subsidiary of the Parent (direct or indirect)) without the prior written consent of the Agent and the Lessor Parties; provided, however, no such consent shall be required in connection with any such assignment or other transfer (direct or indirect pursuant to a merger or other transaction) to any Subsidiary of the Parent (direct or indirect); provided, further, and notwithstanding the preceding proviso, all such assignments and other transfers (including such assignments and other transfers (direct or indirect pursuant to a merger or other transaction) to any Subsidiary of the Parent (direct or indirect)) must satisfy all the following terms of this Section 10.1 and, if such terms are not so satisfied, then any such assignment or other transfer (direct or indirect pursuant to a merger or other transaction) shall, automatically and without the need for further action, be null and void and of no further force or effect.

In addition to any consent that may be required by the second sentence of the immediately preceding paragraph (if any), neither the Construction Agent nor the Lessee may assign or otherwise transfer (directly or indirectly pursuant to a merger or other transaction) any of the Operative Agreements or any of their respective rights or obligations thereunder or with respect to the Property in whole or in part to any Person without satisfaction in full of the following conditions precedent:

(a) the Construction Agent or the Lessee, as applicable, shall provide prior written notice to the Agent of such assignment or other transfer no less than ninety (90) days prior to the anticipated effective date of such assignment or other transfer;

(b) the Credit Parties (including any such assignee or other transferee of the Construction Agent or the Lessee) shall (when applicable, as determined by the Agent, in its reasonable discretion) execute and deliver to the Agent, or cause to be so executed and delivered with regard to such assignment or other transfer and such assignee or other transferee, all agreements, documents, instruments, certificates, opinions, evidence of insurance and such other items, in each case, as required by the Agent, in its reasonable discretion, and in form and substance satisfactory to the Agent, in its reasonable discretion, including: (i) an assignment and assumption agreement pursuant to which such assignee or other transferee assumes all liabilities and obligations of the Construction Agent or the Lessee, as applicable, under or pursuant to the Operative Agreements and otherwise with regard to the Property; (ii) a certificate regarding such assignee or other transferee from the Secretary or an Assistant Secretary of such assignee or other transferee (comparable to the certificates contemplated under Section 5.3(u)); (iii) a legal opinion by counsel to such assignee or other transferee acceptable to the Agent and addressing such issues as identified by the Agent and otherwise consistent with the opinions delivered in respect of the Credit Parties on the date hereof; (iv) UCC, tax and judgment lien searches regarding such assignee or other transferee (comparable to the searches contemplated under Section 5.3(q)); (v) a reaffirmation by all remaining Credit Parties of their liabilities and obligations under or pursuant to the Operative Agreements from and after the effectiveness of such assignment or other transfer; (vi) amendments, supplements and/or restatements regarding the Operative Agreements and filings of the same in the appropriate filing offices, in each case as determined necessary or appropriate by the Agent, in its reasonable discretion; (vii) endorsements to the title insurance policy delivered pursuant to Section 5.3(g), as such are determined necessary or appropriate by the Agent, in its reasonable discretion; (viii) all Taxes, fees and other charges in connection with such assignment or other transfer, including in connection with the execution, delivery, recording, filing and registration of documents in connection with such assignment or other transfer (including with regard to any and all UCC Financing Statements), the

out-of-pocket fees and expenses incurred by the Agent (including reasonable fees of outside counsel) and the cost of title insurance endorsements shall have been paid by the Construction Agent or the Lessee, as applicable, or provision for such payment (including pursuant to a Lessor Advance) shall have been made by the Construction Agent or the Lessee, as applicable; (ix) a certificate of insurance evidencing the insurance with respect to the Property as required by the Lease or the Agency Agreement, as applicable; (x) UCC Financing Statements; and (xi) such other items in regard to such assignment or other transfer as are identified by the Agent, in its reasonable discretion; and

(c) there shall not have occurred and be continuing any Default or Event of Default, as of the effective date of such assignment or other transfer.

Notwithstanding any provision in any Operative Agreement to the contrary, no assignment or other transfer by the Construction Agent or the Lessee, as applicable, shall be effective unless and until the Agent has confirmed to its satisfaction, in its reasonable discretion, that all conditions precedent for such assignment or other transfer have been satisfied, and any such assignment or other transfer effected without such confirmation by the Agent shall (without the need for any further action) be null and void and of no further force or effect.

10.2Effect of Transfer.

From and after any transfer effected in accordance with this Section 10, the transferor shall be released, to the extent of such transfer, from its liability hereunder and under the other documents to which it is a party in respect of obligations to be performed on or after the date of such transfer; provided, however, that any transferor shall remain liable hereunder and under such other documents to the extent that the transferee shall not have assumed the obligations of the transferor thereunder. Upon any transfer by any Lessor Parties as above provided, any such transferee shall assume the obligations of the applicable Lessor Party and shall be deemed a "Lessor Party" for all purposes of such documents and each reference herein to the transferor shall thereafter be deemed a reference to such transferee for all purposes, except as provided in the preceding sentence. Notwithstanding any transfer of all or a portion of the transferor's interest as provided in this Section 10, the transferor shall be entitled to all benefits accrued and all rights vested prior to such transfer including rights to indemnification under any such document.

10.3Successor Agent.

The Agent may, at any time, resign upon twenty (20) days' written notice to the Lessor Parties and the Lessee and be removed with cause by the Lessor Parties upon thirty (30) days' written notice to the Agent. Upon any such resignation or removal, the Majority Secured Parties, in consultation with the Lessee, shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed, and shall have accepted such appointment, within thirty (30) days after the notice of resignation or notice of removal, as appropriate, then the retiring Agent shall select a successor Agent provided such successor is a Lessor Party or a commercial bank organized under the laws of the United States of America or of any State thereof, has a combined capital and surplus of at least \$100,000,000 or an Affiliate of any such commercial bank. Upon the acceptance of any appointment as the Agent hereunder by a successor, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations as the Agent under the Operative Agreements. The fees payable by the Lessee to a successor Agent shall be the same as those payable to its predecessor unless agreed between the Lessee and such successor. Notwithstanding the foregoing, the provisions of Section 8.6 shall inure to the benefit of the retiring Agent as to any actions taken or omitted to be taken by it while it was the Agent under the Operative Agreements.

10.4 Participations.

Subject to and in accordance with Section 10.1, any Lessor Party may, in the ordinary course of its business and in accordance with Applicable Law and at its own cost and expense, at any time sell to one (1) or more banks, lending institutions or other entities ((other than a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or a competitor of any Credit Party) (each, a “Participant”) participating interests in any Lessor Advance owing to such Lessor Party, any Lessor Parties Commitment of such Lessor Party or any other interest of such Lessor Party under the Operative Agreements; provided, that any such sale of a participating interest shall be in a Lessor Advance amount of at least \$2,000,000 or such lesser amount constituting such Lessor Party’s entire interest in the Operative Agreements. In the event of any such sale by a Lessor Party of a participating interest to a Participant, such Lessor Party’s obligations under the Operative Agreements to the other parties to this Agreement shall remain unchanged, such Lessor Party shall remain solely responsible for the performance thereof, such Lessor Party shall remain the holder of its Lessor Parties Interest for all purposes under the Operative Agreements, and the Credit Parties and the Agent shall continue to deal solely and directly with such Lessor Party in connection with such Lessor Party’s rights and obligations under the Operative Agreements. In no event shall any Participant have any right to approve any amendment or waiver of any provision of any Operative Agreement, or any consent to any departure by any Credit Party or any other Person therefrom, except to the extent that such amendment, waiver or consent would (a) reduce any Lessor Advance or Lessor Yield on any Lessor Advance, or postpone the date of the final maturity of any Lessor Advance, in each case to the extent subject to such participation or (b) release all or substantially all of the collateral pursuant to the Security Documents. The Credit Parties agree that, while an Event of Default shall have occurred and be continuing, if amounts outstanding by any Credit Party under the Operative Agreements are due or unpaid, or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall, to the maximum extent permitted by Applicable Law, but only after obtaining the prior written consent of the Majority Secured Parties prior to exercising any right of set-off, be deemed to have the right of set-off in respect of its participating interests in amounts owing directly to it as a Lessor Party, provided, that in purchasing such participating interest, such Participant shall be deemed to have agreed to share with the Lessor Parties the proceeds thereof as provided in Section 12.15 as fully as if it were a Lessor Party hereunder. The Credit Parties also agree that each Participant shall be entitled to the benefits of, and shall be subject to the obligations and limitations under, Sections 11.2, 11.3 and 11.4 with respect to its participation in the Lessor Parties Commitments and the Lessor Advances outstanding from time to time as if it was a Lessor Party; provided, that such Participant shall have complied with the requirements of said Sections and provided, further, that no Participant shall be entitled to receive any greater amount pursuant to any such Section than the transferor Lessor Party would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lessor Party to such Participant had no such transfer occurred and provided, further, that the Lessor Parties and the Participants, taken as a whole, shall not be entitled to receive any greater amount pursuant to any such Section than the original Lessor Party (prior to any participation) would have been entitled to receive pursuant to such Section.

10.5 Assignments.

(a) Subject to and in accordance with Section 10.1, any Lessor Party may, in the ordinary course of its business and in accordance with Applicable Law and at its own cost and expense, at any time and from time to time assign to any Eligible Assignee (each, a “Purchasing Lessor Party”), all or any part of its rights and obligations under this Agreement and the other Operative Agreements pursuant to an assignment and acceptance, in form and substance reasonably acceptable to the Agent, executed by such Purchasing Lessor Party, such assigning Lessor Party and the Agent and delivered to the Agent for its acceptance and recording in the Register; provided, that no such assignment to

a Purchasing Lessor Party (other than any Lessor Party or any affiliate thereof) shall be in an aggregate advance amount less than \$2,000,000 (other than in the case of an assignment of all of a Lessor Party's interests under the Operative Agreements); provided, further, to the extent no Default or Event of Default shall have occurred and be continuing, any such assignment (other than to a Lessor Party or its Affiliates) shall be subject to the consent (not to be unreasonably withheld or delayed) by the Lessee; provided, further, upon the occurrence and during the continuance of any Event of Default, (i) any Lessor Party may assign to any Person (regardless of whether such Person is an Eligible Assignee; provided that, in no event, shall any assignment be made to any competitor of any Credit Party even if an Event of Default has occurred) all or any part of such Lessor Party's rights and obligations under the Operative Agreements pursuant to an assignment and acceptance, in form and substance reasonably satisfactory to the Agent, and (ii) there shall be no minimum aggregate advance amount required for any such assignment. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such assignment and acceptance, (x) the Purchasing Lessor Party thereunder shall be a party hereto and, to the extent provided in such assignment and acceptance, have the rights and obligations of a Lessor Party hereunder with a Lessor Parties Interest as set forth therein, and (y) the assigning Lessor Party thereunder shall, to the extent provided in such assignment and acceptance, be released from its obligations under this Agreement (and, in the case of an assignment and acceptance covering all of the remaining portion of an assigning Lessor Party's rights and obligations under the Operative Agreements, such assigning Lessor Party shall cease to be a party hereto).

(b) Upon its receipt of an assignment and acceptance, in form and substance reasonably satisfactory to the Agent, executed by an assigning Lessor Party, a Purchasing Lessor Party and the Agent together with payment to the Agent of a registration and processing fee of \$3,500 (which, subject to Section 5A.7(b), shall not be payable by the Construction Agent or the Lessee), the Agent shall (i) promptly accept such assignment and acceptance and (ii) promptly after the effective date determined pursuant thereto, record the information contained therein in the Register and give notice of such acceptance and recordation to the Lessee and the Lessor Parties.

(c) Each Purchasing Lessor Party, by executing and delivering an assignment and acceptance,

(i) agrees to execute and deliver to the Agent, as promptly as practicable, the documentation described in Section 11.2(e), as applicable;

(ii) represents and warrants to the Lessee and the Agent that the form so delivered is true and accurate and that, as of the effective date of the assignment and acceptance, each of such Purchasing Lessor Party's lending offices is entitled to receive payments of advance amount and Lessor Yield under or in respect of this Agreement without withholding or deduction for or on account of any U.S. Taxes;

(iii) agrees to update the forms delivered pursuant to clause (i) if such forms expire or become obsolete or inaccurate unless an event has occurred which renders the relevant form inapplicable (it being understood that if the applicable form is not so delivered, payments under or in respect of the Operative Agreements may be subject to withholding and deduction and such Purchasing Lessor Party may not have any rights to indemnity for such withholding and deduction under Section 11.2(e) as provided therein);

(iv) agrees to promptly notify the Lessee and the Agent in writing if it ceases to be entitled to receive payments of advance amount and Lessor Yield under or in respect of the Operative Agreements without withholding or deduction for or on account of any U.S. Taxes (it being understood that payments under or in respect of the Operative Agreements may be subject to withholding and deduction in such event);

(v) acknowledges that in the event it ceases to be exempt from withholding and/or deduction of U.S. Taxes, the Agent may withhold and/or deduct the applicable amount from any payments to which such assignee Lessor Party would otherwise be entitled, without any liability to such assignee Lessor Party therefor; and

(vi) agrees to indemnify the Lessee and the Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs or expenses that result from such assignee Lessor Party's breach of any such representation, warranty or agreement;

provided, however, that the foregoing provisions of this Section 10.5 shall not apply to any Purchasing Lessor Party to the extent it is not legally eligible to provide such forms and is entitled to indemnification from U.S. withholding taxes under Section 11.2(e) under the circumstances described in clause (a) of Section 11.2(e)(i).

(d) Any Lessor Party party to this Agreement may, from time to time and without the consent of the Lessee or any other Person, pledge or assign for security purposes any portion of its Lessor Parties Interest or any other interests in the Operative Agreements to any Federal Reserve Bank.

(e) In connection with any assignment of rights and obligations under the Operative Agreements of any Defaulting Lessor Party, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Lessee and the Agent, the applicable Pro Rata Share of Lessor Advances previously requested but not funded by the Defaulting Lessor Party, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lessor Party to the Agent or any Lessor Party under any Operative Agreement (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full Pro Rata Share of all Lessor Advances in accordance with the percentage corresponding to the applicable Lessor Parties Commitment of the assignor. Notwithstanding the foregoing, in the event that any assignment of rights and obligations under the Operative Agreements of any Defaulting Lessor Party shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lessor Party for all purposes of the Operative Agreements until such compliance occurs. No assignment by a Defaulting Lessor Party will constitute a waiver or release of any claim of any party hereunder arising from that Lessor Party's having been a Defaulting Lessor Party. Any assignment or transfer by a Lessor Party of rights or obligations under the Operative Agreements that does not comply with this subsection shall be treated for purposes of the Operative Agreements as a sale by such Lessor Party of a participation in such rights and obligations in accordance with this Agreement.

10.6The Register; Disclosure.

The Agent shall maintain for the benefit of the Lessor Parties a copy of each assignment and acceptance delivered to it and a register (the “Register”) for the recordation of the names and addresses of the Lessor Parties, the Lessor Parties Commitments of the Lessor Parties, the Commitment Percentages of the Lessor Parties, the Percentage Shares of the Lessor Parties and the amount of outstanding Lessor Advances owing to each Lessor Party from time to time. The entries in the Register shall be conclusive, in the absence of clearly demonstrable error, and the Credit Parties, the Agent and the Lessor Parties may treat each Person whose name is recorded in the Register as the owner of the Lessor Parties Interests recorded therein for all purposes of the Operative Agreements. The Register shall be available for inspection by the Lessee or any Lessor Party at any reasonable during normal business hours of the Agent and from time to time upon reasonable notice.

Section 11. INDEMNIFICATION.

11.1General Indemnity.

Subject to Sections 11.2 (regarding indemnification matters concerning Impositions) and 11.6, whether or not any of the transactions contemplated hereby shall be consummated, the Indemnity Provider hereby assumes liability for and agrees to defend, indemnify and hold harmless each Indemnified Person on an After Tax Basis from and against any Claims which may be imposed on, incurred by or asserted against an Indemnified Person by any third party (including any other Indemnified Person), including Claims arising from the negligence of such Indemnified Person (but, in each case, not to the extent (1) such Claims arise from the gross negligence or willful misconduct of such Indemnified Person itself, as determined by a court of competent jurisdiction in a final nonappealable judgment, as opposed to gross negligence or willful misconduct imputed to such Indemnified Person; (2) disputes solely between or among Indemnified Persons and not relating to or in connection with acts or omissions by the Lessee or any other Credit Party; (3) such Claims result from a claim brought by any Credit Party against an Indemnified Person for breach in bad faith of such Indemnified Person’s obligations hereunder or under any other Operative Agreement, if such Credit Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction; (4) the Indemnity Provider was not given notice of the subject claim and the opportunity to participate in the defense thereof, at its expense (except that each Credit Party shall remain liable to the extent such failure to give notice does not result in a loss of such Credit Party); or (5) the same results from a compromise or settlement agreement entered into without the consent of the Indemnity Provider, which shall not be unreasonably withheld), whether or not such Indemnified Person shall also be indemnified as to any such Claim by any other Person and whether or not such Claim is initiated after the Termination Date, so long as such Claim arises out of an act or omission (or other circumstance or condition of any kind or description) which arose or occurred prior to the Termination Date, in any way relating to or arising or alleged to relate to, or arise out of the execution, delivery, performance or enforcement of this Agreement, the Lease, the Agency Agreement or any other Operative Agreement or on or with respect to the Property or any component thereof, including Claims in any way relating to or arising or alleged to arise out of (a) the financing, refinancing, purchase, acceptance, rejection, ownership, design, construction, refurbishment, development, delivery, nondelivery, leasing, subleasing, possession, use, occupancy, operation, maintenance, repair, modification, transportation, condition, sale, return, repossession (whether by summary proceedings or otherwise), or any other disposition of the Property or any part thereof, including the acquisition, holding or disposition of any interest in the Property, lease or agreement comprising a portion of any thereof; (b) any latent or other defects in the Property or any portion thereof whether or not discoverable by an Indemnified Person or the Indemnity Provider; (c) any violation or alleged violation of law or in tort

(strict liability or otherwise); (d) any Claim based upon a violation or alleged violation of the terms of any restriction, easement, condition or covenant or other matter affecting title to the Property; (e) any violation of or noncompliance with (or alleged violation or noncompliance with) any Environmental Laws, any Environmental Claims or any loss of or damage to any property or the environment relating to the Property, the Lease or the Indemnity Provider; (f) the Operative Agreements, or any transaction contemplated thereby (including the formation, continuance, operation and ultimate dissolution and liquidation of the Lessor) or any amendment, modification or waiver thereof or the exercise of remedies under any Operative Agreement following the occurrence and continuance of any Event of Default; (g) any breach by the Indemnity Provider, the Construction Agent or any Guarantor of any of its representations or warranties under the Operative Agreements to which the Indemnity Provider, the Construction Agent or any Guarantor is a party or failure by the Indemnity Provider, the Construction Agent or any Guarantor to perform or observe any covenant or agreement to be performed by it under any of the Operative Agreements; (h) the making of any Modifications in violation of the Operative Agreements or any standards imposed by any insurance policies required to be maintained by the Lessee pursuant to the Lease which are in effect at any time with respect to the Property or any part thereof; (i) any Claim for patent, trademark or copyright infringement; (j) the transactions contemplated hereby or by any other Operative Agreement, in respect of the application of Parts 4 and 5 of Subtitle B of Title I of ERISA; (k) personal injury, death or property damage, including Claims based on strict or absolute liability in tort; (l) any fees, expenses and/or other assessments by any business park or any other applicable entity with oversight responsibility for the Property; (m) the retaining or employment of any broker, finder or financial advisor by any Credit Party to act on its behalf in connection with this Agreement or the other Operative Agreements; (n) Claims arising from any public improvements with respect to the Property resulting in any change or special assessments being levied against the Property or any plans to widen, modify or realign any street or highway adjacent to the Property, or any Claim for utility "tap-in" fees; (o) except in all cases for the existence of Lessor Liens and Liens created under the Operative Agreements in favor of any Financing Party, the existence of any Lien on or with respect to the Property, the Improvements or any Equipment relating thereto, title thereto, any interest therein or on any Basic Rent or Supplemental Rent, including any Liens which arise out of the possession, use, occupancy, construction, repair or rebuilding of the Property or by reason of labor or materials furnished or claimed to have been furnished to the Lessee or the Lessor or any predecessor in title, or any of its contractors or agents or by reason of the financing of any personalty or equipment purchased or leased by the Lessee or the Lessor or any predecessor in title or Modifications constructed by the Lessee.

If a written Claim is made against any Indemnified Person or if any proceeding shall be commenced against such Indemnified Person (including a written notice of such proceeding), for any Claim, such Indemnified Person shall promptly notify the Indemnity Provider in writing and shall not take action with respect to such Claim without the consent of the Indemnity Provider for thirty (30) days after the receipt of such notice by the Indemnity Provider; provided, however, that in the case of any such Claim, if action shall be required by law or regulation to be taken prior to the end of such period of thirty (30) days, such Indemnified Person shall endeavor to, in such notice to the Indemnity Provider, inform the Indemnity Provider of such shorter period, and no action shall be taken with respect to such Claim without the consent of the Indemnity Provider before seven (7) days before the end of such shorter period; provided, further, that the failure of such Indemnified Person to give the notices referred to in this sentence shall not diminish the Indemnity Provider's obligation hereunder except to the extent such failure precludes in any material respect the Indemnity Provider from contesting such Claim.

If, within thirty (30) days of receipt of such notice from the Indemnified Person (or such shorter period as the Indemnified Person has notified the Indemnity Provider is required by law or regulation for the Indemnified Person to respond to such Claim), the Indemnity Provider shall request in writing that such Indemnified Person respond to such Claim, the Indemnified Person shall, at the expense of the Indemnity

Provider, in good faith conduct and control such action (including by pursuit of appeals) by, in the sole discretion of the Person conducting and controlling such action (1) resisting payment thereof, (2) not paying the same except under protest, if protest is necessary and proper, (3) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, or (4) taking such other action as is reasonably requested by the Indemnity Provider from time to time (provided, however, that (A) if such Claim, in the Indemnity Provider's reasonable discretion, can be pursued by the Indemnity Provider on behalf of or in the name of such Indemnified Person, the Indemnified Person, at the Indemnity Provider's request, shall allow the Indemnity Provider to conduct and control the response to such Claim unless such Claim cannot be pursued independently from any other claim involving such Indemnified Person or unless such Claim is unrelated to the Property or the transactions contemplated by the Operative Agreements and (B) in the case of any Claim (and notwithstanding the provisions of the foregoing subsection (A)), the Indemnified Person may require the Indemnity Provider to conduct and control the response to such Claim (with counsel to be selected by the Indemnity Provider and consented to by such Indemnified Person, such consent not to be unreasonably withheld); provided, however, that any Indemnified Person may retain separate counsel at the expense of the Indemnity Provider if, in the written opinion of counsel to the Indemnified Person reasonably acceptable to the Indemnity Provider (the expense of which opinion shall be paid by the Indemnity Provider), use of counsel of the Indemnity Provider's choice would be expected to give rise to a conflict of interest between such Indemnified Person and the Indemnity Provider).

The party controlling the response to any Claim shall consult in good faith with the non-controlling party and shall keep the non-controlling party reasonably informed as to the conduct of the response to such Claim; provided, that all decisions ultimately shall be made in the discretion of the controlling party. The parties agree that an Indemnified Person may at any time decline to take further action with respect to the response to such Claim and may settle such Claim if such Indemnified Person shall waive its rights to any indemnity from the Indemnity Provider that otherwise would be payable in respect of such Claim (and any future Claim, the pursuit of which is precluded by reason of such resolution of such Claim) and shall pay to the Indemnity Provider any amount previously paid or advanced by the Indemnity Provider pursuant to this Section 11.1 by way of indemnification or advance for the payment of an amount regarding such Claim (not including the expenses of the contest).

Notwithstanding the foregoing provisions of this Section 11.1, an Indemnified Person shall not be required to take any action and the Indemnity Provider shall not be permitted to respond to any Claim in its own name or that of the Indemnified Person unless (A) the Indemnity Provider shall have agreed in writing to pay and shall pay to such Indemnified Person on demand and on an After Tax Basis all reasonable costs, losses and expenses that such Indemnified Person actually incurs in connection with such Claim, including all reasonable legal, accounting and investigatory fees and disbursements and the Indemnity Provider shall have agreed in writing to indemnify such Indemnified Person in respect of the Claim if and to the extent the contest is not successful, (B) the Indemnified Person shall have reasonably determined that the action to be taken will not result in any material danger of sale, forfeiture or loss of the Property, or any part thereof or interest therein, will not interfere with the payment of Rent, and will not result in risk of criminal liability or civil penalty or risk of sale, forfeiture or loss of or the creation of any Lien (other than a Permitted Lien) on the Property, (C) if such Claim shall involve the payment of any amount prior to the resolution of such Claim, the Indemnity Provider shall provide to the Indemnified Person an interest-free advance in an amount equal to the amount that the Indemnified Person is required to pay (with no additional net after-Tax cost to such Indemnified Person) prior to the date such payment is due, (D) in the case of an appeal of an adverse determination respecting a Claim that must be pursued in the name of an Indemnified Person (or an Affiliate thereof), the Indemnity Provider shall have provided to such Indemnified Person an opinion of independent counsel selected by the Indemnity Provider and reasonably satisfactory to the Indemnified Person stating that a reasonable basis exists to pursue such an appeal, and (E) no Default or Event of Default shall have

occurred and be continuing. In no event shall an Indemnified Person be required to appeal an adverse judicial determination to the United States Supreme Court. In addition, an Indemnified Person shall not be required to contest any Claim in its name (or that of an Affiliate) if the subject matter thereof shall be of a continuing nature and shall have previously been decided adversely by a court of competent jurisdiction pursuant to the contest provisions of this Section 11.1, unless there shall have been a change in Law (or interpretation thereof) and the Indemnified Person shall have received, at the Indemnity Provider's expense, an opinion of independent counsel selected by the Indemnity Provider and reasonably acceptable to the Indemnified Person stating that as a result of such change in Law (or interpretation thereof), it is more likely than not that the Indemnified Person will prevail in such contest. In no event shall the Indemnity Provider be permitted to adjust or settle any Claim without the consent of the Indemnified Person to the extent any such adjustment or settlement involves, or is reasonably likely to involve, any performance by or adverse admission by or with respect to the Indemnified Person.

11.2 General Tax Indemnity.

(a) Subject to Section 11.6, the Indemnity Provider shall pay and assume liability for, and does hereby agree to indemnify, protect and defend the Property and all Indemnified Persons, and hold them harmless against, all Impositions on an After Tax Basis, and all payments pursuant to the Operative Agreements shall be made free and clear of and without deduction or Withholding for any and all present and future Impositions, except as required by Applicable Law. If deduction or Withholding from any such payment is required by Applicable Law and such deduction or Withholding is subject to indemnification by the Indemnity Provider under the provisions of this Section 11.2, then such payment amount shall be increased as necessary so that after making all required deductions and Withholdings (including deductions and Withholdings applicable to additional sums payable under this Section 11.2(a)) the applicable recipient of such payment receives an amount equal to the sum it would have received had no such deduction or Withholding been made.

(b) Notwithstanding anything to the contrary in Section 11.2(a) hereof, the following shall be excluded from the indemnity required by Section 11.2(a):

(i) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, value added, transfer or property Taxes) that are imposed on or measured by net income (however denominated and including the Texas franchise Tax on taxable margin, Taxes based on capital gains and minimum Taxes), net worth, or capital stock, franchise Taxes, gross receipts Taxes and branch profits Taxes, in each case, imposed as a result of an Indemnified Person (A) being organized under the laws of, or having its principal office or, in the case of any Financing Party, its applicable lending office located in, the jurisdiction imposing such Taxes (or any political subdivision thereof) or (B) having a present or former connection with the jurisdiction imposing such Taxes; provided, that such Taxes shall not be excluded under this subparagraph (i) to the extent the sole connection between such Indemnified Person and the jurisdiction imposing such Taxes is (I) the location, possession or use of the Property in, the location or the operation of the Lessee or any use of the Property in, or the making of payments by or on behalf of the Lessee under the Operative Agreements from, the jurisdiction imposing such Taxes and/or (II) the activities of any one or more of the Indemnified Persons in the jurisdiction imposing the Taxes in connection with its or their enforcement of remedies under the Operative Agreements; provided, further, that this clause (i) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made; and

(ii) any Taxes which are imposed on an Indemnified Person as a result of the gross negligence or willful misconduct of such Indemnified Person itself, as determined by a court of competent jurisdiction in a final nonappealable judgment (as opposed to gross negligence or willful misconduct imputed to such Indemnified Person), but not Taxes imposed as a result of ordinary negligence of such Indemnified Person.

(c) (i) Subject to the terms of Sections 11.2(f) and 11.6, the Indemnity Provider shall pay or cause to be paid all Impositions directly to the applicable Governmental Authority where feasible and otherwise to the Indemnified Person, as appropriate, and the Indemnity Provider shall at its own expense, upon such Indemnified Person's reasonable request, furnish to such Indemnified Person copies of official receipts or other satisfactory proof evidencing such payment.

(ii) In the case of Impositions for which no contest is conducted pursuant to Section 11.2(f) and which the Indemnity Provider pays directly to the applicable Governmental Authority, the Indemnity Provider shall (subject to Section 11.6) pay such Impositions prior to the latest time permitted by the relevant Governmental Authority for timely payment. In the case of Impositions for which the Indemnity Provider reimburses an Indemnified Person, the Indemnity Provider shall do so within thirty (30) days after receipt by the Indemnity Provider of demand by such Indemnified Person describing in reasonable detail the nature of the Imposition and the basis for the demand (including the computation of the amount payable), accompanied by receipts, if available, or other reasonable evidence of such demand (and shall make advances with respect to such Impositions in the manner and to the extent provided by Section 11.2(f) and 11.1 prior to such date). In the case of Impositions for which a contest is conducted pursuant to Section 11.2(f), the Indemnity Provider shall (subject to Section 11.6) pay such Impositions or reimburse such Indemnified Person for such Impositions, to the extent not previously paid, advanced or reimbursed pursuant to subsection (a) or (f), prior to the latest time permitted by the relevant Governmental Authority for timely payment after conclusion of all contests under Section 11.2(f) (and shall make advances with respect to such Impositions in the manner and to the extent provided by Section 11.2(f) and 11.1 prior to such date).

(iii) At the Indemnity Provider's request, the amount of any indemnification payment by the Indemnity Provider pursuant to subsection (a) shall be verified and certified by an independent public accounting firm mutually acceptable to the Indemnity Provider and the Indemnified Person. The fees and expenses of such independent public accounting firm shall be paid by the Indemnity Provider.

(d) The Indemnity Provider shall be responsible for preparing and filing (i) any real and personal property or ad valorem Tax returns in respect of the Property and (ii) any other Tax returns required of the Lessor respecting the transactions described in the Operative Agreements (but in the case of Tax returns described in clause (ii), other than returns with respect to Taxes excluded from indemnification pursuant to Section 11.2(b)(i)). In case any report or Tax return shall be required to be made with respect to any Tax indemnified by the Indemnity Provider under subsection (a), the Indemnity Provider, at its sole cost and expense, shall notify the relevant Indemnified Person of such requirement and (except if such Indemnified Person notifies the Indemnity Provider that such Indemnified Person intends to prepare and file such report or return) (A) to the extent required or permitted by and consistent with Legal Requirements, make and file in the Indemnity Provider's name such return, statement or report; and (B) in the case of any other such return, statement or report required to be made in the name of such Indemnified Person, advise

such Indemnified Person of such fact and prepare such return, statement or report for filing by such Indemnified Person or, where such return, statement or report shall be required to reflect items in addition to any obligations of the Indemnity Provider under or arising out of subsection (a), provide such Indemnified Person, at the Indemnity Provider's expense, with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of the Indemnity Provider under or arising out of subsection (a). Such Indemnified Person shall, upon the Indemnity Provider's request and at the Indemnity Provider's expense, provide any data maintained by such Indemnified Person (and not otherwise available to or within the control of the Indemnity Provider) with respect to the Property which the Indemnity Provider may reasonably be required to prepare any required Tax returns or reports.

