

**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 1, 2008

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.)

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

43228-5311  
(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 is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Accelerated filer ☐

Smaller reporting company ☐

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 November 29, 2008, was 82,116,550.

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**BIG LOTS, INC.**

**FORM 10-Q**

**FOR THE FISCAL QUARTER ENDED NOVEMBER 1, 2008**

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## Part I. Financial Information

### Item 1. Financial Statements

#### BIG LOTS, INC. AND SUBSIDIARIES

##### Consolidated Statements of Operations (Unaudited)

(In thousands, except per share amounts)

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	November 1, 2008	November 3, 2007	November 1, 2008	November 3, 2007
Net sales	\$ 1,021,580	\$ 1,030,638	\$ 3,278,358	\$ 3,243,928
Cost of sales	615,318	618,832	1,973,501	1,964,135
Gross margin	406,262	411,806	1,304,857	1,279,793
Selling and administrative expenses	366,505	367,806	1,124,246	1,116,315
Depreciation expense	19,632	21,268	58,868	64,860
Operating profit	20,125	22,732	121,743	98,618
Interest expense	(1,635)	(235)	(4,153)	(432)
Interest and investment income	10	578	36	5,180
Income from continuing operations before income taxes	18,500	23,075	117,626	103,366
Income tax expense	6,142	8,702	44,635	37,834
Income from continuing operations	12,358	14,373	72,991	65,532
Income (loss) from discontinued operations, net of tax expense (benefit) of \$(64), \$(48), \$(123), and \$581, respectively	(110)	(75)	(209)	914
Net income	\$ 12,248	\$ 14,298	\$ 72,782	\$ 66,446
Earnings per common share - basic				
Continuing operations	\$ 0.15	\$ 0.14	\$ 0.90	\$ 0.62
Discontinued operations	-	-	-	0.01
	\$ 0.15	\$ 0.14	\$ 0.90	\$ 0.63
Earnings per common share - diluted				
Continuing operations	\$ 0.15	\$ 0.14	\$ 0.89	\$ 0.61
Discontinued operations	-	-	-	0.01
	\$ 0.15	\$ 0.14	\$ 0.89	\$ 0.62
Weighted-average common shares outstanding:				
Basic	81,255	101,188	81,043	105,866
Dilutive effect of share-based awards	1,129	1,055	1,064	1,329
Diluted	82,384	102,243	82,107	107,195

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

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

	(Unaudited) November 1, 2008	February 2, 2008
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 39,236	\$ 37,131
Inventories	957,979	747,942
Deferred income taxes	57,899	53,178
Other current assets	68,202	52,859
Total current assets	1,123,316	891,110
Property and equipment - net	494,369	481,366
Deferred income taxes	45,964	51,524
Other assets	19,374	19,815
Total assets	\$ 1,683,023	\$ 1,443,815
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Current maturities of long-term obligations	\$ 269,100	\$ -
Accounts payable	385,761	260,272
Property, payroll, and other taxes	72,143	65,260
Accrued operating expenses	48,790	62,978
Insurance reserves	36,204	37,762
Accrued salaries and wages	37,450	37,531
Income taxes payable	724	36,541
Total current liabilities	850,172	500,344
Long-term obligations	-	163,700
Deferred rent	28,545	35,955
Insurance reserves	44,899	45,092
Unrecognized tax benefits	25,510	25,353
Other liabilities	32,490	34,885
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 81,313 shares and 82,682 shares, respectively	1,175	1,175
Treasury shares - 36,182 shares and 34,813 shares, respectively, at cost	(804,607)	(784,718)
Additional paid-in capital	500,722	490,959
Retained earnings	1,010,219	937,571
Accumulated other comprehensive income (loss)	(6,102)	(6,501)
Total shareholders' equity	701,407	638,486
Total liabilities and shareholders' equity	\$ 1,683,023	\$ 1,443,815

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	Retained	Accumulated Other Comprehensive	
	Shares	Amount	Shares	Amount	Paid-In Capital	Earnings	Income (Loss)	Total
Balance - February 3, 2007	109,633	\$ 1,175	7,862	\$ (124,182)	\$ 477,318	\$ 781,325	\$ (5,933)	\$ 1,129,703
Net income	-	-	-	-	-	66,446	-	66,446
Other comprehensive income								
Amortization of pension, net of tax of \$(246)	-	-	-	-	-	-	386	386
Comprehensive income	-	-	-	-	-	-	-	66,832
Adoption of FIN No. 48	-	-	-	-	-	(2,215)	-	(2,215)
Purchases of common shares	(16,899)	-	16,899	(484,355)	-	-	-	(484,355)
Exercise of stock options	2,734	-	(2,734)	46,428	(10,607)	-	-	35,821
Restricted shares awarded	284	-	(284)	6,596	(6,596)	-	-	-
Tax benefit from share-based awards	-	-	-	-	19,794	-	-	19,794
Sale of treasury shares used for deferred compensation plan	80	-	(80)	777	1,598	-	-	2,375
Share-based employee compensation expense	-	-	-	-	7,317	-	-	7,317
Balance - November 3, 2007	95,832	1,175	21,663	(554,736)	488,824	845,556	(5,547)	775,272
Net income	-	-	-	-	-	92,015	-	92,015
Other comprehensive income								
Amortization of pension, net of tax of \$(609)	-	-	-	-	-	-	860	860
Valuation adjustment of pension, net of tax of \$1,245	-	-	-	-	-	-	(1,814)	(1,814)
Comprehensive income	-	-	-	-	-	-	-	91,061
Purchases of common shares	(13,160)	-	13,160	(230,556)	-	-	-	(230,556)
Exercise of stock options	8	-	(8)	518	(416)	-	-	102
Restricted shares awarded	2	-	(2)	66	(66)	-	-	-
Tax benefit from share-based awards	-	-	-	-	27	-	-	27
Sale of treasury shares used for deferred compensation plan	-	-	-	(10)	-	-	-	(10)
Share-based employee compensation expense	-	-	-	-	2,590	-	-	2,590
Balance - February 2, 2008	82,682	1,175	34,813	(784,718)	490,959	937,571	(6,501)	638,486
Net income	-	-	-	-	-	72,782	-	72,782
Other comprehensive income								
Amortization of pension, net of tax of \$(243)	-	-	-	-	-	-	359	359
Comprehensive income	-	-	-	-	-	-	-	73,141
Adoption of SFAS No. 158 - measurement date	-	-	-	-	-	(134)	40	(94)
Purchases of common shares	(2,170)	-	2,170	(37,508)	-	-	-	(37,508)
Exercise of stock options	786	-	(786)	17,484	(6,648)	-	-	10,836
Restricted shares awarded	2	-	(2)	40	(40)	-	-	-
Tax benefit from share-based awards	-	-	-	-	4,583	-	-	4,583
Sale of treasury shares used for deferred compensation plan	13	-	(13)	95	257	-	-	352
Share-based employee compensation expense	-	-	-	-	11,611	-	-	11,611
Balance - November 1, 2008	81,313	\$ 1,175	36,182	\$ (804,607)	\$ 500,722	\$ 1,010,219	\$ (6,102)	\$ 701,407

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 1, 2008	November 3, 2007
Operating activities:		
Net income	\$ 72,782	\$ 66,446
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization expense	55,550	60,719
Deferred income taxes	658	(7,465)
Loss on disposition of equipment	1,356	1,937
KB Toys matters	-	(1,360)
Non-cash share-based compensation expense	11,611	7,317
Pension	(637)	1,150
Change in assets and liabilities:		
Inventories	(210,037)	(231,557)
Accounts payable	125,489	192,985
Current income taxes	(45,964)	(21,102)
Other current assets	(6,335)	(9,188)
Other current liabilities	(4,171)	(11,414)
Other assets	344	(2,566)
Other liabilities	(6,167)	(862)
Net cash provided by (used in) operating activities	(5,521)	45,040
Investing activities:		
Capital expenditures	(75,574)	(39,397)
Purchase of short-term investments	-	(436,040)
Redemption of short-term investments	-	436,040
Cash proceeds from sale of equipment	478	1,294
Other	(5)	(15)
Net cash used in investing activities	(75,101)	(38,118)
Financing activities:		
Proceeds from long-term obligations	2,108,500	175,500
Payment of long-term obligations	(2,003,100)	(36,600)
Payment of capital lease obligations	(936)	(365)
Proceeds from the exercise of stock options	10,836	35,821
Excess tax benefit from share-based awards	4,583	19,794
Payment for treasury shares acquired	(37,508)	(443,328)
Treasury shares sold for deferred compensation plan	352	2,375
Net cash provided by (used in) financing activities	82,727	(246,803)
Increase (decrease) in cash and cash equivalents	2,105	(239,881)
Cash and cash equivalents:		
Beginning of period	37,131	281,657
End of period	\$ 39,236	\$ 41,776
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest, including capital leases	\$ 3,963	\$ 43
Cash paid for income taxes, excluding impact of refunds	\$ 85,910	\$ 46,001
Non-cash activity:		
Assets acquired under capital leases	\$ 2,596	\$ 2,855
Treasury shares acquired, but not settled	\$ -	\$ 41,027
Accrued property and equipment	\$ 3,590	\$ 14,077

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

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

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

All references in this report to “we,” “us,” or “our” are to Big Lots, Inc. and its subsidiaries. We are the nation’s largest broadline closeout retailer. At November 1, 2008, we operated 1,366 stores in 47 states. We manage our business on the basis of one segment, broadline closeout retailing. 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. We make available, free of charge, through the “Investor Relations” section of our website ([www.biglots.com](http://www.biglots.com)) under the “SEC Filings” caption, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), as soon as reasonably practicable after we file such material with, or furnish it to, the Securities and Exchange Commission (“SEC”). The contents of our 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. These statements, however, do not include all information necessary for a complete presentation of financial position, 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. 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 2, 2008 (“2007 Form 10-K”).

**Fiscal Periods**

We follow the concept of a 52-53 week fiscal year, which ends on the Saturday nearest to January 31. Unless otherwise stated, references to years in this report relate to fiscal years rather than calendar years. Fiscal year 2008 (“2008”) is comprised of the 52 weeks that began on February 3, 2008 and will end on January 31, 2009. Fiscal year 2007 (“2007”) was comprised of the 52 weeks that began on February 4, 2007 and ended on February 2, 2008. The fiscal quarters ended November 1, 2008 (“third quarter of 2008”) and November 3, 2007 (“third quarter of 2007”) were both comprised of 13 weeks. The year to date periods ended November 1, 2008 (“year to date 2008”) and November 3, 2007 (“year to date 2007”) were both comprised of 39 weeks.

**Selling and Administrative Expenses**

Selling and administrative expenses include store expenses (such as payroll and occupancy costs), costs related to warehousing, distribution and outbound transportation to our stores, advertising, purchasing, insurance and insurance-related costs, non-income taxes, and overhead costs. Our selling and administrative expense rate may not be comparable to the selling and administrative expense rates of other retailers that include distribution and outbound transportation costs in cost of sales. Distribution and outbound transportation costs included in selling and administrative expenses were \$43.8 million and \$47.7 million for the third quarter of 2008 and the third quarter of 2007, respectively, and \$139.1 million and \$149.1 million for the year to date 2008 and the year to date 2007, respectively.

**Advertising Expense**

Advertising costs, which are expensed as incurred, consist primarily of television, internet, in-store point of purchase and print media, and are included in selling and administrative expenses. Advertising expenses were \$17.8 million and \$19.7 million for the third quarter of 2008 and the third quarter of 2007, respectively, and \$63.1 million and \$66.0 million for the year to date 2008 and the year to date 2007, respectively.

**Recent Accounting Pronouncements**

Effective February 3, 2008, we adopted Statement of Financial Accounting Standards (“SFAS”) No. 157, *Fair Value Measurements*, for financial assets and liabilities on a prospective basis. The Financial Accounting Standards Board (“FASB”) deferred the effective date of SFAS No. 157 for one year for non-financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a non-recurring basis, which we will adopt effective the beginning of 2009. SFAS No. 157 addresses how companies should approach measuring fair value and expands disclosures about fair value measurements under other accounting pronouncements that require or permit fair value measurements. The standard provides a single definition of fair value that is to be applied consistently for all accounting applications and also generally describes and prioritizes according to reliability the methods and inputs used in fair value measurements. SFAS No. 157 prescribes additional disclosures regarding the extent of fair value measurements included in a company’s financial statements and the methods and inputs used to arrive at these values. The adoption of this statement for financial assets and liabilities did not have any impact on our financial condition, results of operations, or liquidity. The adoption of this statement for non-financial assets and liabilities in 2009 is not expected to have a material impact on our financial condition, results of operations, or liquidity. See note 2 to these consolidated financial statements for additional information about our adoption of SFAS No. 157.

Effective February 3, 2008, we adopted the provisions of SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R)*, which require us to measure defined benefit plan assets and obligations as of the date of our year-end consolidated balance sheet. Previously, our pension plans had a measurement date of December 31. Switching to the new measurement date required one-time adjustments of \$0.1 million to retained earnings and less than \$0.1 million to accumulated other comprehensive income in the first quarter of 2008 per the transition guidance of SFAS No. 158. We adopted the funding recognition provisions of SFAS No. 158 in 2006 to reflect on our balance sheet the funded status of our qualified defined benefit plan and nonqualified supplemental defined benefit plan. See note 5 to these financial statements for additional information about our employee benefit plans.

Effective February 3, 2008, we adopted SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*. SFAS No. 159 permits us to choose to measure certain financial instruments and other items at fair value. Since our adoption of SFAS No. 159, we have not elected to measure any additional financial assets or liabilities at fair value.

## **NOTE 2 – FAIR VALUE MEASUREMENTS**

SFAS No. 157 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy, as defined below, gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities and the lowest priority to unobservable inputs.

Level 1, defined as observable inputs such as unadjusted quoted prices in active markets for identical assets or liabilities.

Level 2, defined as observable inputs other than Level 1 inputs. These include quoted prices for similar assets or liabilities in an active market, quoted prices for identical assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

As of November 1, 2008, we had financial assets of \$11.2 million of mutual fund investments. The fair value of our mutual fund assets was a Level 1 valuation under the SFAS No. 157 hierarchy because each fund's quoted market value per share was available in an active market.

## **NOTE 3 – 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 as of November 1, 2008 or November 3, 2007. Anti-dilutive stock options and restricted stock awards were excluded from the computation of diluted earnings per share because they would decrease the number of diluted shares outstanding under the treasury stock method. For the third quarter of 2008 and the third quarter of 2007, 1.1 million and 1.5 million, respectively, of our outstanding stock options were antidilutive. For the year to date 2008 and the year to date 2007, 2.0 million and 1.3 million, respectively, of our outstanding stock options were antidilutive. Antidilutive stock options are generally outstanding stock options where the exercise price is greater than the weighted-average market price of our common shares for the applicable period. The restricted stock awards that were antidilutive, as determined under the treasury stock method, were immaterial for all periods presented.



**Share Repurchase Program**

In the first quarter of 2008, we acquired approximately 2.2 million of our outstanding common shares for \$37.5 million, which completed the \$150.0 million share repurchase program approved by our Board of Directors and publicly announced on November 30, 2007 (together with the \$600.0 million share repurchase program approved by our Board of Directors and publicly announced on March 9, 2007 that we completed during the fourth quarter of 2007, we refer to these programs as the “2007 Repurchase Programs”). We recorded the shares acquired in the first quarter of 2008 as treasury shares, at cost, and these shares became available to meet obligations under our equity compensation plans and for general corporate purposes.

**NOTE 4 – SHARE-BASED PLANS**

We have issued nonqualified stock options and restricted stock awards under our equity compensation plans approved by our shareholders. Our restricted stock awards, as described below and in note 7 to the consolidated financial statements in our 2007 Form 10-K, are expensed over the estimated vesting period based on the estimated achievement date of the financial performance objective, and are reported as nonvested shares as that term is defined in SFAS No. 123(R). We recognized share-based compensation expense of \$4.1 million and \$2.6 million in the third quarter of 2008 and the third quarter of 2007, respectively and \$11.6 million and \$7.3 million in the year to date 2008 and the year to date 2007, respectively. Due to the acceleration of the vesting of certain stock options before our adoption of SFAS No. 123(R) (as discussed in more detail in note 7 to the consolidated financial statements in our 2007 Form 10-K), the share-based compensation expense we recognized in all periods presented was less than what it would have been had we not accelerated the vesting of such options.

The weighted-average fair value of stock options granted and assumptions used in the model to estimate the fair value of stock options granted during each of the respective periods were as follows:

	<b>Third Quarter</b>		<b>Year to Date</b>	
	<b>2008</b>	<b>2007</b>	<b>2008</b>	<b>2007</b>
Weighted-average fair value of stock options granted	\$ 13.07	\$ 12.08	\$ 8.74	\$ 11.59
Risk-free interest rate	3.1%	4.0%	2.2%	4.4%
Expected life (years)	4.3	4.9	4.3	4.4
Expected volatility	49.8%	43.8%	48.8%	42.6%
Expected annual forfeiture rate	3.0%	3.0%	3.0%	3.0%

A summary of the stock option activity for the year to date 2008 is as follows:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (000's)
Outstanding stock options at February 2, 2008	4,124,470	\$ 19.20		
Granted	930,000	21.06		
Exercised	(85,795)	13.20		
Forfeited	(301,540)	36.18		
Outstanding stock options at May 3, 2008	4,667,135	\$ 18.58	5.6	\$ 46,074
Granted	52,500	28.15		
Exercised	(525,005)	14.33		
Forfeited	(15,850)	30.11		
Outstanding stock options at August 2, 2008	4,178,780	\$ 19.20	5.6	\$ 50,027
Granted	2,500	24.67		
Exercised	(174,812)	12.47		
Forfeited	(27,750)	28.23		
Outstanding stock options at November 1, 2008	3,978,718	\$ 19.43	5.4	\$ 24,668
Vested and expected to vest at November 1, 2008	3,769,650	\$ 19.34	5.4	\$ 23,654
Exercisable at November 1, 2008	1,512,518	\$ 16.04	5.0	\$ 13,796

The stock options granted in 2008 vest in equal amounts on the first four anniversaries of the grant date and have a contractual term of seven years. The number of stock options expected to vest was based on our annual forfeiture rate assumption.

A summary of the restricted stock awards activity for the year to date 2008 is as follows:

	Number of Shares	Weighted Average Grant-Date Fair Value
Restricted stock awards at February 2, 2008	320,900	\$ 28.72
Granted	370,000	21.06
Vested	(1,800)	26.43
Forfeited	(7,500)	28.73
Restricted stock awards at May 3, 2008	681,600	\$ 24.57
Granted	37,100	29.61
Vested	-	-
Forfeited	(900)	23.19
Restricted stock awards at August 2, 2008	717,800	\$ 24.83
Granted	900	24.67
Vested	-	-
Forfeited	-	-
Restricted stock awards at November 1, 2008	718,700	\$ 24.83

The restricted stock awards granted in 2008 vest if certain financial performance objectives are achieved. If we meet a threshold financial performance objective and the recipient remains employed by us, the restricted stock awards will vest on the opening of our first trading window five years after the grant date of the award. If we meet a higher financial performance objective and the recipient remains employed by us, the restricted stock awards will vest on the first trading day after we file our Annual Report on Form 10-K with the SEC for the fiscal year in which the higher objective is met. In the event that a recipient of a restricted stock award dies or becomes disabled after we meet the threshold financial performance objective but before the five-year period elapses, the restricted stock award granted to such recipient will vest in a proportion equal to the percentage of the five-year period that elapsed before such event. When we granted restricted stock awards in the first quarter of 2008, we estimated a three-year period for vesting of those awards based on the assumed achievement of the higher financial performance objective. In the second quarter of 2008, we changed the estimated achievement date for the higher financial performance objective from three years to two years due to better operating results than initially anticipated, resulting in \$0.3 million of incremental expense in the third quarter of 2008 and \$0.6 million of incremental expense in the year to date 2008.

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

	Third Quarter		Year to Date	
	2008	2007	2008	2007
<i>(In thousands)</i>				
Total intrinsic value of stock options exercised	\$ 3,777	\$ 3,423	\$ 13,502	\$ 45,931
Total fair value of restricted stock vested	-	-	37	11,021

The total unearned compensation cost related to all share-based awards outstanding at November 1, 2008 was approximately \$23.9 million, and is expected to be recognized as expense over the remaining vesting period of each award, with the latest scheduled vesting date for an existing award of October 2012. The weighted-average remaining expense recognition period for all currently nonvested awards was approximately 2.2 years from November 1, 2008.

#### NOTE 5 – EMPLOYEE BENEFIT PLANS

We maintain a qualified defined benefit pension plan and a nonqualified supplemental defined benefit pension plan covering certain employees whose hire date was before April 1, 1994.

Weighted-average assumptions used to determine net periodic pension cost for 2008 and 2007 were:

	2008	2007
Discount rate	6.5%	5.9%
Rate of increase in compensation levels	3.5%	3.5%
Expected long-term rate of return	8.5%	8.5%
Measurement date for plan assets and benefit obligations	12/31/07	12/31/06

The components of net periodic pension cost were as follows:

	Third Quarter		Year to Date	
	2008	2007	2008	2007
<i>(In thousands)</i>				
Service cost - benefits earned in the period	\$ 610	\$ 658	\$ 1,829	\$ 1,974
Interest cost on projected benefit obligation	833	787	2,499	2,362
Expected investment return on plan assets	(991)	(1,072)	(2,973)	(3,216)
Amortization of actuarial loss	206	174	618	520
Amortization of prior service cost	(9)	34	(26)	102
Amortization of transition obligation	3	3	10	10
Net periodic pension cost	\$ 652	\$ 584	\$ 1,957	\$ 1,752

In the third quarter of 2008 and the year to date 2008, we contributed \$0.8 million and \$2.3 million, respectively, to the qualified defined benefit pension plan. These contributions are due in part to lower year to date investment performance than previously expected. We expect to contribute an additional \$0.7 million to the qualified defined benefit pension plan in 2008. The qualified defined benefit pension plan's asset values have significantly declined in market value since the last plan measurement date, which was December 31, 2007. If the asset values remain at this lower level or decline further, we may make larger contributions to the plan in 2009 than we did in 2008.

## **NOTE 6 – INCOME TAXES**

The effective income tax rate for income from continuing operations was 33.2% and 37.9% for the third quarter of 2008 and the year to date 2008, respectively. The effective income tax rate for the third quarter of 2008 was lower than the effective rate for the year to date 2008 principally due to the resolution of an uncertain tax liability because of the lapse of the statute of limitations applicable to the liability. The effective income tax rate for income from continuing operations was 37.7% and 36.6% during the third quarter of 2007 and the year to date 2007, respectively. The effective income tax rate for the year to date 2007 benefited from the settlement of certain income tax matters, the reduction in a valuation allowance related to a capital loss carryover (primarily due to realized investment gains), the lapse of a statute of limitations for assessment for certain tax years, and the effect of nontaxable municipal interest income.

Other than the resolution of an uncertain tax liability because of the lapse of the statute of limitations applicable to the liability, there was no material change in the net amount of unrecognized tax benefits in the year to date 2008. We have estimated the reasonably possible expected net change in unrecognized tax benefits through October 31, 2009 based on 1) anticipated positions taken in the next 12 months, 2) expected settlements or payments of uncertain tax positions, and 3) lapses of the applicable statutes of limitations of unrecognized tax benefits. The estimated net decrease in unrecognized tax benefits for the next 12 months is approximately \$4 million. Actual results may differ materially from this estimate.

## **NOTE 7 – CONTINGENCIES**

In October 2005, a class action complaint was served upon us for adjudication in the Superior Court of California, Ventura County, alleging that we violated certain California wage and hour laws ("Espinosa matter"). The plaintiff seeks to recover, on her own behalf and on behalf of all other individuals who are similarly situated, alleged unpaid wages and rest and meal period compensation, as well as penalties, injunctive and other equitable relief, reasonable attorneys' fees and costs. In the third quarter of 2006, we reached a tentative settlement with the plaintiff concerning the Espinosa matter. On November 6, 2006, the court issued an order granting preliminary approval of the tentative settlement. On April 30, 2007, the court entered the final order approving the class action settlement and judgment of dismissal with prejudice. Two class members whose objections to the settlement were overruled by the court appealed the final order to the California Court of Appeal, challenging the settlement. The same two objectors also filed a separate class action in federal court in the Northern District of California alleging the same class claims that were tentatively settled through the Espinosa matter. The federal court stayed the federal action pending resolution of the appeal before the California Court of Appeal. During the second quarter of 2008, the objectors dismissed the federal action with prejudice and their appeal. In the third quarter of 2006, we recorded a pretax charge of \$6.5 million included in selling and administrative expenses for the agreed-upon settlement amount of the Espinosa matter. We funded the settlement to the claims administrator in the second quarter of 2008. Administration of the settlement is ongoing and expected to conclude in the fourth quarter of 2008.

In November 2004, a civil collective action complaint was filed against us in the United States District Court for the Eastern District of Louisiana, alleging that we violated the Fair Labor Standards Act by misclassifying assistant store managers as exempt employees ("Louisiana matter"). The plaintiffs seek to recover, on behalf of themselves and all other individuals who are similarly situated, alleged unpaid overtime compensation, as well as liquidated damages, attorneys' fees and costs. On July 5, 2005, the District Court in Louisiana issued an order conditionally certifying a class of all current and former assistant store managers who have worked for us since November 23, 2001. As a result of that order, notice of the lawsuit was sent to approximately 5,500 individuals who had the right to opt-in to the Louisiana matter. As of November 3, 2007, approximately 1,100 individuals had joined the Louisiana matter. We filed a motion to decertify the class and the motion was denied on August 24, 2007. The trial began on May 7, 2008 and concluded on May 15, 2008. On June 20, 2008, the court issued an Order decertifying the action and dismissed, without prejudice, the claims of the opt-in plaintiffs. Remaining before the court are individual claims of approximately four named-plaintiffs. We cannot make a determination as to the probability of a loss contingency resulting from the Louisiana matter or the estimated range of possible loss; however, we currently believe that such claims, both individually and in the aggregate, will be resolved without material adverse effect on our financial condition, results of operations, or liquidity.

In September 2006, a class action complaint was filed against us in the Superior Court of California, Los Angeles County, alleging that we violated certain California wage and hour laws by misclassifying California store managers as exempt employees ("Seals matter"). The plaintiffs seek to recover, on their own behalf and on behalf of all other individuals who are similarly situated, damages for alleged unpaid overtime, unpaid minimum wages, wages not paid upon termination, improper wage statements, missed rest breaks, missed meal periods, reimbursement of expenses, loss of unused vacation time, and attorneys' fees and costs. The court has not determined whether the case may proceed as a class action, and has not set any deadlines for class certification or trial. We cannot make a determination as to the probability of a loss contingency resulting from this lawsuit or the estimated range of possible loss, if any. We intend to vigorously defend ourselves against the allegations levied in this lawsuit; however, the ultimate resolution of this matter could have a material adverse effect on our financial condition, results of operations, and liquidity.

In May 2007, two class action complaints were filed against us, one in the Superior Court of California, Orange County ("Stary matter"), and one in the Superior Court of California, San Diego County ("Christopher matter"), alleging that we violated California law by requesting certain customer information in connection with the return of merchandise for which the customer sought to receive a refund to a credit card. The plaintiffs sought to recover, on their own behalf and on behalf of a California statewide class of all other individuals who are similarly situated, statutory penalties, costs and attorneys' fees and injunctive relief. We believe that substantially all of the purported class members of the Christopher matter are within the purported class of the Stary matter. The Stary matter was transferred to the Superior Court of California, San Diego County, where it was being coordinated with the Christopher matter before the same judge. Both matters were stayed pending the ruling of the California Court of Appeals, Fourth Appellate Division Three, in a similar case involving another retailer. The appellate court ruled in favor of the other retailer, holding that the California law at issue does not apply to merchandise return transactions. Based on the appellate court ruling, we stipulated with the plaintiffs in the Stary matter and the Christopher matter to the dismissal of the respective matters with prejudice. The court entered the dismissal in the Christopher matter on October 30, 2008, and entered the dismissal in the Stary matter on December 2, 2008.