(e) As between the Indemnity Provider on one hand, and each Financing Party on the other hand, the Indemnity Provider shall be responsible for, and the Indemnity Provider shall indemnify and hold harmless each Financing Party (including, for purposes of this Section 11.2(e), each Participant to the extent such Participant is entitled to the benefit of this provision pursuant to Section 10.4) (without duplication of any indemnification required by subsection (a) and subject to Section 11.6) on an After Tax Basis against, any obligation for United States or foreign withholding Taxes or similar levies, imposts, charges, fees, deductions or withholdings (collectively, "Withholdings") imposed in respect of the Lessor Yield payable on the Lessor Advances, Rent payable under the Lease or with respect to any other payments under the Operative Agreements to be made without deduction, withholding or set-off (all such payments being referred to herein as "Exempt Payments") (including, if any Financing Party receives a demand for such payment from any Governmental Authority or a Withholding is otherwise required with respect to any Exempt Payment, the Indemnity Provider shall discharge such demand on behalf of such Financing Party); provided, however, that the obligation of the Indemnity Provider under this Section 11.2(e) shall not apply to:

(i) Withholdings on any Exempt Payment to any Financing Party which is a Non-U.S. Person unless such Financing Party is, on the date hereof (or on the date it becomes a Financing Party hereunder) and on the date of any change in the principal place of business or the lending office of such Financing Party, entitled to submit and submits to the Agent (which shall be available to the Indemnity Provider upon request) an executed IRS Form W-8BEN, Form W-8BEN-E, Form W-8IMY, Form W-8ECI or other applicable forms (relating to such Financing Party and entitling it to a complete exemption from Withholding on such Exempt Payment) or is otherwise subject to exemption from Withholding with respect to such Exempt Payment (except (a) in the case of a transferee, if the transferring Financing Party was being indemnified against Withholdings at the time of transfer as a result of a change in Law after the Initial Closing Date (or, if later, the date the transferring Financing Party became a Financing Party hereunder) or (b) where the failure of the exemption results from a change in the principal place of business of the Lessee);

(ii) Any U.S. Taxes imposed solely by reason of the failure by a Non-U.S. Person to comply with applicable certification, information, documentation or other reporting requirements concerning the nationality, residence, identity or connections with the United States of America of such Non-U.S. Person if such compliance is required by statute or regulation of the United States as a precondition to relief or exemption from such U.S. Taxes (but only if the Non-U.S. Person can legally comply with such requirement);

(iii) Withholdings on any Exempt Payment to any Financing Party which is a U.S. Person unless such Financing Party has delivered to the Agent (which shall be available to the Indemnity Provider upon request), on or before the date it becomes a Financing Party hereunder, an executed IRS Form W-9 certifying that such Financing Party is exempt from U.S. federal backup withholding Tax; or

(iv) U.S. federal Withholdings imposed under FATCA.

For the purposes of this Section 11.2(e), (A) “U.S. Person” shall mean a citizen, national or resident of the United States, a corporation, partnership or other entity created or organized in or under any laws of the United States or any State thereof, or any estate or trust that is subject to Federal income taxation regardless of the source of its income and (B) “U.S. Taxes” shall mean any present or future Tax, assessment or other charge or levy imposed by or on behalf of the United States or any taxing authority thereof or therein.

If a Financing Party or an Affiliate with whom such Financing Party files a consolidated Tax return (or equivalent) subsequently receives the benefit in any country of a Tax credit or an allowance resulting from U.S. Taxes with respect to which it has received a payment of an additional amount under this Section 11.2(e), so long as no Event of Default has occurred and is continuing (or at such time as such Event of Default is no longer continuing), such Financing Party will pay to the Indemnity Provider such part of that benefit as in the reasonable opinion of such Financing Party will leave it (after such payment) in a position no more and no less favorable than it would have been in if no additional payment had been required to be paid, provided always that (i) such Financing Party will be the sole judge of the amount of any such benefit and of the date on which it is received, (ii) such Financing Party will have the absolute discretion as to the order and manner in which it employs or claims Tax credits and allowances available to it and (iii) such Financing Party will not be obliged to disclose to the Indemnity Provider any information regarding its Tax affairs or Tax computations.

Each U.S. Person and Non-U.S. Person that shall become a Financing Party after the date hereof shall, upon the effectiveness of the related transfer or otherwise upon becoming a Financing Party hereunder, be required to provide all of the forms and statements referenced above or other evidences of exemption from Withholdings to the Agent, which shall be available to the Indemnity Provider upon request (unless the transferor of such Financing Party was being indemnified against Withholding at the time of the transfer as a result of a change in Law after the Initial Closing Date, in which case such forms and statements shall evidence a rate of Withholding that does not exceed the rate of Withholding applicable to Exempt Payments to the transferor).

(f) If an Imposition is made against any Indemnified Person or if any proceeding shall be commenced against such Indemnified Person (including a written notice of such proceeding), for any Imposition, such Indemnified Person shall promptly notify the Indemnity Provider in writing and shall not take action with respect to such Imposition without the consent of the Indemnity Provider (such consent not to be unreasonably withheld, conditioned or delayed) for thirty (30) days after the receipt of such notice by the Indemnity Provider; provided, however, that in the case of any such Imposition, if action shall be required by Applicable Law to be taken prior to the end of such period of thirty (30) days, such Indemnified Person shall, in such notice to the Indemnity Provider, inform the Indemnity Provider of such shorter period, and no action shall be taken with respect to such Imposition without the consent of the Indemnity Provider (such consent not to be unreasonably withheld, conditioned or delayed) before seven (7) days before the end of such shorter period;

provided, further, that the failure of such Indemnified Person to give the notices referred to in this sentence shall not diminish the Indemnity Provider's obligation hereunder except to the extent such failure effectively precludes the Indemnity Provider from contesting such Imposition.

If, within thirty (30) days of receipt of such notice from the Indemnified Person (or such shorter period as the Indemnified Person has notified the Indemnity Provider is required by Applicable Law for the Indemnified Person to respond to such Imposition), the Indemnity Provider shall request in writing that such Indemnified Person contest such Imposition, the Indemnified Person shall, at the expense of the Indemnity Provider, in good faith conduct and control such action with counsel selected by the Indemnified Person and consented to by the Indemnity Provider, such consent not to be unreasonably withheld (including by pursuit of appeals) by, in the sole discretion of the Person conducting and controlling such action (1) resisting payment thereof, (2) not paying the same except under protest, if protest is necessary and proper, (3) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, or (4) taking such other action as is reasonably requested by the Indemnity Provider from time to time provided that such other action cannot reasonably be expected to have any adverse effect on the Indemnified Person (provided, however, that (A) if such contest, in the Indemnified Person's reasonable discretion, can be pursued by the Indemnity Provider in its own name, the Indemnified Person, at the Indemnity Provider's request, shall allow the Indemnity Provider to conduct and control the contest of such Imposition unless such Imposition cannot be pursued independently from any other claim involving such Indemnified Person or unless such Imposition is unrelated to the Property or the transactions contemplated by the Operative Agreements and (B) in the case of any Imposition (and notwithstanding the provisions of the foregoing subsection (A)), the Indemnified Person may require the Indemnity Provider to conduct and control the contest of such Imposition (with counsel to be selected by the Indemnity Provider and consented to by such Indemnified Person, such consent not to be unreasonably withheld); provided, however, that any Indemnified Person may retain separate counsel at the expense of the Indemnity Provider if, in the written opinion of counsel to the Indemnified Person reasonably acceptable to the Indemnity Provider (the expense of which opinion shall be paid by the Indemnity Provider), use of counsel of the Indemnity Provider's choice would be expected to give rise to a conflict of interest between such Indemnified Person and the Indemnity Provider).

The party controlling the contest of any Imposition shall consult in good faith with the non-controlling party and shall keep the non-controlling party reasonably informed as to the conduct of the contest of such Imposition; provided, that all decisions ultimately shall be made in the discretion of the controlling party. The parties agree that an Indemnified Person may at any time decline to take further action with respect to the contest of such Imposition and may settle such contest if such Indemnified Person shall waive its rights to any indemnity from the Indemnity Provider that otherwise would be payable in respect of such Imposition (and any future Imposition, the pursuit of which is precluded by reason of such resolution of such contest) and shall pay to the Indemnity Provider any amount previously paid or advanced by the Indemnity Provider pursuant to this Section 11.2 by way of indemnification or advance for the payment of an amount regarding such Imposition (not including the expenses of the contest).

Notwithstanding the foregoing provisions of this Section 11.2(f), an Indemnified Person shall not be required to take any action and the Indemnity Provider shall not be permitted to contest any Imposition in its own name or that of the Indemnified Person unless (A) the Indemnity Provider shall have agreed in writing to pay and shall pay to such Indemnified Person on demand and on an After Tax Basis all reasonable costs, losses and expenses that such Indemnified Person actually

incurs in connection with such contest, including all reasonable legal, accounting and investigatory fees and disbursements and the Indemnity Provider shall have agreed in writing to indemnify such Indemnified Person in respect of the Imposition if and to the extent the contest is not successful, (B) the Indemnified Person shall have reasonably determined that the action to be taken will not result in any material danger of sale, forfeiture or loss of the Property, or any part thereof or interest therein, will not interfere with the payment of Rent, and will not result in risk of criminal liability or risk of sale, forfeiture or loss of or the creation of any Lien (other than a Permitted Lien) on the Property, (C) if such contest shall involve the payment of any amount prior to the resolution of such contest, the Indemnity Provider shall provide to the Indemnified Person an interest-free advance in an amount equal to the amount that the Indemnified Person is required to pay (with no additional net cost, on an After Tax Basis, to such Indemnified Person) prior to the date such payment is due, (D) in the case of a contest of an Imposition that cannot and is not to be pursued in the name of the Indemnity Provider, the Indemnity Provider shall have provided to such Indemnified Person an opinion of independent counsel selected by the Indemnity Provider and reasonably satisfactory to the Indemnified Person stating that a reasonable basis exists to pursue the contest (or in the case of an appeal of adverse judicial determination, the position asserted in such appeal will more likely than not prevail), and (E) no Default or Event of Default shall have occurred and be continuing. In no event shall an Indemnified Person be required to appeal an adverse judicial determination to the United States Supreme Court. In addition, an Indemnified Person shall not be required to contest any Imposition in its name (or that of an Affiliate) if the subject matter thereof shall be of a continuing nature and shall have previously been decided adversely by a court of competent jurisdiction pursuant to the contest provisions of this Section 11.2(f), unless there shall have been a change in Law (or interpretation thereof) and the Indemnified Person shall have received, at the Indemnity Provider's expense, an opinion of nationally-recognized independent counsel selected by the Indemnity Provider and reasonably acceptable to the Indemnified Person stating that as a result of such change in Law (or interpretation thereof), that the Indemnified Person should prevail in such contest. In no event shall the Indemnity Provider be permitted to adjust or settle the contest of Imposition without the consent of the Indemnified Person to the extent any such adjustment or settlement involves, or is reasonably likely to involve, any performance by or adverse admission by or with respect to the Indemnified Person.

(g) Each Lessor Party has entered into the transactions contemplated by the Operative Agreements on the assumption that the Lessor Advances are properly characterized for Federal, State and local income Tax purposes as debt (the "Assumed Characterization"). If for any reason (and notwithstanding anything to the contrary contained in the Operative Agreements and without regard to paragraph (b) hereof, except subsection (ii) thereof) (other than any Financing Party voluntarily taking a position on its Federal, State or local income Tax returns inconsistent with the Assumed Characterization), any Financing Party shall suffer any adverse Federal, State or local income Tax consequences as a result of any challenge to the Assumed Characterization (a "Tax Loss"), the Indemnity Provider will pay to such Financing Party an amount sufficient to reimburse such Financing Party, on an After Tax Basis, for the additional Federal, State and local income Taxes payable by (or not refundable to) such Financing Party from time to time as a result of such Tax Loss plus all interest, penalties, fines and additions to Tax payable by such Financing Party as a result of such Tax Loss. In connection with the foregoing, the applicable Financing Party shall provide written notice to the Indemnity Provider of any claim for indemnification under this Section 11.2(g). Any such claim shall be subject to the contest provisions of Section 11.2(f) and the verification procedure set forth in Section 11.2(c)(iii). Any payments due to such Financing Party pursuant to this Section 11.2(g) shall be paid no later than the date that such Financing Party shall

become obligated to pay the additional Federal, State or local income Taxes resulting from the Tax Loss.

11.3Yield Protection Amount.

Subject to Section 11.6, if any Regulatory Change occurring after the date hereof:

(a) shall impose upon any Financing Party (which, for purposes of this Section 11.3, shall include any Participant to the extent such Participant is entitled to the benefit of this provision pursuant to Section 10.4), modify or deem applicable any reserve, special deposit or similar requirement against assets of any Financing Party, deposits or obligations with or for the account of any Financing Party or with or for the account of any Affiliate (or entity deemed by the Federal Reserve Board to be an Affiliate) of any Financing Party, or credit extended by any Financing Party (except any reserve requirement already reflected in the LIBOR Rate); or

(b) shall change the amount of capital maintained or required or requested or directed to be maintained by any Financing Party or such Financing Party's holding company; or

(c) shall impose any other condition affecting any Lessor Advance or any Operative Agreement (or any Financing Party's participation therein) or any of its obligations or right to acquire or hold any Lessor Advance;

and the result of any of the foregoing is or would be with regard to the transactions evidenced by the Operative Agreements:

(i) to increase the cost to (or impose a cost on) a Financing Party funding or acquiring or holding any Lessor Advance or loans or other extensions of credit under any Operative Agreement or any obligation or commitment of such Financing Party with respect to any of the foregoing,

(ii) to reduce the amount of any sum received or receivable by a Financing Party as a Lessor Party (or otherwise in respect of any of the Lessor Advances), under any Operative Agreement (or its participation in any of the foregoing), or

(iii) to reduce the rate of return on the capital of such a Financing Party as a consequence of its obligations under the Operative Agreements (or its participation therein) to a level below that which such Financing Party could otherwise have achieved,

in each case by an amount reasonably deemed by such Financing Party to be material, then prior to the next Payment Date, and in any case within thirty (30) days after demand by such Financing Party, the Lessee shall pay directly to such Financing Party such additional amount or amounts as will compensate such Financing Party for such additional or increased cost or such reduction (the "Yield Protection Amount"); provided that the Lessee shall not be required to compensate any Financing Party pursuant to the foregoing provisions of this Section 11.3 for any increased costs incurred or reductions suffered more than one hundred twenty (120) days prior to the date that such Financing Party notifies the Lessee of the event or circumstances giving rise to such increased costs or reductions and of such Financial Party's intention to claim compensation therefor (except that, if the Regulatory Change giving rise to such increased costs or reductions is retroactive, then the one hundred twenty (120) days period referred to above shall be extended to include the period of retroactive effect thereof).

In determining any amount provided for or referred to in this Section 11.3, a Financing Party may use any reasonable averaging and attribution method that it (in its sole discretion) shall deem applicable. Any Financing Party when making a claim under this Section 11.3 shall submit to the Lessee a statement as to such increased cost or reduced return (including calculation thereof in reasonable detail), which statement shall, in the absence of error, be conclusive and binding upon the Lessee.

(d) Notwithstanding any other provision of this Agreement, if any Financing Party (including, for purposes of this Section 11.3(d), any Participant to the extent such Participant is entitled to the benefit of this provision pursuant to Section 10.4) shall notify the Agent that the introduction of or any change in or in the interpretation of any Law or regulation makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for any Financing Party to perform its obligations hereunder to make or maintain Eurodollar Lessor Advances then (i) each Eurodollar Lessor Advance will automatically, at the earlier of the end of the Lessor Yield Period for such Eurodollar Lessor Advance or the date required by law, convert into an ABR Lessor Advance, and (ii) the obligation of the Financing Parties to make, convert or continue Eurodollar Lessor Advances shall be suspended until the Agent shall notify the Lessee that such Financing Party has determined that the circumstances causing such suspension no longer exist.

11.4Funding/Contribution Indemnity.

Subject to Section 11.6, the Lessee agrees to indemnify each Financing Party (which, for purposes of this Section 11.4, shall include any Participant to the extent such Participant is entitled to the benefit of this provision pursuant to Section 10.4) and to hold each Financing Party harmless from (I) all Breakage Costs, and (II) any loss or reasonable expense which such Financing Party may sustain or incur as a consequence of (a) any default in connection with the drawing of funds for any Lessor Advance, (b) any default in making any repayment or prepayment after a notice thereof has been given in accordance with the provisions of the Operative Agreements or the delivery by the Lessee of a revocation of such a notice (notwithstanding that each such notice is expressly irrevocable and that the Lessee has no right to revoke) pursuant to Section 16.2(a) or 20.2 of the Lease or (c) the making of a voluntary or involuntary payment of Lessor Advances (except for ABR Lessor Advances) on a day which is not the last day of a Lessor Yield Period with respect thereto. Such indemnification shall be in an amount equal to the excess, if any, of (x) the amount of Lessor Yield which would have accrued on the amount so paid, or not so borrowed, accepted, converted or continued for the period from the date of such payment or of such failure to borrow, accept, convert or continue to the last day of such Lessor Yield Period (or, in the case of a failure to borrow, accept, convert or continue, the Lessor Yield Period that would have commenced on the date of such failure) in each case at the applicable Lessor Yield for such Lessor Advance for such Lessor Yield Period over (y) the amount of yield (as determined by such Financing Party in its reasonable discretion) which would have accrued to such Financing Party on such amount by placing such amount on deposit for a comparable period with leading banks in the relevant interest rate market. This covenant shall survive the termination of the Operative Agreements and the payment of all other amounts payable hereunder.

11.5EXPRESS INDEMNIFICATION FOR ORDINARY NEGLIGENCE, STRICT LIABILITY, ETC.

WITHOUT LIMITING THE GENERALITY OF THE INDEMNIFICATION PROVISIONS OF ANY AND ALL OF THE OPERATIVE AGREEMENTS (BUT SUBJECT TO SECTION 11.6), EACH PERSON PROVIDING INDEMNIFICATION OF ANOTHER PERSON UNDER ANY OPERATIVE AGREEMENT HEREBY FURTHER EXPRESSLY RELEASES EACH

BENEFICIARY OF ANY SUCH INDEMNIFICATION FROM ALL CLAIMS FOR LOSS OR DAMAGE, DESCRIBED IN ANY OPERATIVE AGREEMENT, CAUSED BY ANY ACT OR OMISSION ON THE PART OF ANY SUCH BENEFICIARY ATTRIBUTABLE TO THE ORDINARY NEGLIGENCE (WHETHER SOLE OR CONTRIBUTORY) OR STRICT LIABILITY OF ANY SUCH BENEFICIARY, AND INDEMNIFIES, EXONERATES AND HOLDS EACH SUCH BENEFICIARY FREE AND HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, CAUSES OF ACTION, SUITS, CLAIMS, LOSSES, COSTS, LIABILITIES, DAMAGES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES), DESCRIBED ABOVE, INCURRED BY ANY SUCH BENEFICIARY (IRRESPECTIVE OF WHETHER ANY SUCH BENEFICIARY IS A PARTY TO THE ACTION FOR WHICH INDEMNIFICATION UNDER THIS AGREEMENT OR ANY OTHER OPERATIVE AGREEMENT IS SOUGHT) ATTRIBUTABLE TO THE ORDINARY NEGLIGENCE (WHETHER SOLE OR CONTRIBUTORY) OR STRICT LIABILITY OF ANY SUCH BENEFICIARY.

11.6 Indemnity Prior to Completion Date / Construction Period Termination Date.

Notwithstanding the provisions of Sections 11.1, 11.2, 11.3, 11.4 and 11.5 and any other indemnity provision in any Operative Agreement (except as set forth in Section 11.7), the Lessor shall be the only beneficiary of the provisions set forth in Sections 11.1, 11.2, 11.3, 11.4 and 11.5 or any other indemnity provision in any Operative Agreement requiring indemnity payments directly or indirectly from any Credit Party (except as set forth in Section 11.7) with respect to any Claim arising thereunder with respect to the Construction Period Property for the period prior to the Completion Date related to the Property, but the Indemnity Provider shall provide such indemnity only to the extent such Claims result from claims caused by or resulting from the Indemnity Provider's own actions or failures to act (or the act or failure to act of its Affiliates, employees, servants or agents) while in possession of or having management responsibility for the Construction Period Property. As a clarification of the prior sentence, the Indemnity Provider indemnifies the Lessor for, and shall pay the Lessor with respect to, any such Claim referenced in the prior sentence by or against any Indemnified Person other than the Lessor. The Indemnity Provider acknowledges and agrees in this connection that the Property is in its possession and that the Indemnity Provider has management responsibility for the Property, in each case prior to the Completion Date, that the Indemnity Provider is responsible as the Construction Agent for the acts and omissions of its Affiliates, employees, servants and agents and that the Indemnity Provider has agreed to maintain the Property free from injury or mishap to third persons; provided, however, that the occurrence of injury or mishap to third persons shall not give rise to an Event of Default. To the extent the Indemnity Provider is not obligated to indemnify each Indemnified Person with respect to the various matters described in this Section 11.6, the Lessor shall indemnify each other Indemnified Person for such Claims; provided, however, that any obligation of the Lessor to provide any such indemnity shall be discharged solely and exclusively from amounts received by the Lessor from the Indemnity Provider or from Lessor Advances and to the extent such amounts are insufficient to pay such Claims, then the Lessor shall have no responsibility therefor. To the extent the Indemnity Provider does not provide an amount to the Lessor adequate to pay such Claims by or against any Indemnified Person, the Lessor Parties shall make Lessor Advances to pay for such Claim without regard to the satisfaction of conditions precedent pursuant to Section 5.3 or 5.4 of this Agreement but only to the extent amounts are available therefor with respect to the Available Lessor Parties Commitment (subject to the rights of the Lessor Parties to increase their respective commitment amounts in accordance with the provisions of Section 5.8). Notwithstanding any other provision in any other Operative Agreement to the contrary, all amounts so advanced shall be added to the Property Cost for the Construction Period Property.

THE INDEMNITY OBLIGATIONS UNDERTAKEN BY THE LESSOR PURSUANT TO THIS SECTION 11.6 ARE IN ALL RESPECTS SUBJECT TO THE LIMITATIONS ON LIABILITY REFERENCED IN SECTION 12.9.

This Section 11.6 shall only limit or otherwise affect any obligation of the Indemnity Provider in respect of any Claim which arises out of or relates to the Property prior to the Completion Date.

11.7 Additional Provisions Regarding Environmental Indemnification.

Each and every Indemnified Person shall at all times have the rights and benefits, and the Indemnity Provider shall have the obligations, in each case provided pursuant to the Operative Agreements with respect to environmental matters, violations of any Environmental Law, and Environmental Claim or other loss of or damage to any property or the environment relating to the Property, the Lease or the Indemnity Provider (including the rights and benefits provided pursuant to Section 11.1(e)).

11.8 Increase of Lessor Advances.

The Lessor Advances and the Property Cost shall be increased on a dollar-for-dollar basis for the respective Lessor Advances necessary for the Lessor Parties to fund the Lessor in an amount sufficient to pay indemnity claims made by any other Indemnified Person against any Lessor Party pursuant to Section 11.6.

11.9 Survival.

The obligations of the Indemnity Provider under this Section 11 shall survive in accordance with the provisions of Section 12.1.

**Section 12.
MISCELLANEOUS.**

12.1 Survival of Agreements.

The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Agreements, and the parties' obligations under any and all thereof, shall survive the execution and delivery of this Agreement, the transfer of the Property to the Lessor, the acquisition of the Property (or any of its components), the construction of any Improvements, the Completion of the Property, any disposition of any interest of the Lessor in the Property, the payment of the Lessor Advances and any disposition thereof and shall be and continue in effect notwithstanding any investigation made by any party and the fact that any party may waive compliance with any of the other terms, provisions or conditions of any of the Operative Agreements. Except as otherwise expressly set forth herein or in other Operative Agreements, the indemnities of the parties provided for in the Operative Agreements shall survive the expiration or termination of any thereof.

12.2 Notices.

All notices required or permitted to be given under any Operative Agreement shall be in writing. Notices may be served by private courier, prepaid; by facsimile; or personally couriered notices shall be deemed delivered when delivered as addressed, or if the addressee refuses delivery, when presented for delivery notwithstanding such refusal. Telecommunicated notices shall be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office.

Personal delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the parties at the following addresses:

If to the Lessee, to such entity at the following address:

AVDC, Inc.
c/o Big Lots, Inc.
4900 E. Dublin-Granville Road
Columbus, OH 43081
Attention: Paul Schroeder
Telephone: (614) 278-6815
Fax: (614) 278-6666

If to the Parent, to such entity at the following address:

Big Lots, Inc.
4900 E. Dublin-Granville Road
Columbus, OH 43081
Attention: Paul Schroeder
Telephone: (614) 278-6815
Fax: (614) 278-6666

If to any of the Guarantors other than the Parent, to each such entity at the following address:

c/o Big Lots, Inc.
4900 E. Dublin-Granville Road
Columbus, OH 43081
Attention: Paul Schroeder
Telephone: (614) 278-6815
Fax: (614) 278-6666

If to any of the Lessor Parties, to each such entity at the address set forth for such Lessor Party on Schedule XVI.

If to the Agent, to it at the following address:

Wells Fargo Bank, National Association
10 South Wacker Drive, 22nd Floor
Chicago, IL 60606
Attention: John Runger
Telephone: 312-845-9631
Fax: None

From time to time any party may designate additional parties and/or another address for notice purposes by notice to each of the other parties hereto. Each notice hereunder shall be effective upon receipt or refusal thereof.

12.3Counterparts.

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one (1) and the same instrument.

12.4 Terminations, Amendments, Waivers, Etc; Unanimous Vote Matters.

Except with regard to the Unanimous Vote Matters and each other exception expressly set forth in any Operative Agreement, each Operative Agreement only may be terminated, amended, supplemented, waived or modified by, or consent granted by, an instrument in writing signed by the Majority Secured Parties and each Credit Party, to the extent such Credit Party is a party to such Operative Agreement.

Notwithstanding the foregoing, no such termination, amendment, supplement, waiver or modification or consent shall, without the consent of the Agent and, to the extent affected thereby, the Lessor Parties, in all cases without the need for any consent from any Defaulting Lessor Party except to the extent required pursuant to the second to last paragraph of this Section 12.4 (collectively, the “Unanimous Vote Matters”) (i) reduce or increase the Lessor Parties Commitment except as otherwise provided in Sections 5.8, 5A.6 and 9.3 of this Agreement, (ii) extend the scheduled date of maturity of any Lessor Advance, (iii) extend the scheduled Expiration Date, (iv) extend any payment date of any Lessor Advance, (v) reduce the stated Lessor Yield (other than as a result of waiving the applicability of any post-default increase in Lessor Yield), (vi) modify the priority of any Lien in favor of the Agent under any Security Document, (vii) consent to any Lien against the Property or other Collateral other than any Permitted Lien, (viii) subordinate any obligation owed to any of the Lessor Parties, (ix) reduce the Fees under this Agreement, (x) extend the scheduled date of payment of the Fees, (xi) extend the expiration date of the Lessor Parties Commitment, (xii) terminate, amend, modify, extend, supplement, restate, replace or waive any provision of this Section 12.4, (xiii) reduce the percentages specified in the definitions of “Majority Secured Parties”, (xiv) release a material portion of the Collateral (except in accordance with Section 8.8(a)), (xv) release any Credit Party from its obligations under any Operative Agreement (except in accordance with Section 8.8(b)) or (xvi) otherwise alter any payment obligations of any Credit Party to the Lessor or any Financing Party under the Operative Agreements. Additionally, in no event shall Section 8.6 be terminated, amended, supplemented, waived or modified without the consent of the Agent. Any such termination, amendment, supplement, waiver or modification shall apply equally to each of the Lessor Parties and shall be binding upon all the parties to this Agreement. In the case of any waiver, each party to this Agreement shall be restored to its former position and rights under the Operative Agreements, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. For the avoidance of doubt, the parties to this Agreement agree that, except as provided in Sections 5.8 and 11.8, any increase in the Lessor Parties Commitment of the Lessor Parties shall be a matter decided as a Unanimous Vote Matter.

Notwithstanding the foregoing, the Engagement Letter may be amended, modified, extended, supplemented, restated, replaced or waived, or a consent with respect thereto may be granted, in each case only by an instrument in writing signed by the parties thereto.

Notwithstanding anything to the contrary herein, (i) no Defaulting Lessor Party shall have any right to approve or disapprove of any termination, amendment, supplement, waiver or modification of any Operative Agreement or otherwise to provide a consent with respect to any Operative Agreement (and any termination, amendment, supplement, waiver, modification or consent which by its terms requires the consent of all Lessor Parties or each affected Lessor Party may be effected with the consent of the applicable Lessor Parties other than Defaulting Lessor Party), except that (A) the Lessor Parties Commitment of any Defaulting Lessor Party may not be increased or extended without the consent of such Lessor Party, and (B) any

termination, amendment, supplement, waiver or modification requiring the consent of all Lessor Parties or each affected Lessor Party, that by its terms affects any Defaulting Lessor Party disproportionately adversely relative to other affected Lessor Parties shall require the consent of such Defaulting Lessor Party, as applicable; (ii) each Lessor Party is entitled to vote as such Lessor Party sees fit on any bankruptcy reorganization plan that affects the Lessor Advances, and each Lessor Party acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein and (iii) the Majority Secured Parties shall determine whether or not to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lessor Parties.

If any Lessor Party does not consent to a proposed termination, amendment, supplement, waiver, modification or consent with respect to any Operative Agreement that requires the consent of each Lessor Party and that has been approved by the Majority Secured Parties, the Lessee may replace such Non-Consenting Lessor Party in accordance with a required assignment of the Lessor Party's interests pursuant to Section 5A.7(b); provided, that such termination, amendment, supplement, waiver, modification or consent can be effected as a result of such assignment (together with all other such assignments required by the Lessee to be made pursuant to this paragraph).

12.5Headings, etc.

The Table of Contents and headings of the various Articles and Sections of this Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

12.6Parties in Interest.

Except as expressly provided herein, none of the provisions of this Agreement are intended for the benefit of any Person except the parties hereto.

12.7GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL; VENUE.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK EXCEPT TO THE EXTENT THAT LOCAL LAW IS PROPERLY APPLICABLE FOR MATTERS OF REAL PROPERTY. Any legal action or proceeding with respect to this Agreement or any other Operative Agreement may be brought in the courts of the State of New York in New York County or of the United States for the Southern District of New York, and, by execution and delivery of this Agreement, each of the parties to this Agreement hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the nonexclusive jurisdiction of such courts. Each of the parties to this Agreement further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by overnight courier delivery to it at the address set out for notices pursuant to Section 12.2, such service to become effective in the manner provided in Section 12.2. Nothing herein shall affect the right of any party to serve process in any other manner permitted by Law or to commence legal proceedings or to otherwise proceed against any party in any other jurisdiction.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO ANY

DISPUTE OR THIS AGREEMENT, ANY OTHER OPERATIVE AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

(c) Each of the parties to this Agreement hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement or any other Operative Agreement brought in the courts referred to in subsection (a) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

(d) Notwithstanding anything to the contrary contained in this Agreement or any of the other Operative Agreements, if any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Operative Agreement and the foregoing waiver of a right to a trial by jury is for any reason not enforceable in such action or proceeding (including as a consequence of the application of California law), the parties to this Agreement hereby agree that (a) the court shall, and the parties shall advise and direct the court to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision; provided, that at the option of any party to such proceeding, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) without limiting the generality of Section 7, the Lessee shall be solely responsible to pay, or cause to be paid, all fees and expenses of any referee appointed in such action or proceeding.

12.8Severability.

Any provision of any Operative Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12.9Liability Limited.

Anything to the contrary contained in any Operative Agreement notwithstanding, except as stated in this Section 12.9, no Exculpated Person shall be personally liable in any respect for any liability or obligation arising hereunder or in any other Operative Agreement including the payment of the advance amount or yield regarding the Lessor Advances, or for monetary damages for the breach of performance of any of the covenants contained in the Operative Agreements. The Lessor Parties and the Agent agree that, in the event any remedies under any Operative Agreement are pursued, none of the Lessor Parties or the Agent shall have any recourse against any Exculpated Person, for any deficiency, loss or Claim for monetary damages or otherwise resulting therefrom and recourse shall be had solely and exclusively against the Lessor's interest in the Trust Property, and the assets of the Credit Parties (with respect to the Credit Parties' obligations under the Operative Agreements); but nothing contained herein shall be taken to prevent recourse against or the enforcement of remedies against (a) the Lessor's interest in the Trust Property in respect of any and all liabilities, obligations and undertakings contained herein and/or in any other Operative Agreement; (b) the Lessor Parties for any of their obligations arising on a full recourse basis; or (c) the Lessor Parties or any other Person for gross negligence or willful misconduct (other than any gross negligence or willful misconduct imputed to any Lessor Party from any Person other than the Lessor Party or any Affiliate of the Lessor Party

(excepting the Agent)). Notwithstanding the provisions of this Section 12.9, nothing in any Operative Agreement shall: (w) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by or arising under any Operative Agreement or secured by any Operative Agreement, but the same shall continue until paid or discharged; (x) relieve any Exculpated Person from liability and responsibility for (but only to the extent of the damages arising by reason of): active waste knowingly committed by any Exculpated Person with respect to the Property, any fraud, gross negligence or willful misconduct on the part of any Exculpated Person (other than any fraud, gross negligence or willful misconduct imputed to such Exculpated Person from any Person other than an Affiliate of such Exculpated Person (excepting the Agent)); (y) relieve any Exculpated Person from liability and responsibility for (but only to the extent of the moneys misappropriated, misapplied or not turned over) (i) except for Excepted Payments, misappropriation or misapplication by any Lessor Party (i.e., application in a manner contrary to any of the Operative Agreements) of any insurance proceeds or condemnation award paid or delivered to any Lessor Party by any Person other than the Agent, (ii) except for Excepted Payments, any rent or other income received by any Lessor Party from any Credit Party that is not turned over to the Agent, or (iii) except for Excepted Payments, any deposits or any escrows or amounts owed by the Construction Agent under the Agency Agreement held by any Lessor Party; or (z) affect or in any way limit the Agent's rights and remedies under any Operative Agreement with respect to the Rents (other than Excepted Payments) and rights and powers of the Agent under the Operative Agreements or to obtain a judgment against the Lessee's interest in the Property or the Agent's rights and powers to obtain a judgment against any Lessor Party (but limited as to those matters specified in this Section 12.9) or any Credit Party (provided, that no deficiency judgment or other money judgment shall be enforced against any Exculpated Person except to the extent of the Lessor's interest in the Trust Property or to the extent any Lessor Party may be liable as otherwise contemplated in clauses (b) and (c) of this Section 12.9).

12.10 Rights of the Credit Parties.

If at any time all obligations of the Lessor Parties under the Operative Agreements and of the Credit Parties under the Operative Agreements have in each case been satisfied or discharged in full, then the Credit Parties shall be entitled to terminate the Lease and guaranty obligations under Section 6B.

12.11 Further Assurances.

The parties hereto shall promptly cause to be taken, executed, acknowledged or delivered, at the sole expense of the Lessee, all such further acts, conveyances, documents and assurances as the other parties may from time to time reasonably request in order to carry out and effectuate the intent and purposes of this Agreement, the other Operative Agreements and the transactions contemplated hereby and thereby (including the preparation, execution (if applicable) and filing of any and all UCC Financing Statements, Mortgage Instruments and other filings or registrations which the parties hereto may from time to time request to be filed or effected). The Lessee, at its own expense and without need of any prior request from any other party, shall take such action as may be necessary (including any action specified in the preceding sentence), or (if the Agent or the Lessor shall so request) as so requested, in order to maintain and protect all security interests provided for hereunder or under any other Operative Agreement. In addition, in connection with the sale or other disposition of the Property or any portion thereof, the Lessee agrees to execute such instruments of conveyance as may be reasonably required in connection therewith.

12.12 Calculations under Operative Agreements.

The parties hereto agree that all calculations and numerical determinations to be made under the Operative Agreements by any Lessor Party shall be made by the Agent (to the extent such calculations and numerical determinations relate to any Lessor Party, Lessor Advances or Lessor Yield) and that such

calculations and determinations shall be conclusive and binding on the parties hereto in the absence of manifest error.

12.13 Confidentiality.

Each Financing Party severally agrees to use reasonable efforts to keep confidential all non-public information pertaining to any Credit Party or any of its Subsidiaries which is provided to it by any Credit Party or any of its Subsidiaries and which an officer of the Lessee or any of its Subsidiaries has requested in writing be kept confidential, and shall not intentionally disclose such information to any Person except:

(a) to the extent such information is public when received by such Person or becomes public thereafter due to the act or omission of any party other than such Person;

(b) to the extent such information is independently obtained from a source other than any Credit Party or any of its Subsidiaries and such information from such source is not, to such Person's knowledge, subject to an obligation of confidentiality or, if such information is subject to an obligation of confidentiality, that disclosure of such information is permitted;

(c) to counsel, auditors or accountants retained by any such Person or any Affiliates of any such Person (if such Affiliates are permitted to receive such information pursuant to clause (f) or (g) below), provided they agree to keep such information confidential as if such Person or Affiliate were party to this Agreement and to financial institution regulators, including examiners of any Financing Party or any Affiliate thereof in the course of examinations of such Persons;

(d) in connection with any litigation or the enforcement or preservation of the rights of any Financing Party under the Operative Agreements;

(e) to the extent required by any applicable statute, rule or regulation or court order (including, by way of subpoena) or pursuant to the request of any regulatory or Governmental Authority having jurisdiction over any such Person; provided, however, that such Person shall endeavor (if not otherwise prohibited by Law) to notify the Lessee prior to any disclosure made pursuant to this clause (e), except that no such Person shall be subject to any liability whatsoever for any failure to so notify the Lessee;

(f) any Financing Party may disclose such information to another Financing Party or to any Affiliate of a Financing Party that is a direct or indirect owner of any Financing Party;

(g) any Financing Party may disclose such information to an Affiliate of any Financing Party to the extent required in connection with the transactions contemplated hereby or to the extent such Affiliate is involved in, or provides advice or assistance to such Person with respect to, such transactions (provided, in each case that such Affiliate has agreed in writing to maintain confidentiality as if it were such Financing Party (as the case may be)); or

(h) to the extent disclosure to any other financial institution or other Person is appropriate in connection with any proposed or actual assignment by any Lessor Party of interests to another Person, as specified in Section 10.1 (who will in turn be required by the transferring Lessor Party to agree in writing to maintain confidentiality as if it were the Lessor Party originally party to this Agreement).

12.14 Financial Reporting/Tax Characterization.

The Credit Parties agree to obtain advice from their own accountants and Tax counsel regarding the financial reporting treatment and the Tax characterization of the transactions described in the Operative Agreements. The Credit Parties further agree that none of them shall rely upon any statement of any Financing Party or any of their respective Affiliates and/or Subsidiaries regarding any such financial reporting treatment and/or Tax characterization.

12.15Set-off.

In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, upon and after the occurrence and continuance of any Event of Default and during the continuance thereof (but only after obtaining the prior written consent of the Majority Secured Parties) the Lessor Parties and their respective Affiliates and any assignee or participant of any Lessor Party in accordance with the applicable provisions of the Operative Agreements are hereby authorized by the Credit Parties at any time or from time to time, without notice to the Credit Parties or to any other Person (subject to the above requirement to obtain the prior written consent of the Majority Secured Parties), any such notice being hereby expressly waived, to set-off and to appropriate and to apply any and all deposits (general or special, time or demand, including indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by such Lessor Party, their respective Affiliates or any assignee or participant of such Lessor Party in accordance with the applicable provisions of the Operative Agreements to or for the credit or the account of any Credit Party against and on account of the obligations of any Credit Party under the Operative Agreements irrespective of whether or not (a) such Lessor Party shall have made any demand under any Operative Agreement or (b) the Agent shall have declared any or all of the obligations of any Credit Party under the Operative Agreements to be due and payable and although such obligations shall be contingent or unmatured. Notwithstanding the foregoing, no Lessor Party shall exercise, or attempt to exercise, any right of set-off, banker's lien, or the like, against any deposit account or property of any Credit Party held by any Lessor Party, without the prior written consent of the Majority Secured Parties, and any Financing Party violating this provision shall indemnify the Agent and the other Financing Parties from any and all costs, expenses, liabilities and damages resulting therefrom. The contractual restriction on the exercise of set-off rights provided in the foregoing sentence is solely for the benefit of the Financing Parties and may not be enforced by any Credit Party. In addition to the foregoing, and not in limitation thereof, in the event that any Defaulting Lessor Party shall exercise any such right of set-off, but only after obtaining the prior written consent of the Majority Secured Parties, (a) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 5A.1(e), respectively, and, pending such payment, shall be segregated by such Defaulting Lessor Party from its other funds and deemed held in trust for the benefit of the Agent and the other Secured Parties and (b) the applicable Defaulting Lessor Party shall provide promptly to the Agent a statement describing in reasonable detail the secured obligations owing to such entity as to which it exercised such right of set-off.

Except as otherwise expressly provided herein or as otherwise agreed among all the Lessor Parties, where, and to the extent, one Lessor Party is entitled to payments prior to other Lessor Parties, if any Lessor Party (a "Benefitted Lessor Party") shall at any time receive any payment of all or part of its Lessor Advances, or Lessor Yield thereon, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off or otherwise (subject to having first obtained the written consent of the Majority Secured prior to initiating any action with regard to such collateral)), in a greater proportion than any such payment to or collateral received by any other Lessor Party, if any, in respect of such other Lessor Party's Lessor Parties Interest, or Lessor Yield thereon, such Benefitted Lessor Party shall purchase for cash from the other Lessor Parties a participating interest in such portion of each such other Lessor Party's Lessor Parties Interest, or shall provide such other Lessor Parties with the benefits of any such collateral, or the proceeds thereof, as

shall be necessary to cause such Benefitted Lessor Party to share the excess payment or benefits of such collateral or proceeds ratably with each of the other Lessor Parties; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lessor Party, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without Lessor Yield.

12.16 Limited Obligation of the Lessee to Pay on behalf of the Lessor.

To the extent the Lessee undertakes to pay any amount on behalf of any Lessor Party pursuant to any Operative Agreement, such obligation of the Lessee shall be limited only to amounts payable by such Lessor Party, as the case may be, on a non-recourse basis.

12.17 Limitation on Commitments.

Notwithstanding any provision of any Operative Agreement to the contrary, the Property may not be financed under the Operative Agreements until such time as sufficient commitments therefor have been approved by each Financing Party in its sole discretion.

12.18 USA Patriot Act Notice.

Each Financing Party that is subject to the USA Patriot Act hereby notifies each of the Credit Parties that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of Credit Parties and other information that will allow such Financing Party to identify the Credit Parties in accordance with the USA Patriot Act.

12.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions-.

Notwithstanding anything to the contrary in any Operative Agreement or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lessor Party that is an EEA Financial Institution arising under any Operative Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by: (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lessor Party that is an EEA Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Operative Agreement; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

12.20 UCC Filing Authorization.

Lessee authorizes Lessor and Agent, to file UCC financing and fixture filings statements, amendments thereto and renewals thereof without Lessee's signature, as Lessor or Agent may determine to be necessary or appropriate to perfect and maintain the security interests and liens granted pursuant to any and all of the Security Documents.

12.21 Lessor Party Voting Regarding Covenants, Representations and Warranties and Waivers.

To the extent a Lessor Party or its Affiliate is a Revolving Credit Agreement Bank at such time that a Revolving Credit Agreement Amendment is effected, then such Lessor Party agrees to vote in the same manner regarding a proposed amendment, or waiver with respect thereto, of Sections 6.1, 8.3A, 8.3B and/or 8.3C of this Agreement and/or of any related definitions contained in this Agreement or any materiality levels in respect of any Event of Default under any Operative Agreement, as applicable, as such Lessor Party or its Affiliate voted with regard to such Revolving Credit Agreement Amendment.

12.22 Lessee to Cause Performance of Obligations by Revolving Credit Agreement Borrowers.

Lessee shall cause each Revolving Credit Agreement Borrower (that is not a party to this Agreement) to perform its obligations under this Agreement.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

CONSTRUCTION AGENT AND LESSEE:

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

By: _____
Name: _____
Title: _____

(signature pages continue)

GUARANTORS:

BIG LOTS STORES, INC., as a Guarantor

By: _____
Name: _____
Title: _____

BIG LOTS, INC., as a Guarantor

By: _____
Name: _____
Title: _____

BIG LOTS ECOMMERCE LLC, as a Guarantor

By: _____
Name: _____
Title: _____

BIG LOTS F&S, INC., as a Guarantor

By: _____
Name: _____
Title: _____

(signature pages continue)

BLC LLC, as a Guarantor

By: _____
Name: _____
Title: _____

CLOSEOUT DISTRIBUTION, INC., as a Guarantor

By: _____
Name: _____
Title: _____

CONSOLIDATED PROPERTY HOLDINGS, INC., as a Guarantor

By: _____
Name: _____
Title: _____

CSC DISTRIBUTION, INC., as a Guarantor

By: _____
Name: _____
Title: _____

(signature pages continue)

PARTICIPATION AGREEMENT

C.S. ROSS COMPANY, as a Guarantor

By: _____
Name: _____
Title: _____

DURANT DC, LLC, as a Guarantor

By: _____
Name: _____
Title: _____

GREAT BASIN LLC, as a Guarantor

By: _____
Name: _____
Title: _____

MAC FRUGAL'S BARGAINS • CLOSE-OUTS, INC., as a Guarantor

By: _____
Name: _____
Title: _____

(signature pages continue)

PARTICIPATION AGREEMENT

PNS STORES, INC., as a Guarantor

By: _____
Name: _____
Title: _____

WEST COAST LIQUIDATORS, INC., as a Guarantor

By: _____
Name: _____
Title: _____

(signature pages continue)

PARTICIPATION AGREEMENT

LESSOR PARTIES:

WACHOVIA SERVICE CORPORATION, as the Lessor

By: _____
Name: _____
Title: _____

(signature pages continue)

PARTICIPATION AGREEMENT

BANKERS COMMERCIAL CORPORATION, as a Lease Participant

By:_____

Name: Stefan Breuer

Title: Managing Director

(signature pages continue)

PARTICIPATION AGREEMENT

PNC EQUIPMENT FINANCE, LLC, as a Lease Participant

By: _____
Name: _____
Title: _____

(signature pages continue)

PARTICIPATION AGREEMENT

AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as the Agent

By: _____
Name: _____
Title: _____

(signature pages end)

PARTICIPATION AGREEMENT

EXHIBIT A

FORM OF REQUISITION

AVDC, INC., an Ohio corporation (the “Company”), as Construction Agent, as of ____, 20__, hereby certifies as true and correct and delivers the following Requisition to Wells Fargo Bank, National Association, as the agent for the Lessor Parties and respecting the Security Documents, as the agent for the Secured Parties, to the extent of their interests (the “Agent”):

Reference is made herein to that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the “Participation Agreement”) among the Company, in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and the Agent. Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth therefor in the Participation Agreement.

Check one:

____ INITIAL CLOSING DATE: _____
(as of the Initial Closing Date)

____ ACQUISITION ADVANCE DATE: _____
(three (3) Business Days prior notice required for Advance, unless delivered as of the Initial Closing Date in accordance with Section 4.2 of the Participation Agreement)

____ CONSTRUCTION ADVANCE DATE: _____
(ten (10) days prior notice required for Advance)

1. Transaction Expenses and any and all other amounts contemplated to be financed under the Participation Agreement including any broker’s fees, taxes, recording fees and the like (with supporting invoices or closing statement attached):

Party to Whom Amount is
Owed

Amount Owed
(in U.S. Dollars)

2. Aggregate Lessor Advances requested under the Operative Agreements with respect to the Property for which Advances are requested under this Requisition, including without limitation all amounts requested under this Requisition:

\$ _____

CHECK THE APPLICABLE BOX:

- ☐ All as a Eurodollar Lessor Advance
☐ All as an ABR Lessor Advance

3. The Company hereby certifies that (a) the aggregate Lessor Advances requested pursuant to Section 2 do not exceed the aggregate of the Available Lessor Parties Commitments and (b) each of the provisions of the Participation Agreement applicable to the Lessor Advances requested hereunder have been complied with as of the date of this Requisition.
4. The Advances requested in connection with this Requisition are with respect to (a) the acquisition of the Land described in the legal description in the attached Schedule 1, (b) reimbursement of costs previously incurred or direct payment for costs incurred concerning the Improvements described in the attached Schedule 2, (c) reimbursement of costs previously incurred or direct payment for costs incurred concerning the Equipment described in the attached Schedule 3 and/or (d) the payment of anticipated costs not yet incurred which are the subject of the Punchlist Advance made pursuant to Section 5.11 of the Participation Agreement.
5. Each and every representation and warranty of each Credit Party contained in the Operative Agreements to which it is a party is true and correct in all material respects on and as of the date hereof (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date).
6. Each and every condition precedent pursuant to the Operative Agreements with respect to the Advances requested in connection with this Requisition have been (a) satisfied or (b) otherwise waived in writing by (i) the Agent and (ii) each other Financing Party as required pursuant to the Operative Agreements.
7. None of the Advances being requested in connection with this Requisition shall be used for the acquisition of, or otherwise in any manner regarding, any Excluded Equipment.

The Company has caused this Requisition to be executed by its duly authorized officer as of the day and year first above written.

AVDC, INC., as Construction Agent

By: _____
Name: _____
Title: _____

Schedule 1

Land

Schedule 2

Improvements

Schedule 3

Equipment

EXHIBIT B

FORM OF OFFICER'S CERTIFICATE

AVDC, INC.

AVDC, INC., an Ohio corporation (the "Company"), as of ____, 20__, DOES HEREBY CERTIFY as follows:

1. Each and every representation and warranty of each Credit Party contained in the Operative Agreements to which it is a party is true and correct in all material respects on and as of the date hereof.
2. No Default or Event of Default has occurred and is continuing.
3. Each Operative Agreement to which any Credit Party is a party is in full force and effect with respect to it.
4. Each Credit Party has duly performed and complied with all covenants, agreements and conditions contained in the Participation Agreement (hereinafter defined) or in any Operative Agreement required to be performed or complied with by it on or prior to the date hereof.

Capitalized terms used in this Officer's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among the Company, in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly executed and delivered as of the day and year first above written.

AVDC, INC.

By: _____
Name: _____
Title: _____

EXHIBIT C

FORM OF SECRETARY'S CERTIFICATE

[CREDIT PARTY]

[CREDIT PARTY], a _____ (the "Company"), as of _____, 20____, DOES HEREBY CERTIFY as follows:

1. Attached hereto as Schedule 1 is a true, correct and complete copy of the **[articles of incorporation]**, as amended, of the Company on file with the Secretary of State of the State of _____. Such **[articles of incorporation]**, as amended, remain in full force and effect as of the date hereof.
2. Attached hereto as Schedule 2 is a true, correct and complete copy of the **[by-laws]**, as amended, of the Company. Such **[by-laws]**, as amended, have not been otherwise amended, modified or rescinded since their date of adoption and remain in full force and effect as of the date hereof.
3. Attached hereto as Schedule 3 is a true, correct and complete copy of the resolutions of the Company duly authorizing the execution, delivery and performance by the Company of each of the Operative Agreements to which it is or will be a party. Such resolutions have not been amended, modified or rescinded since their date of adoption and remain in full force and effect as of the date hereof.
4. The persons named below now hold the offices with the Company set forth opposite their names, and the signatures opposite their names and titles are their true and correct signatures.

Name

Office

Signature

Capitalized terms used in this Secretary's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among **[the Company/AVDC, Inc.]**, in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.

(Signature page follows)

IN WITNESS WHEREOF, the Company has caused this Secretary's Certificate to be executed by its duly authorized officer as of the day and year first above written.

[CREDIT PARTY]

By: _____

Name: _____

Title: _____

Schedule 1

[Articles of Incorporation]

Schedule 2

[By-Laws]

Schedule 3

Resolutions

EXHIBIT D

FORM OF OFFICER'S CERTIFICATE

WACHOVIA SERVICE CORPORATION

WACHOVIA SERVICE CORPORATION, a Delaware corporation (the "Company"), as of ____, 20__, DOES HEREBY CERTIFY as follows:

Each and every representation and warranty of the Company contained in the Operative Agreements to which it is a party is true and correct in all material respects on and as of the date hereof.

Each Operative Agreement to which the Company is a party is in full force and effect with respect to it.

The Company has duly performed and complied with all covenants, agreements and conditions contained in the Participation Agreement (hereinafter defined) or in any Operative Agreement required to be performed or complied with by it on or prior to the date hereof.

Capitalized terms used in this Officer's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among AVDC, Inc., in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, the Company, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly executed and delivered as of the day and year first above written.

WACHOVIA SERVICE CORPORATION

By: _____
Name: _____
Title: _____

EXHIBIT E

FORM OF SECRETARY'S CERTIFICATE

WACHOVIA SERVICE CORPORATION

WACHOVIA SERVICE CORPORATION, a Delaware corporation (the "Company"), as of ____, 20__, DOES HEREBY CERTIFY as follows:

1. Attached hereto as Schedule 1 is a true, correct and complete copy of the certificate of incorporation, as amended, of the Company on file with the Secretary of State of the State of Delaware. Such certificate of incorporation, as amended, remain in full force and effect as of the date hereof.
2. Attached hereto as Schedule 2 is a true, correct and complete copy of the by-laws, as amended, of the Company. Such by-laws, as amended, have not been otherwise amended, modified or rescinded since their date of adoption and remain in full force and effect as of the date hereof.
3. Attached hereto as Schedule 3 is a true, correct and complete copy of the resolutions of the Company duly authorizing the execution, delivery and performance by the Lessor of each of the Operative Agreements to which it is or will be a party. Such resolutions have not been amended, modified or rescinded since their date of adoption and remain in full force and effect as of the date hereof.
4. The persons named below now hold the offices with the Company set forth opposite their names, and the signatures opposite their names and titles are their true and correct signatures.

Name

Office

Signature

Capitalized terms used in this Secretary's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among AVDC, Inc., in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, the Company, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.

(Signature page follows)`

IN WITNESS WHEREOF, the Company has caused this Secretary's Certificate to be executed by its duly authorized officer as of the day and year first above written.

WACHOVIA SERVICE CORPORATION

By: _____

Name: _____

Title: _____

Schedule 1

Certificate of Incorporation

Schedule 2

By-Laws

Schedule 3

Resolutions

EXHIBIT F-1

FORM OF OFFICER'S CERTIFICATE (COMPLETION - FIRST CERTIFICATION)

AVDC, INC., an Ohio corporation (the "Company"), as of ___, 20___, DOES HEREBY CERTIFY as follows:

1. The address for the Property is _____.
2. The Completion Date for the construction of Improvements at the Property occurred on _____.
3. The aggregate Property Cost is \$_____.

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

5. Attached hereto as Schedule 1 is a copy of the temporary certificate of occupancy for the Property.

Capitalized terms used in this Officer's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among the Company, in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly executed and delivered as of the day and year first above written.

AVDC, INC.

By: _____
Name: _____
Title: _____

Schedule 1

Temporary Certificate of Occupancy

EXHIBIT F-2

FORM OF OFFICER'S CERTIFICATE (COMPLETION - SECOND CERTIFICATION)

AVDC, INC., an Ohio corporation (the "Company"), as of ___, 20___, DOES HEREBY CERTIFY as follows:

1. Attached hereto as Schedule A is the detailed, itemized documentation supporting the asserted Property Cost figures.
2. Attached hereto as Schedule B are unconditional waivers of Lien covering all work and materials regarding the Property by the applicable general contractor and any subcontractors and suppliers.

Capitalized terms used in this Officer's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among the Company, in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly executed and delivered as of the day and year first above written.

AVDC, INC.

By: _____
Name: _____
Title: _____

Schedule A

(Itemized Documentation in Support of Asserted Property Cost)

Schedule B

(Unconditional Waivers of Lien by the Applicable
General Contractor, Subcontractors and Suppliers)

EXHIBIT G

FORM OF CONSTRUCTION AGENT CERTIFICATE

THIS CONSTRUCTION AGENT CERTIFICATE dated as of _____, _____ (this "Certificate") is executed by AVDC, INC., an Ohio corporation (the "Company," or the "Construction Agent"), in favor of (a) Wells Fargo Bank, National Association, as agent for the Lessor Parties and, respecting the Security Documents, as agent for the Secured Parties (the "Agent") and (b) _____, a _____, as construction servicer on behalf of the Agent (the "Construction Servicer").

The Construction Agent hereby certifies as follows:

1. Concurrent herewith, the Construction Agent has submitted a Requisition requesting funding thereof, all in accordance with the requirements of the Operative Agreements. The Requisition is attached hereto as Schedule A. The Construction Agent acknowledges that funding of the Requisition is subject to satisfaction of the conditions precedent in the Operative Agreements, including approval by the Construction Servicer.
2. This Certificate is to be utilized only in connection with the above-referenced Requisition.
3. To the best of the Construction Agent's knowledge, it has complied with all duties and obligations required to date to be carried out and performed by it pursuant to the Operative Agreements.
4. No Event of Default has occurred and is continuing.
5. All change orders regarding the construction of the Property subject to the above-referenced Requisition or changes to any of the Construction Documents have been submitted to and, to the extent required pursuant to the Operative Agreements, approved by the applicable Financing Parties.
6. All previously disbursed Advances have been used for the purposes as set forth in the Operative Agreements.
7. All outstanding claims for labor, materials and/or services furnished prior to the Advance requested pursuant to the above-referenced Requisition that are due and payable have been paid or will be paid from the proceeds of such Advance (unless such are being contested as permitted by the Operative Agreements and no such certification is hereby made with respect to costs to be incurred with respect to the future completion of punch list items in connection with the Punchlist Advance).
8. To the best of the Construction Agent's knowledge, all construction regarding the construction of the Property subject to the above-referenced Requisition prior to the date of this Certificate has been accomplished in substantial accordance with the Plans and Specifications; provided, no such certification is hereby made with respect to the future completion of punch list items in connection with the Punchlist Advance.
9. The Advance pursuant to the above-referenced Requisition will be used solely for the purposes set forth therein, and no amount requested for funding pursuant to the above-referenced Requisition has been the basis for any prior Requisition.

10. To the best of the Construction Agent's knowledge, there are no Liens outstanding against the Property subject to the above-referenced Requisition, except for Permitted Liens.

11. To the best of the Construction Agent's knowledge, the then Available Lessor Parties Commitment is sufficient to pay for Completion of the Property in accordance with the Construction Documents and the Operative Agreements.

12. All representations and warranties of the Credit Parties in the Operative Agreements are true and correct in all material respects as of the date hereof (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date).

13. The Construction Agent understands that this Certificate is made for the purpose of inducing the Agent and the Construction Servicer to approve the Advance pursuant to the above-referenced Requisition and in approving such Advance, the Agent and the Construction Servicer will rely upon the accuracy of the matters stated in this Certificate.

14. The statements made in this Certificate and any documents submitted herewith and identified herein are true and correct.

Capitalized terms used in this Certificate and not otherwise defined herein have the respective meanings ascribed thereto in that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among the Company, in its capacity as the Construction Agent and the Lessee, the various entities which are parties thereto from time to time, as the Guarantors, Wachovia Service Corporation, as the Lessor, the various banks and other lending institutions which are parties thereto from time to time, as the Lease Participants, and Wells Fargo Bank, National Association, as the Agent.

The Construction Agent has caused this Certificate to be duly executed and delivered as of the day and year first above written.

AVDC, INC., as the Construction Agent

By:_____

Name:_____

Title:_____

Schedule A

(Requisition)

EXHIBIT H

FORM OF GUARANTOR JOINDER AND ASSUMPTION AGREEMENT

This Guarantor Joinder and Assumption Agreement ("Joinder") is made as of _____, 20____, by _____, a _____ limited liability company/limited partnership/general partnership/corporation (the "New Guarantor").

Background

Reference is made to (i) the Participation Agreement, dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement"), by and among AVDC, Inc., an Ohio corporation (the "Construction Agent" or "Lessee"); the various entities which are parties thereto from time to time as guarantors (individually, a "Guarantor" and collectively, the "Guarantors"); Wachovia Service Corporation, a Delaware corporation (the "Lessor"); the various banks and other lending institutions which are parties thereto from time to time as lease participants (individually, a "Lease Participant" and collectively, the "Lease Participants"); and Wells Fargo Bank, National Association, a national banking association, as the agent for the Lessor Parties and, respecting the Security Documents, as agent for the Secured Parties (in such capacity, the "Agent") and (ii) the other Operative Agreements referred to in the Participation Agreement, as the same may be amended, modified, extended, supplemented, restated and/or replaced from time to time.

Agreement

Capitalized terms defined in the Participation Agreement are used herein as defined therein. In consideration of the New Guarantor becoming a Guarantor under the terms of the Participation Agreement and in consideration of the value of the synergistic benefits received by the New Guarantor as a result of becoming affiliated with the Credit Parties, the New Guarantor hereby agrees that (i) it shall become a "Guarantor" as defined in the Participation Agreement and be subject to Section 6B of the Participation Agreement, (ii) effective as of the date hereof, it hereby is, and shall be deemed to be, a Guarantor under the Participation Agreement and each of the other Operative Agreements to which the Guarantors are a party and agrees that from the date hereof and so long as any Obligation shall remain outstanding and until the payment and performance in full of all Obligations (other than contingent indemnification and reimbursement obligations in respect of which no claim for payment has yet been asserted by the Person entitled thereto), the New Guarantor has assumed the obligations of a Guarantor under, and the New Guarantor shall perform, comply with and be subject to and bound by, jointly and severally with any other Guarantor, each of the terms, provisions and waivers of the Participation Agreement, the Intercompany Subordination Agreement and each of the other Operative Agreements which are stated to apply to or are made by a Guarantor. Without limiting the generality of the foregoing, the New Guarantor hereby represents and warrants that (i) each of the representations and warranties with respect to the Guarantors set forth in Section 6.1 of the Participation Agreement (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date) is true and correct in all material respects as to the New Guarantor on and as of the date hereof as if made on and as of the date hereof by the New Guarantor and (ii) the New Guarantor has heretofore received a true and correct copy of the Participation

Agreement, and each of the other Operative Agreements (including any modifications thereof or supplements or waivers thereto) as in effect on the date hereof.

The New Guarantor hereby makes, affirms, and ratifies in favor of the Financing Parties, as applicable, the Participation Agreement, the Intercompany Subordination Agreement and each of the other Operative Agreements executed by the Guarantors.

The New Guarantor is simultaneously delivering to the Agent the following documents together with this Joinder required under Section 6B.9 [Joinder of Guarantors] of the Participation Agreement.

<u>Document</u>		<u>Delivered</u>	<u>Not Delivered</u>
Officer's Certificate (mandatory)		o	o
Secretary's Certificate (mandatory)		o	o
Opinion of Counsel (mandatory)		o	o
<u>Schedule No. and Description</u>		<u>Delivered</u>	<u>Not Delivered</u>
Schedule III	Subsidiaries (mandatory)	o	o
Schedule V	Owned Real Estate (if applicable)	o	o
Schedule VI	Consents and Approvals (mandatory)	o	o
Schedule VII	Insurance Policies (if applicable)	o	o
Schedule VIII	Employee Benefit Plan Disclosure (if applicable)	o	o
Schedule IX	Environmental Disclosure (if applicable)	o	o
Schedule X	Permitted Indebtedness (if applicable)	o	o
Schedule XI	Existing Guaranties (if applicable)	o	o
Schedule XII	Excluded Active Subsidiaries (if applicable)	o	o
Schedule XIII	Excluded Inactive Subsidiaries (if applicable)	o	o
Schedule XIV	Permitted Investments (if applicable)	o	o
Schedule XV	Revolving Credit Agreement Permitted Liens (if applicable)	o	o

[Note: updates to schedules do not cure any breach of warranties unless expressly agreed in accordance with the terms of the Participation Agreement.]

As of the date set forth above, the New Guarantor has duly executed and delivered this Joinder.

[__]

By: __
Name: __
Title: __

EXHIBIT I

FORM OF OFFICER'S CERTIFICATE (PERMITTED ACQUISITION)

Wells Fargo Bank, National Association, as Agent
10 South Wacker Drive, 22nd Floor
Chicago, IL 60606
Attention: Peter R. Martinets

Ladies and Gentlemen:

We refer to the Participation Agreement, dated as of November 30, 2017 (as may be amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement"), by and among AVDC, Inc., an Ohio corporation (the "Construction Agent" or "Lessee"); the various entities which are parties thereto from time to time as guarantors (individually, a "Guarantor" and collectively, the "Guarantors"); Wachovia Service Corporation, a Delaware corporation (the "Lessor"); the various banks and other lending institutions which are parties thereto from time to time as lease participants (individually, a "Lease Participant" and collectively, the "Lease Participants"); and Wells Fargo Bank, National Association, a national banking association, as the agent for the Lessor Parties and, respecting the Security Documents, as agent for the Secured Parties (in such capacity, the "Agent"). Unless otherwise defined herein, terms defined in the Participation Agreement are used herein with the same meanings.