In February 2008, three alleged class action complaints were filed against us by a California resident (the "Caron matters"). The first was filed in the Superior Court of California, Orange County. This action is similar in nature to the Seals matter, which allowed us to successfully coordinate this matter with the Seals matter in the Superior Court of California, Los Angeles County. The second and third matters, filed in the United States District Court, Central District of California, and the Superior Court of California, Riverside County, respectively, allege that we violated certain California wage and hour laws for missed meal and rest periods and other wage and hour claims. The plaintiff seeks to recover, on her own behalf and on behalf of a California statewide class of all other individuals who are similarly situated, damages resulting from improper wage statements, missed rest breaks, missed meal periods, non-payment of wages at termination, reimbursement of expenses, loss of unused vacation time, and attorneys' fees and costs. We believe these two matters overlap and we intend to consolidate the two cases before one court. The allegations also overlap some portion of the claims released through the class action settlement in the Espinosa matter. We cannot make a determination as to the probability of a loss contingency resulting from this lawsuit or the estimated range of possible loss, if any. We intend vigorously to defend ourselves against the allegations levied in this lawsuit; however, the ultimate resolution of this matter could have a material adverse effect on our financial condition, results of operations, and liquidity.

We are involved in other legal actions and claims, including various additional employment-related matters, arising in the ordinary course of business. We currently believe that such actions and claims, both individually and in the aggregate, will be resolved without material adverse 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 adverse effect on our financial condition, results of operations, and liquidity.

## NOTE 8 – DISCONTINUED OPERATIONS

In the third quarter of 2008 and year to date 2008, we recorded pretax loss from discontinued operations of \$0.2 million and \$0.3 million, respectively, principally due to continuing costs associated with the stores we closed in 2005 that have lease terms remaining, which we continue to classify as discontinued operations.

In the second quarter of 2007, we recorded pretax, income from discontinued operations of \$2.0 million to reflect favorable settlements of KB Toys lease obligations. We sold the KB Toys business to KB Acquisition Corporation in December 2000, but we have certain continuing indemnification and guarantee obligations with respect to the KB Toys business. See note 11 to the consolidated financial statements and the KB Toys-related risk factors in Part I, Item 1A. (Risk Factors) in our 2007 Form 10-K for further discussion of KB Toys matters.

## NOTE 9 – BUSINESS SEGMENT DATA

We manage our business based on one segment, broadline closeout retailing. We report the following six merchandise categories: Consumables, Home, Furniture, Hardlines, Seasonal, and Other. The Consumables category includes the food, health and beauty, plastics, paper, chemical, and pet departments. The Home category includes the domestics, stationery, and home decorative departments. The Furniture category includes the upholstery, mattresses, ready-to-assemble, and case goods departments. Case goods consist of bedroom, dining room, and occasional furniture. The Hardlines category includes the electronics, appliances, tools, and home maintenance departments. The Seasonal category includes the lawn & garden, Christmas, summer, and other holiday departments. The Other category includes the toy, jewelry, infant accessories, and apparel departments. Other also includes the results of certain large closeout deals that are typically acquired through our alternate product sourcing operations.

The following is net sales data by category:

	Third Quarter		Year to Date	
	2008	2007	2008	2007
<i>(In thousands)</i>				
Consumables	\$ 341,591	\$ 334,712	\$ 1,027,559	\$ 971,940
Home	173,915	190,433	515,519	558,021
Furniture	170,212	160,169	533,224	502,435
Hardlines	145,566	136,838	434,189	436,341
Seasonal	74,163	83,674	402,780	402,579
Other	116,133	124,812	365,087	372,612
Net sales	\$ 1,021,580	\$ 1,030,638	\$ 3,278,358	\$ 3,243,928

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

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

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

Certain statements in this report are forward-looking statements within the meaning of the Act, and such statements are intended to qualify for the protection of the safe harbor provided by the Act. The words "anticipate," "estimate," "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 crisis, 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 Part II, Item 1A. (Risk Factors) of this Quarterly Report on Form 10-Q, the risks discussed in Part I, Item 1A. (Risk Factors) 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 thereof. 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 unaudited 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 2008 that we believe are key indicators of our operating performance when compared to the operating performance from the third quarter of 2007:

- Comparable store sales for stores open at least two years at the beginning of 2008 decreased 0.2%. The comparable store sales decline was more pronounced in the month of October as conditions in the general economy deteriorated (see Part II, Item 1.A. Risk Factors).
- Gross margin dollars decreased \$5.5 million.
- Selling and administrative expenses as a percent of sales increased 20 basis points to 35.9% of sales versus 35.7% of sales.
- Depreciation expense as a percent of sales decreased 20 basis points to 1.9% of sales versus 2.1% of sales.
- Interest expense increased to \$1.6 million from \$0.2 million. Interest and investment income decreased to less than \$0.1 million from \$0.6 million.
- Borrowings under our five-year \$500.0 million unsecured credit facility entered into in October 2004 ("Credit Agreement"), were \$269.1 million at the end of the third quarter of 2008, which was principally attributable to the \$750 million in share repurchases between March 2007 and February 2008 under the 2007 Repurchase Programs and our seasonal working capital needs prior to our peak holiday selling season. Our borrowings under the Credit Agreement at the end of the third quarter of 2007 were \$138.9 million.

- Diluted earnings per share from continuing operations improved to \$0.15 per share compared to \$0.14 per share. The \$0.01 per share increase was driven by a 19.9 million decrease in our outstanding weighted-average diluted shares due to share repurchases under the 2007 Repurchase Programs partially offset by lower income from continuing operations of \$2.0 million.
- We used more net cash in operating activities in the third quarter of 2008 compared to the third quarter of 2007, primarily due to the quarterly change in accounts payable.
- Average inventory levels were lower throughout the third quarter of 2008 compared to the third quarter of 2007 resulting in a higher inventory turnover rate in the third quarter of 2008 than the third quarter of 2007.

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

## STORES

The following table presents stores opened and closed during the year to date 2008 and the year to date 2007

	2008	2007
Stores open at the beginning of the fiscal year	1,353	1,375
Stores opened during the period	20	7
Stores closed during the period	(7)	(14)
Stores open at the end of the period	1,366	1,368

## RESULTS OF OPERATIONS

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

	Third Quarter		Year to Date	
	2008	2007	2008	2007
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of sales	60.2	60.0	60.2	60.5
Gross margin	39.8	40.0	39.8	39.5
Selling and administrative expenses	35.9	35.7	34.3	34.4
Depreciation expense	1.9	2.1	1.8	2.0
Operating profit	2.0	2.2	3.7	3.0
Interest expense	(0.2)	0.0	(0.1)	0.0
Interest and investment income	0.0	0.1	0.0	0.2
Income from continuing operations before income taxes	1.8	2.2	3.6	3.2
Income tax expense	0.6	0.8	1.4	1.2
Income from continuing operations	1.2	1.4	2.2	2.0
Discontinued operations	0.0	0.0	0.0	0.0
Net income	1.2%	1.4%	2.2%	2.0%



## THIRD QUARTER OF 2008 COMPARED TO THIRD QUARTER OF 2007

### Net Sales

Net sales by merchandise category, net sales by merchandise category as a percentage of total net sales, and net sales change in dollars and percentage from the third quarter of 2008 to the third quarter of 2007 were as follows:

	Third Quarter								
	2008			2007		Change			
(\$ in thousands)									
Consumables	\$	341,591	33.4%	\$	334,712	32.5%	\$	6,879	2.1%
Home		173,915	17.0		190,433	18.5		(16,518)	(8.7)
Furniture		170,212	16.7		160,169	15.5		10,043	6.3
Hardlines		145,566	14.2		136,838	13.3		8,728	6.4
Seasonal		74,163	7.3		83,674	8.1		(9,511)	(11.4)
Other		116,133	11.4		124,812	12.1		(8,679)	(7.0)
Net sales	\$	1,021,580	100.0%	\$	1,030,638	100.0%	\$	(9,058)	(0.9) %

Net sales decreased 0.9% to \$1,021.6 million for the third quarter of 2008, compared to \$1,030.6 million for the third quarter of 2007. The \$9.1 million decrease in net sales was due to the comparable store sales decrease of 0.2% for stores open at least two years at the beginning of 2008, and fewer open stores. Comparable store sales for the Home and Seasonal categories as well as the toy department, which is included in the Other category, were negative for the quarter. These results were partially offset by positive comparable store sales in the Consumables, Furniture, and Hardlines categories. The Home category has been challenged across most departments for over a year. The Seasonal category decline was primarily driven by reduction in the net sales of the Halloween, Harvest, and Christmas departments. The Consumables category continued its strong performance and was led by sales in the food, chemicals, and pet departments. The Furniture category continued its strong performance and its positive results were driven by mattress sales. The Hardlines category was driven by the electronics department, primarily due to better availability of closeout merchandise during the third quarter of 2008.

### Gross Margin

Gross margin was \$406.3 million for the third quarter of 2008, compared to \$411.8 million for the third quarter of 2007, a decrease of \$5.5 million or 1.3%. The decrease in gross margin was principally due to lower net sales of \$9.1 million and a slightly lower gross margin rate. Gross margin as a percentage of net sales decreased to 39.8% in the third quarter of 2008 compared to 40.0% in the third quarter of 2007. The gross margin rate decrease was principally due to higher markdowns and merchandise sales mix, partially offset by a higher initial markup on merchandise.

### Selling and Administrative Expenses

Selling and administrative expenses were \$366.5 million for the third quarter of 2008, compared to \$367.8 million for the third quarter of 2007, a decrease of \$1.3 million or 0.4%. The decrease in selling and administrative expenses was principally due to lower distribution and outbound transportation costs, the amortization of proceeds related to an early lease termination buyout, and lower advertising expenses principally from delaying television advertising until after the national election. Distribution and outbound transportation costs, which are included in selling and administrative expenses, decreased to \$43.8 million for the third quarter of 2008 compared to \$47.7 million for the third quarter of 2007. As a percentage of net sales, distribution and outbound transportation costs decreased by 30 basis points to 4.3% of net sales in the third quarter of 2008 as compared to 4.6% for the third quarter of 2007. The distribution and outbound transportation rate decrease was primarily a result of lower inventory levels, fewer cartons processed through our distribution centers due to the “raise the ring” merchandising strategy, more one-way trips to the stores resulting in a higher shipping cost per mile but fewer miles traveled, and, beginning in July 2008, the integration of our Ohio furniture distribution operations into our regional distribution centers. Partially offsetting these favorable expense items was the impact of higher fuel prices, higher expenses for health and welfare plan costs, and higher share-based compensation.

As a percentage of net sales, selling and administrative expenses were 35.9% for the third quarter of 2008 compared to 35.7% for the third quarter of 2007. The increase in the expense rate was principally driven by our decline in net sales of \$9.1 million partially offset by the decrease in selling and administrative expenses.

### Depreciation Expense

Depreciation expense for the third quarter of 2008 was \$19.6 million compared to \$21.3 million for the third quarter of 2007. The \$1.7 million decrease in depreciation expense was primarily due to the lower level of capital expenditures in 2006 and 2007 and a decrease in depreciation expense related to the five-year service life of store remodel program assets that were placed in service in 2002 and 2003. Capital expenditures in 2006 and 2007 were lower than previous years principally because of fewer new store openings.

### Interest Expense

Interest expense increased to \$1.6 million for the third quarter of 2008, compared to \$0.2 million for the third quarter of 2007. The increase was principally due to increased weighted-average borrowings, which were \$179.5 million in the third quarter of 2008 and \$8.7 million in the third quarter of 2007. Higher borrowings in the current year were principally the result of \$309 million of common share repurchases in the fourth quarter of 2007 and first quarter of 2008 under our 2007 Repurchase Programs.

### Interest and Investment Income

Interest and investment income was less than \$0.1 million for the third quarter of 2008, compared to \$0.6 million for the third quarter of 2007. The decrease in interest and investment income was principally due to lower levels of cash and cash equivalents available for investment in the third quarter of 2008 resulting from \$309 million of common share repurchases in the fourth quarter of 2007 and the first quarter of 2008 under our 2007 Repurchase Programs.

### Income Taxes

The effective income tax rate for the third quarter of 2008 for income from continuing operations was 33.2%, which was lower than the 37.7% effective income tax rate for the third quarter of 2007. The lower rate was principally due to the recognition of benefits resulting primarily from a higher effect of this year's lapse of the statute of limitations.

## YEAR TO DATE 2008 COMPARED TO YEAR TO DATE 2007

### Net Sales

Net sales by merchandise category, net sales by merchandise category as a percentage of total net sales, and net sales change in dollars and percentage from the year to date 2008 to the year to date 2007 were as follows:

	Year to Date					
	2008		2007		Change	
(\$ in thousands)						
Consumables	\$ 1,027,559	31.4%	\$ 971,940	30.0%	\$ 55,619	5.7%
Home	515,519	15.7	558,021	17.2	(42,502)	(7.6)
Furniture	533,224	16.3	502,435	15.5	30,789	6.1
Hardlines	434,189	13.2	436,341	13.4	(2,152)	(0.5)
Seasonal	402,780	12.3	402,579	12.4	201	0.0
Other	365,087	11.1	372,612	11.5	(7,525)	(2.0)
Net sales	\$ 3,278,358	100.0%	\$ 3,243,928	100.0%	\$ 34,430	1.1%

Net sales increased 1.1% to \$3,278.4 million for the year to date 2008, compared to \$3,243.9 million for the year to date 2007. The \$34.4 million increase in net sales was due to an increase of 2.1% in comparable store sales for stores open at least two years at the beginning of 2008, partially offset by fewer open stores. The increase in comparable store sales for the year to date 2008 was driven by an increase in the value of the average basket as our "raise the ring" merchandise strategy has delivered positive results. The Consumables category produced positive comparable store sales results across most of its departments. The improvement in the sales performance of the Furniture category was driven by the mattress and casegoods departments. The Seasonal category produced slightly positive comparable store sales and was strongest in the lawn & garden department. The Hardlines category was essentially flat on a comparable store basis with electronics performing well in the most recent quarters. The Home category has been challenged across most departments for over a year. The Other category was lower principally due to a decline in sales from the toy department.

### **Gross Margin**

Gross margin was \$1,304.9 million for the year to date 2008, compared to \$1,279.8 million for the year to date 2007, an increase of \$25.1 million or 2.0%. The increase in gross margin was principally due to increased net sales of \$34.4 million and a higher gross margin rate. Gross margin as a percentage of net sales increased to 39.8% in the year to date 2008 compared to 39.5% in the year to date 2007. The gross margin rate increase was principally due to higher initial markup on merchandise and favorable shrink results related to physical inventories taken in 2008, partially offset by higher markdowns.