_____ [enter name of Credit Party] intends to enter into a Permitted Acquisition with _____ [enter name of the target company] pursuant to which such Credit Party will _____ [provide a brief description of the transactions contemplated by such Permitted Acquisition] and the Consideration paid by such Credit Party exceeds Twenty-Five Million and 00/100 Dollars (\$25,000,000.00). This Certificate is delivered to the Administrative Agent in accordance with Section 8.3B(e)(iii)(E) of the Participation Agreement. I, _____, [Chief Executive Officer/President/Chief Financial Officer/Treasurer] of BLS, and I, _____, [Chief Executive Officer/President/Chief Financial Officer/Treasurer] of the Parent, do hereby certify on behalf of the Credit Parties as of _____ [at least 10 Business Days prior to any Permitted Acquisition] (the "Report Date"), as follows:

1. The representations and warranties of the Credit Parties contained in Section 6.1 of the Participation Agreement and in the other Operative Agreements to which they are a party are true and correct in all material respects on and as of the date hereof with the same effect as though such representations and warranties had been made on and as of the Report Date (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date). The Credit Parties are in compliance with, and since the date of the previously delivered Compliance Certificate have performed and complied with all covenants and conditions contained in the Participation Agreement except for any Event of Default that has been cured or waived.
2. No Default or Event of Default exists on the Report Date; no Default or Event of Default exists and is continuing; no Default or Event of Default shall exist immediately prior to and after giving effect to such Permitted Acquisition.

[NOTE: If any Event of Default or Default has occurred and is continuing, set forth on an attached sheet the nature thereof and the action which the Credit Parties have taken, are taking or propose to take with respect thereto.]

3. Maximum Leverage Ratio (Section 8.3B(o)). After giving effect to such Permitted Acquisition (including in such computation Indebtedness or other liabilities assumed or incurred in connection with such Permitted Acquisition), the ratio of (a) the sum of (i) Consolidated Total Indebtedness, and (ii) four (4) times Consolidated Rental Expense, to (b) Adjusted Consolidated EBITDAR is _____ to 1.00 for the four (4) most recently completed fiscal quarters of the Parent and its Subsidiaries ending prior to the Report Date, which is not greater than the permitted ratio of _____ to 1.00 for the relevant period *[insert applicable maximum from Table I below]*.

TABLE I

<u>Four (4) Consecutive Fiscal Quarters Ending (Nearest) of each applicable year</u>	<u>Maximum Total Leverage Ratio</u>
April 30	3.00 to 1.00
July 31	3.25 to 1.00
October 31	3.50 to 1.00
January 31	3.00 to 1.00

- (A) Consolidated Total Indebtedness for the four (4) most recently completed fiscal quarters ending prior to the Report Date equals \$_____.
- (B) Consolidated Rental Expense for the four (4) most recently completed fiscal quarters ending prior to the Report Date, multiplied by four (4), equals \$_____.
- (C) The sum of item 3(A) plus item 3(B) equals \$_____, the numerator of the Leverage Ratio.
- (D) Adjusted Consolidated EBITDAR for the four (4) most recently completed fiscal quarters prior to the Report Date, equals \$_____, and is computed as follows:
- (i) net income \$__
 - (ii) depreciation \$__
 - (iii) amortization \$__
 - (iv) other non-cash charges to net income \$__
 - (v) interest expense \$__
 - (vi) income tax expense \$__
 - (vii) Consolidated Rental Expense \$__
 - (viii) sum of items 3(A)(i) through 3(A)(vii) \$__

(ix) non-cash credit to net income \$__

(x) item 3(A)(viii) less item 3(A)(ix) equals Adjusted Consolidated EBITDAR, the denominator of the Leverage Ratio \$__

(E) The ratio of item 3(C) to item 3(D)(x) equals the Leverage Ratio.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby have executed this Certificate this ____ day of _____, 20__.

ATTEST: Big Lots Stores, Inc.

By:____ By:____

Name:____ Name:____

Title:____ Title:____

ATTEST: Big Lots, Inc.

By:____ By:____

Name:____ Name:____

Title:____ Title:____

EXHIBIT J

FORM OF OFFICER'S CERTIFICATE (COMPLIANCE)

[For the Fiscal Year Ended ____, 20__]

or

[For the Fiscal Quarter Ended ____, 20__]

Wells Fargo Bank, National Association, as Agent
10 South Wacker Drive, 22nd Floor
Chicago, IL 60606
Attention: Peter R. Martinets

Ladies and Gentlemen:

We refer to the Participation Agreement, dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement"), by and among AVDC, Inc., an Ohio corporation (the "Construction Agent" or "Lessee"); the various entities which are parties thereto from time to time as guarantors (individually, a "Guarantor" and collectively, the "Guarantors"); Wachovia Service Corporation, a Delaware corporation (the "Lessor"); the various banks and other lending institutions which are parties thereto from time to time as lease participants (individually, a "Lease Participant" and collectively, the "Lease Participants"); and Wells Fargo Bank, National Association, a national banking association, as the agent for the Lessor Parties and, respecting the Security Documents, as agent for the Secured Parties (in such capacity, the "Agent"). Unless otherwise defined herein, terms defined in the Participation Agreement are used herein with the same meanings.

I, ____, [*Chief Executive Officer/President/Chief Financial Officer/Treasurer*] of BLS, do hereby certify on behalf of BLS, and I, ____, [*Chief Executive Officer/President/Chief Financial Officer/Treasurer*] of the Parent, do hereby certify on behalf of the Parent, each as of the fiscal [*quarter/year*] ended [__, 20__] (the "Report Date"), as follows:

1. CHECK ONE:

_____ The audited annual financial statements of the Parent and its Subsidiaries being delivered to the Agent with this Compliance Certificate (a) present fairly, in all material respects, the financial position of the Parent and its Subsidiaries and their results of operations and cash flows for the fiscal year set forth above determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP consistently applied and (b) comply with the reporting requirements for such financial statements as set forth in Section 8.3C(b) of the Participation Agreement.

OR

_____ The quarterly financial statements of the Parent and its Subsidiaries being delivered to the Agent with this Compliance Certificate (a) present fairly, in all material respects, the financial position of the Parent and its Subsidiaries and their results of operations and cash flows for the fiscal quarter set forth above

determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP consistently applied, subject to normal year-end audit adjustments (except that such statements do not contain all of the footnotes required by GAAP) and (b) comply with the reporting requirements for such financial statements as set forth in Section 8.3C(a) of the Participation Agreement.

2. The representations and warranties of the Credit Parties contained in Section 6.1 of the Participation Agreement and in the other Operative Agreements are true and correct in all material respects on and as of the date hereof with the same effect as though such representations and warranties had been made on and as of the Report Date (except representations and warranties which (i) expressly relate solely to an earlier date or time, in which case such representations and warranties were true and correct as of such earlier date or time or (ii) are qualified by materiality or references to Material Adverse Effect, which such representations and warranties shall be true and correct in all respects as of such date) and the Credit Parties have performed and complied with all covenants and conditions of the Operative Agreements.

3. In accordance with Section 8.3A(m) of the Participation Agreement, attached hereto as Exhibit A are updates to the Schedules to the Participation Agreement, if applicable (the “Updated Schedules”).

4. No Event of Default or Default exists and is continuing on the Report Date; [Include the following when required pursuant to Section 6.1(i)(iii) of the Participation Agreement: no Material Adverse Effect has occurred since the date of the previously delivered Compliance Certificate; and no event has occurred and is continuing since the date of the previously delivered Compliance Certificate that may reasonably be expected to result in a Material Adverse Effect].

[NOTE: If any Event of Default, Default, [if required as noted above: Material Adverse Effect or event which may reasonably be expected to result in a Material Adverse Effect] has occurred and is continuing, set forth on an attached sheet the nature thereof and the action which the Credit Parties have taken, are taking or propose to take with respect thereto.]

5. Maximum Leverage Ratio (Section 8.3B(o)). The ratio of (a) the sum of (i) Consolidated Total Indebtedness, and (ii) four (4) times Consolidated Rental Expense, to (b) Adjusted Consolidated EBITDAR is _____ to 1.0 for the four (4) fiscal quarters of the Parent and its Subsidiaries ending as of the Report Date, which is not greater than the permitted ratio of _____ to 1.0 for the relevant period *[insert applicable maximum from Table I below]*:

TABLE I

<u>Four (4) Consecutive Fiscal Quarters Ending (Nearest) of each applicable year</u>	<u>Maximum Total Leverage Ratio</u>
April 30	3.00 to 1.00
July 31	3.25 to 1.00
October 31	3.50 to 1.00
January 31	3.00 to 1.00

- (A) Consolidated Total Indebtedness for the four (4) fiscal quarters ending as of the Report Date equals \$_____.
- (B) Consolidated Rental Expense for the four (4) fiscal quarters ending as of the Report Date, multiplied by four (4), equals \$_____.
- (C) The sum of item 5(A) plus item 5(B) equals \$_____, the numerator of the Leverage Ratio.
- (D) Adjusted Consolidated EBITDAR for the four (4) fiscal quarters ending as of the Report Date equals \$_____, and is computed as follows:
 - (i) net income \$_____
 - (ii) depreciation \$_____
 - (iii) amortization \$_____
 - (iv) other non-cash charges to net income \$_____
 - (v) interest expense \$_____
 - (vi) income tax expense \$_____
 - (vii) Consolidated Rental Expense \$_____
 - (viii) sum of items 5(A)(i) through 5(A)(vii) \$_____
 - (ix) non-cash credit to net income \$_____
 - (x) item 5(A)(viii) less item 5(A)(ix) equals Adjusted Consolidated EBITDAR, the denominator of the Leverage Ratio \$_____
- (E) The ratio of item 5(C) to item 5(D)(x) equals the Leverage Ratio

6. Minimum Fixed Charge Coverage Ratio (Section 8.3B(p)). The ratio of (a) Consolidated EBITDAR to (b) the sum of (i) Consolidated Interest Expense and (ii) Consolidated Rental Expense is _____ to 1.00 for the four (4) fiscal quarters of the Parent and its Subsidiaries ending as of the Report Date, which is not less than the permitted ratio of 1.50 to 1.00 for the relevant period:

- (A) Consolidated EBITDAR for the four (4) most recently completed fiscal quarters equals \$_____, and is computed as follows:
 - (i) net income \$_____
 - (ii) depreciation \$_____
 - (iii) amortization \$_____

- (iv) other non-cash charges to net income \$_____
- (v) interest expense \$_____
- (vi) income tax expense \$_____
- (vii) Consolidated Rental Expense \$_____
- (viii) sum of items 6(A)(i) through 6(A)(vii) \$_____
- (ix) non-cash credit to net income \$_____
- (x) item 6(A)(viii) less item 6(A)(ix) equals Consolidated EBITDAR, the numerator of the Fixed Charge Coverage Ratio \$_____
- (B) Consolidated Interest Expense for the four (4) most recently completed fiscal quarters equals \$_____.
- (C) Consolidated Rental Expense for the four (4) most recently completed fiscal quarters equals \$_____.
- (D) The sum of item 6(B) plus item 6(C) equals \$_____, the denominator of the Fixed Charge Coverage Ratio.
- (E) The ratio of item 6(A) to item 6(D) equals the Fixed Charge Coverage Ratio.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have executed this Certificate this ____ day of _____, 20__.

ATTEST: Big Lots Stores, Inc.

By:____ By:____

Name:____ Name:____

Title:____ Title:____

ATTEST: Big Lots, Inc.

By:____ By:____

Name:____ Name:____

Title:____ Title:____

EXHIBIT K

FORM OF INTERCOMPANY SUBORDINATION AGREEMENT

THIS INTERCOMPANY SUBORDINATION AGREEMENT (this "Agreement") is dated as of November 30, 2017 and is made by and among the entities listed on the signature page hereto (or subsequently joining this Agreement) (each being individually referred to herein as a "Credit Party" and collectively as the "Credit Parties") for the benefit of Wells Fargo Bank, National Association, as the agent for the Lessor (as hereinafter defined) and the Lease Participants (as hereinafter defined) and, respecting the Security Documents (as defined in the Participation Agreement (as hereinafter defined)), as agent for the Secured Parties (as defined in the Participation Agreement) (in such capacity, the "Agent").

WITNESSETH THAT:

WHEREAS, each capitalized term used herein shall, unless otherwise defined herein, have the meaning specified in the Participation Agreement, dated as of even date herewith (as may be amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement"), by and among AVDC, Inc., an Ohio corporation (the "Construction Agent" or "Lessee"); the various entities which are parties thereto from time to time as guarantors (individually, a "Guarantor" and collectively, the "Guarantors"); Wachovia Service Corporation, a Delaware corporation (the "Lessor"); the various banks and other lending institutions which are parties thereto from time to time as lease participants (individually, a "Lease Participant" and collectively, the "Lease Participants"); and Wells Fargo Bank, National Association, as the Agent; and

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

WHEREAS, the Credit Parties are or may become indebted to each other (the Indebtedness of each of the Credit Parties to any other Credit Party, now existing or hereafter incurred (whether created directly or acquired by assignment or otherwise), and interest and premiums, if any, thereon and other amounts payable in respect thereof are hereinafter collectively referred to as the "Intercompany Indebtedness") and are permitted to dissolve or merge in accordance with the terms of the Participation Agreement; and

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

WHEREAS, the obligations of the Lessor and the Lease Participants to maintain the Lessor Parties Commitments and make Lessor Advances from time to time are subject to the condition, among others, that the Credit Parties subordinate the Intercompany Indebtedness to the Indebtedness and all other Obligations of the Credit Parties to any of the Financing Parties pursuant to the Operative Agreements (collectively, the "Senior Debt") in the manner set forth herein.

NOW, THEREFORE, intending to be legally bound hereby, the parties hereto covenant and agree as follows:

1. Intercompany Indebtedness Subordinated to Senior Debt. The recitals set forth above are hereby incorporated by reference. All Intercompany Indebtedness shall be subordinate and subject in right of payment to the prior Payment In Full of all Senior Debt pursuant to the provisions contained herein.

2. Payment Over of Proceeds Upon Bankruptcy, Etc. Upon any distribution of assets of any Credit Party in connection with (a) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to any such Credit Party or to its creditors, as such, or to its assets, or (b) any assignment for the benefit of creditors or any marshalling of assets and liabilities of any such Credit Party (a Credit Party distributing assets as set forth herein being referred to in such capacity as a “Distributing Credit Party”), then and in any such event, the Agent shall be entitled to receive, for the benefit of the Financing Parties, as their respective interests may appear, Payment In Full of all amounts due or to become due, if an Event of Default has occurred or the Senior Debt has been declared due and payable prior to the date on which it would otherwise have become due and payable, other than pursuant to Section 5A.4 of the Participation Agreement (a “Triggering Event”), on or in respect of any and all Senior Debt before the holder of any Intercompany Indebtedness owed by the Distributing Credit Party is entitled to receive any payment on account of the principal of or interest on such Intercompany Indebtedness. Additionally, the Credit Parties hereby agree that the Revolving Credit Agreement Administrative Agent shall be entitled to receive, for application to the payment of the amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents, any payment or distribution of any kind or character, whether in cash, property or securities, which may be payable or deliverable in respect of the Intercompany Indebtedness owed by the Distributing Credit Party in any such case, proceeding, dissolution, liquidation or other winding up event.

If, notwithstanding the foregoing provisions of this Section, after the occurrence of a Triggering Event, a Credit Party which is owed Intercompany Indebtedness by a Distributing Credit Party shall have received any payment or distribution of assets from the Distributing Credit Party of any kind or character, whether in cash, property or securities, then and in such event such payment or distribution shall be held in trust for the benefit of the Revolving Credit Agreement Administrative Agent for application to amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents, shall be segregated from other funds and property held by such Credit Party, and shall be forthwith paid over to the Revolving Credit Agreement Administrative Agent for application to amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to or held as collateral (in the case of noncash property or securities) for the payment or prepayment of the amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents in accordance with the terms of the Revolving Credit Agreement Loan Documents.

3. No Commencement of Any Proceeding. Each Credit Party agrees that, so long as the Senior Debt shall remain unpaid, it will not commence, or join with any creditor other than the Revolving Credit Agreement Banks, the Revolving Credit Agreement Administrative Agent and the Financing Parties in commencing any proceeding referred to in the first paragraph of Section 2 against any other Credit Party which owes it any Intercompany Indebtedness.

4. No Payment When Senior Debt in Default. If a Triggering Event shall have occurred and be continuing, or would result from or exist after giving effect to a payment with respect to any portion of the Intercompany Indebtedness, unless the Majority Secured Parties shall have consented to or waived the same, so long as Payment In Full has not occurred, no payment shall be made by any Credit Party owing such Intercompany Indebtedness on account of principal or interest on any portion of the Intercompany Indebtedness except to the extent that the proceeds of such payment are used by the Credit Party receiving

such proceeds to immediately apply the same to the amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents.

If, notwithstanding the foregoing, any Credit Party shall make any payment of the Intercompany Indebtedness to another Credit Party prohibited by the foregoing provisions of this Section, such payment shall be paid over and delivered forthwith to the Revolving Credit Agreement Administrative Agent for application to amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents.

5. Payment Permitted if No Default. Nothing contained in this Agreement shall prevent any of the Credit Parties, at any time except during the pendency of any of the conditions described in Sections 2 and 4 hereof, from making payments at any time of principal of or interest on any portion of the Intercompany Indebtedness, or the retention thereof by any of the Credit Parties of any money deposited with them for the payment of or on account of the principal of or interest on the Intercompany Indebtedness.

6. Rights of Subrogation. Each Credit Party agrees that no payment or distribution to the Revolving Credit Agreement Administrative Agent for application to amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents pursuant to the provisions of this Agreement shall entitle it to exercise any rights of subrogation in respect thereof until Payment In Full.

7. Instruments Evidencing Intercompany Indebtedness. Each Credit Party shall cause each instrument, if any, which now or hereafter evidences all or a portion of the Intercompany Indebtedness to be conspicuously marked as follows:

“This instrument is subject to the terms of an Intercompany Subordination Agreement dated as of November 30, 2017 in favor of Wells Fargo Bank, National Association, as agent for the Lessor Parties and, respecting certain security documents, as agent for the Secured Parties (as such parties are referred to therein), which Intercompany Subordination Agreement is incorporated herein by reference. Notwithstanding any contrary statement contained in the within instrument, no payment on account of the principal thereof or interest thereon shall become due or payable except in accordance with the express terms of said Intercompany Subordination Agreement.”

8. Agreement Solely to Define Relative Rights. The purpose of this Agreement is solely to define the relative rights of the Credit Parties, on the one hand, and the Financing Parties, on the other hand. Nothing contained in this Agreement is intended to or shall impair, as between any of the Credit Parties and their creditors other than the Financing Parties, the obligation of the Credit Parties to each other to pay the principal of and interest on the Intercompany Indebtedness as and when the same shall become due and payable in accordance with its terms, or is intended to or shall affect the relative rights among the Credit Parties and their creditors other than the Financing Parties, nor shall anything herein prevent any of the Credit Parties from exercising all remedies otherwise permitted by Applicable Law upon default under any agreement pursuant to which the Intercompany Indebtedness is created, subject to the obligations of the Credit Parties under this Agreement to pay to the Revolving Credit Agreement Administrative Agent for application to amounts due and owing pursuant to the Revolving Credit Agreement Loan Documents such cash, property or securities otherwise payable or deliverable with respect to the Intercompany Indebtedness.

9. No Implied Waivers of Subordination. No right of the Financing Parties to enforce subordination, as herein provided, shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Credit Party or by any act or failure to act by any Financing Party, or by any non-compliance by any Credit Party with the terms, provisions and covenants of any agreement pursuant to which

the Intercompany Indebtedness is created, regardless of any knowledge thereof any Financing Party may have or be otherwise charged with. Each Credit Party by its acceptance hereof shall agree that, so long as Payment In Full has not occurred, such Credit Party shall not agree to sell, assign, pledge, encumber or otherwise dispose of, or to compromise, the obligations of the other Credit Parties with respect to their Intercompany Indebtedness, other than by means of payment of such Intercompany Indebtedness according to its terms or the sale, assignment, pledge or transfer to another Credit Party, without the prior written consent of the Agent.

Without in any way limiting the generality of the foregoing paragraph, to the extent, if any, permitted by the Participation Agreement, the Financing Parties may, at any time and from time to time, without the consent of or notice to the Credit Parties except to the extent provided in the Participation Agreement, without incurring responsibility to the Credit Parties and without impairing or releasing the subordination provided in this Agreement or the obligations hereunder of the Credit Parties to the Financing Parties, do any one or more of the following: (i) change the manner, place or terms of payment, or extend the time of payment, renew or alter the Senior Debt or otherwise amend or supplement the Senior Debt or the Operative Agreements; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing the Senior Debt, if any; (iii) release any Person liable in any manner for the payment or collection of the Senior Debt; and (iv) exercise or refrain from exercising any rights against any of the Credit Parties and any other Person.

10. Additional Subsidiaries. The Credit Parties covenant and agree that they shall cause Subsidiaries created or acquired after the date of this Agreement that are required to join this Agreement pursuant to Section 6B.9 of the Participation Agreement, to execute a joinder in the form of Exhibit H to the Participation Agreement, whereby such Subsidiary joins this Agreement and subordinates all Indebtedness owed to any such Subsidiary by any of the Credit Parties or other Subsidiaries hereafter created or acquired to the Senior Debt.

11. Continuing Force and Effect. This Agreement shall continue in force until Payment In Full.

12. Modification, Amendments or Waivers. Any and all agreements amending or changing any provision of this Agreement or the rights of the Financing Parties hereunder, and any and all waivers or consents to departures from the due performance by the Credit Parties of their obligations hereunder, shall be made only by written agreement, waiver or consent signed by the Agent, acting on behalf of the Financing Parties, with the written consent of the Majority Secured Parties, any such agreement, waiver or consent made with such written consent being effective to bind all the Financing Parties and, with respect to amendments or changes to any provision of this Agreement, signed by the Credit Parties.

13. Expenses. The Credit Parties unconditionally and jointly and severally agree upon demand to pay to the Agent, on behalf of the Financing Parties, the amount of any and all reasonable and necessary out-of-pocket costs, expenses and disbursements for which reimbursement is customarily obtained, including fees and expenses of counsel, which any of the Financing Parties may incur in connection with (a) the administration of this Agreement, (b) the exercise or enforcement of any of the rights of the Financing Parties hereunder, or (c) the failure by the Credit Parties to perform or observe any of the provisions hereof.

14. Severability. The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

15. Governing Law. This Agreement shall be a contract under the internal Laws of the State of New York and for all purposes shall be construed in accordance with the internal Laws of the State of New York without giving effect to its principles of conflict of laws.

16. Successors and Assigns. This Agreement shall inure to the benefit of the Financing Parties and their respective successors and assigns, as permitted in the Participation Agreement, and the obligations of the Credit Parties shall be binding upon their respective successors and assigns. Except in connection with a consolidation or merger permitted by Section 8.3B(e) of the Participation Agreement, the duties and obligations of the Credit Parties may not be delegated or transferred by the Credit Parties without the written consent of the Majority Secured Parties and any such delegation or transfer without such consent shall be null and void. Except to the extent otherwise required by the context of this Agreement, any reference in this Agreement to any Financing Party or collectively, to the Financing Parties shall include, without limitation, any holder of an assignment of rights in any Lessor Parties Interests and any replacement of the Agent, in its capacity as “Agent” under the Operative Agreements, in each case as applicable, and each such Person shall have the benefits of this Agreement to the same extent as if such holder had originally been a Financing Party under the Operative Agreements.

17. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when executed and delivered, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

18. Attorneys-in-Fact. Each of the Credit Parties hereby authorizes and empowers the Agent, at its election at any time after the occurrence and continuance of an Event of Default and the acceleration of the Senior Debt and in the name of either itself, for the benefit of the Financing Parties, as their respective interests may appear, or in the name of each such Credit Party as is owed Intercompany Indebtedness, to execute and file proofs and documents and take any other action the Agent may deem advisable to completely protect the interests of the Financing Parties pursuant to this Agreement and their right of enforcement thereof, and to that end each of the Credit Parties hereby irrevocably makes, constitutes and appoints the Agent, its officers, employees and agents, or any of them, with full power of substitution, as the true and lawful attorney-in-fact and agent of such Credit Party, and with full power for such Credit Party, and in the name, place and stead of such Credit Party for the purpose of carrying out the provisions of this Agreement, and taking any action and executing, delivering, filing and recording any instruments which the Agent may deem necessary or advisable to accomplish the purposes hereof, which power of attorney, being given for security, is coupled with an interest and is irrevocable. Each Credit Party hereby ratifies and confirms, and agrees to ratify and confirm, all action taken by the Agent, its officers, employees or agents pursuant to the foregoing power of attorney.

19. [Reserved].

20. Remedies. In the event of a breach by any of the Credit Parties in the performance of any of the terms of this Agreement, the Agent, on behalf of the Financing Parties, may demand specific performance of this Agreement and seek injunctive relief and may exercise any other remedy available at law or in equity, it being recognized that the remedies of the Agent on behalf of the Financing Parties at law may not fully compensate the Agent on behalf of the Financing Parties for the damages they may suffer in the event of a breach hereof.

21. Consent to Jurisdiction, Waiver of Jury Trial. Each of the Credit Parties hereby irrevocably consents to the non-exclusive jurisdiction of the State of New York in New York County or of the United

States for the Southern District of New York, and consents to service of process in the manner provided for in the Participation Agreement. Each of the Credit Parties waives any objection to jurisdiction and venue of any action instituted against it as provided herein and agrees not to assert any defense based on lack of jurisdiction or venue, AND EACH OF THE COMPANIES WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT TO THE FULL EXTENT PERMITTED BY LAW.

22. Notices. All notices, statements, requests and demands and other communications given to or made upon the Credit Parties or the Financing Parties in accordance with the provisions of this Agreement shall be given or made as provided in Section 12.2 of the Participation Agreement.

[remainder of page intentionally left blank]

WITNESS the due execution hereof as of the day and year first above written.

ATTEST:

AVDC, INC.

By: _____
Name: _____
Title: _____

BIG LOTS STORES, INC.

By: _____
Name: _____
Title: _____

BIG LOTS, INC.

By: _____
Name: _____
Title: _____

BIG LOTS ECOMMERCE LLC

By: _____
Name: _____
Title: _____

(signature pages continue)

BIG LOTS F&S, INC.

By: _____
Name: _____
Title: _____

BLC LLC

By: _____
Name: _____
Title: _____

CLOSEOUT DISTRIBUTION, INC.

By: _____
Name: _____
Title: _____

CONSOLIDATED PROPERTY HOLDINGS, INC.

By: _____
Name: _____
Title: _____

(signature pages continue)

CSC DISTRIBUTION, INC.

By: _____
Name: _____
Title: _____

C.S. ROSS COMPANY

By: _____
Name: _____
Title: _____

DURANT DC, LLC

By: _____
Name: _____
Title: _____

GREAT BASIN LLC

By: _____
Name: _____
Title: _____

(signature pages continue)

MAC FRUGAL'S BARGAINS • CLOSE-OUTS, INC.

By: _____
Name: _____
Title: _____

PNS STORES, INC.

By: _____
Name: _____
Title: _____

WEST COAST LIQUIDATORS, INC.

By: _____
Name: _____
Title: _____

(signature pages end)

SCHEDULE I

LESSOR PARTIES COMMITMENT

COMMITTED AMOUNT IMMEDIATELY PRIOR TO THE EFFECTIVENESS
OF THE LESSOR ASSIGNMENT AGREEMENT

<u>LESSOR</u>	<u>COMMITTED AMOUNT</u>	<u>COMMITMENT PERCENTAGE</u>
---------------	-------------------------	------------------------------

Wachovia Service Corporation	\$160,000,000.00	100%
------------------------------	------------------	------

COMMITTED AMOUNTS IMMEDIATELY AFTER THE EFFECTIVENESS
OF THE LESSOR ASSIGNMENT AGREEMENT

<u>LESSOR PARTIES</u>	<u>COMMITTED AMOUNT</u>	<u>COMMITMENT PERCENTAGE</u>
-----------------------	-------------------------	------------------------------

Wachovia Service Corporation	\$60,000,000.00	37.50%
------------------------------	-----------------	--------

Bankers Commercial Corporation	\$50,000,000.00	31.25%
--------------------------------	-----------------	--------

PNC Equipment Finance, LLC	<u>\$50,000,000.00</u>	<u>31.25%</u>
----------------------------	------------------------	---------------

TOTAL	<u>\$160,000,000.00</u>	<u>100.00%</u>
-------	-------------------------	----------------

SCHEDULE II

CAPITALIZATION

The Parent had 280,001 total outstanding options to acquire its common shares as of August 17, 2018.

SCHEDULE III

CREDIT PARTIES

Entity	Domestic Jurisdiction	Owner(s) / Member(s)	Authorized Shares	Issued & Outstanding Shares	Address
AVDC, Inc.	OH	Big Lots, Inc.	1,500 common, \$0 par	100	c/o Big Lots, Inc. 4900 E. Dublin-Granville Road Columbus, OH 43081
Big Lots F&S, Inc.	OH	Big Lots Stores, Inc.	1,500 common, \$0 par	100	4900 E. Dublin-Granville Road Columbus, OH 43081
Big Lots eCommerce LLC	OH	Big Lots Stores, Inc.	N/A	N/A	4900 E. Dublin-Granville Road Columbus, OH 43081
Big Lots, Inc.	OH	Publicly Owned	298,000,000 common, \$0.01 par 2,000,000 preferred, \$0.01 par	40,346,268 common as of August 4, 2018 0 preferred as of August 4, 2018	4900 E. Dublin-Granville Road Columbus, OH 43081
Big Lots Stores, Inc.	OH	Big Lots, Inc.	750 common, \$0 par	575	4900 E. Dublin-Granville Road Columbus, OH 43081
BLC LLC	DE	Big Lots, Inc.	N/A	N/A	c/o Big Lots, Inc. 4900 E. Dublin-Granville Road Columbus, OH 43081
Closeout Distribution, Inc.	PA	Big Lots Stores, Inc.	1,000 common, \$0 par	1,000	50 Rausch Creek Road Tremont, PA 17981
Consolidated Property Holdings, Inc.	NV	Big Lots Stores, Inc.	100 common, \$0 par	5	330 E. Warm Springs Road Las Vegas, Nevada 89119
CSC Distribution, Inc.	AL	Big Lots Stores, Inc.	200 common, \$50.00 par	100	2855 Selma Highway Montgomery, AL 36108

Entity	Domestic Jurisdiction	Owner(s) / Member(s)	Authorized Shares	Issued & Outstanding Shares	Address
C.S. Ross Company	OH	Big Lots Stores, Inc.	100 common, \$1.00 par	100	4900 E. Dublin-Granville Road Columbus, OH 43081
Durant DC, LLC	OH	Big Lots Stores, Inc.	N/A	N/A	2306 Enterprise Drive Durant, OK 74701
Great Basin LLC	DE	Big Lots Stores, Inc.	N/A	N/A	4900 E. Dublin-Granville Road Columbus, OH 43081
Mac Frugal's Bargains • Close-outs, Inc.	DE	Big Lots, Inc.	3,000 common, \$0.01 par	100	c/o Big Lots, Inc. 4900 E. Dublin-Granville Road Columbus, OH 43081
PNS Stores, Inc.	CA	Mac Frugal's Bargains • Close-outs, Inc.	5,000 common, \$100.00 par	450	7241 Fair Oaks Blvd. Carmichael, CA 95608
West Coast Liquidators, Inc.	CA	Mac Frugal's Bargains • Close-outs, Inc.	1,000 common, \$0 par	200	12434 4 th Street Rancho Cucamonga, CA 91730

SCHEDULE IV

NEW YORK POTENTIAL TAX CLAIM

New York Potential Tax Claim. Fashion Barn, Inc., an Excluded Inactive Subsidiary, may be liable to the State of New York for gains tax arising from the resale of real estate in 1988. On or about June 29, 1995, an administrative law judge ruled that Fashion Barn, Inc. may be liable for \$493,417.20 in gains tax, plus applicable interest and penalties, if any. The administrative law judge further ruled that the State of New York could only collect this potential liability from Fashion Barn, Inc. and no other entity or person, including Barn Acquisition Corporation and the Borrower. Fashion Barn, Inc. currently has no assets.

SCHEDULE V

OWNED REAL ESTATE

Location	Name	Address 1	City	ST	Zip	
1910	LAKEWOOD, CA	5227 LAKEWOOD AVE.	LAKEWOOD	CA	90712	Purchased 6/5/12
4002	DOWNEY, CA	9020 E FIRESTONE BLVD	DOWNEY	CA	90241	
4014	FONTANA, CA	17575 FOOTHILL BLVD	FONTANA	CA	92335	
4025	ARCADIA, CA	610 LAS TUNAS	ARCADIA	CA	91006	
4030	VENTURA, CA	299 BORCHARD DR.	VENTURA	CA	93003	
4031	GARDENA, CA	2900 ROSECRANS AVE	GARDENA	CA	90249	
4035	HEMET, CA	2093 E FLORIDA	HEMET	CA	92544	
4045	VICTORVILLE, CA	14790 LA PAZ DR	VICTORVILLE	CA	92392	
4046	ORANGE, CA	1821 N TUSTIN AVE	ORANGE	CA	92866	
4052	BUENA PARK, CA	8932 VALLEY VIEW	BUENA PARK	CA	90620	
4066	WEST COVINA, CA	635 N AZUSA AVE	WEST COVINA	CA	91791	
4087	YUCCA VALLEY, CA	56865 TWENTY-NINE	YUCCA VALLEY	CA	92284	
4088	HUNTINGTON BEACH, CA	21082 BEACH BLVD	HUNTINGTON BEACH	CA	92648	
4090	COVINA, CA	20808 E ARROW HWY	COVINA	CA	91724	
4094	ROWLAND HEIGHTS, CA	1730 S NOGALES ST	ROWLAND HGTS	CA	91748	
4096	DENTON, TX	2249 S LOOP 288	DENTON	TX	76205	12/11/14 sold 6,277 sf of land to the TDOT
4098	CHINO, CA	12550 CENTRAL AVE	CHINO	CA	91710	
4099	PEORIA, AZ	8778 W CHOLLA	PEORIA	AZ	85345	Store closed on 6/4/17
4103	RANCHO CUCAMONGA, CA	12322 4TH ST	RANCHO CUCAMONGA	CA	91730	
4104	COLORADO SPRINGS, CO	1990 S ACADEMY	COLORADO SPRINGS	CO	80916	

Location	Name	Address 1	City	ST	Zip	
4105	STOCKTON, CA	8001 WEST LANE	STOCKTON	CA	95210	
4106	LODI, CA	380 S CHEROKEE LANE	LODI	CA	95240	
4107	WESTMINSTER, CA	6351 WESTMINSTER BLVD	WESTMINSTER	CA	92683	
4110	SAN ANTONIO, TX	1739 SW LOOP 410 #200	SAN ANTONIO	TX	78227	
4117	ARVADA, CO	8125 SHERIDAN BLVD	ARVADA	CO	80003	
4118	INGLEWOOD, CA	3003 W MANCHESTER	INGLEWOOD	CA	90305	
4121	FORT COLLINS, CO	126 W TROUTMAN PKWY	FORT COLLINS	CO	80525	
4126	NATIONAL CITY, CA	1410 PLAZA BLVD	NATIONAL CITY	CA	91950	
4129	ANTIOCH, CA	2521 SOMERSVILLE RD.	ANTIOCH	CA	94509	
4136	LOMITA, CA	2155 W. PACIFIC COAST HWY	LOMITA	CA	90717	
4144	FARMERS BRANCH, TX	2865 VALLEY VIEW LANE	FARMERS BRANCH	TX	75234	
4147	SANTA FE, NM	3140 CERRILLOS ROAD	SANTA FE	NM	87505	
4162	BOSSIER CITY, LA	3145 E. TEXAS AVE.	BOSSIER CITY	LA	77036	
4164	FRESNO, CA	4895 E. KINGS CANYON	FRESNO	CA	93727	
4170	DUARTE, CA	1325 E. HUNTINGTON DR.	DUARTE	CA	91010	
4178	LAS CRUCES, NM	2350 E. LOHMAN	LAS CRUCES	NM	88001	
4224	CUTLER RIDGE, FL	18325 S. DIXIE HWY.	CUTLER RIDGE	FL	33157	
4225	MIAMI, FL	2100 S.W. 27TH AVE.	MIAMI	FL	33145	
4247	SAN DIEGO, CA	1655 EUCLID AVE.	SAN DIEGO	CA	92105	
4275	PASADENA, CA	1260 N. LAKE AVE.	PASADENA	CA	91104	
4277	LANCASTER, CA	1070 "A" W. AVENUE K	LANCASTER	CA	93534	
4281	DUBLIN, CA	7991 AMADOR VALLEY BLVD.	DUBLIN	CA	94568	Purchased 6/30/08
4303	HIGHLAND, CA	26545 HIGHLAND AVE.	HIGHLAND	CA	92346	
4310	REDDING, CA	1340 HILLTOP DRIVE	REDDING	CA	96003	
4315	LOS ANGELES, CA	1815 SLAUSON	LOS ANGELES	CA	90047	
4321	FONTANA, CA	17095 VALLEY BLVD	FONTANA	CA	92335	
4322	RANCHO CUCAMONGA, CA	9008 FOOTHILL BLVD	RANCHO CUCAMONGA	CA	91730	
4329	TUCSON, AZ	3959 ORACLE ROAD	TUCSON	AZ	85705	

Location	Name	Address 1	City	ST	Zip	
4337	PLACENTIA, CA	1257 E YORBA LINDA BLVD	PLACENTIA	CA	92870	Purchased 7/23/08
4340	SAN FRANCISCO, CA	3333 MISSION ST	SAN FRANCISCO	CA	94110	
4350	ESCONDIDO, CA	1580 W VALLEY PARKWAY	ESCONDIDO	CA	92029	
5230	VERO BEACH, FL	6420 20TH ST.	VERO BEACH	FL	33208	Purchased 12/23/11
5271	TAYLOR, MI	23351 EUREKA RD	TAYLOR	MI	48180	Purchased 7/25/12
5358	ELYRIA, OH	825 CLEVELAND ST.	ELYRIA	OH	44035	Purchased 6/23/17
Unit #						
10055/890/872	General Office/Warehouse & Distribution Facility (Parcel 570-211797)	200,300,350,400,450,550 Phillipi Road	Columbus	OH	43228	
870	Warehouse & Distribution Facility	2855 Selma Highway	Montgomery	AL	36108	
873	Warehouse & Distribution Facility	12434 Fourth Street	Rancho Cucamonga	CA	91730	
874	Warehouse & Distribution Facility	50 Rausch Creek Road	Tremont	PA	17981	
879	Warehouse & Distribution Facility	2306 Enterprise Blvd.	Durant	OK	74701	
890	Warehouse & Distribution Facility (Parcel 570-211798)	500 Phillipi Road	Columbus	OH	43228	
890	Land (Parcel 570-211799)	500 Phillipi Road	Columbus	OH	43228	
890	Land (Parcel 010-110890)	Wilson Road	Columbus	OH	43228	
10059	Land	Homer M Adams Parkway	Alton	IL	62002	
4133	Land	Hampden Ave.	Aurora	CO	80013	

SCHEDULE VI

CONSENTS AND APPROVALS

None.

SCHEDULE VII

INSURANCE POLICIES

Coverage	Limits	Carrier / Broker	Policy Number
Auto Liability	\$2M combined single limit	Starr Indemnity and Liability Co. AON	SISIPCA08373518 - AOS
			SISIPCA08373618 - MA
Crime - Fidelity	Employee Dishonesty Coverage, Loss Inside the Premises Coverage, Loss Outside the Premises, Money Orders and Counterfeit Paper Currency, Depositors Forgery Coverage, Computer Fraud Coverage, Credit Card Forgery Coverage or Rider – All with \$5M limits	National Union Fire Insurance Company of Pittsburgh, PA (AIG) Integro	14570281
Cyber Liability	\$10M PCI Fines, Expenses and Costs Sublimit: \$2.5M, Notified Individuals in the Aggregate Limit: \$2M Notified Individuals in the aggregate; including up to 10% of such amount to be available for Notified Individuals residing outside of the United States, Legal Services/Computer Expert Services/Public Relations and Crisis Management Expenses Aggregate Sublimit: \$2.5M	Beasley	W19E02170301
		Marsh	
	\$10M X Primary	XL Catlin Marsh	MTE 9032818 02
	\$10M X \$10M	AIG Marsh	02-708-66-81
	\$10M X Primary	Liberty Surplus Marsh	EO5NAA731U003

	\$5M X \$20M	Colony Insurance (Argo) Marsh	XS407188
Directors & Officers			
	25M	Berkshire Hathaway Specialty Ins. Co. Integro	47EPC15019505 (Claims Made)
	\$15,000,000 Excess Primary	Endurance American Insurance Company Integro	DOX10013122900 (Claims Made)
	\$10,000,000 Excess of \$40,000,000	Beazley Insurance Company, Inc. Integro	V15ADD180501 (Claims Made)
	\$10,000,000 Excess of \$50,000,000	AXIS Insurance Company Integro	MCN727071012018 (Claims Made)
	\$10,000,000 Excess of \$60,000,000	Liberty Insurance Underwriters, Inc. Integro	DOSF190374217 (Claims Made)
	\$10,000,000 Excess of \$70,000,000	Travelers Integro	106527435 (Claims Made)
	\$20,000,000 Excess of \$80,000,000	AIG Integro	14550846 (Claims Made)
Employment Practices Liability			
	\$25,000,000 Primary	Illinois National Insurance Company (AIG) Integro	14550849 (Claims Made)
	\$15,000,000 Excess of \$25,000,000	AXIS Insurance Company Integro	MCN760607012018 (Claims Made)
	\$10,000,000 Excess of \$40,000,000	Federal Insurance Company (Chubb) Integro	G25583826001 (Claims Made)
	\$25M	American International Reinsurance Company, Ltd. (AIG) Integro	12714403 (Claims Made)
	Annual Aggregate		
	\$50M W/\$25M Pun Wrap		

Employed Lawyers (Prof. Liability)			
	\$2,000,000 / \$1,600,000 Defense	Federal Insurance Company (Chubb) Integro	81660007 (Claims Made)
Fiduciary Liability			
	\$10M Claim/Policy Limit	Federal Insurance Company (Chubb)	81590406
	\$10,000,000 Excess \$10,000,000	Berkshire Hathaway Specialty Ins. Co.	47-EPC-303749-02 (Claims Made)
Foreign (Exporters) Liability			
	\$1,000,000 Each Occurrence, \$2,000,000 Personal and Advertising Aggregate, \$2,000,000 Product/Completed Operations Aggregate, \$1,000,000 Premises Damage Each Occurrence \$30,000 Medical Expenses Any One Person, Automobile Liability \$1,000,000 Each Accident \$25,000 Hired Auto Physical Damage--Any One Accident, \$25,000 Hired Auto Physical Damage--Any 1 Period, \$30,000 Medical Payments--Each Person, \$30,000 Medical Payments--Each Accident, Employee Benefits Liability, \$1,000,000 Each Claim \$1,000,000 Annual Aggregate, \$1,000 Deductible Each Claim, Foreign Voluntary Workers Compensation, North Americans--State of Hire Benefits, Third Country Nationals--Country of Origin Benefits, Local Nationals--Country of Origin Benefits, Employers Liability \$1,000,000 Bodily Injury by Accident--Each Accident, \$1,000,000 Bodily Injury by Disease--Policy Limit	ACE American Insurance Marsh Inc.	PHFD3837249A002
General Liability			
	\$1,000,000 Per Occurrence \$10,000,000 General Aggregate Limit \$4,000,000 Products/Completed Operations Aggregate \$1,000,000 Personal & Advertising Injury \$1,000,000 Employee Benefits-Each Employee/Aggregate \$1,000,000 Fire Damage Limit \$1,000,000 Liquor Liability-Each Common Cause/Aggregate	Starr Indemnity & Liability Co. AON	1000100047181

	\$25,000,000 Per Occurrence \$25,000,000 Products/Completed Operations Aggregate \$25,000,000 General Aggregate \$250,000 Casualty Business Crisis Expense Excess of Primary	ACE Property & Casualty Insurance Co. AON	XOOG28123905002
	\$25,000,000 excess of \$25,000,000	XL AON	US00006767LI17A
	\$25,000,000 excess of \$50,000,000	The Ohio Casualty Insurance Company (Liberty) AON	ECO1857915161
	\$25,000,000 part of \$50,000,000 excess of \$75,000,000	ACE Property & Casualty Insurance Co. AON	XCQG4664752A001
	\$25,000,000 part of \$50,000,000 excess of \$75,000,000	Great American Assurance Co. AON	EXC1603637
	\$25,000,000 excess of \$125,000,000	Navigators Insurance Company AON	CH17RXS901878IV
	\$25,000,000 Each Occurrence \$25,000,000 Products/Completed Operations Aggregate \$25,000,000 General Aggregate	Chubb Bermuda Insurance Ltd. AON	BIG2PID17
	\$25,000,000 excess of \$25,000,000	XL Insurance Company SE AON	IE00018148LI17A
	\$25,000,000 excess of \$50,000,000	Magna Carta Insurance Limited AON	MCLI1203932
	\$25,000,000 part of \$50,000,000 excess of \$75,000,000	Chubb Bermuda Insurance Ltd. AON	BIGPD17
		GAI insurance Company, LTD.	EXC1492961

	\$25,000,000 part of \$50,000,000 excess of \$75,000,000	AON	
	\$25,000,000 excess of \$125,000,000	Magna Carta Insurance Limited AON	MCNA 203933
Property			
	50% of \$500,000,000	XL Insurance America Inc.	US00065403PR17A
	10% of \$500,000,000	Liberty Mutual Fire Insurance Co.	MJ2-L9L-434342-027
	25% of \$490,000,000 xs \$10,000,000	American Guarantee & Liability Insurance Company (Zurich)	XPP 0171421-023
	25% of \$490,000,000 xs \$10,000,000	Starr Surplus Lines Insurance Company 25% Prim 10m	SLSTPTY10967817
	15% of Primary \$10,000,000	ACE American Insurance	GPAD38115522002
	15% of Primary \$10,000,000	QBE Specialty Insurance Company 15%	CFE3977231
		Everest National	RP8CF00019171
	15% of Primary \$10,000,000	Aspen Specialty Ins. Co. (Northshore)	NSM37181
	\$12,500,000 Part of \$25,000,000 xs \$25,000,000 (50%)	Endurance American Specialty Insurance Co. 40%	ESP30000356400
	\$10,000,000 Part of \$50,000,000 xs \$50,000,000 (20%)	Aspen Specialty Ins. Co. (Northshore)	NSM37182
	\$17,500,000 Part of \$50,000,000 xs \$50,000,000 (35%)	Catalytic on behalf of Certain Underwriters at Lloyd's of London 40% AON	LLO15685
Stock Throughput			
	\$15,000,000 Primary any one vessel or aircraft	Starr Marine	MASICNY0314US17
	\$15,000,000 Primary any one inland conveyance; US Domestic Transit \$5,000,000 per occurrence any one retail location \$20,000,000 per occurrence any one scheduled DC/warehouse \$3,000,000 any one unnamed warehouse/DC location \$20,000,000 per occ. and agg. for CAL Quake/EQ Sprinkler Leakage \$20,000,000 per occ. and agg. for Named Windstorm \$20,000,000 per occ. and agg. for Flood	Various London AON	MACAR1700429
Special Coverage			

	\$20M	Hiscox Integro	UKA3008512.18
Travel Accident			
	2.5M Per Occurrence, 500K Class I, 250K Class II, 100K Class III	Zurich AON	GTU2853455-16
Workers' Compensation & Employer Liability			
	WC is Statutory, Employer's Liability – 1M Injury by Accident-Each Accident, 1M Injury by Disease-Each Employee & 1M Injury by Disease	Starr Indemnity & Liability Co. Starr Indemnity & Liability Co. Starr Indemnity & Liability Co. Starr Indemnity & Liability Co.	10000022120 - AOS 1000002211 - AZ,CT,IA,NJ,NY,NC & VT 1000002209 - FL & MA 1000002210 - WI
	WC - Statutory Benefits, Employer's Liability - 1M Injury by Accident-Each Accident, 1M Injury by Disease-Each Employee & 1M Injury by Disease	Starr Indemnity & Liability Co.	1000129922181 - OH Excess
	WC - Statutory Benefits, Employer's Liability - 1M Injury by Accident-Each Accident, 1M Injury by Disease-Each Employee & 1M Injury by Disease	Starr Indemnity & Liability Co. AON	1000129923181 - GA Excess
	Texas: Combined Single Limit (per any one person) \$7,000,000, Combined Single Limit (per any one occurrence) \$25,000,000, Annual Policy Aggregate None	Great American Insurance Group PartnerSource	ECA 3719677
State Funds			
	North Dakota	North Dakota State Fund	1272257 - BL
	Washington	Washington State Fund PNS 86730407 Effective 12/31/2008	86730403 = BL 96029300 = PNS
	Wyoming	Wyoming State Fund	3422850

SCHEDULE VIII

EMPLOYEE BENEFIT PLAN DISCLOSURE

None.

SCHEDULE IX

ENVIRONMENTAL DISCLOSURE

None.

SCHEDULE X

PERMITTED INDEBTEDNESS

Indebtedness secured by Liens listed on Schedule XV.

SCHEDULE XI

EXISTING GUARANTIES

Guaranty obligations arising from or related to the purchase and/or sale of KB Toys.

SCHEDULE XII

EXCLUDED ACTIVE SUBSIDIARIES

None.

SCHEDULE XIII

EXCLUDED INACTIVE SUBSIDIARIES

Entity	Domestic Jurisdiction	Owner / Member
Barn Acquisition Corporation	DE	Industrial Products of New England, Inc.
Big Lots Online LLC	OH	Big Lots Stores, Inc.
BLSI Property, LLC	DE	Big Lots Stores, Inc.
Capital Retail Systems, Inc.	OH	Big Lots, Inc.
Fashion Barn, Inc.	NY	Barn Acquisition Corporation
Fashion Barn of Oklahoma, Inc.	OK	Fashion Barn, Inc.
Fashion Bonanza, Inc.	NY	Fashion Barn, Inc.
Industrial Products of New England, Inc.	ME	Big Lots Stores, Inc.
Liquidation Services, Inc.	DE	Liquidation World U.S.A. Holding Corp.
Liquidation World U.S.A. Holding Corp.	DE	Big Lots, Inc.
Liquidation World U.S.A. Inc.	DE	Liquidation World U.S.A. Holding Corp.
LQW Traders, Inc.	DE	Liquidation World U.S.A. Holding Corp.
Midwestern Home Products, Inc.	DE	Big Lots Stores, Inc.
Midwestern Home Products Company, Ltd.	OH	Midwestern Home Products, Inc.
North American Solutions, Inc.	DE	Liquidation World U.S.A. Holding Corp.
Rogers Fashion Industries, Inc.	NY	Fashion Barn, Inc.
Sahara LLC	DE	Big Lots Stores, Inc.
Sonoran LLC	DE	Big Lots Stores, Inc.
SS Investments Corporation	DE	Industrial Products of New England, Inc.
Talon Wholesale, Inc.	DE	Liquidation World U.S.A. Holding Corp.
Tool and Supply Company of New England, Inc.	DE	Big Lots Stores, Inc.

SCHEDULE XIV

PERMITTED INVESTMENTS

Any Credit Party's ownership of the stock, partnership interest (whether general or limited) or limited liability company interest in, as applicable, or capital contribution to, any Excluded Active Subsidiary or Excluded Inactive Subsidiary.

SCHEDULE XV

REVOLVING CREDIT AGREEMENT PERMITTED LIENS

- a. The security interests purportedly held against Big Lots, Inc. by Platinum Disc, LLC (DBA Each Bridge Home Entertainment) in specific equipment.
- b. The security interests purportedly held against Big Lots Stores, Inc. by The Huntington National Bank in specific equipment.
- c. The security interests purportedly held against Big Lots Stores, Inc. by Canon Solutions America, Inc. in specific equipment.
- d. The security interest purportedly held against Big Lots Stores, Inc., PNS Stores, Inc., C.S. Ross Company and Closeout Distribution, Inc. by Scents of Worth, Inc. in specific equipment.
- e. The security interest purportedly held against Big Lots Stores, Inc., PNS Stores, Inc., C.S. Ross Company and Closeout Distribution, Inc. by American Greetings Corporation in specific equipment.
- f. The security interest purportedly held against Big Lots Stores, Inc., PNS Stores, Inc., C.S. Ross Company and Closeout Distribution, Inc. by FGX International Inc. in specific equipment.
- g. The security interest purportedly held against Big Lots Stores, Inc., PNS Stores, Inc., C.S. Ross Company and Closeout Distribution, Inc. by Mizco International, Inc. in specific equipment.
- h. The security interests purportedly held against Big Lots Stores, Inc. by Dippin'Dots, LLC in specific equipment.
- i. The security interest purportedly held against Closeout Distribution, Inc. by PNC Equipment Finance, LLC in specific equipment.
- j. The security interest purportedly held against West Coast Liquidators, Inc. by Raymond Leasing Corporation in specific equipment.

SCHEDULE XVI

NOTICE INFORMATION FOR LESSOR PARTIES

Wachovia Service Corporation
301 South College Street, 12th Floor
Charlotte, NC 28202
MAC: D1053-124
Attention: Matthew Kuhn/Karla Brewer
Telephone: 704-410-2459

Bankers Commercial Corporation
445 South Figueroa Street, G14-200
Los Angeles, CA 90071
Attention: Leasing and Asset Finance
Telephone: 213-236-6444
Fax: 213-236-6460

PNC Equipment Finance, LLC
995 Dalton Avenue
Cincinnati, OH 45203
Attention: Customer Service
Telephone: 800-559-2755
Fax: 513-763-1637

with a copy to :

PNC Equipment Finance, LLC
Tower at PNC Plaza
300 Fifth Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Corporate Finance
Telephone: 412 762 4359

SCHEDULE XVII

SETTLEMENT AMOUNTS

Golden State Environmental Justice Alliance – \$475,000 donation, payable 30 days after start of construction.

Sierra Club – \$40,000 in attorney fees (already paid). Plus \$50,000 donation to Mojave Desert Land Trust and \$15,000 to Transition Habitat Conservancy, payable within 30 days of issuance of construction permits.

SCHEDULE XVIII

GUARANTORS AS OF THE FIRST AMENDMENT CLOSING DATE

1. Big Lots, Inc. (OH)
2. Big Lots Stores, Inc. (OH)
3. Big Lots eCommerce LLC (OH)
4. Big Lots F&S, Inc. (OH)
5. BLC LLC (DE)
6. Closeout Distribution, Inc. (PA)
7. Consolidated Property Holdings, Inc. (NV)
8. CSC Distribution, Inc. (AL)
9. C.S. Ross Company (OH)
10. Durant DC, LLC (OH)
11. Great Basin LLC (DE)
12. MacFrugal's Bargains • Close-outs, Inc. (DE)
13. PNS Stores, Inc. (CA)
14. West Coast Liquidators, Inc. (CA)

Appendix A
Rules of Usage and Definitions

I. Rules of Usage

The following rules of usage shall apply to this Appendix A and the Operative Agreements (and each appendix, schedule, exhibit and annex to the foregoing) unless otherwise required by the context or unless otherwise defined therein:

(a) Except as otherwise expressly provided, any definitions set forth herein or in any other document shall be equally applicable to the singular and plural forms of the terms defined.

(b) Except as otherwise expressly provided, references in any document to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits are references to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits in or to such document.

(c) The headings, subheadings and table of contents used in any document are solely for convenience of reference and shall not constitute a part of any such document nor shall they affect the meaning, construction or effect of any provision thereof.

(d) References to any Person shall include such Person, its successors, permitted assigns and permitted transferees.

(e) Except as otherwise expressly provided, reference to any agreement means such agreement as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof.

(f) Except as otherwise expressly provided, references to any law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor.

(g) When used in any document, words such as “hereunder”, “hereto”, “hereof” and “herein” and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof.

(h) References to “including” mean including without limiting the generality of any description preceding such term and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned.

(i) References herein to “attorney’s fees”, “legal fees”, “costs of counsel” or other such references shall not include the allocated cost of in-house counsel.

(j) Each of the parties to the Operative Agreements and their counsel have reviewed and revised, or requested revisions to, the Operative Agreements, and the usual rule of construction that any ambiguities

are to be resolved against the drafting party shall be inapplicable in the construction and interpretation of the Operative Agreements and any amendments or exhibits thereto.

(k) Capitalized terms used in any Operative Agreements which are not defined in this Appendix A but are defined in another Operative Agreement shall have the meaning so ascribed to such term in the applicable Operative Agreement.

(l) In computing any period of time for purposes of any Operative Agreement, the mechanics for counting the number of days set forth in Rule 6 of the Federal Rules of Civil Procedure shall be observed.

(m) Time is of the essence, including with regard to the performance of all obligations.

II. Definitions

“ABR” shall mean, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) except during any period of the unavailability of LIBOR (as determined by the Agent in accordance with the Operative Agreements), the LIBOR Rate for a Lessor Yield Period of one month plus 1%; each change in the ABR shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or the LIBOR Rate.

“ABR Lessor Advance” shall mean a Lessor Advance bearing a Lessor Yield based on the ABR.

“Acceptable Regulatory Standards” shall mean those standards currently in effect with respect to the presence of a hazardous substance on the Property which would be sufficient to satisfy the promulgated remediation standards of the jurisdiction where the Property is located for the continued use of the real property for industrial or commercial purposes only, including the possible application of restrictive covenants, engineering controls, other types of use restrictions or monitored natural attenuation for the minimum and lowest cost.

“Acquisition Advance” shall have the meaning given to such term in Section 5.3 of the Participation Agreement.

“Adjusted Consolidated EBITDAR” shall mean, as of any date of determination, Consolidated EBITDAR for the period equal to the immediately preceding twelve (12) consecutive months, as adjusted to include without duplication the difference between (i) the sum of consolidated (a) net income plus (b) depreciation, plus (c) amortization, plus (d) other non-cash charges to net income, plus (e) interest expense, plus (f) income Tax expense, plus (g) Consolidated Rental Expense, minus (ii) non-cash credits to net income, all calculated as set forth in the definition of “Consolidated EBITDAR” below, and for purposes of calculating Adjusted Consolidated EBITDAR, (1) with respect to any Persons or assets acquired by any Credit Party pursuant to a Permitted Acquisition during such period, Consolidated EBITDAR shall be calculated on a pro forma basis for such period as if such Permitted Acquisition had occurred on the first day of such period, and (2) with respect to a business liquidated, sold or disposed of by the Credit Parties pursuant to Section 8.3B(f), Consolidated EBITDAR shall be calculated on a pro forma basis for such period as if such liquidation, sale or disposition had been consummated at the beginning of such period; and, in each case set forth in clause (1) and (2), as evidenced by pro forma financial statements in form and substance satisfactory to the Agent, in each case determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP.

“Administrative Agency Fee” shall have the meaning given to such term in Section 7.6 of the Participation Agreement.

“Advance” shall mean, individually, an Initial Closing Date Advance, an Acquisition Advance, a Construction Advance or any other Lessor Advance in accordance with the Operative Agreements.

“Affiliate”, as to any Person, shall mean any other Person (a) which directly or indirectly controls, is controlled by, or is under common control with such Person, (b) which beneficially owns or holds twenty percent (20%) or more of any class of the voting or other equity interests of such Person, or (c) twenty percent (20%) or more of any class of voting interests or other equity interests of which is beneficially owned or held, directly or indirectly, by such Person. Control, as used in this definition, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, including the power to elect a majority of the directors or trustees of a corporation or trust, as the case may be.

“After Tax Basis” shall mean, in the context of determining the amount of a payment to be made on such basis, actually or constructively, the base amount of such payment increased so that, after reduction by the amount of all Taxes required to be paid by the recipient calculated at the then maximum marginal Tax rates generally applicable to Persons of the same Tax classification as the recipient with respect to the receipt by the recipient of such increased amount (and taking into account the deductibility of any such Taxes at such maximum marginal Tax rates, as well as any actual Tax benefits realized as a result of the recipient’s actual or constructive payment of the base amount that is subject to indemnification), such increased payment (as so reduced) is equal to the base amount of the payment otherwise required to be made. At the Indemnity Provider’s request, the amount of any indemnification payment by the Indemnity Provider required to be made on such “After Tax Basis” shall be verified and certified by an independent public accounting firm mutually acceptable to the Indemnity Provider and the applicable Indemnified Person. The fees and expenses of such independent public accounting firm shall be paid by the Indemnity Provider.

“Agency Agreement” shall mean the Construction Agency Agreement dated on or about the Initial Closing Date, between the Construction Agent and the Lessor.

“Agency Agreement Default” shall mean any event or condition which, with the lapse of time or the giving of notice, or both, would constitute an Agency Agreement Event of Default.

“Agency Agreement Event of Default” shall mean an “Event of Default” as defined in Section 5.1 of the Agency Agreement.

“Agent” shall mean Wells Fargo Bank, National Association, a national banking association, as agent for the Lessor Parties, or any successor agent appointed in accordance with the terms of the Participation Agreement, and respecting the Security Documents, as agent for the Secured Parties, to the extent of their interests.

“Anti-Terrorism Laws” shall mean any applicable Laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such Laws, all as amended, supplemented or replaced from time to time.

“Applicable Law” shall mean, for any Person, all existing and future applicable laws, rules, regulations (including proposed, temporary and final income Tax regulations), statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by any Governmental Authority (including usury laws, the Federal Truth in Lending Act, and Regulation Z and Regulation B of the Board of Governors of the Federal Reserve System), and applicable judgments, decrees, injunctions, writs or orders

APPENDIX A-3

of any court, arbitrator or other administrative, judicial, or quasi-judicial Tribunal or agency of competent jurisdiction.

“Applicable Percentage” shall mean for Eurodollar Lessor Advances, ABR Lessor Advances and for Lessor Parties Unused Fees, the appropriate applicable percentages corresponding to the pricing level set forth below based on the rating of the senior, unsecured, long-term debt of the Parent by Moody’s and S&P:

Pricing Level	Senior Debt Rating Moody’s/S&P	Applicable Percentage for Eurodollar Lessor Advances	Applicable Percentage for ABR Lessor Advances	Applicable Percentage for Lessor Parties Unused Fees
I	Baa1/BBB+ or higher	1.35%	0.35%	0.125%
II	Baa2/BBB	1.60%	0.60%	0.150%
III	Baa3/BBB-	1.85%	0.85%	0.200%
IV	Ba1/BB+	2.10%	1.10%	0.250%
V	Below Ba1/BB+	2.60%	1.60%	0.350%

From the Initial Closing Date to the first reset date, the Applicable Percentage shall be based on Pricing Level II. Any change in the Applicable Percentage shall be effective as of the day on which the applicable rating is announced and publicly available (if such announcement day is a Business Day) or the Business Day next following such announcement day (if such announcement day is not a Business Day). In the event of a split rating, (a) if there is one level difference between the ratings from the ratings agencies, then the higher rating will apply and (b) if there is a two or more level difference between the ratings from the ratings agencies, then the lower rating will apply. If any rating from one of the ratings agencies shall be suspended or withdrawn, the Applicable Percentage during such period for which such rating is suspended or withdrawn shall be based upon Level V.

“Appraisal” shall mean, with respect to the Property, an appraisal to be delivered in connection with the Participation Agreement or in accordance with the terms of the Lease, in each case prepared by a reputable appraiser reasonably acceptable to the Agent, which in the judgment of counsel to the Agent, complies with all of the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, the rules and regulations adopted pursuant thereto, and all other applicable Legal Requirements, or any other appraisal or valuation with respect to the Property reasonably acceptable to the Agent.

“Appraisal Procedure” shall have the meaning given such term in Section 21.4 of the Lease.

“Appurtenant Rights” shall mean (a) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or pertaining to the Land underlying the Improvements or the Improvements, including the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to the Land and (b) all permits, licenses and rights, whether or not of record, appurtenant to such Land or the Improvements.

“Assumed Characterization” shall have the meaning given to such term in Section 11.2(g) of the Participation Agreement.

APPENDIX A-4

“Attributable Indebtedness” shall mean, with respect to any Person, on any date, (a) in respect of any Capital Lease, the capitalized amount thereof that would appear on the balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments thereunder that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such Synthetic Lease Obligation were accounted for as a Capital Lease.

“Authorized Officer” shall mean with respect to any Credit Party, the Chief Executive Officer, President, Chief Financial Officer, Treasurer or Assistant Treasurer of such Credit Party, any manager or the members (as applicable) in the case of any Credit Party which is a limited liability company or such other individuals, designated by written notice to the Agent from BLS, in each case, authorized to execute notices, reports and other documents on behalf of the Credit Parties required under the Operative Agreements. Any Credit Party may amend such list of individuals from time to time by giving written notice of such amendment to the Agent.