### **Selling and Administrative Expenses**

Selling and administrative expenses were \$1,124.2 million for the year to date 2008, compared to \$1,116.3 million for the year to date 2007, an increase of \$7.9 million or 0.7%. The increase in selling and administrative expenses was primarily due to higher bonus expense, insurance proceeds we recognized in 2007 relating to hurricanes occurring in 2005, higher insurance and insurance-related costs, and higher share-based compensation expense. The higher bonus expense was principally due to our improved financial performance in the year to date 2008. Insurance and insurance-related costs increased principally due to higher health and welfare plan costs in the year to date 2008. Share-based compensation expense increased principally due to a higher number of unvested stock options in the year to date 2008. Partially offsetting these items were lower store payroll, lower advertising, lower distribution and outbound transportation costs, and the amortization of proceeds related to an early lease termination buyout. Store payroll decreased principally due to the decline in labor hours due to fewer merchandise cartons processed at the stores. Advertising expense decreased principally due to delaying our television marketing until after the national election. Distribution and outbound transportation costs, which are included in selling and administrative expenses, decreased to \$139.1 million for the year to date 2008 compared to \$149.1 million for the year to date 2007. As a percentage of net sales, distribution and outbound transportation costs decreased by 40 basis points to 4.2% of net sales for the year to date 2008 as compared to 4.6% of net sales for the year to date 2007. The distribution and outbound transportation rate decrease was primarily a result of lower inventory levels, fewer cartons processed through our distribution centers due to the “raise the ring” merchandising strategy, more one-way trips to the stores resulting in a higher shipping cost per mile but fewer miles traveled, and, beginning in July 2008, the integration of our Ohio furniture distribution operations into our regional distribution centers. Partially offsetting these favorable distribution and outbound transportation items was the impact of higher fuel prices. As a percentage of net sales, selling and administrative expenses improved 10 basis points to 34.3% for the year to date 2008 compared to 34.4% for the year to date 2007 principally due to the increase in the year to date 2008 comparable store sales of 2.1%.

### **Depreciation Expense**

Depreciation expense for the year to date 2008 was \$58.9 million compared to \$64.9 million for the year to date 2007. The \$6.0 million decrease in depreciation expense was primarily due to the lower level of capital expenditures in 2006 and 2007 and a decrease in depreciation expense related to the five-year service life of store remodel program assets that were placed in service in 2002 and 2003. Capital expenditures in 2006 and 2007 were lower than previous years principally because of fewer new store openings.

### **Interest Expense**

Interest expense increased to \$4.2 million for the year to date 2008, compared to \$0.4 million for the year to date 2007. The increase was principally due to increased weighted-average borrowings, which were \$150.1 million in the year to date 2008 and \$2.9 million in the year to date 2007. Higher borrowings in the current year were the result of the \$750 million of common share repurchases under our 2007 Repurchase Programs.

### **Interest and Investment Income**

Interest and investment income was less than \$0.1 million for the year to date 2008, compared to \$5.2 million for the year to date 2007. The decrease in interest and investment income was principally due to lower levels of cash and cash equivalents available for investment in the year to date 2008, because of the \$750 million of common share repurchases under our 2007 Repurchase Programs.

## **Income Taxes**

The effective income tax rate for the year to date 2008 for income from continuing operations was 37.9%. The effective income tax rate for the year to date 2007 for income from continuing operations was 36.6%, and was lower principally due to the reduction in a valuation allowance related to a capital loss carryover (primarily due to realized investment gains) and the effect of nontaxable municipal interest income.

## **Capital Resources and Liquidity**

The primary source of our liquidity is cash flows from operations and, as necessary, borrowings under the Credit Agreement. We use the Credit Agreement, as necessary, to provide funds for ongoing and seasonal working capital, capital expenditures, share repurchase programs, and other expenditures. Given the seasonality of our business, the amount of borrowings under the Credit Agreement may fluctuate materially depending on various factors, including our operating financial performance, the time of year, and our need to increase merchandise inventory levels prior to our peak selling season. Our borrowings have historically peaked in the third fiscal quarter or early in the fourth fiscal quarter as we build inventory levels prior to the Christmas selling season. For additional information about the Credit Agreement, see note 3 to the consolidated financial statements in our 2007 Form 10-K.

At November 1, 2008, borrowings available under the Credit Agreement were \$177.7 million, after taking into account outstanding borrowings of \$269.1 million and the reduction in availability resulting from outstanding letters of credit totaling \$53.2 million. The weighted-average interest rate on our outstanding borrowings at November 1, 2008 was 4.0%. Total indebtedness (outstanding borrowings plus letters of credit) under the Credit Agreement reached approximately \$350 million in November 2008. We expect that total indebtedness under the Credit Agreement will decline through the remainder of 2008 to approximately \$40 million at the end of 2008.

Net cash used in operating activities was \$5.5 million for the year to date 2008 compared to net cash provided by operating activities of \$45.0 million for the year to date 2007. The decrease in cash provided by operating activities was principally due to higher payments of income taxes in the year to date 2008 and the year to date change in accounts payable, partially offset by a reduction in the cash used to acquire merchandise. We paid income taxes of \$85.7 million and \$45.8 million, net of refunds, in the year to date 2008 and the year to date 2007, respectively. The increase in the year to date 2008 income taxes paid was caused by improved operating performance and a lower current year tax deduction due to a decline in stock option exercises during 2008. In the year to date 2007, we improved our accounts payable leverage significantly as a result of improving our vendor payment terms. As part of our strategy to improve our inventory turnover rate, inventory per average store was lower in the year to date 2008 when compared to inventory per average store in the year to date 2007, resulting in less cash expended to acquire merchandise in the year to date 2008.

Net cash used in investing activities, which was principally comprised of capital expenditures, was \$75.1 million for the year to date 2008 compared to \$38.1 million for the year to date 2007. The increase in capital expenditures was driven by the completion of installation of our new point-of-sale register system, hardware, development and licensing costs associated with our SAP for Retail system implementation, 20 new stores opened, and the acquisition of two store properties we were previously leasing.

Net cash provided by financing activities was \$82.7 million for the year to date 2008, compared to net cash used in financing activities of \$246.8 million for the year to date 2007. In the year to date 2008, borrowings under our Credit Agreement provided us \$105.4 million and we used a portion of these proceeds to acquire approximately 2.2 million of our common shares for \$37.5 million to complete the 2007 Repurchase Programs. In the year to date 2007, we disbursed \$443.3 million for the acquisition of our common shares under the 2007 Repurchase Programs, partially offset by \$138.9 million of borrowings under our Credit Agreement, \$35.8 million of proceeds from the exercise of stock options and \$19.8 million for the excess tax benefit on share-based awards.

As discussed further below in Part II, Item 1A. Risk Factors, the recent events that have occurred in the financial and credit markets continue to add a high level of uncertainty to factors which may affect our results of operations, capital resources, and liquidity, as well as credit availability of our vendors and credit availability of our customers. Based in part on discussions we have had with our key banking relationships, we currently believe that we have, or, if necessary, have the ability to obtain, adequate resources to fund ongoing and seasonal working capital requirements, future capital expenditures, new projects, and currently maturing obligations. We are not currently aware of any other trends, events, demands, commitments, or uncertainties which reasonably can be expected to have a material impact on our capital resources or liquidity.

## **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, judgments, and assumptions. See note 1 to our consolidated financial statements included in the 2007 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 2007 Form 10-K. Had we used estimates, judgments, and assumptions different from any of those discussed in our 2007 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 Credit Agreement. We had no fixed rate long-term debt at November 1, 2008. An increase of 1% in our variable interest rate on our outstanding debt would not have a material effect on our financial condition, results of operations, or liquidity.

## **Item 4. Controls and Procedures**

### ***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures, as that term is defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and Chief 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***

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, occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **Part II. Other Information**

## **Item 1. Legal Proceedings**

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

## Item 1A. Risk Factors

For information regarding the most significant risks to us, please see Part I, Item 1A. (Risk Factors) in our 2007 Form 10-K, as well as the risks discussed below. There were no material changes to such disclosures contained in our 2007 Form 10-K other than the addition of the risk factor set forth below.

***The current conditions in the financial markets combined with the current economic conditions including falling home prices, job losses, foreclosures, bankruptcies, and reduced access to credit are extraordinary and give rise to uncertainties that may adversely affect our capital resources, financial condition, results of operations, and liquidity including, but not limited to the following:***

- Consumers may defer or elect to forego purchases in response to tighter credit and negative financial news. Reduced consumer spending may reduce our net sales, lowering our profitability and our ability to convert merchandise inventories to cash.
- Fluctuating commodity prices, including but not limited to diesel fuel and other fuels used to generate power by utilities, may affect our gross profit and operating profit margins.
- The impact of these conditions on our vendors' businesses cannot be predicted. Our vendors may be negatively impacted due to insufficient availability of credit to fund their operations or insufficient demand for their products, which may affect their ability to fulfill their obligations to us.
- Demand for our merchandise could be different from our expectations causing us to under buy or over buy certain categories or departments of merchandise, which could result in customer dissatisfaction or excessive markdowns required to sell through the merchandise.
- Competitive reaction to the marketplace, including the recent increasing trend in liquidations occurring at bankrupt retailers, may drive our competitors, some of whom are better capitalized than us, to offer significant discounts or promotions on their merchandise potentially negatively affecting our sales and profit margins.
- Disruption in credit markets and volatility in equity markets may affect our ability to access sufficient funding beyond the maturity of the Credit Agreement in October 2009. In order to conserve liquidity, we may choose in the short term to defer making investments that could further improve our long-term profitability.
- A downgrade in our credit rating could negatively affect our ability to access capital or increase the borrowing rates we pay beyond the maturity of the Credit Agreement in October 2009.
- A decline in the market value of our pension plan's investment portfolios may affect our financial condition, results of operations, and liquidity.

Additionally, many of the effects and consequences of the financial crisis and broad economic downturn are currently unknown and beyond our control; any one or all of them could potentially have a material adverse impact on our capital resources, financial condition, results of operations, and liquidity.

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

None.

## Item 3. Defaults Upon Senior Securities

None.

## Item 4. Submission of Matters to a Vote of Security Holders

None.

## Item 5. Other Information

We are providing the disclosure in this Item 5 in lieu of providing such disclosure under Item 5.02(e) of a Current Report on Form 8-K. The description of each agreement discussed below is qualified in its entirety by reference to the applicable exhibit attached to this Form 10-Q.

### Employment Agreements

On December 5, 2008, we entered into new employment agreements with our principal executive officer (Steven S. Fishman), our principal financial officer (Joe R. Cooper), and our other executive officers whose compensation is described in our April 15, 2008 proxy statement (Brad A. Waite, John C. Martin and Lisa M. Bachmann). These new employment agreements replace in their entirety the existing employment agreements we had previously entered into with Mr. Fishman, Mr. Cooper, Mr. Waite, Mr. Martin and Ms. Bachmann (“named executive officers”).

Below is a brief description of the material terms and conditions of the new employment agreements with the named executive officers. The terms of the new employment agreements are substantially similar and are described collectively herein except where their terms materially differ. Unless the executive and we mutually agree to amend or terminate his or her new employment agreement, its terms will remain unchanged and it will remain effective as long as we employ the named executive officer.

The principal purpose of the new employment agreements is to conform the agreements to the substantive and procedural requirements of Section 409A (“Section 409A”) of the Internal Revenue Code of 1986, as amended (“IRC”), and the regulations promulgated thereunder. In order to conform to Section 409A, the new employment agreements adopt definitions that are consistent with Section 409A and the regulations promulgated thereunder (including the Section 409A definitions for “change in control event” and “separation from service”), and provide that certain payments made following a separation from service are delayed for a period of six months following such separation from service.

Under the terms of the new employment agreements, the named executive officers are each entitled to receive at least the following salaries, which amounts are not subject to automatic increase: Mr. Fishman: \$1,200,000; Mr. Cooper: \$440,000; Mr. Waite: \$550,000; Mr. Martin: \$520,000; and Ms. Bachmann: \$440,000. The terms of each named executive officer’s new employment agreement also establishes the smallest payout percentages that may be set annually for his or her target and stretch bonus levels. The payout percentages set by the new employment agreements for target bonus and stretch bonus, respectively, are as follows (expressed as a percentage of the named executive officer’s salary): Mr. Fishman: 100% and 200%; Mr. Cooper: 60% and 120%; Mr. Waite: 75% and 150%; Mr. Martin: 60% and 120%; and Ms. Bachmann: 60% and 120%. The salaries and payout percentages set by the new employment agreements reflect the named executive officers’ current salaries and the payout percentages applicable to their 2008 bonus opportunities. The new employment agreements also provide each named executive officer with an automobile or automobile allowance.

Each new employment agreement requires the named executive officer to devote his or her full business time to our affairs and prohibits the named executive officer from competing with us during his or her employment. Each named executive officer’s new employment agreement also includes several restrictive covenants that survive the termination of his or her employment, including confidentiality (infinite), non-solicitation (two years), non-disparagement (infinite), non-competition (one year but reduced to six months following a change of control), and continuing cooperation (three years for Mr. Fishman and infinite for the other named executive officers).

Under each new employment agreement, if a named executive officer is terminated for cause or due to his or her voluntary resignation, we have no further obligation to pay any unearned compensation or to provide any future benefits to the named executive officer. If terminated without cause, Mr. Fishman would continue to receive his salary for two years and each of the other named executive officers would continue to receive his or her respective salary for one year. The salary continuation period is six months for all named executive officers if terminated in connection with becoming disabled. Each named executive officer would receive a lump sum payment equal to two times his or her respective salary if terminated in connection with a change in control. Additionally, each named executive officer is eligible (based on our achievement of at least the corporate performance amount corresponding to the floor bonus level) to receive a prorated bonus for the fiscal year in which his or her termination is effective if he or she is terminated without cause or in connection with his or her death or disability, and two times his or her stretch bonus if terminated following a change of control.

Each of the named executive officers is also entitled to receive continued healthcare coverage: 1) for up to two years following a termination without cause or if terminated in connection with a change of control, plus the amount necessary to reimburse him or her for the taxes he or she would be liable for as a result of such continued healthcare coverage; and 2) for six months following termination due to disability, plus long-term disability benefits. Additionally, if terminated without cause, Mr. Fishman is entitled to continue receiving an automobile or automobile allowance for two years, and the other named executive officers are entitled to continue receiving an automobile or automobile allowance for one year.

The change of control provisions of the new employment agreements provide that each named executive officer receives the above described cash payments and other benefits in connection with a change of control only if the named executive officer is terminated in connection with the change of control. Pursuant to the new employment agreements, a named executive officer's termination in connection with a change of control is generally deemed to occur if, during the applicable protection period, we or any other party to the change of control (e.g., the unrelated acquirer or successor company): 1) terminate the named executive officer without cause; 2) breach a term of the new employment agreement; or 3) constructively terminate the named executive officer (i.e., the named executive officer is caused to resign due to the imposition of a material adverse change in the executive's duties, compensation or reporting relationships after our failure to cure such change). The protection period afforded to Mr. Fishman consists of the six months preceding a change of control and the two years following a change of control. The protection period afforded to the other named executive officers consists of the three months preceding a change of control and the two years following a change of control.