“Available Lessor Parties Commitment” shall mean an amount equal to the excess, if any, of (a) the amount of the Lessor Parties Commitment over (b) the aggregate amount of the Lessor Advances made since the Initial Closing Date after giving effect to Section 5.2(d) of the Participation Agreement.

“Bail-In Action” shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule.

“Bank-Provided Hedge” shall mean a Hedge Agreement which is provided by any Revolving Credit Agreement Bank and with respect to which the Revolving Credit Agreement Administrative Agent confirms meets specified requirements of the Revolving Credit Agreement, all as evidenced by the Credit Parties to the reasonable satisfaction of the Agent. The liabilities of the Credit Parties to the provider of any Bank-Provided Hedge, for purposes of the Operative Agreements, shall not be Obligations.

“Bankruptcy Code” shall mean the United States Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, et seq.), as amended from time to time.

“Basic Rent” shall mean the scheduled Lessor Yield due on the Lessor Advances on any Payment Date (but not including yield on overdue amounts), calculated as of the applicable date on which Basic Rent is due.

“Basic Term” shall have the meaning given to such term in Section 2.2 of the Lease.

“Basic Term Expiration Date” shall have the meaning given to such term in Section 2.2 of the Lease.

“Benefit Arrangement” shall mean at any time an “employee benefit plan,” within the meaning of Section 3(3) of ERISA, which is not a Plan, a Multiemployer Plan or a Multiple Employer Plan and which is maintained, sponsored or otherwise contributed to by any member of the ERISA Group.

“Benefitted Lessor Party” shall have the meaning given to such term in Section 12.15 of the Participation Agreement.

“Big Lots Capital Group” shall mean, collectively, Big Lots Capital, Inc., an Ohio corporation, and any hereinafter created direct or indirect Subsidiary of Big Lots Capital, Inc., provided, that the Parent, directly or indirectly, owns all of the issued and outstanding shares of capital stock of Big Lots Capital, Inc. and Big Lots Capital, Inc..

“Big Lots Supplemental Savings Plan” shall mean the nonqualified deferred compensation plan maintained for the benefit of employees of the Parent’s Subsidiaries.

“Bill of Sale” shall mean a warranty bill of sale (or special warranty bill of sale if seller is not an individual) regarding Equipment, in form and substance satisfactory to the Agent, in its reasonable discretion.

“BLS” shall mean Big Lots Stores, Inc., an Ohio corporation.

“Breakage Costs” shall mean any amount or amounts as shall compensate any Financing Party for any loss, cost or expense incurred by such Financing Party (as determined by such Financing Party in its reasonable discretion) as a result of a repayment or prepayment of Lessor Advances or Lessor Yield pursuant to the terms of the Operative Agreements on any date other than a Payment Date or any failure to receive a Lessor Advance, in each case on the date specified therefor in the applicable Requisition.

“Budgeted Total Property Cost” shall mean the amount of Property Cost set forth in the Construction Budget for the Property necessary for final completion thereof.

“Business Day” shall mean any day of the year other than a Saturday or a Sunday on which (a) banks are not required or authorized to be closed in New York, New York or Charlotte, North Carolina and (b) if the term “Business Day” is used in connection with the determination of the LIBOR Rate, dealings in United States dollar deposits are carried on in the London interbank market.

“Capital Lease” shall mean all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases, including any “financing lease” under FASB 842.

“Captive Insurance Entity” shall mean an insurance company created and owned by a Credit Party whose primary purpose is to provide coverage on the risk of the Parent or the Parent’s Subsidiaries.

“Casualty” shall mean any damage or destruction of all or any portion of the Property as a result of a fire or other casualty.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986.

“Certifying Party” shall have the meaning given to such term in Section 26.3 of the Lease.

“Claims” shall mean any and all obligations, liabilities, losses, actions, suits, penalties, claims, demands, costs and expenses (including reasonable attorney’s fees and expenses) of any nature whatsoever.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” shall mean, excluding in all cases Excepted Payments, the assets and property upon which a Lien is created, exists or is purported to be created by one or more of the Security Documents.

“Commencement Date” shall have the meaning given to such term in Section 2.2 of the Lease.

“Commitment Percentage” shall mean, as to any Lessor Party at any time, the percentage which such Lessor Party’s Lessor Parties Commitment then constitutes of the aggregate Lessor Parties Commitments.

“Commitment Period” shall mean the period from and including the Initial Closing Date to and including the date that is eighteen (18) months after the Initial Closing Date or in the event that a Force Majeure Event occurs with respect to the Property during such eighteen (18) month period, then the date that is up to three (3) months after such eighteen (18) month period) as determined in a manner consistent with Section 3.3 of the Agency Agreement, or such earlier date as the Lessor Parties Commitment shall terminate as provided in the Participation Agreement.

“Commitments” shall mean the Lessor Parties Commitments.

“Company Obligations” shall mean the Obligations.

“Completion” shall mean, such time as the acquisition, installation, testing and final completion of the Improvements on the Property has been achieved in all material respects in accordance with the Plans and Specifications, the Agency Agreement and/or the Lease, and in compliance with all Legal Requirements and Insurance Requirements and a temporary certificate of occupancy or its equivalent has been issued with respect to the Property by the appropriate governmental entity (except if noncompliance, individually or in the aggregate, shall not have and could not reasonably be expected to have a Material Adverse Effect). If the Lessor purchases the Property that includes existing Improvements that are to be immediately occupied by the Lessee without any improvements to be financed pursuant to the Operative Agreements, the date of Completion for the Property shall be the Property Closing Date.

“Completion Date” shall mean, the earlier of (a) the date on which Completion for the Property has occurred or (b) the Construction Period Termination Date.

“Compliance Certificate” shall have the meaning given to such term in Section 8.3C(c) of the Participation Agreement.

“Condemnation” shall mean any taking or sale of the use, access, occupancy, easement rights or title to the Property or any part thereof, wholly or partially (temporarily or permanently), by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Person having the power of eminent domain, including an action by a Governmental Authority to change the grade of, or widen the streets adjacent to, the Property or alter the pedestrian or vehicular traffic flow to the Property so as to result in a change in access to the Property, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action.

“Consolidated EBITDAR” shall mean, for any period of determination, without duplication (a) the sum of consolidated net income, depreciation, amortization, other non-cash charges to net income, interest expense, income Tax expense and Consolidated Rental Expense, minus (b) non-cash credit to net income, in each case determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP.

“Consolidated Interest Expense” shall mean, for any period of determination, the aggregate amount of interest or fees paid, accrued or scheduled to be paid or accrued in respect of any Indebtedness (including the interest portion of rentals under Capital Leases but not the interest portion of Synthetic Leases Obligations) and all but the principal component of payments in respect of conditional sales or other title retention

agreements paid, accrued or scheduled to be paid or accrued during such period, net of interest income, in each case determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP.

“Consolidated Rental Expense” shall mean, for any period of determination, the aggregate rental amounts payable by the Parent and its Subsidiaries during such period under any lease of real property having a remaining term (including any required renewals or any renewals at the option of the lessor or lessee) of one year or more (but does not include any amounts payable under Capital Leases or performance rents), in each case determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP.

“Consolidated Subsidiary” shall mean, as to any Person, any Subsidiary of such Person which under the rules of GAAP consistently applied should have its financial results consolidated with those of such Person for purposes of financial accounting statements.

“Consolidated Total Indebtedness” shall mean, as of any date of determination, any and all Indebtedness (excluding any Synthetic Lease Obligation and any obligations (contingent or otherwise) under any Hedge Agreement) of the Parent and its Subsidiaries, in each case determined and consolidated for the Parent and its Subsidiaries in accordance with GAAP.

“Construction Advance” shall mean an advance of funds by any of the Lessor Parties to pay, or to reimburse the Lessee, the Construction Agent or a designee or designees of either for, Property Costs pursuant to Section 5.4 of the Participation Agreement.

“Construction Agency Person” shall mean the Construction Agent, the Lessee, the Guarantors, any contractor, subcontractor, adviser, architect, engineer, developer, employee, attorney-in-fact or agent with respect to the Property and any other Person that the Construction Agent directly or indirectly supervises, hires or otherwise permits to engage in any Work with respect to the Property, any portion thereof or any Improvements thereto, and any Affiliate of any of the foregoing.

“Construction Agent” shall mean AVDC, Inc., an Ohio corporation, as the construction agent under the Agency Agreement.

“Construction Agent Certificate” shall have the meaning given to such term in Section 5.17(b)(i)(A) of the Participation Agreement.

“Construction Budget” shall mean the construction budget certified to the Agent detailing the cost of acquisition, installation, testing, constructing and developing the Property as determined by the Construction Agent in its reasonable, good faith judgment, as such budget may be amended, modified or supplemented from time to time in accordance with the terms of the Operative Agreements.

“Construction Commencement Date” shall mean, with respect to Improvements, the Property Closing Date.

“Construction Consultant” shall mean Wells Fargo Real Estate Technical Services, a division of Wells Fargo Bank, National Association, a national banking association.

“Construction Contract” shall mean any contract entered into between the Construction Agent or the Lessee with (a) a Contractor for the construction of Improvements or any portion thereof on the Property, which shall be a maximum guaranteed price design-build agreement between the Construction Agent and the general contractor for the Property to complete construction of the Property in accordance with the Construction Budget on or prior to the Construction Period Termination Date, (b) an architect for the design

of Improvements or any portion thereof on the Property, and (c) an engineer for engineering services regarding Improvements or any portion thereof on the Property.

“Construction Documents” shall mean each of the Construction Contracts, the Construction Budget, the construction schedule, the Plans and Specifications and each and every other agreement or document related to any of the foregoing.

“Construction Period” shall mean the period commencing on the Construction Commencement Date and ending on the Completion Date.

“Construction Period Guarantee Amount” shall have the meaning given to such term in Section 5.4 of the Agency Agreement.

“Construction Period Property” shall mean the Property if, at any date of determination, the Rent Commencement Date has not occurred on or prior to such date.

“Construction Period Termination Date” shall mean (a) the earlier of (i) the date that the Lessor Parties Commitment has been terminated in its entirety in accordance with the terms of the Participation Agreement, or (ii) the date that is eighteen (18) months after the Initial Closing Date or in the event that a Force Majeure Event occurs with respect to the Property during such eighteen (18) month period, then the date that is up to three (3) months after such eighteen (18) month period as determined in a manner consistent with Section 3.3 of the Agency Agreement or (b) such later date as shall be agreed to by each Lessor Party, in its sole discretion.

“Contamination” shall mean the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from any Revolving Credit Agreement Property which pursuant to Environmental Laws requires notification or reporting to an Official Body, or which pursuant to Environmental Laws requires the investigation, cleanup, removal, remediation, containment, abatement of or other response action or which otherwise constitutes a violation of Environmental Laws.

“Contractor” shall mean each entity with whom the Construction Agent or the Lessee contracts to construct any Improvements or any portion thereof on the Property.

“Controlled Group” shall mean all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Lessee, are treated as a single employer under Section 414 of the Code.

“Covered Entity” shall mean (a) each Revolving Credit Agreement Borrower, each of Revolving Credit Agreement Borrower’s Subsidiaries, all Guarantors and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect (x) ownership of, or power to vote, twenty-five percent (25%) or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

“Credit Parties” shall mean the Construction Agent, the Lessee and the Guarantors.

“Debt Ratings” shall mean collectively the rating of the Parent’s Indebtedness under the Revolving Credit Agreement by each of S&P’s and/or Moody’s, each of which is referred to herein individually as a “Debt Rating”.

“Debtor Relief Laws” shall mean the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Deed” shall mean a warranty deed (or special warranty deed if grantor is not an individual) respecting any Land and/or Improvements, in form and substance satisfactory to the Agent, in its reasonable discretion.

“Deemed Insolvency” shall mean with respect to any Person, such Person (i) is insolvent pursuant to the Uniform Fraudulent Transfers Act or any similar, equivalent or replacement thereof, (ii) is engaged in a business or transaction, or is about to engage in business or a transaction, for which any property remaining with such Person is an unreasonably small amount of capital or (iii) intended to incur, or believed that such Person would incur, debt or other obligations that would be beyond such Person’s ability to pay as such debts and obligations mature or otherwise become due.

“Default” shall mean any event or condition which with notice, passage of time or a determination reasonably made by the Agent or the Majority Secured Parties, or any combination of the foregoing, would constitute an Event of Default.

“Defaulting Lessor Party” shall mean, subject to Section 5A.1(e)(ii) of the Participation Agreement, any Lessor Party that

(a) has failed to (i) fund all or any portion of its Lessor Advances within two (2) Business Days of the date such Lessor Advances were required to be funded under the Operative Agreement unless such Lessor Party notifies the Agent and the Lessee in writing that such failure is the result of such Lessor Party’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Agent or any other Lessor Party any other amount required to be paid by it hereunder within two (2) Business Days of the date when due,

(b) has notified the Agent or the Lessee in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lessor Party’s obligation to fund a Lessor Advance and states that such position is based on such Lessor Party’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied),

(c) has failed, within three (3) Business Days after written request by the Agent or the Lessee, to confirm in writing to the Agent and the Lessee that it will comply with its prospective funding obligations hereunder (provided, that such Lessor Party shall cease to be a Defaulting Lessor Party pursuant to this clause (c) upon receipt of such written confirmation by the Agent), or

(d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance

Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action;

provided, that a Lessor Party shall not be a Defaulting Lessor Party solely by virtue of the ownership or acquisition of any equity interest in that Lessor Party or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lessor Party with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lessor Party (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lessor Party. Any determination by the Agent that a Lessor Party is a Defaulting Lessor Party under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lessor Party shall be deemed to be a Defaulting Lessor Party (subject to Section 5A.1(e)(ii)) as of the date established therefor by the Agent in a written notice of such determination, which shall be delivered by the Agent to each other Lessor Party promptly following such determination.

“Deficiency Balance” shall have the meaning given to such term in Section 21.1(b) of the Lease.

“Dollars” and “\$” shall mean dollars in lawful currency of the United States of America.

“DTSC” shall have the meaning given to such term in Section 5.14 of the Participation Agreement.

“EEA Financial Institution” shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Election Date” shall have the meaning given to such term in Section 20.1 of the Lease.

“Election Notice” shall have the meaning given to such term in Section 20.1 of the Lease.

“Eligible Assignee” shall mean respecting any assignee of any Lessor Party, any “qualified institutional buyer” as that term is defined in Rule 144A under the Securities Act or an Affiliate of a “qualified institution buyer”, except in all cases any Defaulting Lessor Party, any Credit Party, any Affiliate of any Credit Party or any competitor of any Credit Party.

“Engagement Letter” shall mean that certain engagement letter agreement, dated October 17, 2017, from Wells Fargo Securities, LLC and Wells Fargo Bank, National Association to Mr. Paul Schroeder, Senior Vice President, Controller and Treasurer of Big Lots, Inc., and accepted by Big Lots, Inc., as such letter may be amended, modified, supplemented, restated or replaced from time to time.

“Environmental Claims” shall mean any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding, or claim (whether administrative, judicial, or private in nature) arising (a) pursuant to, or in connection with, an actual or alleged violation of, or noncompliance with, any Environmental Law, (b) in connection with any Hazardous Substance, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Substance, Environmental Law, or other order of a Tribunal or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

“Environmental Complaint” shall mean any (a) notice of non-compliance or violation, citation or order relating in any way to any Environmental Law, Environmental Permit, Contamination or Regulated Substance; (b) civil, criminal, administrative or regulatory investigation instituted by an Official Body relating in any way to any Environmental Law, Environmental Permit, Contamination or Regulated Substance; (c) administrative, regulatory or judicial action, suit, claim or proceeding instituted by any Person or Official Body or any written notice of liability or potential liability from any Person or Official Body, in either instance, setting forth allegations relating to or a cause of action for personal injury (including death), property damage, natural resource damage, contribution or indemnity for the costs associated with the performance of Remedial Actions, direct recovery for the costs associated with the performance of Remedial Actions, liens or encumbrances attached to or recorded or levied against property for the costs associated with the performance of Remedial Actions, civil or administrative penalties, criminal fines or penalties, or declaratory or equitable relief arising under any Environmental Laws; or (d) subpoena, request for information or other written notice or demand of any type issued to the Guarantor or any of its Subsidiaries by an Official Body pursuant to any Environmental Laws.

“Environmental Condition” shall mean any action, omission, event, condition or circumstance, including the presence of any Hazardous Substance, which does or reasonably could (i) require assessment, investigation, abatement, correction, removal or remediation, (ii) give rise to any obligation or liability of any nature (whether civil or criminal, arising under a theory of negligence or strict liability, or otherwise under any Environmental Law, (iii) create or constitute a public or private nuisance or trespass, or (iv) constitute a violation of or noncompliance with any Environmental Law.

“Environmental Laws” shall mean all federal, state, provincial, local and foreign Laws (including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, the Federal Air Pollution Control Act, 42 U.S.C. § 7401 et seq., the Oil Pollution Act, 33 U.S.C. § 2701 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 to 136y) each as amended, and any regulations promulgated thereunder or any equivalent state, provincial or local Law, each as amended, and any regulations promulgated thereunder and any consent decrees, settlement agreements, judgments, orders, directives or any binding policies having the force and effect of law issued by or entered into with an Official Body pertaining or relating to: (a) pollution or pollution control; (b) protection of human health from exposure to Regulated Substances; (c) protection of the environment and/or natural resources; (d) the presence, use, management, generation, manufacture, processing, extraction, treatment, recycling, refining, reclamation, labeling, sale, transport, storage, collection, distribution, disposal or release or threat of release of Regulated Substances; (e) the presence of Contamination; (f) the protection of endangered or threatened species; and (g) the protection of Environmentally Sensitive Areas.

“Environmental Permits” shall mean all permits, licenses, bonds or other forms of financial assurances, consents, registrations, identification numbers, approvals or authorizations required under

Environmental Laws (a) to own, occupy or maintain any Revolving Credit Agreement Property; (b) for the operations and business activities of the Credit Parties; or (c) for the performance of a Remedial Action.

“Environmental Records” shall mean all notices, reports, records, plans, applications, forms or other filings relating or pertaining to all Revolving Credit Agreement Properties, Contamination, the performance of a Remedial Action and the operations and business activities of the Credit Parties which pursuant to Environmental Laws, Environmental Permits or at the request or direction of an Official Body either must be submitted to an Official Body or otherwise must be maintained.

“Environmental Violation” shall mean any activity, omission, occurrence or condition that violates or threatens (if the threat requires remediation under any Environmental Law and is not remediated during any grace period allowed under such Environmental Law) to violate or results in or threatens (if the threat requires remediation under any Environmental Law and is not remediated during any grace period allowed under such Environmental Law) to result in noncompliance with any Environmental Law.

“Environmentally Sensitive Area” shall mean (a) any wetland as defined by or designated by Applicable Laws, including applicable Environmental Laws; (b) any area designated as a coastal zone pursuant to Applicable Laws, including Environmental Laws; (c) any area of historic or archeological significance or scenic area as defined or designated by Applicable Laws, including Environmental Laws; (d) habitats of endangered species or threatened species as designated by Applicable Laws, including Environmental Laws; (e) wilderness or refuge areas as defined or designated by Applicable Laws, including Environmental Laws; or (f) a floodplain or other flood hazard area as defined pursuant to any Applicable Laws.

“Equipment” shall mean equipment, apparatus, furnishings, fittings and personal property of every kind and nature whatsoever that is purchased, leased or otherwise acquired using the proceeds of the Lessor Advances, together with all replacements, modifications, alterations, attachments and additions thereto.

“Equipment Schedule” shall mean each Equipment Schedule attached to the applicable Requisition.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) under common control with the Lessee within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” shall mean (a) a reportable event as defined in Section 4043(b) of ERISA and the regulations issued thereunder, with respect to a Pension Plan, as to which PBGC has not by regulation waived the requirements of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event (provided that a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(c) of the Code); (b) the filing under Section 4041 of ERISA of a notice of intent to terminate any Pension Plan or the termination of any Plan; (c) the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or the receipt by any Guarantor or any ERISA Affiliate of notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan; (d) the complete or partial withdrawal by any Guarantor or any ERISA Affiliate under Section 4201 or 4204 of ERISA from a Multiemployer Plan, or the receipt by any Guarantor or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or

insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A or ERISA; and (e) the institution of a proceeding by a fiduciary of any Multiemployer Plan against any Guarantor or any ERISA Affiliate to enforce Section 515 of ERISA which proceeding is not dismissed within thirty (30) days.

“ERISA Group” shall mean, at any time, each Revolving Credit Agreement Borrower and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Revolving Credit Agreement Borrower, are treated as a single employer under Section 414 of the Code or Section 4001(b)(1) of ERISA; provided, however, that the ERISA Group shall only include those entities that regularly employ individuals to perform services within the United States.

“EU Bail-In Legislation Schedule” shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurocurrency Liabilities” shall have the meaning given to such term in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Eurodollar Lessor Advance” shall mean a Lessor Advance bearing a Lessor Yield based on the LIBOR Rate.

“Eurodollar Reserve Percentage” shall mean for any Eurodollar Lessor Advance, the percentage applicable during such period (or, if more than one such percentage shall be so applicable, the daily average of such percentages for those days in such period during which any such percentage shall be so applicable) under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to liabilities or assets consisting of or including Eurocurrency Liabilities having a term of one month.

“Event of Default” shall mean a Lease Event of Default or an Agency Agreement Event of Default.

“Excepted Payments” shall mean, regarding each Lessor Party:

(a) all indemnity payments (including indemnity payments made pursuant to Section 11 of the Participation Agreement) to which any Lessor Party or any of its Affiliates, successors, assigns, shareholders, members, managers, partners, agents, officers, directors or employees is entitled;

(b) any amounts (other than Basic Rent or Termination Value) payable under any Operative Agreement to reimburse any Lessor Party or any of its respective Affiliates (including the reasonable expenses of any Lessor Party incurred in connection with any such payment) for performing or complying with any of the obligations of any Credit Party under and as permitted by any Operative Agreement;

(c) any amount payable to any Lessor Party by any transferee as the purchase price of any Lessor Party’s Lessor Party Interest (or a portion thereof);

(d) any insurance proceeds (or payments with respect to risks self-insured or policy deductibles) under liability policies in favor of any Lessor Party;

(e) any insurance proceeds under policies maintained by any Lessor Party;

(f) Transaction Expenses or other amounts, fees, disbursements or expenses paid or payable to or for the benefit of any Lessor Party;

(g) any payments in respect of interest to the extent attributable to payments referred to in clauses (a) through (f) above;

(h) any rights of any Lessor Party to demand, collect, sue for or otherwise receive and enforce payment of any of the foregoing amounts, provided that such rights shall not include the right to terminate the Lease; and

(i) any payments to any Lessor Party regarding any Overfunded Amount.

“Excess Proceeds” shall mean the excess, if any, of the aggregate of all awards, compensation, insurance proceeds or condemnation proceeds payable in connection with a Casualty or Condemnation over the Termination Value paid by the Lessee pursuant to the Lease with respect to such Casualty or Condemnation.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

“Excluded Active Subsidiaries” shall mean collectively the following Subsidiaries of any Credit Party: (a) any entity in the Big Lots Capital Group, (b) any Captive Insurance Entity, (c) any Qualified Community Development Entity and any Subsidiary of a Qualified Community Development Entity, and (d) the Subsidiaries of the Parent listed on Schedule XII; each of which is referred to individually as an “Excluded Active Subsidiary”. Any Excluded Active Subsidiary that joins the Participation Agreement as a Guarantor pursuant to Section 6B.9 of the Participation Agreement shall cease to be an Excluded Active Subsidiary.

“Excluded Equipment” shall mean equipment, apparatus, furnishings, fittings and personal property of every kind and nature whatsoever that is not Equipment.

“Excluded Inactive Subsidiaries” shall mean collectively the Subsidiaries of the Parent listed on Schedule XIII, each of which is referred to herein individually as an Excluded Inactive Subsidiary. Any Excluded Inactive Subsidiary which joins the Participation Agreement as a Guarantor pursuant to Section 6B.9 of the Participation Agreement shall cease to be an Excluded Inactive Subsidiary.

“Exculpated Persons” shall mean the Lessor Parties (except with respect to the representations and warranties and the other obligations of the Lessor Parties pursuant to the Operative Agreements expressly undertaken in their respective individual capacities, including the representations and warranties of the Lessor Parties pursuant to Section 6.2 of the Participation Agreement and the obligations of the Lessor Parties under Section 8.2 of the Participation Agreement) and their respective Affiliates, successors, assigns, shareholders, members, managers, partners, agents, officers, directors or employees.

“Exempt Payments” shall have the meaning given to such term in Section 11.2(e) of the Participation Agreement.

“Expiration Date” shall mean the last day of the Term; provided, in no event shall the Expiration Date be later than the seventy-eight (78) month anniversary of the Initial Closing Date, unless such later date has been expressly agreed to in writing by each of the Financing Parties in accordance with Section 2.2

of the Lease, in which case the Expiration Date shall in no event be later than the two hundred and fifty-eight (258) month anniversary of the Initial Closing Date.

“Facility Termination Date” shall mean the Expiration Date or such later date as the Lessor Parties shall notify the Lessee and the Agent of in writing.

“Fair Market Sales Value” shall mean, the amount, which in any event, shall not be less than zero (0), that would be paid in cash in an arms-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, the Property. Fair Market Sales Value of the Property shall be determined based on the assumption that, except for purposes of Section 17 of the Lease, the Property is in the condition and state of repair required under Section 10.1 of the Lease and each Credit Party is in compliance with the other requirements of the Operative Agreements.

“FATCA” shall mean Section 1471 through 1474 of the Code, as of the date of the Participation Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Official Bodies and implementing such Sections of the Code.

“Federal Funds Effective Rate” shall mean the Federal Funds Rate.

“Federal Funds Rate” shall mean, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the overnight federal funds rates as in Federal Reserve Board Statistical Release H.15(519) or any successor or substitute publication selected by the Agent (or, if such day is not a Business Day, for the next preceding Business Day), or, if, for any reason, such rate is not available on any day, the rate determined, in the good faith opinion of the Agent, to be the rate at which overnight federal funds are being offered in the national federal funds market at 9:00 a.m. Charlotte, North Carolina time, absent demonstrable error; provided, notwithstanding the foregoing, if such interest rate determined as provided above would be less than 0.0% per annum for any applicable time period, then such interest rate for such time period shall be deemed to be 0.0% per annum.

“Fees” shall mean the Lessor Parties Unused Fee, the Lessor Parties Upfront Fee, the Administrative Agency Fee, the Structuring Fee and any and all additional fees referenced pursuant to the Engagement Letter.

“Financial Projections” shall have the meaning given to such term in Section 6.1(i)(ii) of the Participation Agreement.

“Financing Parties” shall mean the Lessor Parties and the Agent.

“First Amendment” shall mean that certain First Amendment to Certain Operative Agreements dated as of August 31, 2018, by and among the Lessee, the Guarantors parties thereto, the Lessor, the Lease Participants parties thereto and the Agent.

“First Amendment Closing Date” shall mean the effective date of the First Amendment.

“Fiscal Quarter” shall mean any quarter of a Fiscal Year.

“Fiscal Year” shall mean any period of twelve consecutive calendar months ending on December 31; references to a Fiscal Year with a number corresponding to any calendar year (e.g., the “2004 Fiscal Year”) refer to the Fiscal Year ending on December 31st of such calendar year.

“Fitch” shall mean Fitch Ratings, Inc., a subsidiary of the Fitch Group, Inc.

“Fixed Charge Coverage Ratio” shall mean the ratio of (a) Consolidated EBITDAR to (b) the sum of (i) Consolidated Interest Expense and (ii) Consolidated Rental Expense.

“Fixtures” shall mean all fixtures relating to the Improvements, including all components thereof, located in or on the Improvements, together with all replacements, modifications, alterations and additions thereto.

“Force Majeure Event” shall mean, with respect to construction in connection with the Construction Period Property, any event (the existence of which at the construction commencement date was not known, or would not reasonably have been expected to be discovered through the exercise of commercially reasonable due diligence, by any Construction Agency Person, taking into account the contemplated use of the Land and the Improvements) beyond the control of any such Person, including general strikes (but not any strike or other job action involving employees of any Construction Agency Person), acts of God, government activities directly interfering with the work of construction of the Improvements, any general inability to obtain labor or materials, civil commotion and enemy action; but excluding in all cases any event, cause or condition that results from a breach by any Construction Agency Person of its obligations, representations or warranties under the Operative Agreements or any other agreements to which it is a party, from any Construction Agency Person’s financial condition or failure to pay or any event, cause or condition which could have been avoided or which could be remedied or mitigated through the exercise of commercially reasonable efforts or the commercially reasonable expenditure of funds or other commercially reasonable action, election or arrangement which would correct or resolve the impact of such event on the construction.

“Force Majeure Loss” shall mean the actual construction costs, determined by the applicable insurance company in assessing a claim for such costs under any policy of insurance, or if such loss is not fully insured in whole or in part under any policy of insurance, then as determined by a nationally recognized independent appraiser selected by the Agent, expended to repair and restore damage caused by a Force Majeure Event with respect to the Property (or portion thereof) to the condition of the Property immediately prior to such Force Majeure Event (but excluding all capitalized costs and other collateral costs and carrying costs whenever accrued).

“Full Recourse Event of Default” shall mean (a) an Agency Agreement Event of Default arising in whole or in part as a consequence of any fraudulent act or omission of any Construction Agency Person in connection with the negotiation, execution, delivery, consummation and/or performance of any Operative Agreement or any other contractual agreement relating to the Property or the construction or work thereon; (b) an Agency Agreement Event of Default arising in whole or in part as a consequence of the misapplication of any Lessor Advance or any portion thereof or any other funds made available to, or on behalf of, the Construction Agent or any other Construction Agency Person under any Operative Agreement; (c) an Agency Agreement Event of Default arising in whole or in part as a consequence of an Insolvency Event; (d) an occurrence pursuant to which any Construction Agency Person shall willfully breach any of its respective obligations, covenants, representations or warranties under any Operative Agreement, Construction Document or any other contractual agreement or otherwise regarding any law relating to the Property or the construction or work thereon; (e) an occurrence pursuant to which any Construction Agency Person shall commit any illegal act regarding the Property; or (f) an occurrence pursuant to which any Construction

Agency Person, through its actions or failure to act, shall cause any loss, cost or damage to any Financing Party with respect to the Property or matters related to the Operative Agreements, excluding (for purposes of this subclause (f) only) indemnity claims solely arising from failure to achieve (or to timely achieve) Completion.

“GAAP” shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the accounting principles board of the American Institute of Certified Public Accountants, and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, that are applicable to the circumstances as of the date of determination.

“GAAP Project Cost” shall mean the Property Cost less any Uninsured Force Majeure Loss attributable to the Property.

“Governmental Action” shall mean all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Legal Requirement, and shall include, without limitation, all environmental and operating permits and licenses that are required for the full use, occupancy, zoning and operating of the Property.

“Governmental Authority” shall mean the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, Taxing, regulatory or administrative powers or functions of or pertaining to government (including the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or the European Central Bank).

“Guarantor” shall mean, collectively, each Person executing the Participation Agreement as of the Initial Closing Date or otherwise executing a Guaranty Joinder from time to time after the Initial Closing Date, in each case, to evidence the guarantee of the Obligations.

“Guarantor Joinder” shall mean each Guarantor Joinder and Assumption Agreement executed by a newly added Guarantor pursuant to the provisions of Sections 6B.9 and 8.3B(h) of the Participation Agreement, in the form of EXHIBIT H to the Participation Agreement or in such other form as is satisfactory to the Agent, in its reasonable discretion.

“Guaranty” of any Person shall mean any obligation of such Person guaranteeing or in effect guaranteeing any liability or obligation of any other Person in any manner, whether directly or indirectly, including any agreement to indemnify or hold harmless any other Person, any performance bond or other suretyship arrangement and any other form of assurance against loss, except endorsement of negotiable or other instruments for deposit or collection in the ordinary course of business.

“H.15” shall mean Federal Reserve Statistical Release H.15.

“Hard Costs” shall mean all costs and expenses payable for supplies, materials, labor and profit with respect to the Improvements under any Construction Contract.

“Hazardous Substance” shall mean any of the following: (a) any petroleum or petroleum product, explosives, radioactive materials, asbestos, formaldehyde, polychlorinated biphenyls, lead and radon gas; (b) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical

waste, or pollutant, in each case whether naturally occurring, man-made or the by-product of any process, that is toxic, harmful or hazardous to the environment or health or safety of human beings; or (c) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant that would support the assertion of any claim under any Environmental Law or is the subject of regulatory action by any Governmental Authority under any Environmental Law, whether or not defined as hazardous as such under any Environmental Law.

“Hedge Agreement Termination Value” shall mean, as to any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Revolving Credit Agreement Bank or any Affiliate of a Revolving Credit Agreement Bank).

“Hedge Agreements” shall mean (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement, in each case, entered into by the Parent or any of its Subsidiaries in the ordinary course of business and not for speculative purposes.

“Historical Statements” shall have the meaning given to such term in Section 6.1(i)(i) of the Participation Agreement.

“Holdback Amount” shall mean the “Holdback Amount” (as defined in the Purchase Agreement) up to, but not to exceed, an amount equal to \$650,000.

“Impositions” shall mean any and all liabilities, losses, expenses, costs, charges and Liens of any kind whatsoever for fees, taxes, levies, imposts, duties, charges, assessments or withholdings (“Taxes”) including but not limited to (i) real and personal property taxes, including personal property taxes on any property covered by the Lease that is classified by Governmental Authorities as personal property, and real estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangibles taxes); (iii) excise taxes; (iv) real estate transfer taxes, conveyance taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of franchise, income, value added, privilege and doing business taxes, license and registration fees; (vi) assessments on the Property, including all assessments for public Improvements or benefits, whether or not such improvements are commenced or completed within the Term; and (vii) taxes, Liens, assessments or charges asserted, imposed or assessed by the PBGC or any Governmental Authority succeeding to or performing functions similar to the PBGC; and (viii) in each case all interest, additions to tax and penalties thereon,

which at any time prior to, during or with respect to the Term or in respect of any period for which the Lessee shall be obligated to pay Supplemental Rent, may be levied, assessed or imposed by any Governmental Authority upon or with respect to (a) the Property or any part thereof or interest therein; (b) the leasing, financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy, servicing, maintenance, repair, ownership, possession, activity conducted on, delivery, insuring, use, operation, improvement, sale, transfer of title, return or other disposition of the Property or any part thereof or interest therein; (c) indebtedness with respect to the Property, or the Lessor Advances, or any part thereof or interest therein; (d) the rentals, receipts or earnings arising from the Property or any part thereof or interest therein; (e) the Operative Agreements, the performance thereof, or any payment made or accrued pursuant thereto; (f) the income or other proceeds received with respect to the Property or any part thereof or interest therein upon the sale or disposition thereof; (g) any contract (including the Agency Agreement) relating to the construction, acquisition or delivery of the Improvements or any part thereof or interest therein; (h) the obtaining of Lessor Advances; (i) the Lessor or the Trust Property; or (j) otherwise in connection with the transactions contemplated by the Operative Agreements.

“Improvements” shall mean, with respect to any Land, all buildings, structures, Fixtures, and other improvements of every kind existing at any time and from time to time on or under the Land purchased or otherwise acquired using the proceeds of the Lessor Advances, together with any and all appurtenances to such buildings, structures, Fixtures or improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways, and including all Modifications and other additions to or changes in the Improvements at any time, including (a) any Improvements existing as of the Property Closing Date as such Improvements may be referenced on the applicable Requisition and (b) any Improvements made subsequent to the Property Closing Date.

“Indebtedness” shall mean, as to any Person at any time, without duplication, any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person for or in respect of: (a) borrowed money, (b) amounts raised under or liabilities in respect of any note purchase or acceptance credit facility, (c) (i) reimbursement obligations (contingent or otherwise) under any letter of credit or (ii) net obligations under any Hedge Agreement, (d) any other transaction (including forward sale or purchase agreements and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements (but not including trade payables and accrued expenses incurred in the ordinary course of business), (e) Attributable Indebtedness of such Person in respect of Capital Leases and Synthetic Lease Obligations, or (f) any Guaranty of Indebtedness for borrowed money. For purposes of the Operative Agreements, the amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Hedge Agreement Termination Value thereof as of such date.

“Indemnified Person” shall mean without duplication each Financing Party and their respective successors, assigns, directors, shareholders, members, managers, partners, officers, employees, agents and Affiliates.

“Indemnity Provider” shall mean the Lessee.

“Initial Closing Date” shall mean November 30, 2017.

“Initial Closing Date Advance” shall have the meaning given to such term in Section 5.3 of the Participation Agreement.

“Insolvency Event” shall mean one or more of (a) the liquidation or dissolution of the Construction Agent or the Lessee, or the suspension of the business of the Construction Agent or the Lessee, or the filing

by the Construction Agent or the Lessee of a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under the Bankruptcy Code or under any other insolvency act or law, state or federal, now or hereafter existing, or any other action of the Construction Agent or the Lessee indicating its consent to, approval of or acquiescence in, any such petition or proceeding; the application by the Construction Agent or the Lessee for, or the appointment by, consent to or acquiescence of the Construction Agent or the Lessee regarding a receiver, a trustee or a custodian of the Construction Agent or the Lessee for all or a substantial part of its property; the making by the Construction Agent or the Lessee of any assignment for the benefit of creditors; the inability of the Construction Agent or the Lessee, or the admission by the Construction Agent or the Lessee in writing of its inability, to pay its debts as they mature; or the Construction Agent or the Lessee taking any corporate action to authorize any of the foregoing; (b) the filing of an involuntary petition against the Construction Agent or the Lessee in bankruptcy or seeking reorganization, arrangement, readjustment of its debts or for any other relief under the Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing; or the involuntary appointment of a receiver, a trustee or a custodian of the Construction Agent or the Lessee for all or a substantial part of its property; or the issuance of a warrant of attachment, execution or similar process against any substantial part of the property of the Construction Agent or the Lessee, and the continuance of any of such events for ninety (90) days undismissed or undischarged; (c) the adjudication of the Construction Agent or the Lessee as bankrupt or insolvent or the occurrence of a Deemed Insolvency with respect to the Construction Agent or the Lessee; (d) the entering of any order in any proceedings against the Construction Agent or the Lessee or any Subsidiary of the foregoing decreeing the dissolution, divestiture or split-up of the Construction Agent or the Lessee or any Subsidiary of the Construction Agent or the Lessee, and such order remains in effect for more than sixty (60) days; (e) the occurrence of any Agency Agreement Event of Default under Section 5.1(c) of the Agency Agreement, to the extent such Agency Agreement Event of Default is attributable to a Lease Event of Default under Section 17.1(n) or (o) of the Lease; or (f) the occurrence of any Lease Event of Default under Section 17.1(n) or (o) of the Lease.

“Insurance Requirements” shall mean all terms and conditions of any insurance policy required by the Lease to be maintained by the Lessee or required by the Agency Agreement to be maintained by the Construction Agent, all requirements of the issuer of any such policy and from and after the Completion Date, regarding self-insurance, any other insurance requirements of the Lessee.

“Intercompany Subordination Agreement” shall mean a Subordination Agreement among the Credit Parties in the form attached to the Participation Agreement as EXHIBIT K.

“Investment Company Act” shall mean the Investment Company Act of 1940, as amended, together with the rules and regulations promulgated thereunder.

“IRS” shall mean the United States Internal Revenue Service.

“Labor Contracts” shall mean all employment agreements, employment contracts, collective bargaining agreements and other similar agreements guaranteeing a right of employment among any Credit Party and its employees.

“Land” shall mean a parcel of real property described on (a) the Requisition issued by the Construction Agent or the Lessee on the Property Closing Date and (b) Exhibit A to the Lease.

“Land Cost” shall have the meaning given to such term in Section 5.4 of the Agency Agreement.

“Law” shall mean any law (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, release, ruling, order, injunction, writ, decree, bond, judgment, authorization or approval, Lien or award of or settlement agreement with any Official Body.

“Lease” or “Lease Agreement” shall mean the Real Property Lease Agreement dated on or about the Initial Closing Date, between the Lessor and the Lessee.

“Lease Default” shall mean any event or condition which, with the lapse of time or the giving of notice, or both, would constitute a Lease Event of Default.

“Lease Event of Default” shall have the meaning given to such term in Section 17.1 of the Lease.

“Lease Participant” shall mean each bank or other financial institution which is from time to time party to any of the Operative Agreements in its capacity as a “Lease Participant”.

“Legal Requirements” shall mean all foreign, federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting any Lessor Party, any Credit Party, the Agent or the Property, Land, Improvements, Equipment or the taxation, demolition, construction, use or alteration of such Improvements, whether now or hereafter enacted and in force, including any that require repairs, modifications or alterations in or to the Property or in any way limit the use and enjoyment thereof (including all building, zoning and fire codes and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et. seq., and any other similar federal, state or local laws or ordinances and the regulations promulgated thereunder) and any that may relate to environmental requirements (including all Environmental Laws), and all permits, certificates of occupancy, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments which are either of record or known to any Credit Party affecting the Property or the Appurtenant Rights.

“Lessee” shall have the meaning given to such term in the Lease, and shall include any successor, transferee or assignee permitted pursuant to Section 10.1 of the Participation Agreement.

“Lessor” shall mean Wachovia Service Corporation, a Delaware corporation.

“Lessor Advance” shall mean, as the context may require,

(a) any single advance made by any Lessor Party pursuant to the terms of the Operative Agreements or

(b) the aggregate amount of all advances made by the Lessor Parties pursuant to the terms of the Operative Agreements as reduced from time to time by any repayment or prepayment of such advances pursuant to Section 5A.4 of the Participation Agreement or otherwise in accordance with the Operative Agreements.

“Lessor Assignment Agreement” shall mean the Assignment and Assumption Agreement dated on or about the Initial Closing Date, among the Lessor, the various banks and other lending institutions which are parties thereto as assignees, the Agent and the Lessee.

“Lessor Confirmation Letter” shall mean the confirmation letter issued by the Lessor from time to time to the Lessee pursuant to Section 8.2(d) of the Participation Agreement, in a form substantially similar to the form of confirmation letter provided to the Lessee on or prior to the Initial Closing Date.

“Lessor Lien” shall mean any Lien, lease or disposition of title in respect of the Property or any other Collateral arising as a result of (a) any claim against any Lessor Party or any Affiliate of any Lessor Party not resulting from the transactions contemplated by the Operative Agreements, (b) any act or omission of any Lessor Party or any Affiliate of any Lessor Party which is not required by the Operative Agreements or is in violation of any of the terms of the Operative Agreements, (c) any claim against any Lessor Party or any Affiliate of any Lessor Party with respect to Taxes or Transaction Expenses against which the Lessee is not required to indemnify the applicable Lessor Party or its Affiliate pursuant to Section 11 of the Participation Agreement or otherwise to pay pursuant to the Operative Agreements or (d) any claim against any Lessor Party or any Affiliate of any Lessor Party arising out of any transfer by the applicable Lessor Party of all or any portion of the interest of such Lessor Party in the Property or the Operative Agreements other than the transfer of title to or possession of the Property by such Lessor Party pursuant to and in accordance with the Operative Agreements, including pursuant to the exercise of the remedies set forth in Article XVII of the Lease.

“Lessor Parties” shall mean the Lessor and the Lease Participants.

“Lessor Parties Commitment” shall mean the pro rata Lessor Parties Commitment of the Lessor and the Lease Participants as set forth in Schedule I to the Participation Agreement as such Schedule I may be amended or replaced from time to time.

“Lessor Parties Interest” shall mean, regarding each Lessor Party, its respective (a) Lessor Parties Commitment and (b) Lessor Parties Ownership Interest.

“Lessor Parties Ownership Interest” shall mean, concurrent with the effectiveness of the Lessor Assignment Agreement, and with regard to each of the Lessor Parties, an undivided, pari passu ownership interest for the applicable Lessor Party (for each such Lessor Party, in an amount equal to its Percentage Share) in (a) all rights to payments required to be made by any Credit Party under the Operative Agreements (including, as applicable, the Construction Period Guarantee Amount, the Deficiency Balance, the Maximum Residual Guarantee Amount and Rent), (b) proceeds from (i) insurance that the Lessee is required to maintain pursuant to the Operative Agreements and (ii) condemnation proceedings regarding the Property, (c) any other proceeds from the sale or other disposition of the Property or any interest therein and (d) any other amounts payable pursuant to the Operative Agreements regarding the Property or any interest therein or the right, title and interest of the Lessor in the Property (but limited in each case regarding the foregoing subsections (a) – (d), to the amounts which would otherwise be payable to or for the benefit of the Lessor for its own account if the Lessor Assignment Agreement were not in effect and excluding in all cases regarding the foregoing subsections (a) – (d), the Excepted Payments which Excepted Payments shall be in favor exclusively of the applicable Lessor Party and/or its related parties).

“Lessor Parties Unused Fee” shall have the meaning given to such term in Section 7.4 of the Participation Agreement.

“Lessor Parties Upfront Fee” shall have the meaning given to such term in Section 7.5 of the Participation Agreement.

“Lessor Yield” shall mean with respect to Lessor Advances a per annum rate equal to the LIBOR Rate plus the Applicable Percentage, the ABR plus the Applicable Percentage or a combination thereof as determined pursuant to Section 5A.5 of the Participation Agreement; provided, to the extent the Agent has made the determination referenced in the first sentence of Section 5A.5(d) of the Participation Agreement and replacement pricing with regard to Lessor Advances has been effected pursuant to an amendment of the

Operative Agreements in accordance with Section 5A.5(d) of the Participation Agreement, then Lessor Yield shall be determined in accordance with such amendment of the Operative Agreements.

“Lessor Yield Period” shall mean as to any Eurodollar Lessor Advance (i) with respect to the initial Lessor Yield Period, the period beginning on the date of the first Eurodollar Lessor Advance and ending one (1) month thereafter, and (ii) thereafter, each period commencing on the last day of the next preceding Lessor Yield Period applicable to such Eurodollar Lessor Advance and ending one (1) month thereafter; provided, however, that all of the foregoing provisions relating to Lessor Yield Periods are subject to the following: (A) if any Lessor Yield Period would end on a day which is not a Business Day, such Lessor Yield Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (B) no Lessor Yield Period shall extend beyond the Expiration Date, (C) where a Lessor Yield Period begins on a day for which there is no numerically corresponding day in the calendar month in which the Lessor Yield Period is to end, such Lessor Yield Period shall end on the last Business Day of such calendar month and (D) there shall not be more than one (1) Lessor Yield Period outstanding at any one (1) time, respectively, for Eurodollar Lessor Advances.

“Leverage Ratio” shall mean, as of any date of determination, the ratio of (a) the sum of (i) Consolidated Total Indebtedness on such date and (ii) four (4) times Consolidated Rental Expense for the four (4) fiscal quarters ending on such date, to (b) Adjusted Consolidated EBITDAR for the four (4) fiscal quarters ending on such date.

“LIBOR” shall mean, for any day during any Lessor Yield Period and any Eurodollar Lessor Advance, an interest rate per annum equal to:

(a) for any interest rate or yield calculation with respect to a Eurodollar Lessor Advance, the rate of interest or yield, as applicable, per annum determined on the basis of the rate of interest for deposits in Dollars for a period equal to the applicable Lessor Yield Period which appears on the applicable Reuters screen (or such other commercially available source providing such quotations as may be designated by the Agent from time to time) at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Lessor Yield Period (rounded upward, if necessary, to the nearest 1/100th of 1%). If, for any reason, such rate of interest does not appear on the applicable Reuters screen (or such other commercially available source as referenced above), then “LIBOR” shall be determined by the Agent to be the arithmetic average of the rate of interest per annum at which deposits in Dollars in minimum amounts of at least \$5,000,000 would be offered by first class banks in the London interbank market to the Agent at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Lessor Yield Period for a period equal to such Lessor Yield Period. Notwithstanding the foregoing, if any such rate of interest or yield, as applicable, for any Lessor Yield Period determined as provided above would be less than 0.0% per annum, then such rate of interest for such Lessor Yield Period shall be deemed to be 0.0% per annum; and

(b) for any interest rate or yield calculation with respect to an ABR Lessor Advance, the rate of yield per annum determined on the basis of the rate of interest for deposits in Dollars in minimum amounts of at least \$5,000,000 for a period equal to one month (commencing on the date of such ABR Lessor Advance) which appears on the applicable Reuters screen (or such other commercially available source providing such quotations as may be designated by the Agent from time to time) at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable one month period (rounded upward, if necessary, to the nearest 1/100th of 1%).

If, for any reason, such rate of interest does not appear on the applicable Reuters screen (or such other commercially available source as referenced above), then “LIBOR” for such ABR Lessor Advance shall be determined by the Agent to be the arithmetic average of the rate of interest per annum at which deposits in Dollars in minimum amounts of at least \$5,000,000 would be offered by first class banks in the London interbank market to the Agent at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable one month period for a period equal to such one month period. Notwithstanding the foregoing, if any such rate of interest or yield, as applicable, for any applicable time period determined as provided above would be less than 0.0% per annum, then such rate of interest for such time period shall be deemed to be 0.0% per annum.

“LIBOR Impairment Event” shall mean any one or more of the following: (a) adequate and reasonable means do not exist for ascertaining the LIBOR Rate; (b) a contingency has occurred which materially and adversely affects the offshore interbank market relating to the LIBOR Rate; or (c) if at any time any Lessor Party shall have determined that: (i) the making, maintenance or funding of any Eurodollar Lessor Advance has been made impracticable or unlawful by compliance by such Lessor Party in good faith with any Law or any interpretation or application thereof by any Official Body or with any request or directive of any such Official Body (whether or not having the force of Law); (ii) the making of any such Eurodollar Lessor Advance will not adequately and fairly reflect the cost to such Lessor Party of the establishment or maintenance of any such Eurodollar Lessor Advance; or (iii) after making all reasonable efforts, deposits of the relevant amount in Dollars for the relevant Lessor Yield Period for a Eurodollar Lessor Advance, or to banks generally, to which a LIBOR Rate option applies, respectively, are not available to such Lessor Party with respect to such Eurodollar Lessor Advance, or to banks generally, in the interbank eurodollar market.

“LIBOR Rate” shall mean a rate per annum determined by the Agent pursuant to the following formula:

$$\text{LIBOR Rate} = \frac{\text{LIBOR}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

“LIBOR Termination Date” shall have the meaning given to such term in Section 5A.5(d)(1) of the Participation Agreement.

“Lien” shall mean any mortgage, pledge, security interest, encumbrance, lien, option, attachment, levy, encroachment, title defect or charge of any kind.

“Limited Recourse Amount” shall mean in the case of the Lease regarding the Property, an amount equal to the Termination Value less the Maximum Residual Guarantee Amount.

“Limited Recourse Event of Default” shall have the meaning given to such term in Section 17.12 of the Lease.

“LLC Interests” shall have the meaning given to such term in Section 6.1(c) of the Participation Agreement.

“Majority Secured Parties” shall mean at any time the Lessor Parties (other than any Defaulting Lessor Party) whose Lessor Advances outstanding represent at least fifty-one percent (51%) of (a) the aggregate Lessor Advances outstanding or (b) to the extent there are no Lessor Advances outstanding, the aggregate Lessor Parties Commitment.

“Marketing Period” shall mean, if the Lessee has given a Sale Notice in accordance with Section 20.1 of the Lease, the period commencing on the date such Sale Notice is given and ending on the Expiration Date.

“Material Adverse Effect” shall mean any set of circumstances or events which: (a) has or could reasonably be expected to have any material adverse effect upon the validity or enforceability of the Participation Agreement or any other Operative Agreement; (b) is or could reasonably be expected to be material and adverse to the business, operations, properties, assets, or financial condition of the Credit Parties taken as a whole; provided that a downgrade of the Debt Ratings or a Negative Pronouncement shall not in and of itself be deemed to be a Material Adverse Effect; (c) impairs materially or could reasonably be expected to impair materially the ability of the Credit Parties taken as a whole to duly and punctually pay or perform their Indebtedness or any of their respective obligations under the Operative Agreements; (d) impairs materially or could reasonably be expected to impair materially the ability of the Revolving Credit Agreement Administrative Agent, any of the Revolving Credit Agreement Banks or any of the Financing Parties, to the extent permitted, to enforce their legal remedies pursuant to the Revolving Credit Agreement Loan Documents (in the case of the Revolving Credit Agreement Administrative Agent or any of the Revolving Credit Agreement Banks) or pursuant to the Participation Agreement or any other Operative Agreement (in the case of any of the Financing Parties); (e) impairs materially or could reasonably be expected to impair materially the validity, priority or enforceability of any Lien on the Property created by any of the Operative Agreements; or (f) impairs materially or could reasonably be expected to impair materially the value, utility or useful life of the Property, which has caused or could reasonably be expected to cause a diminution of the fair market value of the Property of ten percent (10%) or more from the then-current fair market value of the Property, or the use, or ability of the Lessee to use, the Property for the purpose for which it was intended.

“Maturity Date” shall mean the Expiration Date.

“Maximum Residual Guarantee Amount” shall mean (a) from the Initial Closing Date to and including December 31, 2018, an amount equal to the product of the GAAP Project Cost for the Property times eighty-seven percent (87.0%) and (b) from and including January 1, 2019 and thereafter, an amount as reasonably determined by the Majority Secured Parties and the Lessee in accordance with Accounting Standards Codification No. 842.

“Modifications” shall have the meaning given to such term in Section 11.1 of the Lease.

“Monthly Notice Date” shall mean the tenth (10th) day of each calendar month unless such is not a Business Day and in such case on the next preceding Business Day.

“Moody’s” shall mean Moody’s Investors Services, Inc., and any successor thereto.

“Mortgage Instrument” shall mean any mortgage, deed of trust or any other instrument executed by the Lessee (or regarding any Land, the applicable Affiliate of the Lessee) in favor of the Trustee thereunder, for the benefit of the Agent (for the benefit of the Secured Parties) and evidencing a Lien on the Lessee’s interest in the Property, in form and substance reasonably acceptable to the Agent.

“Multiemployer Plan” shall mean any employee benefit plan which is a “multiemployer plan” within the meaning of Section 4001(a) (3) of ERISA and to which any Revolving Credit Agreement Borrower or any other member of the ERISA Group is then making or accruing an obligation to make contributions or, within the preceding five Plan years, has made or had an obligation to make such contributions.

“Multiple Employer Plan” shall mean a Plan which has two or more contributing sponsors (including any Credit Party or any other member of the ERISA Group) at least two of whom are not under common control, as such a plan is described in Sections 4063 and 4064 of ERISA.

“Negative Pronouncement” shall mean a public announcement by either S&P’s or Moody’s with respect to a possible downgrade of, or negative outlook with respect to, the Debt Ratings.

“New York Potential Tax Claim” shall mean the liability for taxes or gains arising from the resale of real estate asserted by the New York State Department of Taxation and Finance against some of the Excluded Inactive Subsidiaries described in Schedule IV of the Participation Agreement.

“Non-Consenting Lessor Party” shall mean any Lessor Party that does not approve any proposed termination, amendment, supplement, waiver, modification or consent with respect to any Operative Agreement that (a) requires the approval of all Lessor Parties, or all affected Lessor Parties, in accordance with the terms of Section 12.4 of the Participation Agreement and (b) has been approved by the Majority Lessor Parties.

“Non-Defaulting Lessor Party” shall mean, at any time, each Lessor Party that is not a Defaulting Lessor Party at such time.

“Non-U.S. Person” shall mean a Person that is not a U.S. Person.

“Obligations” shall mean the collective reference to all obligations (including without limitation all payment and performance obligations), now existing or hereafter arising, owing by the Lessee and/or the Construction Agent, as applicable, to one or more Secured Parties under or pursuant to the Operative Agreements, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, which may arise under, out of, or in connection with the Participation Agreement, the Lessor Assignment Agreement, the Lease, the Agency Agreement or any of the other Operative Agreements, whether on account of advanced amounts, yield, reimbursement obligations, fees, indemnities, costs, expenses, termination payments or otherwise (including without limitation all fees and disbursements of counsel to any of the Secured Parties) that are required to be paid by the Lessee and/or the Construction Agent, as applicable, pursuant to the terms of the Operative Agreements for any purpose, including without limitation in connection with the exercise of remedies. Obligations shall not include the liabilities to any Financing Party under any Bank-Provided Hedge or Qualified Hedge Agreement.

“Off-Site Construction Costs” shall mean the construction costs, not to exceed Twelve Million and 00/100 Dollars (\$12,000,000.00), incurred to pay for the Off-Site Improvements.

“Off-Site Improvements” shall mean the off-site improvements not located on the Land and not included in the Improvements, with such off-site improvements to include dry utilities (electrical, phone and street light); wet utilities (LP/HP mains and meters); curb gutters, road widening, sidewalks and landscaping; and all other necessary labor, materials, equipment and services to complete such work.

“Officer’s Certificate” with respect to any Person shall mean a certificate executed on behalf of such Person by a Responsible Officer who has made or caused to be made such examination or investigation as is necessary to enable such Responsible Officer to express an informed opinion with respect to the subject matter of such Officer’s Certificate.

“Official Body” shall mean the government of the United States of America or any other nation, or of any political subdivision thereof, whether state, provincial, local or otherwise, and any agency, authority,

instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, Taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Operative Agreements” shall mean the following: the Participation Agreement, the Lessor Assignment Agreement, the Agency Agreement, the Engagement Letter, the Lease (and a memorandum thereof (or a short form lease), in each case, in a form reasonably acceptable to the Agent), each Requisition, the Intercompany Subordination Agreement, the Security Documents, the Deeds, the Bills of Sale and any and all other agreements, documents and instruments executed in connection with any of the foregoing.

“Overdue Rate” shall mean a per annum rate equal to the lesser of (a) the then current rate of Lessor Yield respecting the particular amount in question plus two percent (2%) and (b) the highest rate permitted by Applicable Law, in each case from the date of such non-payment until such amount is paid in full (whether after or before judgment).

“Overfunded Amount” shall have the meaning given to such term in Section 5.2(c)(ii) of the Participation Agreement.

“Overnight Federal Funds Rate” shall mean for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of one percent (1%)) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (a) if such day is not a Business Day, the Overnight Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Overnight Federal Funds Rate for such day shall be the average rate charged to Wells Fargo Bank, National Association on such day on such transactions as determined by Wells Fargo Bank, National Association.

“Parent” shall mean Big Lots, Inc., an Ohio corporation.

“Participant” shall have the meaning given to such term in Section 10.4 of the Participation Agreement.

“Participation Agreement” shall mean the Participation Agreement dated on or about the Initial Closing Date, among the Lessor Parties, the Lessee, the Construction Agent, the Guarantors and the Agent.

“Partnership Interests” shall have the meaning given to such term in Section 6.1(c) of the Participation Agreement.

“Payment Date” shall mean (a) as to any Eurodollar Lessor Advance, the last day of the Lessor Yield Period applicable to such Eurodollar Lessor Advance, (b) as to any ABR Lessor Advance, the twentieth day of each month, unless such day is not a Business Day and in such case on the next occurring Business Day and (c) as to all Lessor Advances, the date of any voluntary or involuntary payment, repayment, prepayment, return or redemption, and the Expiration Date.

“Payment in Full” shall mean the indefeasible payment and satisfaction in full of all Obligations and the obligations of the other Credit Parties pursuant to the Operative Agreements (other than contingent indemnification and reimbursement obligations in respect of which no claim for payment has yet been asserted by the Person entitled thereto) and termination of the Lessor Parties Commitments.

“PBGC” shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor.

“Pension Plan” shall mean a “pension plan”, as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Plan), and to which any Credit Party or any ERISA Affiliate may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

“Percentage Share” shall mean, for each Lessor Party and from time to time, the percentage which its respective funded Lessor Advances bears to all funded Lessor Advances, as the Percentage Share for each Lessor Party shall be determined from time to time by the Agent in good faith, with such determination by the Agent being conclusive and binding on each Lessor Party and the Credit Parties, absent manifest error.

“Permitted Acquisition” shall have the meaning given to such term in Section 8.3B(e)(iii) of the Participation Agreement.

“Permitted Facility” shall mean the approximately one million three hundred fifty thousand (1,350,000) square foot (gross building area) distribution center to be constructed at the southwest corner of Navajo Road and Lafayette Road in San Bernardino County, California identified by the Construction Agent or the Lessee reasonably acceptable to the Agent, it being agreed that in determining said acceptability, the Agent shall be entitled to require an appraisal of the parcel of real property.

“Permitted Investments” shall mean:

(a) direct obligations of the United States of America or any agency or instrumentality thereof or obligations backed by the full faith and credit of the United States of America maturing in twelve (12) months or less from the date of acquisition;

(b) commercial paper maturing in one (1) year or less rated not lower than A-1, by S&P's, P-1 by Moody's or F-1 by Fitch on the date of acquisition;

(c) demand deposits, time deposits or certificates of deposit maturing within one year in any Bank or any other commercial banks whose obligations are rated A-1, A or the equivalent or better by S&P's on the date of acquisition;

(d) money market mutual funds or cash management trusts rated the highest rating by S&P's, Moody's or Fitch (and not rated other than the highest rating by S&P's, Moody's or Fitch) or investing solely in investments described in clauses (a) through (c) above;

(e) fully collateralized repurchase agreements with a term of not more than one hundred eighty (180) days for securities described in clause (a) above and entered into with commercial banks whose obligations are rated A-1, A or the equivalent or better by S&P's on the date of acquisition;

(f) short term Tax-exempt securities rated not lower than BBB by S&P's, Baa2 by Moody's or an equivalent rating by Fitch with provisions for liquidity or maturity accommodations of two (2) years or less;

(g) investments in other readily marketable securities (excluding any equity or equity-linked securities other than auction rate preferred securities) which are rated P1 or P2 by Moody's,

A1 or A2 by S&P's or F1 or F2 by Fitch (in lieu of a short term rating, a long term rating of not less than A2 by Moody's, A by S&P's or an equivalent rating by Fitch would qualify under this sub-clause (g), provided that no such security position shall exceed five percent (5%) of the invested cash portfolio of the Credit Parties); and

(h) any investment existing on the date of the Revolving Credit Agreement and described on Schedule XIV.

“Permitted Liens” shall mean:

(a) the respective rights and interests of the parties to the Operative Agreements as provided in the Operative Agreements;

(b) the rights of any sublessee or assignee under a sublease or an assignment expressly permitted by the terms of the Lease for no longer than the duration of the Lease;

(c) Liens for Taxes that either are (i) not yet due or (ii) are being contested in accordance with the provisions of Section 13.1 of the Lease;

(d) Liens arising by operation of law, materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's and other like Liens relating to the construction of the Improvements or in connection with any Modifications or arising in the ordinary course of business for amounts that (i) are not more than thirty (30) days past due, (ii) are being diligently contested in good faith by appropriate proceedings, so long as such proceedings satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease or (iii) have been bonded for not less than the full amount in dispute (or as to which other security arrangements satisfactory to the Majority Secured Parties, in their reasonable discretion, have been made), which bonding (or arrangements) shall comply with applicable Legal Requirements, and shall have effectively stayed any execution or enforcement of such Liens;

(e) Liens arising out of judgments or awards with respect to which appeals or other proceedings for review are being prosecuted in good faith and for the payment of which adequate reserves have been provided to the extent required by GAAP or other appropriate provisions have been made, so long as such proceedings have the effect of staying the execution of such judgments or awards and satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease;

(f) Liens in favor of municipalities to the extent agreed to by the Majority Secured Parties;

(g) Liens that are expressly set forth as title exceptions on the title commitment issued under Section 5.3(g) of the Participation Agreement with respect to the Property, to the extent such title exceptions do not have and could not reasonably be expected to have a Material Adverse Effect;

(h) Liens on the Property approved by the Majority Secured Parties or otherwise permitted under Section 8.5 of the Participation Agreement; and

(i) Lessor Liens.

“Person” shall mean an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, sole proprietorship, joint venture, government (or any agency or political subdivision thereof) or other entity.

“Plan” shall mean at any time an employee pension benefit plan (including a Multiple Employer Plan, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code and either (a) is maintained by any member of the ERISA Group for employees of any member of the ERISA Group or (b) has at any time within the preceding five years been maintained by any entity which was at such time a member of the ERISA Group for employees of any entity which was at such time a member of the ERISA Group.

“Plans and Specifications” shall mean, with respect to Improvements, the plans and specifications for such Improvements to be constructed or already existing certified to the Agent, as such Plans and Specifications may be amended, modified or supplemented from time to time in accordance with the terms of the Operative Agreements.

“Prime Rate” shall mean the rate announced by Wells Fargo Bank, National Association from time to time as its prime rate in the United States, such rate to change as and when such designated rate changes; provided, notwithstanding the foregoing, if any such interest rate for any period of time determined as provided above would be less than 0.0% per annum, then such interest rate for such period of time shall be deemed to be 0.0% per annum. The Prime Rate is not intended to be the lowest rate of interest charged by Wells Fargo Bank, National Association in connection with extensions of credit to debtors.