If the payments received by a named executive officer in connection with a change of control constitute an "excess parachute payment" under Section 280G of the IRC, the named executive officer is entitled to reimbursement for any excise tax imposed under Section 4999 of the IRC, or the named executive officer's benefits under his or her new employment agreement will be reduced to the extent necessary to become one dollar less than the amount that would generate such excise tax, if this reduction results in a larger after-tax amount as compared to the excise tax reimbursement method. The compensation payable on account of a change of control may be subject to the deductibility limitations of Sections 162(m) and 280G of the IRC.

## **Indemnification Agreements**

On December 5, 2008, our Board of Directors approved new indemnification agreements to be entered into with our outside directors, named executive officers, and other officers holding the position of senior vice president. Each indemnification agreement provides the director or officer with a contractual right to indemnification from us in the event such director or officer is subject to a threatened or actual claim or lawsuit arising from his or her service to us, except if such director's or officer's act or omission giving rise to any claim for indemnification was occasioned by his or her intent to cause injury to the Company or by his or her reckless disregard for the best interests of the Company, and in respect of any criminal action or proceeding, he or she had reasonable cause to believe his or her conduct was unlawful.

## **Item 6. Exhibits**

Exhibits marked with an asterisk (\*) are filed herewith. Exhibits 10.1 through 10.14 are management contracts or compensatory plans or arrangements.

<u>Exhibit No.</u>	<u>Document</u>
<a href="#">10.1*</a>	Amended and Restated Employment Agreement with Steven S. Fishman.
<a href="#">10.2*</a>	Amended and Restated Employment Agreement with Joe R. Cooper.
<a href="#">10.3*</a>	Amended and Restated Employment Agreement with Brad A. Waite.
<a href="#">10.4*</a>	Amended and Restated Employment Agreement with John C. Martin.
<a href="#">10.5*</a>	Amended and Restated Employment Agreement with Lisa M. Bachmann.
<a href="#">10.6*</a>	Employment Agreement with Robert C. Claxton.



<a href="#">10.7*</a>	Amended and Restated Employment Agreement with Charles W. Haubiel II.
<a href="#">10.8*</a>	Amended and Restated Employment Agreement with Norman J. Rankin.
<a href="#">10.9*</a>	Amended and Restated Employment Agreement with Robert S. Segal.
<a href="#">10.10*</a>	Big Lots 2006 Bonus Plan, as amended and restated effective December 5, 2008.
<a href="#">10.11*</a>	First Amendment to Big Lots Executive Benefit Plan.
<a href="#">10.12*</a>	Form of Indemnification Agreement.
<a href="#">10.13*</a>	Form of Executive Severance Agreement.
<a href="#">10.14*</a>	Form of Senior Executive Severance Agreement.
<a href="#">31.1*</a>	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<a href="#">31.2*</a>	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<a href="#">32.1*</a>	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
<a href="#">32.2*</a>	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

## Signature

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: December 9, 2008

**BIG LOTS, INC.**

By: /s/ Joe R. Cooper

Joe R. Cooper  
*Senior Vice President and  
Chief Financial Officer*  
(Principal Financial Officer, Principal Accounting Officer and Duly  
Authorized Officer)

**AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT  
BY AND AMONG  
BIG LOTS, INC.,  
BIG LOTS STORES, INC.  
AND  
STEVEN S. FISHMAN**

This amended and restated employment agreement ("Agreement") by and among Big Lots, Inc. ("BLI"), Big Lots Stores, Inc. ("Big Lots") and their affiliates, predecessor, successor, subsidiaries and other related companies (collectively the "Company") and Steven S. Fishman ("Executive"), collectively, the "Parties," is effective as of December 5, 2008 ("Effective Date") and supersedes and replaces any other oral or written agreement or understanding concerning the terms of the Executive's employment with the Company but does not supersede or replace any agreement or arrangement between the Executive or any Group Member (as defined in Section 4.02[1]) relating to the payment of compensation or benefits earned (or deemed earned) on account of services performed for a Group Member before the Effective Date.

**1.00      Duration**

This Agreement will remain in effect from the Effective Date until it terminates as provided in Section 5.00 ("Term"). Any notice of termination required to be given under this Agreement must be given as provided in Section 6.00 and will be effective on the date prescribed in Section 5.00.

**2.00      Executive's Employment Function**

**2.01      Position.** The Executive agrees to serve as the Company's Chief Executive Officer and, at the discretion of BLI's Board of Directors, as the Company's President, with the authority and duties customarily associated with this position. The Executive agrees at all times to observe and to be bound by all Company rules, policies, practices, procedures and resolutions which apply to senior executive officers of the Company and which do not conflict with the specific terms of this Agreement. Promptly after the Effective Date, the Executive will be elected to BLI's Board of Directors and designated as the Chairman of the Board.

**2.02      Place of Performance.** Unless the Company requires the Executive to temporarily perform duties at another location, the Executive's duties will be performed principally in Columbus, Ohio, except for travel on the business of any Group Member. The Executive will not be required to relocate his principal office or personal residence outside of the Columbus, Ohio metropolitan area without his prior written consent.

**3.00      Compensation**

The Company will pay the Executive the amounts described in Sections 3.00 and 5.00 as compensation for the services described in this Agreement and in exchange for the duties and responsibilities described in Section 4.00.

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**3.01 Base Salary.** The Company will pay to the Executive an annualized base salary of \$1,200,000, which, at the discretion of the Company, may be adjusted from time to time in a manner that is consistent with the Company's compensation policies in effect for Company employees with a similar title and position ("Base Amount") but may not be adjusted to any amount lower than \$1,200,000 without the Executive's consent. The Executive's Base Salary will be paid in installments that correspond with the Company's normal payroll practices.

**3.02 Bonus.** The Executive will be eligible to receive bonus compensation ("Bonus") under and subject to the terms of the Company's Big Lots 2006 Bonus Plan, as amended (or any such successor plan, hereinafter, "Bonus Program") for the fiscal year beginning January 30, 2008 and for each subsequent fiscal year during the Term of this Agreement. The Executive's Bonus will be an amount equal to the Base Salary at the end of each fiscal year multiplied by the Bonus Payout percentage as determined under the Bonus Program. The Bonus Program is based upon the achievement of the Company's annual financial plan. The Executive's Bonus Payout percentage will consist of a Target Bonus of 100 percent of Base Salary and a Stretch Bonus of 200 percent of Base Salary. Both "Target Bonus" and a "Stretch Bonus" are defined in the Bonus Program and are subject to adjustment as provided in the Bonus Program; provided, however, the Executive's Target Bonus will never be set at less than 100 percent of Base Salary and the Executive's Stretch Bonus will never be set at less than 200 percent of Base Salary.

[1] **Payment.** The payment of any earned Bonuses is subject to the terms of the Bonus Program and any agreements issued thereunder.

[2] **Fiscal Year.** The term "fiscal year" means the period beginning on the first Sunday after the Saturday closest to January 31<sup>st</sup> of each calendar year and ending on the Saturday closest to January 31<sup>st</sup> of the following calendar year.

**3.03 Benefit and Other Compensatory Plans.** Subject to their terms (which the Company may amend at any time), the Executive may participate in any Company-sponsored employee pension or welfare benefit plan at a level commensurate with the Executive's title and position. The Executive also may participate in any other deferred incentive or similar compensation program maintained by the Company and generally made available to other senior executive officers of the Company.

**3.04 Vacation and Sick Leave.** The Executive will be entitled to the same periods of vacation and sick leave each year that the Company provides under its vacation and sick leave policy to other senior executive officers of the Company, but in no event less than four (4) weeks of annual vacation.

**3.05 Expenses.** Consistent with the terms of its business expense reimbursement policies and procedures, the Company will reimburse Executive for all normal and reasonable expenses incurred while performing services under this Agreement, including reasonable travel expenses. Reimbursement for these expenses will be made as soon as administratively feasible after the date the Executive submits appropriate evidence of the expenditure and otherwise complies with the Company's business expense reimbursement policies and procedures.

**3.06 Automobile Allowance.** The Company at its expense will provide the Executive with a current model luxury automobile every three (3) years or after 50,000 miles of use.

**3.07 Termination Benefits.** The Company will provide the Executive with only those termination benefits described in Section 5.00.

#### **4.00 Executive's Obligations**

The amounts described in Sections 3.00 and 5.00 of this Agreement are provided by the Company in exchange for (and have a value to the Company equivalent to) the Executive's performance of the obligations described in this Agreement, including performance of the duties and the covenants made and entered into by and between the Executive and the Company in this Agreement.

**4.01 Scope of Duties.** The Executive will:

- [1]** Devote all available business time, best efforts and undivided attention to the Company's business and affairs; and
- [2]** Not engage in any other business activity, whether for gain, profit or other pecuniary benefit except for services benefiting the Group or any Group Member.

However, the restrictions described in Sections 4.01[1] and [2] will not preclude the Executive from:

- [3]** Making or holding passive investments; or
- [4]** Serving on corporate, civic, religious, educational and/or charitable boards or committees but only if this activity **[a]** does not interfere with the Executive's performance of the duties assumed under this Agreement and **[b]** is approved in writing by the Company.

**4.02 Confidential Information.**

**[1] Obligation to Protect Confidential Information.** The Executive acknowledges that the Company, its parent, affiliates, predecessor, successor, subsidiaries and other related companies, including entities that become related entities after the Effective Date (collectively, "Group" and separately, "Group Member") have a legitimate and continuing proprietary interest in the protection of Confidential Information (as defined in Section 4.02[2]) and Intellectual Property (as defined in Section 4.02[3]) and have invested, and will continue to invest, substantial sums of money to develop, maintain and protect Confidential Information and Intellectual Property. The Executive agrees **[a]** during and after employment with the Company and as to all Group Members **[i]** that any Confidential Information and Intellectual Property will be held in confidence by him and treated by him as proprietary to the Group, **[ii]** not to use or disclose any Confidential Information or Intellectual Property except to promote and advance the Group's business interests and **[b]** immediately upon termination for any reason from employment with the Company, to return to the Company any Confidential Information and Intellectual Property within his control.

[2] **Definition of Confidential Information.** For purposes of this Agreement, Confidential Information includes any confidential data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, supplier information, tax records, personnel histories and records, information regarding sales, information regarding properties and any other information of a similar confidential nature regarding the business, operations, properties or personnel of the Group, the Company or any other Group Member which are disclosed to or learned by the Executive while he is employed by a Group Member, but will not include [a] the Executive's own personal personnel records or [b] any information that [i] the Executive possessed before the date of initial employment (including periods before the Effective Date) with the Group that was a matter of public knowledge, [ii] became or becomes a matter of public knowledge through authorized sources independent of the Executive, [iii] has been or is disclosed by any Group Member without restriction on its use, [iv] has been or is required to be disclosed by law or governmental order or regulation or [v] is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only if its disclosure is a necessary part of any proceedings described in Section 9.00. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, he will not regard the item as public knowledge until and unless the Company's General Counsel or Chief Executive Officer (other than the Executive) confirms to the Executive that the information is public knowledge or an adjudicator finally decides that the information is public knowledge.

[3] **Intellectual Property.** The Executive expressly acknowledges that all right, title and interest to all inventions, designs, discoveries, works of authorship, and ideas conceived, produced, created, discovered, authored or reduced to practice during the Executive's performance of services under this Agreement, whether individually or jointly with any Group Member and whether or not it is deemed to be "work made for hire" which relate to the business of the Group (the "Intellectual Property") will be owned solely by the Group, and will be subject to the restrictions set forth in Section 4.02[1]. All Intellectual Property that constitutes copyrightable subject matter under the copyright laws of the United States will, from its conception, be deemed to be a "work made for hire" under the United States copyright laws and all right, title and interest in and to such copyrightable works will vest in the Company or the Group. All right, title and interest in and to all Intellectual Property developed or produced under this Agreement by the Executive, whether constituting patentable subject matter or copyrightable subject matter (to the extent deemed not to be a "work made for hire") or otherwise, will be assigned and is hereby irrevocably assigned to the Company or the Group by the Executive. Without any additional consideration, the Executive will execute all documents and take all other actions the Company reasonably believes are needed to convey the Executive's complete ownership interest in any Intellectual Property to the Company or the Group so that the Company or the Group will own and may protect the Intellectual Property and obtain patent, copyright and trademark registrations for it. The Executive agrees that any Group Member may alter or modify the Intellectual Property at the Group Member's sole discretion, and the Executive waives all right to claim or disclaim ownership.

**4.03 Solicitation of Employees.** The Executive agrees during his employment, and for two years after terminating his employment with all Group Members **[1]** not, directly or indirectly, to solicit (or facilitate the solicitation of) any employee of any Group Member to leave employment with the Group or any Group Member, **[2]** not, directly or indirectly, to employ, seek to employ or facilitate the employment of any then employee of any Group Member by an entity that is not a Group Member and **[3]** not to cause or induce any entity described in Section 4.05[1] to solicit or employ (or to facilitate the solicitation or employment of) any then employee of any Group Member.

**4.04 Solicitation of Third Parties.** The Executive agrees during his employment, and for two years after terminating his employment with all Group Members not, directly or indirectly, to recruit, solicit or otherwise induce or influence any customer, supplier, sales representative, lender, lessor, lessee or any other person having a business relationship with the Group, the Company or any other Group Member to discontinue or reduce the extent of that relationship except in the course of discharging the duties described in this Agreement and with the good faith objective of advancing the Company's or the Group's (or any other Group Member's) business interests.

**4.05 Non-Competition.** The Executive acknowledges the nature of the Group's Business (as defined in Section 4.05[3][a]), and that the Group is one of the limited number of entities which has developed this type of business; that the Group's Business is national in scope and the Executive's work for the Group, the Company and other Group Members will give Executive access to the confidential affairs of the Company and other Group Members, to Confidential Information and to Intellectual Property as defined in Sections 4.02[2] and 4.02[3], respectively; and that the agreements and covenants of the Executive contained in Section 4.00 are essential to preserving the Group's Business and good will. Accordingly, the Executive covenants and agrees that:

**[1]** During the Restriction Period (as defined in Section 4.05[3][c]) and within the Restricted Area (as defined in Section 4.05[3][b]) the Executive will not **[a]** engage in the Group's Business for the Executive's own account, **[b]** render any services to any person engaged in the Group's Business (other than to an entity that is a Group Member when those services are rendered); or **[c]** become employed in any manner by, or consult with, Wal-Mart, Sam's Club, Kmart, Target, Dollar General, Family Dollar, Dollar Tree, Value City/Schottenstein Stores Corporation, Fred's, 99¢ Stores, Canned Foods, Tuesday Morning and TJX Corporation. Further, the Executive agrees during the Restricted Period to not become employed in any manner by or to act as consultant to any successor, parent or subsidiary of the entities (or types of entities) listed above other than in the course of discharging the duties described in this Agreement.

**[2] Maximum Enforceable Restriction.** If any or all of the covenants set forth in this Section 4.05 are determined by a court of competent jurisdiction to be unenforceable by reason of the temporal restrictions being too great, the geographic areas covered too great, the range of activities too great or for any other reason, the Court is authorized and shall interpret them to extend over the maximum period of time, the maximum geographic area and the maximum range of activities or, as to any provision, in such a manner that all provisions may be given maximum restrictive effect in accordance with applicable law.

**[3] Definition Relating to Section 4.05.**

**[a] Group Business.** For purposes of this Agreement, “Group Business” includes (i) the operation of Big Lots retail outlets, the inventories of which are acquired primarily through special purchases such as overstocks, close-outs, liquidations, bankruptcies, wholesale distribution of overstock, distress, liquidation and other volume inventories, (ii) the operation of Big Lots furniture stores, and (iii) related wholesale operations and other lines of business any Group Member develops during the Term of this Agreement.

**[b] Restricted Area.** For purposes of this Agreement, “Restricted Area” means the 50 mile radius surrounding any location in which the Group’s Business is conducted during the Term of this Agreement.

**[c] Restriction Period.** For purposes of this Agreement, “Restriction Period” means the Term of this Agreement and one year following termination of the Executive’s employment with all Group Members, regardless of the reason for termination; provided, however, that in the event of a Change of Control as defined in Section 5.07[3] of this Agreement, the Restricted Period shall be six (6) months.

**4.06 Post-Termination Cooperation.** The Executive agrees, during and for a period of three (3) years after his employment with the Group has terminated and without additional compensation (other than reimbursement for reasonable associated expenses), except in situations in which the interest of the Executive and of the Group, the Company or another Group Member are adverse to one another, to cooperate with the Group, the Company and any other Group Member in the following areas:

**[1] Cooperation With the Group, the Company and Other Group Members.** The Executive agrees **[a]** to be reasonably available to answer questions for any Group Member’s officers or directors regarding any matter, project, initiative or effort with which the Executive was involved while employed by any Group Member and **[b]** to cooperate with the Group, the Company and any other Group Member during the course of all proceedings arising out of the Group’s Business about which the Executive has knowledge or information. For purposes of this Agreement, **[c]** “proceedings” includes internal investigations, administrative investigations or proceedings and lawsuits (including pre-trial discovery and trial testimony) and **[d]** “cooperation” includes **[i]** the Executive’s being reasonably available (taking into account his other employment and personal commitments and schedules) for interviews, meetings, depositions, hearings and/or trials without the need for subpoena or assurances by the Group, the Company or any other Group Member, **[ii]** providing any and all documents in the Executive’s possession that relate to the proceeding and **[iii]** providing assistance in locating any and all relevant notes and/or documents relevant to any proceedings.

**[2] Cooperation With Third Parties.** Unless compelled to do so by lawfully-served subpoena or court order or to the extent it is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement, the Executive agrees not to communicate with, or give statements or testimony to, any opposing attorney, opposing attorney's representative (including a private investigator) or current or former employee relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company and other Group Members. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by a third party or receiving a subpoena or court order to appear and testify with respect to any matter affected by this section.

**[3] Cooperation With Media.** The Executive agrees not to communicate with, or give statements to, any member of the media (including print, television, radio or electronic media) relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company or any other Group Member. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by any member of the media with respect to any matter affected by this section.

**4.07 Non-Disparagement.** The Executive and the Company (on its behalf and on behalf of the Group and other Group Members) agree that after the Executive's employment with the Group has terminated neither will make any disparaging remarks about the other, and the Executive will not make any disparaging remarks about the Company's executives or directors or any other Group Member or their executives and directors. However, this section will not preclude **[1]** any remarks that may be made by the Executive **[a]** under the terms of Section 4.06[2], **[b]** that are required to discharge the duties described in this Agreement or **[c]** are germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement or **[2]** the Company or any other Group Member from making (or eliciting from any person) disparaging remarks about the Executive **[a]** concerning any conduct that may lead to a termination for Cause, as defined in Section 5.04[3] (including initiating an inquiry or investigation that may result in a termination for Cause) or **[b]** that are germane (but only to the extent that it is germane) to defending against any action begun by the Executive under this Agreement.

**4.08 Notice of Subsequent Employment.** The Executive agrees to notify the Company of any subsequent employment during the Restriction Period and any period during which any payment described in Section 5.00 is due or is being paid.

**4.09 Remedies.** The Executive:



[1] Acknowledges that the obligations and restrictions described in Sections 4.02 through 4.08 are reasonable in light of the nature of the Group's Business and the nature of the Executive's relationship with the Group and the Company; that the Group, the Company and all other Group Members have legitimate business reasons for requiring the Executive's agreement to all provisions of Section 4.00; and that the Executive understands these restrictions, has had an opportunity to fully discuss these restrictions with the Company and accepts the restrictions.

[2] Agrees that if any of the obligations to the Company under Sections 4.02 through 4.08 are breached, the periods during which the obligations described in Sections 4.02 through 4.08 apply will be extended for the length of time that the Executive failed to fulfill the obligations under Sections 4.02 through 4.08.

[3] Agrees that [a] any breach of any of the terms of this Section 4.00 would result in irreparable injury and damage to the Group, the Company and all other Group Members for which none would have an adequate remedy at law, [b] in the event of such a breach or any threat of such a breach by the Executive, the Group, the Company and any Group Member will be entitled to an immediate injunction and restraining order to prevent that breach and/or threatened breach and/or continued breach by the Executive and/or any and all persons and/or entities acting for, with and/or through the Executive, without having to prove damages [c] no bond will be required of the Group, the Company or any other Group Member in connection with an action described in Section 4.09[3][a] and [d] not to defend any action seeking injunctive or other equitable relief referred to in Section 4.09[3][b] on the basis that the Group, the Company or any other Group Member has an adequate remedy at law in money damages or otherwise. The terms of this Section 4.09 will not prevent the Company from pursuing any other available remedies for any breach or threatened breach by the Executive of Section 4.00, including, but not limited to, the recovery of monetary damages from the Executive or specific performance. In addition to any other available remedies, the Group, the Company or any Group Member may require the Executive to account for and pay over to the Company all compensation, profits, accruals, increments or other benefits derived or received by the Executive as a result of any transaction constituting a breach of any portion of Section 4.00. The Company may set off any amounts finally determined by a court of competent jurisdiction to be due under this section against any amount that may be owed to the Executive under this Agreement or under any other compensatory arrangement (other than a tax-qualified retirement plan) between the Executive and the Group, the Company or any other Group Member. The Parties agree that any action for breach of any of the provisions of Section 4.00 and/or injunctive relief will be venued in the Court of Common Pleas, Franklin County, Ohio.

**4.10 Return of Group Property.** Upon termination of employment, the Executive agrees to promptly return to the Company all property then in his possession or control belonging to the Group or any Group Member; provided, however, that in the event the Executive's employment is terminated pursuant to Section 5.06 and the Executive is then utilizing an automobile provided by the Company, the Executive shall retain the automobile in accordance with the terms of Section 5.06[5].

**4.11 Effect of Termination of Agreement.** The provisions of Section 4.00 will survive any termination of this Agreement; and the existence of any claim or cause of action by the Executive against the Company or any Group Member, whether predicated on this Agreement or otherwise, will not in and of itself constitute a defense to the enforcement by the Group, the Company or any other Group Member of the covenants and agreements of this Section 4.00; provided, however, that this Section 4.11 will not, in and of itself, preclude the Executive from defending against the enforceability of the covenants and agreements of Section 4.00.

## **5.00 Termination and Related Benefits**

This Agreement will terminate upon the occurrence of any of the events described in this Section 5.00, although all of the obligations, restrictions and duties described in Sections 4.02 through 4.08 will continue after this Agreement terminates and will apply and continue to apply to the Executive and the Executive's estate, heirs and assigns for the applicable period described in Sections 4.02 through 4.08.

**5.01 Rules of General Application.** The following rules apply generally to the implementation of Section 5.00:

**[1] Definition of Termination.** For purposes of this Agreement, any reference to a "termination" of employment or any form thereof shall mean a "separation from service" as defined in Treasury Regulation §1.409A-1(h) by the Executive with BLI, Big Lots and all persons with whom BLI would be considered a single employer under Sections 414(b) and (c) of the Internal Revenue Code of 1986, as amended (the "Code").

**[2] Application of Pro Rata.** Any pro rata amount to be paid under Section 5.00 **[a]** will be calculated as provided in the program through which the payment is due or **[b]** if the payment obligation arises solely under this Agreement, will be based on the number of days between the first day of the fiscal year during which the Executive terminates employment and the date that the Executive terminates employment divided by the number of days in the fiscal year during which the Executive terminates employment.

**[3] Payment of Bonus (or pro rata share of any Bonus).** Any Bonus (or pro rata portion thereof) payable pursuant to this Section 5.00 will be paid in accordance with the terms of the applicable bonus plan, but in no event later than the fifteenth day of the third month following the later of: **[a]** the end of the calendar year during which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable; or **[b]** the end of the Company's fiscal year in which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable.

**5.02 Termination Due to Executive's Death.** This Agreement will terminate automatically on the date the Executive dies. If all requirements of this Agreement are met (including those described in Section 7.00), as of the Executive's date of death, and subject to Section 5.04[5], the Company will make the following payments to the beneficiary the Executive designates on a form acceptable to the Company. If the Executive has not made an effective beneficiary designation (or has revoked all beneficiary designations), such payments will be made to the Executive's estate.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his death occurs had his death not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.03 Termination Due to Executive's Disability.** If the Executive becomes Disabled (as defined in Section 5.03[4]), this Agreement shall terminate automatically. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[4] **Definition of Disability.** For purposes of this Agreement, "Disability" (and any of its forms) means that, for more than six consecutive months, the Executive is unable, with reasonable accommodation, to perform the duties described in Section 4.01 on a full-time basis due to a physical or mental disability or infirmity.

**5.04 Termination for Cause.** The Company may terminate the Executive's employment for Cause (as defined in Section 5.04[3]). A termination for Cause shall only be effective after [a] the Company has delivered a written notice to the Executive stating that, in the reasonable opinion of BLI's Board, the Executive may be terminated for Cause, specifying the details and [b] if the failure or action is one that can be cured, the Executive does not cure the matter giving rise to the Cause determination within 30 days after receiving notice. If the Executive is terminated for Cause and if all requirements of this Agreement are met (including those imposed under Section 7.00), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[3] **Definition of Cause.** For purposes of this Agreement, Cause means the Executive's [a] failure to comply with Company's policies and procedures which the Board of Directors of BLI reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [b] willful or illegal misconduct or grossly negligent conduct that is materially injurious to the Group, the Company or any other Group Member, monetarily or otherwise; [c] violation of laws or regulations governing the Group, the Company or any other Group Member (including the Sarbanes-Oxley Act of 2002) or violation of the Company's code of ethics; [d] breach of any fiduciary duty owed to the Group, the Company or any other Group Member; [e] misrepresentation or dishonesty which the Board of Directors of BLI reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [f] material breach of any provision of Section 4.00 of this Agreement; [g] involvement in any act of moral turpitude that in the reasonable opinion of the Board of Directors of BLI has a materially injurious effect on the Group, the Company or any other Group Member or their reputation; or [h] breach of the terms of any non-solicitation or confidentiality clauses contained in an employment agreement(s) with a former employer.

[4] [Reserved]

[5] **Subsequent Information.** The terms of Section 5.04 also will apply if, within six (6) consecutive calendar months beginning after the Executive terminates under any other provision of Section 5.00, the Company learns of an event that, had it been known before the Executive terminated employment, would have justified a termination for Cause. In this case, the Company will be entitled to recover any amounts that the Executive or any beneficiary received under any other provision of Section 5.00, reduced by the amount the Executive is entitled to receive under this Section 5.04 and any other legally protected benefits paid or made available under this Agreement, that originally was applied when the Executive terminated.

**5.05 Voluntary Termination by Executive.** The Executive may voluntarily terminate employment with the Company at any time. In this case, and if all other requirements of this Agreement are met, and subject to Section 5.04(5), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.06 Involuntary Termination Without Cause.** The Company may terminate the Executive's employment at any time without Cause by delivering to the Executive a written notice specifying the same. In such an event, if all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Income Continuation.** The Executive will be entitled to continue to receive his Base Salary until the last day of the twenty-fourth (24th) complete calendar month beginning after the termination date. Such amounts shall be payable in accordance with the regularly scheduled payroll for similarly situated employees.

[4] **Health Care.** The Executive will be entitled to continue to receive the welfare benefits described in Section 3.03 until the last day of the twelfth complete calendar month beginning after the termination date. Thereafter, the Company will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium for this coverage, if any, until the earlier of [a] the last day of the twenty-fourth (24th) complete calendar month beginning after the termination date or [b] the date the Executive becomes eligible for the same or similar coverage under another benefit program. The Company will also promptly make a payment to the Executive in an amount rounded to the nearest \$100.00 which is equal to any federal, state and local income, employment and wage taxes (using the individual tax rate applicable to the Executive for year for which the termination occurs) for which the Executive will be liable as a result of his receipt of the COBRA reimbursement (the additional cash payment provided for in this sentence being referred to as a "Gross-Up Payment"). In addition, the Executive shall be entitled to promptly receive from the Company a further Gross-Up Payment in respect of each prior Gross-Up Payment until the amount of the last Gross-Up Payment is less than \$100.00. Any reimbursement for continuing health coverage under this Section 5.06[4], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any Gross-Up Payment pursuant to this Section 5.06[4] shall be subject to the following: [i] the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; [ii] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [iii] the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

[5] **Transportation.** The Executive will be entitled to continue to receive the automobile benefits described in Section 3.06 until the last day of the twenty-fourth (24<sup>th</sup>) complete calendar month beginning after the termination date; provided, however, that: [a] the benefits provided or amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement or benefits to be provided in any other taxable year of the Executive; [b] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [c] the right to such benefit or reimbursement may not be subject to liquidation or exchange for another benefit.