“Pro Rata Share” shall mean with respect to a Lessor Party, a percentage equal to such Lessor Party’s pro rata share of the aggregate Lessor Parties Commitments, in each case, as set forth next to such Lessor Party’s name on Schedule I of the Participation Agreement or on any assignment pursuant to which such Lessor Party becomes a party hereto.

“Prohibited Transaction” shall mean any prohibited transaction as defined in Section 4975 of the Code or Section 406 of ERISA for which (a) no statutory exception exists or (b) neither an individual nor a class exemption has been issued by the United States Department of Labor.

“Property” shall mean the real property that is (or is to be) acquired, constructed and/or renovated pursuant to the terms of the Operative Agreements, including the Land, each item of Equipment and the various Improvements, in each case located on such Land, including the Property if it is a Construction Period Property and if the Term has commenced.

“Property Acquisition Cost” shall mean the cost to the Lessor Parties for the Lessor to purchase the Property on the Property Closing Date (including Transaction Expenses).

“Property Closing Date” shall mean the Initial Closing Date.

“Property Cost” shall mean (a) the aggregate amount of the Lessor Advances (in each case, as such amounts shall be increased pro rata according to the Lessor Advances advanced or extended from time to time including to pay for the Transaction Expenses and Uninsured Force Majeure Losses) and (b) respecting the various amounts described in the foregoing subsection (a), all the occurrences and items giving rise to all such amounts.

“Punchlist Advance” shall have the meaning given to such term in Section 5.11 of the Participation Agreement.

“Punchlist Deadline” shall have the meaning given to such term in Section 5.11 of the Participation Agreement.

“Purchase Agreement” shall mean the Agreement of Purchase and Sale and Joint Escrow Instructions dated as of October 4, 2017 by and between Watson Land Company and the Lessee, without regard to any amendment, modification, extension, supplement, restatement and/or replacement thereof subsequent to such date.

“Purchase Money Security Interest” shall mean Liens upon real or tangible personal property securing loans to any Credit Party or Subsidiary of a Credit Party or deferred payments by such Credit Party or Subsidiary for the purchase of such real or tangible personal property.

“Purchase Option” shall have the meaning given to such term in Section 20.1 of the Lease.

“Purchasing Lessor Party” shall have the meaning given to such term in Section 10.5(a) of the Participation Agreement.

“Qualified Community Development Entity” shall mean any corporation or partnership (or a limited liability company designated as a corporation or partnership for federal income Tax purposes) organized under the laws of the United States of America or any state thereof that meets the requirements of Section 45(D)(c) of the Code.

“Qualified Hedge Agreement” shall mean a Hedge Agreement with a financial institution reasonably acceptable to the Revolving Credit Agreement Administrative Agent (as evidenced by the Credit Parties to the reasonable satisfaction of the Agent) and the Agent and which (a) is documented in a standard International Swap Dealer Association Agreement or a similar agreement, (b) provides for the method of calculating the reimbursable amount of the provider’s credit exposure in a reasonable and customary manner, (c) is entered into for hedging (rather than speculative) purposes, and (d) does not require that any collateral be provided as security for such agreement.

“Real Property” shall mean the Property.

“Real Property Lease” or “Real Property Lease Agreement” shall mean the Lease.

“Register” shall have the meaning given to such term in Section 10.6 of the Participation Agreement.

“Regulated Substances” shall mean, without limitation, any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a “hazardous substance,” “pollutant,” “pollution,” “contaminant,” “hazardous or toxic substance,” “extremely hazardous substance,” “toxic chemical,” “toxic substance,” “toxic waste,” “hazardous waste,” “special handling waste,” “industrial waste,” “residual waste,” “solid waste,” “municipal waste,” “mixed waste,” “infectious waste,” “chemotherapeutic waste,” “medical waste,” “pesticide” or “regulated substance” or any other substance, material or waste, regardless of its form or nature, which is regulated, controlled or governed by Environmental Laws due to its radioactive, ignitable, corrosive, reactive, explosive, toxic, carcinogenic or infectious properties or nature or any other material, substance or waste, regardless of its form or nature, which otherwise is regulated, controlled or governed by Environmental Laws, including petroleum and petroleum products (including crude oil and any fractions thereof), natural gas, synthetic gas and any mixtures thereof, asbestos, urea formaldehyde, polychlorinated biphenyls, mercury, radon and radioactive materials.

“Regulation B” shall mean Regulation B of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

“Regulation U” shall mean Regulation U of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

“Regulation Z” shall mean Regulation Z of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

“Regulatory Change” shall mean the occurrence, after the Initial Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Regulatory Change”, regardless of the date enacted, adopted or issued.

“Release” shall mean any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Substance.

“Remedial Action” shall mean any investigation, identification, preliminary assessment, characterization, delineation, feasibility study, cleanup, corrective action, removal, remediation, risk assessment, fate and transport analysis, in situ treatment, containment, operation and maintenance or management in-place, control or abatement of or other response actions to Regulated Substances and any closure or post-closure measures associated therewith.

“Renewal Term” shall have the meaning given to such term in Section 2.2 of the Lease.

“Rent” shall mean, collectively, the Basic Rent and the Supplemental Rent, in each case payable under the Lease.

“Rent Commencement Date” shall mean, the Completion Date with respect to the Property.

“Reportable Compliance Event” shall mean that any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any Anti-Terrorism Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations is in actual or probable violation of any Anti-Terrorism Law.

“Reportable Event” shall mean a reportable event described in Section 4043 of ERISA and regulations thereunder with respect to a Plan, a Multiemployer Plan or a Multiple Employer Plan.

“Requested Funds” shall mean any funds requested by the Lessee or the Construction Agent, as applicable, in accordance with Section 5 of the Participation Agreement.

“Requesting Party” shall have the meaning given to such term in Section 26.3 of the Lease.

“Requisition” shall have the meaning given to such term in Section 4.2 of the Participation Agreement.

“Responsible Officer” shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Operative Agreement, the President, or any Vice President, Assistant Vice President, Trust Officer or other officer, who in the normal performance of his or her operational responsibility would have knowledge of such matters and the requirements with respect thereto.

“Revolving Credit Agreement” shall mean the Credit Agreement dated as of July 22, 2011 by and among BLS, the Parent, Big Lots Canada, Inc., the various entities parties thereto from time to time as guarantors thereunder, the various entities parties thereto from time to time as lenders thereunder, PNC Bank, National Association as administrative agent thereunder and the other entities parties thereto from time to time, as amended by that certain First Amendment to Credit Agreement dated as of May 30, 2013 and that certain Second Amendment to Credit Agreement dated as of May 28, 2015, in each case by and among the afore referenced parties, and as further amended from time to time, as the foregoing has been amended and restated pursuant to that certain First Amended and Restated Credit Agreement dated as of August 31, 2018 by and among BLS, the Parent, the various entities parties thereto from time to time as designated borrowers thereunder, the various entities parties thereto from time to time as guarantors thereunder, the various entities parties thereto from time to time as lenders thereunder, PNC Bank, National Association as administrative agent thereunder and the other entities parties thereto from time to time.

“Revolving Credit Agreement Administrative Agent” shall mean the Administrative Agent (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement Amendment” shall mean an amendment of the Revolving Credit Agreement or waiver with respect thereto (to the extent such amendment or waiver requires a vote of the Revolving Credit Agreement Banks), with regard to (a) any of the covenants, representations and warranties or any materiality levels in respect of any Event of Default (as defined in the Revolving Credit Agreement) in the Revolving Credit Agreement which are identical to or substantially similar to the provisions of Sections 6.1, 8.3A, 8.3B and/or 8.3C of the Participation Agreement or Events of Default under any Operative Agreement and/or (b) any definitions in the Revolving Credit Agreement related to the matters described in the foregoing subsection (a).

“Revolving Credit Agreement Banks” shall mean the Banks (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement Borrowers” shall mean BLS, the Parent and any Revolving Credit Agreement Designated Borrower.

“Revolving Credit Agreement Designated Borrower” shall mean each Designated Borrower (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement Loan Documents” shall mean the Revolving Credit Agreement and the other Loan Documents (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement Loan Parties” shall mean the Loan Parties (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement Obligations” shall mean the Obligations (as such term is defined in the Revolving Credit Agreement).

“Revolving Credit Agreement Permitted Liens” shall mean:

- (a) Liens for Taxes, assessments, or similar charges, incurred in the ordinary course of business and which are not yet due and payable;
- (b) Pledges or deposits made in the ordinary course of business to secure payment of workmen’s compensation, or to participate in any fund in connection with workmen’s compensation, unemployment insurance, old-age pensions or other social security programs;
- (c) Liens of contractors, mechanics, materialmen, warehousemen, carriers, or other like Liens, securing obligations incurred in the ordinary course of business that are not yet due and payable and Liens of landlords securing obligations to pay lease payments that are not yet due and payable or in default;
- (d) Good-faith pledges or deposits made in the ordinary course of business to secure performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, not in excess of the aggregate amount due thereunder, or to secure statutory obligations, or surety, appeal, indemnity, performance or other similar bonds required in the ordinary course of business;
- (e) Encumbrances consisting of zoning restrictions, easements or other restrictions on the use of real property, none of which materially impairs the use of such property or the value thereof, and none of which is violated in any material respect by existing or proposed structures or land use;
- (f) Liens on property leased by or consigned to any Credit Party under Capital Leases, operating leases, leases giving rise to Synthetic Lease Obligations or consignment arrangements, in each case, securing obligations of such Credit Party to the lessor (and, in the case of leases giving rise to Synthetic Lease Obligations, the lenders to the lessor) or the consignor under such leases or consignment arrangements;
- (g) Any Lien existing on the date of the Revolving Credit Agreement and described on Schedule XV, provided that the principal amount secured thereby is not hereafter increased, and no additional assets become subject to such Lien;
- (h) Purchase Money Security Interests to the extent that the aggregate amount of loans and deferred payments secured by such Purchase Money Security Interests, when aggregated with the amount of Indebtedness secured by Liens as permitted in clause (i) below, do not exceed at any one time outstanding Ten Million and 00/100 Dollars (\$10,000,000.00) (excluding for the purpose of this aggregate computation any loans or deferred payments secured by Liens described on Schedule XV);
- (i) Liens on proceeds granted in connection with securities lending transactions or reverse repurchase agreements involving United States Treasury bonds to the extent the aggregate amount of the Indebtedness secured by such Liens, when aggregated with the amount of loans and deferred payments secured by Purchase Money Security Interests as permitted in clause (h) above, do not exceed at any one time outstanding Ten Million and 00/100 Dollars (\$10,000,000.00) (excluding for the purpose of this aggregate computation any loans or deferred payments secured by Liens described on Schedule XV); and

(j) The following, (i) if the validity or amount thereof is being contested in good faith by appropriate and lawful proceedings diligently conducted so long as levy and execution thereon have been stayed and continue to be stayed or (ii) if a final judgment is entered and such judgment is discharged within thirty (30) days of entry, or (iii) if payments thereof are covered in full (subject to customary deductibles) by an insurance company of reputable standing which has acknowledged that the applicable policy applies to the following and is not reserving any right to contest applicability, and in any case they do not in the aggregate materially impair the ability of any Credit Party to perform its obligations hereunder or under the other Operative Agreements:

(A) Claims or Liens for Taxes, assessments or charges due and payable and subject to interest or penalty; provided that the applicable Credit Party maintains such reserves or other appropriate provisions as shall be required by GAAP and pays all such Taxes, assessments or charges forthwith upon the commencement of proceedings to foreclose any such Lien;

(B) Claims, Liens or encumbrances upon, and defects of title to, real or personal property, including any attachment of personal or real property or other legal process prior to adjudication of a dispute on the merits;

(C) Claims or Liens of mechanics, materialmen, warehousemen, carriers, or other statutory nonconsensual Liens; or

(D) Liens resulting from final judgments or orders for the payment of money in excess of Fifty Million and 00/100 Dollars (\$50,000,000.00) in the aggregate entered against any Credit Party by a court having jurisdiction in the premises, which judgment is not satisfied, discharged, vacated, bonded or stayed pending appeal within a period of sixty (60) days from the date of entry.

“Revolving Credit Agreement Property” shall mean all real property (including the Property), both owned and leased, of any Credit Party.

“Revolving Credit Agreement Required Banks” shall mean the Required Banks (as such term is defined in the Revolving Credit Agreement).

“RVI Policy” shall mean, with respect to the Property, a residual value insurance policy in form and substance reasonably acceptable to the Lessor in an amount sufficient to enable the Lessor to achieve its desired accounting treatment.

“S&P” shall mean Standard & Poor’s, a division of The McGraw Hill Companies Inc., and any successor thereto.

“Sale Date” shall have the meaning given to such term in Section 20.3(a) of the Lease.

“Sale Notice” shall mean a notice given to the Lessor in connection with the election by the Lessee of its Sale Option.

“Sale Option” shall have the meaning given to such term in Section 20.1 of the Lease.

“Sale Proceeds Shortfall” shall mean the amount by which the proceeds of a sale described in Section 21.1 of the Lease are less than the Limited Recourse Amount with respect to the Property if it has

been determined that the Fair Market Sales Value of the Property at the expiration of the term of the Lease has been impaired by greater than ordinary wear and tear during such term.

“Sanctioned Country” shall mean a country subject to a sanctions program maintained under any Anti-Terrorism Law.

“Sanctioned Person” shall mean any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person, group, regime, entity or thing, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any Anti-Terrorism Law.

“Secured Parties” shall mean the Lessor Parties and the Agent, together with their successors and permitted assigns.

“Securities Act” shall mean the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

“Security Documents” shall mean the collective reference to the Mortgage Instruments, (to the extent the Lease is construed as a security instrument) the Lease, the UCC Financing Statements and all other security documents granting a Lien on any asset or assets of any Person to secure the obligations and liabilities of the Lessee under any Operative Agreement or to secure any guarantee of any such obligations and liabilities.

“Seismic Report” shall mean the Seismic Risk Assessment Report dated October 18, 2017 prepared by Global Realty Services Group regarding Big Lots Industrial Project Located at the SWC of Navajo Road and Lafayette Road.

“Shares” shall have the meaning given to such term in Section 6.1(b) of the Participation Agreement.

“Soft Costs” shall mean (a) all costs which are ordinarily and reasonably incurred in relation to the acquisition, development, leasing, financing, installation, construction, improvement and testing of the Property other than Hard Costs, including Off-Site Construction Costs, Fees, legal fees, broker fees, upfront fees, fees of the Construction Consultant, fees and expenses related to appraisals, title examinations, title insurance, document recordation, documentary stamp Taxes, intangible Taxes, surveys, environmental site assessments, geotechnical soil investigations and similar costs and professional fees customarily associated with a real estate purchase and closing and (b) the settlement amounts described in Schedule XVII to the Participation Agreement.

“Solvent” and “Solvency” shall mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Structuring Fee” shall have the meaning given to such term in Section 7.7 of the Participation Agreement.

“Subsidiary” of any Person at any time shall mean (a) any corporation or trust of which fifty percent (50%) or more (by number of shares or number of votes) of the outstanding capital stock or shares of beneficial interest normally entitled to vote for the election of one or more directors or trustees (regardless of any contingency which does or may suspend or dilute the voting rights) is at such time owned directly or indirectly by such Person or one or more of such Person’s Subsidiaries, (b) any partnership of which such Person is a general partner or of which fifty percent (50%) or more of the partnership interests are at the time directly or indirectly owned by such Person or one or more of such Person’s Subsidiaries, (c) any limited liability company of which such Person is a member or of which fifty percent (50%) or more of the limited liability company interests are at the time directly or indirectly owned by such Person or one or more of such Person’s Subsidiaries or (d) any corporation, trust, partnership, limited liability company or other entity which is controlled or capable of being controlled by such Person or one or more of such Person’s Subsidiaries.

“Subsidiary Shares” shall have the meaning given to such term in Section 6.1(c) of the Participation Agreement.

“Supplemental Rent” shall mean all amounts, liabilities and obligations (other than Basic Rent) which the Lessee assumes or agrees to pay to any Lessor Party, the Agent or any other Person under the Lease or under any of the other Operative Agreements including payments of the Termination Value and the Maximum Residual Guarantee Amount and all indemnification amounts, liabilities and obligations.

“Synthetic Lease Documents” shall have the meaning given to such term in Section 8.3B(q) of the Participation Agreement.

“Synthetic Lease Obligation” shall mean the monetary obligation of any Person under (a) a so-called synthetic or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that, pursuant to the applicable FASB accounting standards, do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Tax Loss” shall have the meaning given to such term in Section 11.2(g) of the Participation Agreement.

“Taxes” shall have the meaning given to such term in the definition of “Impositions”.

“Term” shall mean the Basic Term and each Renewal Term, if any.

“Termination Date” shall have the meaning given to such term in Section 16.2(a) of the Lease.

“Termination Notice” shall have the meaning given to such term in Section 16.1 of the Lease.

“Termination Value” shall mean the sum of (a) an amount equal to the aggregate outstanding Property Cost for the Property, as of the last occurring Payment Date, plus (b) any and all accrued but unpaid Lessor Yield on the Lessor Advances, plus (c) to the extent the same is not duplicative of the amounts payable under clause (b) above, all other Rent and other amounts then due and payable or accrued under the Agency Agreement, the Lease and/or under any other Operative Agreement (including amounts under Sections 11.1 through 11.9 of the Participation Agreement and all costs and expenses incurred by any Lessor Party and/

or the Agent in connection with the transfer or sale of the Property to any Person (regardless of whether any such transfer or sale actually occurs)).

“Test Date” shall mean, if at the time the rating of either S&P’s or Moody’s with respect to the Parent’s consolidated Indebtedness under the Revolving Credit Agreement shall be less than BBB- or Baa3 and the rating of the other such rating agency with respect to BLS’ Indebtedness under the Revolving Credit Agreement shall not be at least BBB- or Baa3, or if there shall not be a rating in effect from such other rating agency of BLS’ Indebtedness under the Revolving Credit Agreement, each date of the making of a loan under the Revolving Credit Agreement or the issuance of any letter of credit under the Revolving Credit Agreement.

“Transaction Expenses” shall mean all Soft Costs and all other costs and expenses incurred or expended by the Construction Agent, the Lessee or any Financing Party in connection with the preparation, execution and delivery of the Operative Agreements and the transactions contemplated by the Operative Agreements including all costs, fees, expenses and other amounts described in Section 7 of the Participation Agreement, all reasonable costs and expenses incurred by any Lessor Party in connection with any designation of a new lending office or assignment by a Lessor Party to another of its offices, branches or affiliates, in each case, pursuant to Section 5A.7(a) the assignment fee payable to the Agent and any other fees or amounts (excluding advance amounts, Lessor Yield and Fees) incurred by a Lessor Party pursuant to Section 5A.7(b) and (except to the extent payable and actually paid by the Construction Agent or the Lessee pursuant to Section 11.6 of the Participation Agreement) all indemnity amounts, breakage amounts, costs, fees, expenses and other amounts arising pursuant to Section 11 of the Participation Agreement and the following:

(a) the reasonable fees, out-of-pocket expenses and disbursements of counsel in negotiating the terms of the Operative Agreements and the other transaction documents, preparing for the closings under, and rendering opinions in connection with, such transactions and in rendering other services customary for counsel representing parties to transactions of the types involved in the transactions contemplated by the Operative Agreements;

(b) the reasonable fees, out-of-pocket expenses and disbursements of accountants for any Credit Party in connection with the transactions contemplated by the Operative Agreements;

(c) any and all other reasonable fees, charges or other amounts payable to the Agent or any broker which arises under any of the Operative Agreements;

(d) any other reasonable fee, out-of-pocket expenses, disbursement or cost of any party to the Operative Agreements or any of the other transaction documents; and

(e) any and all Taxes and fees incurred in recording or filing any Operative Agreement or any other transaction document, any deed, declaration, mortgage, security agreement, notice or financing statement with any public office, registry or governmental agency in connection with the transactions contemplated by the Operative Agreement.

Notwithstanding the foregoing or any provision in Section 7.1 of the Participation Agreement or in any other Operative Agreement to the contrary, “Transaction Expenses” shall not include legal fees and other professional fees or similar costs and expenses expended by any transferee or assignee of any Lease Participant as of the Initial Closing Date.

“Tribunal” shall mean any state, commonwealth, federal, foreign, territorial, or other court or government body, subdivision agency, department, commission, board, bureau or instrumentality of a governmental body.

“Trust Property” shall mean the collateral identified in the Security Documents.

“UCC Financing Statements” shall mean UCC financing statements and fixture filings appropriately completed for filing in the applicable jurisdictions in order to procure a security interest in the Property against the Lessee, as debtor, in favor of the Lessor, as secured party, and thereafter assigned to the Agent, respecting any of the Security Documents.

“Unanimous Vote Matters” shall have the meaning given to such term in Section 12.4 of the Participation Agreement.

“Uniform Commercial Code” and “UCC” shall mean the Uniform Commercial Code as from time to time in effect in the applicable jurisdiction or jurisdictions.

“Uninsured Force Majeure Loss” shall mean an amount equal to the Force Majeure Loss less any and all insurance proceeds paid in connection with the Force Majeure Event giving rise to such Force Majeure Loss.

“United States” shall mean the United States of America.

“United States Bankruptcy Code” shall mean the Bankruptcy Code.

“USA Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

“U.S. Person” shall have the meaning given to such term in Section 11.2(e) of the Participation Agreement.

“U.S. Taxes” shall have the meaning given to such term in Section 11.2(e) of the Participation Agreement.

“Water Utility Easement” shall have the meaning given to such term in Section 8.5 of the Participation Agreement.

“Wholly-Owned Entity” shall mean a Person all of the shares of capital stock or other ownership interest of which are owned by the Parent and/or one of its wholly-owned Subsidiaries or other wholly-owned entities.

“Withholdings” shall have the meaning given to such term in Section 11.2(e) of the Participation Agreement.

“Work” shall mean the furnishing of labor, materials, components, furniture, furnishings, fixtures, appliances, machinery, equipment, tools, power, water, fuel, lubricants, supplies, goods and/or services with respect to the Property.

“Write-Down and Conversion Powers” shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

“Yield Protection Amount” shall have the meaning given to such term in Section 11.3 of the Participation Agreement.

APPENDIX A-41

EXHIBIT B

17.1 Lease Events of Default.

If any one (1) or more of the following events (each a "Lease Event of Default") shall occur:

(a) (i) Except as otherwise provided in this Section 17.1(a), any payment of Basic Rent payable by Lessee shall not be paid when due, and, such payment shall be overdue for a period of three (3) Business Days, (ii) any payment payable by Lessee on the Expiration Date, including any payment described in Article XX or XXI, shall not be paid when due, (iii) any payment of the Termination Value or any payment of Basic Rent or Supplemental Rent due on the date of any such payment of the Termination Value shall not be paid when due, or (iv) Lessee shall fail to make payment of any Supplemental Rent (other than Supplemental Rent payable pursuant to clause (ii) or (iii) of this Section 17.1(a)) due and payable within five (5) Business Days after receipt by Lessee of notice from Agent demanding payment thereof (as any of the amounts pursuant to this Section 17.1(a) are due and payable, whether at maturity, by acceleration or otherwise);

(b) (i) Except as otherwise provided in Section 17.1(b)(ii), any representation or warranty of any Credit Party contained in any Operative Agreement, or in any certificate, report furnished or delivered by any Credit Party on its own behalf or on Lessee's behalf pursuant to the Operative Agreements to Agent or Lessor is incorrect, incomplete or misleading in any material respect when made or reaffirmed, as the case may be, or (ii) any representation or warranty contained in clause (i) of Section 6.1(y) of the Participation Agreement is or becomes false or misleading at any time;

(c) Any Credit Party shall default in the observance or performance of any covenant contained in Article XIV of this Lease (other than the requirement to deliver annual certificates), Sections 8.3A(c), 8.3A(f), clause (i) of Section 8.3A(l) or 8.3B of the Participation Agreement;

(d) Any Credit Party shall default in the performance or observance of any term, covenant (excepting those covenants described in Section 17.1(c)), condition or agreement on its part to be performed or observed hereunder or under any other Operative Agreement (and not constituting a Lease Event of Default under any other clause of this Section 17.1), and such default is of a type that is subject to being cured and shall continue unremedied for a period of fifteen (15) Business Days after any Credit Party becomes aware of the occurrence thereof (such grace period to be applicable only in the event such default can be remedied by corrective action of the Credit Parties as determined by Lessor in its sole reasonable discretion);

(e) (i) A breach, default or event of default shall occur at any time under the terms of the Revolving Credit Agreement or (ii) except as otherwise provided in the foregoing subsection (e)(i), a breach, default or event of default shall occur at any time under the terms of any other agreement involving Indebtedness under which any Credit Party may be obligated as a borrower or guarantor in excess of Fifty Million and 00/100 Dollars (\$50,000,000.00) in the aggregate, and such breach, default or event of default consists of the failure to pay (beyond any period of grace permitted with respect thereto, whether waived or not) any Indebtedness when due (whether at stated maturity, by acceleration or otherwise) or if such breach or default permits or causes the acceleration of any Indebtedness (whether or not such right shall have been waived) or the termination of any commitment to lend;

(f) Any final judgments or orders for the payment of money in excess of Fifty Million and 00/100 Dollars (\$50,000,000.00) in the aggregate shall be entered against any Credit Party by a court having jurisdiction in the premises, which judgment is not satisfied, discharged, vacated, bonded or stayed pending appeal within a period of sixty (60) days from the date of entry;

(g) Any of the Operative Agreements shall cease to be legal, valid and binding agreements enforceable against the party executing the same or such party's successors and assigns (as permitted under the Operative Agreements) in accordance with the respective terms thereof or shall in any way be terminated (except in accordance with its terms) or become or be declared ineffective or inoperative or shall in any way be challenged or contested by a Credit Party or cease to give or provide the remedies, powers or privileges intended to be created thereby;

(h) Any of the Credit Parties' assets are attached, seized, levied upon or subjected to a writ or distress warrant; or such come within the possession of any receiver, receiver and manager, trustee, custodian, assignee for the benefit of creditors or other similar official and the same is not cured within sixty (60) days thereafter;

(i) (i) A notice of Lien or assessment which is not a Permitted Lien is filed of record with respect to all or any part of Lessee's interest in any of the Collateral by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, including the PBGC, or any Taxes or debts owing at any time or times hereafter to any one of these becomes payable and the same is not paid within thirty (30) days after the same becomes; or (ii) except as otherwise provided in Section 17.1(i)(i), a notice of Lien or assessment in excess of Fifty Million and 00/100 Dollars (\$50,000,000.00) which is not a Revolving Credit Agreement Permitted Lien is filed of record with respect to all or any part of any of the Credit Parties' assets by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, including the PBGC, or any Taxes or debts owing at any time or times hereafter to any one of these becomes payable and the same is not paid within thirty (30) days after the same becomes payable;

(j) Any Credit Party ceases to be Solvent or admits in writing its inability to pay its debts as they mature; provided, that any Credit Party may dissolve in accordance with Section 8.3B(e)(ii) of the Participation Agreement;

(k) Any of the following occurs: (i) any Reportable Event which constitutes grounds for the termination of any Plan by the PBGC or the appointment of a trustee to administer or liquidate any Plan, shall have occurred and be continuing; (ii) proceedings shall have been instituted or other action taken to terminate any Plan, or a termination notice shall have been filed with respect to any Plan; (iii) a trustee shall be appointed to administer or liquidate any Plan; (iv) the PBGC shall give notice of its intent to institute proceedings to terminate any Plan or Plans or to appoint a trustee to administer or liquidate any Plan; and, in the case of the occurrence of (i), (ii), (iii), or (iv) above, Lessor determines in good faith that the amount of the Credit Parties' liability is likely to exceed ten percent (10%) of its consolidated tangible net worth; (v) the Revolving Credit Agreement Borrowers or any other member of the ERISA Group shall fail to make any contributions when due to a Plan, Multiemployer Plan or Multiple Employer Plan; (vi) the Revolving Credit Agreement Borrowers or any other member of the ERISA Group shall commit a contribution failure under Section 303(k)(1) of ERISA and is required to provide notice to the PBGC under Section 303(k)(4) of ERISA; (vii) the Revolving Credit Agreement Borrowers or any other member of the ERISA Group shall withdraw completely or partially from a Multiemployer Plan or a Multiple Employer Plan; (viii) the Revolving

Credit Agreement Borrowers or any other member of the ERISA Group shall withdraw (or shall be deemed under Section 4062(e) of ERISA to withdraw) from a Multiple Employer Plan or cease operations at a facility under the circumstances described in Section 4062(e) of ERISA; or (ix) any Applicable Law is adopted, changed or interpreted by any Official Body with respect to or otherwise affecting one or more Plans, Multiemployer Plans, Multiple Employer Plans or Benefit Arrangements and, with respect to any of the events specified in (v), (vi), (vii), (viii) or (ix), the occurrence of which would be reasonably likely to result in a Material Adverse Effect;

(l) Any Credit Party ceases to conduct its business as contemplated, except as permitted under Section 8.3B(e) or 8.3B(f) of the Participation Agreement, or any Credit Party is enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business and such injunction, restraint or other preventive order is not dismissed within thirty (30) days after the entry thereof;

(m) (i) Any person or group of persons (within the meaning of Section 13(d), 14(a) or 14(d) of the Exchange Act) shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 and 13d-5 promulgated by the SEC under said Act) thirty-three and one-third of one percent (33.33%) or more of the voting capital stock of the Parent, or (ii) within a period of twelve (12) consecutive calendar months, individuals who were directors of the Parent on the first day of such period, together with any directors whose election by such board of directors or whose nomination for election by the shareholders was approved by a vote of the majority of the directors then in office shall cease to constitute a majority of the board of directors of the Parent.

(n) A proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of any Credit Party in an involuntary case under any applicable bankruptcy, insolvency, reorganization or other similar Law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of any Credit Party for any substantial part of its property, or for the winding-up or liquidation of its affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days or such court shall enter a decree or order granting any of the relief sought in such proceeding;

(o) Any Credit Party shall commence a voluntary case under any applicable bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or other similar official) of itself or for any substantial part of its property or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any action in furtherance of any of the foregoing;

(p) Lessee shall fail to deliver a certificate when required pursuant to Section 14.3(a) within five (5) Business Days after receipt of notice from Lessor that such certificate is due under the terms hereof or to maintain insurance to the extent required by Article XIV;

(q) Lessee shall elect the Sale Option and shall not have complied with each of its obligations pursuant to the Operative Agreements by the Expiration Date;

(r) An Agency Agreement Event of Default shall have occurred and be continuing;

(s) Any Operative Agreement shall cease to be in full force and effect;

(t) The guaranty given by the Guarantors under the Participation Agreement shall cease to be in full force and effect, or any Guarantor or any Person acting by or on behalf of any Guarantor shall deny or disaffirm its obligations under such guaranty, or any Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to such guaranty; or

(u) Any Operative Agreement shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on, or security interest in, any of the Collateral purported to be covered thereby, in each case other than in accordance with the express terms hereof or thereof.

then, in any such event, Lessor may, in addition to the rights and remedies provided in the Agency Agreement regarding any Agency Agreement Event of Default and the other rights and remedies provided for in this Article XVII and in Section 18.1, terminate this Lease by giving Lessee five (5) days' notice of such termination (provided, notwithstanding the foregoing, this Lease shall be deemed to be automatically terminated without the giving of notice upon the occurrence of a Lease Event of Default under Sections 17.1(n) or (o)), and this Lease shall terminate, and all rights of Lessee under this Lease shall cease. Lessee shall, to the fullest extent permitted by law, pay all costs and expenses incurred by or on behalf of Lessor or any other Financing Party, including fees and expenses of counsel (with such payments to be characterized as Supplemental Rent), as a result of any Lease Event of Default hereunder.

**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 12, 2018

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, Timothy A. Johnson, 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 12, 2018

By: /s/ Timothy A. Johnson

Timothy A. Johnson

*Executive Vice President, Chief Administrative Officer
and Chief Financial 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 November 3, 2018, of Big Lots, Inc. (the "Company"). I, Bruce K. Thorn, President and Chief Executive Officer, 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 12, 2018

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 November 3, 2018, of Big Lots, Inc. (the "Company"). I, Timothy A. Johnson, Executive Vice President, Chief Administrative Officer and Chief Financial Officer of the Company, certify that:

- (i) the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: December 12, 2018

By: /s/ Timothy A. Johnson

Timothy A. Johnson

*Executive Vice President, Chief Administrative Officer
and Chief Financial Officer
(Principal Financial Officer)*