[6] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.07 Termination in Connection With Change of Control.** If the Executive is Terminated in Connection With a Change of Control (as defined in Section 5.07[5]) at any time during the Protection Period (as defined in Section 5.07[4]) and if all other conditions of this Agreement have been met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Change Entity (as defined in Section 5.07[2]) will pay or make available the Change Benefits (as defined in Section 5.07[1]) in lieu of any other amounts of benefits that might otherwise be due under this Agreement on account of that termination.

[1] **Change Benefits.** For purposes of this Agreement, “Change Benefits” means the aggregate of the following, adjusted if appropriate under Sections 5.07[6] and [7]:

[a] **Base Salary.** The sum of [i] the Base Salary earned to the date of termination plus [ii] two hundred percent (200%) of the Executive’s Base Salary at the highest rate in effect at any time during the Protection Period. This amount will be paid in a lump sum cash payment on the Change Entity’s first regular payroll date for senior executive officers of the Company following the effective date of the Executive’s Termination in Connection With a Change of Control.

[b] **Bonus.** Two hundred percent (200%) of the Executive’s Stretch Bonus in effect under the Bonus Program for the fiscal year in which the Executive’s employment is Terminated in Connection With a Change of Control or, if higher, the Stretch Bonus in effect under the Bonus Program (or comparable program) at any time during the Protection Period, which in either case shall be deemed for purposes of this Section 5.07[1][b] to have been fully earned by the Executive. This amount will be paid in a single lump sum on the Change Entity’s next regularly scheduled payroll date for senior executive officers of the Company following the date of the Executive’s Termination in Connection With a Change of Control.

**[c] Health Care.** The Change Entity will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium, if any, at the lowest rate in effect at any time during the Protection Period for this coverage, until the earlier of **[i]** the last day of the twenty-fourth (24<sup>th</sup>) complete calendar month beginning after the date the Executive is Terminated in Connection With a Change of Control or **[ii]** the date the Executive becomes eligible for comparable benefits at comparable costs to the Executive under another employer sponsored benefit program. The Company will also promptly make a payment to the Executive in an amount rounded to the nearest \$100.00 which is equal to any federal, state and local income, employment and wage taxes (using the individual tax rate applicable to the Executive for year for which the termination occurs) for which the Executive will be liable as a result of his receipt of the COBRA reimbursement (the additional cash payment provided for in this sentence being referred to as a "Gross-Up Payment"). In addition, the Executive shall be entitled to promptly receive from the Company a further Gross-Up Payment in respect of each prior Gross-Up Payment until the amount of the last Gross-Up Payment is less than \$100.00. Any reimbursement for continuing health coverage under this Section 5.07[1][c], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any Gross-Up Payment pursuant to this Section 5.07[1][c] shall be subject to the following: **[A]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; **[B]** any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and **[C]** the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

**[d] Other.** Any rights (including those arising on account of the Change of Control) accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Change Entity will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**[2] Change Entity.** For purposes of this Agreement, "Change Entity" means the Company, BLI and any other entity that is a party to the Change of Control.

**[3] Definition of Change of Control.** For purposes of this Agreement, "Change of Control" means the first to occur of any of the following events:

**[a]** The acquisition by any person (as defined under Section 409A of the Code), or more than one person acting as a group (as defined under Section 409A of the Code), of the stock of BLI that, together with the stock of BLI held by such person or group, constitutes more than fifty (50) percent of the total fair market value or total voting power of all of the stock of BLI;

**[b]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of the stock of BLI possessing thirty (30) percent or more of the total voting power of all of the stock of BLI;

**[c]** A majority of the members of the Board of Directors of BLI is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of BLI prior to the date of the appointment or election; or

**[d]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from BLI that have a total gross fair market value equal to or more than forty (40) percent of the total gross fair market value of all of the assets of BLI immediately prior to such acquisition or acquisitions.

This definition of Change of Control under this Section 5.07[3] shall be interpreted in a manner that is consistent with the definition of “change in control event” under Section 409A of the Code and the Treasury Regulations promulgated thereunder. The effective date of any such Change of Control will be the date upon which the last event occurs or last action is taken such that the definition of Change of Control (as set forth above) has been satisfied. For purposes of this Agreement, the term “affiliate” means any person or entity that, along with BLI, constitutes a single employer under Sections 414(b) and 414(c) of the Code. Determination of affiliate will be tested as of the date immediately prior to any event constituting a Change of Control. Notwithstanding the other provisions of this Section 5.07, the term “Change of Control” will not mean any transaction, merger, consolidation or reorganization in which BLI exchanges or offers to exchange newly issued or treasury shares in an amount less than 50 percent of the then-outstanding equity securities of BLI entitled to vote for the election of directors, for fifty-one (51) percent or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than BLI or an affiliate thereof (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.

**[4]       Protection Period.** For purposes of this Agreement, “Protection Period” means the period beginning on the first day of the sixth full consecutive calendar month beginning before the date of the Change of Control and ending on the last day of the twenty-fourth consecutive full calendar month beginning after the date of the Change of Control.

**[5]       Termination in Connection With a Change of Control.** For purposes of this Agreement, “Termination in Connection With a Change of Control” means, at any time during the Protection Period:

**[a]**       The Change Entity involuntarily terminates the Executive without Cause (as defined in Section 5.06).



**[b]** The Executive terminates following the occurrence of any of the following conditions;

**[i]** The Change Entity breaches any provision of this Agreement;

**[ii]** The Change Entity unsuccessfully attempts to terminate the Executive for Cause (as defined in Section 5.04);

**[iii]** The Change Entity attempts to terminate the Executive for any reason without following the procedures described in this Agreement (including an acceleration of the periods described in Section 5.03[4] and 5.04[b]);

**[iv]** The Change Entity revokes or attempts to revoke or accelerate the duration of any leave of absence protected by law or authorized by the Company before the Protection Period or by the Change Entity at any time during the Protection Period;

**[v]** The Change Entity refuses to allow the Executive to return to active employment at the end of any leave of absence protected by law or authorized by the Company before the Protection Period or the Change Entity at any time during the Protection Period; or

**[vi]** The Change Entity causes the Executive to resign because of a material adverse change or material diminution in the Executive's reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by the Executive in his good faith discretion); provided, however, that the Executive shall notify the Company in writing at least forty- five (45) days in advance of any election by the Executive to terminate his employment hereunder, specifying the nature of the alleged adverse change or diminution, and the Company shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before the Executive shall be entitled to exercise any such rights and remedies.

For purposes of this Section 5.07[5], the termination of employment is deemed to occur on the Executive's actual date of termination.

**[6] Treatment of Taxes.** If payments under this Agreement, when combined with payments and benefits under all other plans and programs maintained by the Company or the Change Entity, constitute "excess" parachute payments as defined in Section 280G(b) of the Code, the Change Entity, subject to Section 5.07[7], will either:

**[a]** Reimburse the Executive for the amount of any excise tax due under Code §4999, if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][b]; or

**[b]** Reduce the Executive's benefits under this Agreement so that the Executive's total "parachute payment" as defined in Code §280G(b)(2)(A) under this Agreement and all other agreements will be \$1.00 less than the amount that would generate "excess" parachute payment penalties if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][a].

This comparison will be made as of the date of the corporate event generating the “parachute payments” although any reimbursement provided under Section 5.07[6][a] will be made when the parachute payment is actually made or distributed.

Within 10 business days of the date the Change Entity determines that Section 5.07[6][b] should be applied, the Change Entity will apprise the Executive of the amount of the reduction (“Notice of Reduction”). Within 10 business days after receiving the Notice of Reduction, the Executive may specify how (and against which benefit or payment source) the reduction is to be applied (“Notice of Allocation”). The Change Entity will be required to implement these directions within 10 business days after receiving the Notice of Allocation. If the Change Entity has not received a Notice of Allocation from the Executive within 10 business days after the date of the Notice of Reduction or if the allocation provided in the Notice of Allocation is not sufficient to fully implement Section 5.07[6][b], then the Change Entity will apply Section 5.07[6][b] proportionately based on the amounts otherwise payable under this Agreement or, if a Notice of Allocation has been returned that does not sufficiently implement Section 5.07[6][b], on the basis of the reductions specified in the Notice of Allocation. Any taxes reimbursed pursuant to Section 5.07[6][a] shall be paid by the end of Executive’s taxable year next following the taxable year in which Executive remits payment of the tax or assessment being reimbursed. Any reduction pursuant to Section 5.07[6][b] shall be made in accordance with Section 409A of the Code and the Treasury Regulations promulgated thereunder.

**[7] Effect of Subsequent Tax Claim.** The Change Entity will establish procedures that will apply to any inquiries regarding the treatment of tax payments under this Section 5.07. Within 30 days following the termination of the Executive’s employment under Section 5.07, the Change Entity will provide the Executive with a copy of such procedures.

**5.08 Constructive Termination.** If at any time during the Term of this Agreement the Company or a Change Entity materially adversely changes or causes a diminution in the Executive’s reporting relationship, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by the Executive is his good faith discretion), such action by the Company or Change Entity shall constitute a constructive termination of the Executive’s employment by the Company without Cause, the Executive shall be entitled to resign from his offices and positions with the Company and shall not be obligated to perform any further services of any kind for the Company and the Executive shall be entitled to receive from the Company (and the Change Entity, if applicable) at the applicable times all of the compensation, benefits and other payments described in Section 5.06 or 5.07 (whichever may be applicable); provided, however, that the Executive shall notify the Company in writing at least forty five (45) days in advance of any election by the Executive to terminate his employment hereunder, specifying the nature of the alleged adverse change or diminution, and the Company shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before the Executive shall be entitled to exercise any such rights and remedies.

**5.09 Six-Month Distribution Delay.** Notwithstanding the foregoing, if Executive is a “specified employee,” within the meaning of Treasury Regulation §1.409A-1(i) and as determined under BLI’s policy for determining specified employees, on the Executive’s date of termination, and the Executive is entitled to a payment and/or a benefit under this Agreement that is required to be delayed pursuant to Section 409A(a)(2) of the Code, then such payment or benefit shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following the Executive’s date of termination (or, if earlier, the Executive’s death). The first payment that can be made following such postponement period shall include the cumulative amount of any payments or benefits that could not be paid or provided during such postponement period due to the application of Section 409A(a)(2)(B)(i) of the Code.

## **6.00 Notice**

**6.01 How Given.** Any notice permitted or required to be given under this Agreement must be given in writing and delivered in person or by registered, U.S. mail, return receipt requested, postage prepaid; or through Federal Express, UPS, DHL or any other reputable professional delivery service that maintains a confirmation of delivery system. Any delivery must be [1] in the case of notices to the Company or the Change Entity, addressed to the Company’s Chief Executive Officer (other than the Executive) and General Counsel at the Company’s then-current corporate offices and [2] in the case of notices to the Executive, addressed to the Executive’s last mailing address contained in the Executive’s personnel file.

**6.02 Effective Date.** Any notice permitted or required to be given under this Agreement will be deemed to have been given and will be effective on the date it is delivered.

## **7.00 Execution of Release**

The Executive agrees that as a condition of receiving any post-termination benefit as set forth in Section 5.00, except for earned but unpaid Base Salary to the date of termination and any legally protected rights the Executive has under any employee benefit plan maintained by the Company, the Executive or, in the case of any amounts due after the Executive’s death, the person to whom those amounts are payable (collectively, the “Payee”) must execute a comprehensive release in the form determined from time to time by the Company in its sole reasonable discretion. Generally, the release will require the Payee and the Payee’s personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns to release and forever discharge the Group, the Company and all other Group Members, past, present and future, and their executives, officers, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action that grow out of or are in any way related to the Executive’s recruitment and employment with the Company and arose on or prior to the date of the release (whether known or unknown to the Executive), other than any claim that the Company has breached this Agreement. This release will include, but not be limited to, any claim that the Company violated the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker’s Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act; any state, federal law or local ordinance prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state; or any federal, state or local law (each as in effect on the Effective Date and as subsequently amended) relating to any matter within the purview of this Agreement. Upon the Executive’s termination of employment with all Group Members, the Payee will be presented with a release and if the Payee fails to execute the release, the Payee agrees to forego any payment described in the first sentence of this section. The Executive acknowledges that the Executive is an experienced senior executive knowledgeable about the claims that might arise in the course of employment with and termination from the Company and any other Group Member and knowingly agrees that the payments upon termination provided for in this Agreement are satisfactory consideration for the release of all possible claims described in the release. Notwithstanding anything to the contrary, the failure of the Executive to execute the release described in this Section 7.00 shall not otherwise cause any payment made pursuant to this Agreement to be delayed beyond the date on which such payment was originally scheduled to occur.

## **8.00 Insurance and Indemnification**

The Company will indemnify Executive (including his heirs, executors and administrators) to the fullest extent permitted under the Company's Regulations and Ohio law and will cause the Executive to be covered by all directors and officers liability insurance maintained by the Company. This obligation to provide insurance for the Executive will survive termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions occurring during the Executive's employment with or termination from the Group, the Company or with any other Group Member. Concurrently with the execution of this Agreement, BLI will enter into an indemnification agreement with the Executive.

## **9.00 Arbitration**

**9.01 Acknowledgement of Arbitration.** Unless stated otherwise in this Agreement or any other compensatory or any employee benefit plan, fund or program maintained by the Company, the Parties agree that arbitration is the sole and exclusive remedy for each of them to resolve (except as specifically provided in Section 4.09) and redress any dispute, claim or controversy involving the interpretation or application of this Agreement, the terms, conditions or termination of this Agreement and the terms, conditions or termination of the Executive's employment with the Company, including any claims for any tort, breach of contract, violation of public policy or discrimination, whether such claim arises under federal, state law or local law.

**9.02 Scope of Arbitration.** The Executive expressly understands and agrees that claims subject to arbitration under this section include asserted violations of the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964 (as amended); the Family and Medical Leave Act; any federal, state or local law or ordinances prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state, or any federal, state or local law (each as in effect on the Effective Date or as subsequently amended) relating to any matter within the purview of this Agreement.

**9.03 Effect of Arbitration.** The Parties intend that any arbitration award relating to any matter described in Section 9.01 will be final and binding on them and that a judgment on the award may be entered in any court of competent jurisdiction and that enforcement may be had according to the terms of that award. This Section 9.03 will survive the termination of this Agreement.

**9.04 Location and Conduct of Arbitration.** Arbitration will be held in Columbus, Ohio, and will be conducted by a retired federal judge or other qualified arbitrator. The arbitrator will be mutually agreed upon by the Parties and the arbitration will be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The Parties will have the right to conduct discovery pursuant to the Federal Rules of Civil Procedure; provided, however, that the arbitrator will have the authority to establish an expedited discovery schedule and cutoff and to resolve any discovery disputes. The arbitrator will have no jurisdiction or authority to change any provision of this Agreement by alterations of, additions to or subtractions from the terms of this Agreement. The arbitrator's sole authority will be to interpret or apply any provision(s) of this Agreement or any public law alleged to have been violated. The arbitrator has the authority to award damages and other relief expressly provided by law.

**9.05 Time for Initiating Arbitration.** Any claim or controversy relating to any matter described in Section 9.01 not sought to be submitted to arbitration, in writing, within 90 days after the date the Party asserting the claim knew, or through reasonable diligence should have known, of the facts giving rise to that Party's claim, will be deemed waived; and the Party asserting the claim will have no further right to seek arbitration or recovery with respect to that claim or controversy. Both Parties agree to strictly comply with the time limitation specified in this Section 9.05. For purposes of this Section 9.05, a claim or controversy is sought to be submitted to arbitration on the date the complaining Party gives written notice to the other party that **[1]** an issue has arisen or is likely to arise that, unless resolved otherwise, may be resolved through arbitration under this Section 9.00 and **[2]** unless the issue is resolved otherwise, the complaining Party intends to submit the matter to arbitration under the terms of Section 9.00.

**9.06 Costs of Arbitration and Attorney's Fees.** The Company will bear the arbitrator's fee and other costs associated with any arbitration, unless the arbitrator, acting under Federal Rule of Civil Procedure 54(d)(1), elects to award these fees to the Company. Attorney's fees **[1]** may be awarded to the prevailing party if expressly authorized by statute, or otherwise each party will bear its own attorney's fees and costs, but **[2]** the Executive's attorney's fees and other associated costs and expenses will be borne by the Change Entity with respect to any claim arising under Section 5.07 but only if the arbitrator concludes the claim legitimately relates to matters within the contemplation of Section 5.07 (otherwise, the rule described in Section 9.06[1] will apply). Notwithstanding the foregoing: **[a]** any costs being reimbursed must relate to a claim brought during the lifetime of the Executive with respect to an alleged breach of any obligation of the Company under this Agreement; **[b]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement in any other taxable year; **[c]** any reimbursement must be made on or before the last day of the Executive's taxable year following the taxable year in which the cost was incurred; and **[d]** the right to reimbursement for such costs is not subject to liquidation or exchange for another benefit.

**9.07 Arbitration Exclusive Remedy.** The Parties acknowledge that, because arbitration is the exclusive remedy for resolving the issues described in Section 9.01, neither Party may resort to any federal, state or local court or administrative agency concerning those issues and that the decision of the arbitrator will be a complete defense to any suit, action or proceeding instituted in any federal, state or local court before any administrative agency with respect to any arbitrable claim or controversy.

**9.08 Waiver of Jury.** The Executive (personally and in behalf of all the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns) and the Company (on its own behalf and on behalf of its successors, including any Change Entity) each waive the right to have a claim or dispute with one another decided in a judicial forum or by a jury, except as otherwise provided in this Agreement.

## **10.00 General Provisions**

**10.01 Representation of Executive.** The Executive represents and warrants that the Executive is an experienced senior executive knowledgeable about the matters (and their effect) within the purview of this Agreement and is not under any contractual or legal restraint that prevents or prohibits the Executive from entering into this Agreement or performing the duties and obligations described in this Agreement.

**10.02 Modification or Waiver; Entire Agreement.** No provision of this Agreement may be modified or waived except in a document signed by the Executive and the Company's Chief Executive Officer (other than the Executive) or other person designated by BLI's Board of Directors. This Agreement, and any attachments referenced in the Agreement, constitute the entire agreement between the Parties regarding the employment relationship described in this Agreement, and, except as otherwise specifically provided in this Agreement, any other agreements between the Executive and the Company are terminated and of no further force or legal effect. No agreements or representations, oral or otherwise, with respect to the Executive's employment relationship with the Company have been made or relied upon by either Party which are not set forth expressly in this Agreement.

**10.03 Governing Law; Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application of any provision of this Agreement to any person or circumstance, is, for any reason and to any extent, held invalid or unenforceable, such invalidity and unenforceability will not affect the remaining provisions of this Agreement of its application to other persons or circumstances, all of which will be enforced to the greatest extent permitted by law; and the Parties agree that any invalid or unenforceable provision may and will be reformed and applied **[1]** as provided in Section 4.05, with respect to the matters specifically contemplated in Section 4.00 and **[2]** with respect to other matters, **[a]** to the extent needed to avoid that invalidity or unenforceability and **[b]** in a manner that is as similar as possible to the Parties' intent (as described in this Agreement) and preserves the essential economic substance and effect of this Agreement. The validity, construction and interpretation of this Agreement and the rights and duties of the Parties will be governed by the laws of the State of Ohio, without reference to the Ohio choice of law rules.

**10.04 No Waiver.** Except as otherwise provided in Section 9.05, failure to insist upon strict compliance with any term of this Agreement will not be considered a waiver of any such term or any other term of this Agreement.

**10.05 Withholding.** All payments made to or on behalf of the Executive under this Agreement will be reduced by any amount:

[1] That the Company is required by law to withhold in advance payment of the Executive's federal, state and local income, wage and employment tax liability; and

[2] To the extent determined in accordance with Sections 5.04[5] or 9.00, that the Executive owes to the Group, the Company or any other Group Member.

Application of Section 10.05[2] will not extinguish the Company's right to seek additional amounts from the Executive (or to pursue other appropriate remedies) to the extent that the amount recovered by application of Section 10.05[2] does not fully discharge the amount the Executive owes to the Group, the Company or other Group Member and does not preclude the Group, the Company or any other Group Member from proceeding directly against the Executive without first exhausting its right of recovery under Section 10.05[2].

**10.06 Survival.** The Parties agree that the covenants and promises set forth in this Agreement will survive the termination of this Agreement and continue in full force and effect after this Agreement terminates to the extent that their performance is required to occur after this Agreement terminates.

**10.07 Miscellaneous.**

[1] The Executive may not assign any right or interest to, or in, any payments payable under this Agreement until they have become due from the Company; provided, however, that this prohibition does not preclude the Executive from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and does not preclude the legal representative of the Executive's estate from assigning any right under this Agreement to the person or persons entitled to it.

[2] This Agreement will be binding upon and will inure to the benefit of the Executive, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns and the Company and its successors and, to the extent applicable, the Group and all Group Members.

[3] The headings in this Agreement are inserted for convenience of reference only and will not be a part of or control or affect the meaning of any provision of the Agreement.

**10.08 Successors to Company.** This Agreement may and will be assigned or transferred to, and will be binding upon and will inure to the benefit of, any successor of the Company, including any Change Entity, and any successor will be substituted for the Company under the terms of this Agreement. As used in this Agreement, the term “successor” means any person, firm, corporation or business entity which at any time, whether by merger, purchase or otherwise, acquires all or essentially all of the assets of the business of the Company. Notwithstanding any assignment, the Company will remain, with any successor, jointly and severally liable for all its obligations under this Agreement.

**10.09 Section 409A of the Code.** This Agreement is intended to comply with Section 409A of the Code and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to the Executive and neither the Company nor the Boards of Directors of BLI or Big Lots shall be liable to the Executive for failure to comply with the requirements of Section 409A of the Code. Furthermore, the Company may accelerate the time or schedule of a payment to the Executive if at any time this Agreement fails to meet the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder.

Notwithstanding the foregoing, if the Executive terminates for any reason, dies or becomes Disabled on or prior to December 31, 2008 and is entitled to payment or benefit as a result of such termination, death or Disability, such payment or benefit shall be paid or provided [1] pursuant to the terms of this Agreement in effect immediately prior to the Effective Date, but [2] modified to the extent necessary for good faith compliance with the requirements of Section 409A of the Code. Nothing in this Agreement shall be construed as causing a payment or benefit to be paid or distributed in calendar year 2008 which is not otherwise payable or distributable in calendar year 2008.

**IN WITNESS WHEREOF**, the Parties have duly executed and delivered this Agreement, which includes an arbitration provision, and consists of 24 pages.

BIG LOTS, INC.

By: /s/ Dennis B. Tishkoff

Signed: December 5, 2008



BIG LOTS STORES, INC.

By: /s/ Brad A. Waite

Signed: December 5, 2008

Steven S. Fishman

/s/ Steven S. Fishman

Signed: December 5, 2008

**AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT  
BY AND AMONG  
BIG LOTS, INC.,  
BIG LOTS STORES, INC.  
AND  
JOE R. COOPER**

This amended and restated employment agreement (“Agreement”) by and among Big Lots, Inc. (“BLI”), Big Lots Stores, Inc. (“Big Lots”) and their affiliates, predecessor, successor, subsidiaries and other related companies (collectively the “Company”) and Joe R. Cooper (“Executive”), collectively, the “Parties,” is effective as of December 5, 2008 (“Effective Date”) and supersedes and replaces any other oral or written agreement or understanding concerning the terms of the Executive’s employment with the Company but does not supersede or replace any agreement or arrangement between the Executive or any Group Member (as defined in Section 4.02[1]) relating to the payment of compensation or benefits earned (or deemed earned) on account of services performed for a Group Member before the Effective Date.

**1.00      Duration**

This Agreement will remain in effect from the Effective Date until it terminates as provided in Section 5.00 (“Term”). Any notice of termination required to be given under this Agreement must be given as provided in Section 6.00 and will be effective on the date prescribed in Section 5.00.

**2.00      Executive’s Employment Function**

**2.01      Position.** The Executive agrees to serve as the Company’s Senior Vice President and Chief Financial Officer (or other equivalent title conferred by the Company in its sole discretion) with the authority and duties customarily associated with this position. The Executive agrees at all times to observe and to be bound by all Company rules, policies, practices, procedures and resolutions which apply to Company employees with a similar title and position and which do not conflict with the specific terms of this Agreement.

**2.02      Place of Performance.** Unless the Company requires the Executive to perform duties at another location, the Executive’s duties will be performed principally in Columbus, Ohio, except for travel on the business of any Group Member.

**3.00      Compensation**

The Company will pay the Executive the amounts described in Sections 3.00 and 5.00 as compensation for the services described in this Agreement and in exchange for the duties and responsibilities described in Section 4.00.

**3.01      Base Salary.** The Company will pay to the Executive an annualized base salary of \$440,000, which, at the discretion of the Company, may be adjusted from time to time in a manner that is consistent with the Company’s compensation policies in effect for Company employees with a similar title and position (“Base Amount”) but may not be adjusted to any amount lower than \$440,000 without the Executive’s consent. The Executive’s Base Salary will be paid in installments that correspond with the Company’s normal payroll practices.

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**3.02 Bonus.** The Executive will be eligible to receive bonus compensation (“Bonus”) under and subject to the terms of the Company’s Big Lots 2006 Bonus Plan, as amended (or any such successor plan, hereinafter, “Bonus Program”) for the fiscal year beginning January 30, 2008 and for each subsequent fiscal year during the Term of this Agreement. The Executive’s Bonus will be an amount equal to the Base Salary at the end of each fiscal year multiplied by the Bonus Payout percentage as determined under the Bonus Program. The Bonus Program is based upon the achievement of the Company’s annual financial plan. The Executive’s Bonus Payout percentage will consist of a Target Bonus of 60 percent of Base Salary and a Stretch Bonus of 120 percent of Base Salary. Both “Target Bonus” and a “Stretch Bonus” are defined in the Bonus Program and are subject to adjustment as provided in the Bonus Program; provided, however, the Executive’s Target Bonus will never be set at less than 60 percent of Base Salary and the Executive’s Stretch Bonus will never be set at less than 120 percent of Base Salary.

**[1] Payment.** The payment of any earned Bonuses is subject to the terms of the Bonus Program and any agreements issued thereunder.

**[2] Fiscal Year.** The term “fiscal year” means the period beginning on the first Sunday after the Saturday closest to January 31<sup>st</sup> of each calendar year and ending on the Saturday closest to January 31<sup>st</sup> of the following calendar year.

**3.03 Benefit and Other Compensatory Plans.** Subject to their terms (which the Company may amend at any time), the Executive may participate in any Company-sponsored employee pension or welfare benefit plan at a level commensurate with the Executive’s title and position. The Executive also may participate in any other deferred incentive or similar compensation program maintained by the Company and generally made available to other senior executive officers of the Company.

**3.04 Vacation and Sick Leave.** The Executive will be entitled to the same periods of vacation and sick leave each year that the Company provides under its vacation and sick leave policy to other senior executive officers of the Company.

**3.05 Expenses.** Consistent with the terms of its business expense reimbursement policies and procedures, the Company will reimburse Executive for all normal and reasonable expenses incurred while performing services under this Agreement, including reasonable travel expenses. Reimbursement for these expenses will be made as soon as administratively feasible after the date the Executive submits appropriate evidence of the expenditure and otherwise complies with the Company’s business expense reimbursement policies and procedures.

**3.06 Automobile Allowance.** The Company will provide the Executive with an automobile or a monthly automobile allowance in accordance with applicable Company policies for employees with a similar title and position; provided, however, that the automobile allowance may not be adjusted to a value lower than the value the Executive is entitled to receive as of the Effective Date.

**3.07 Termination Benefits.** The Company will provide the Executive with only those termination benefits described in Section 5.00.

#### **4.00 Executive's Obligations**

The amounts described in Sections 3.00 and 5.00 of this Agreement are provided by the Company in exchange for (and have a value to the Company equivalent to) the Executive's performance of the obligations described in this Agreement, including performance of the duties and the covenants made and entered into by and between the Executive and the Company in this Agreement.

**4.01 Scope of Duties.** The Executive will:

- [1] Devote all available business time, best efforts and undivided attention to the Company's business and affairs; and
- [2] Not engage in any other business activity, whether for gain, profit or other pecuniary benefit except for services benefiting the Group or any Group Member.

However, the restrictions described in Sections 4.01[1] and [2] will not preclude the Executive from:

- [3] Making or holding passive investments; or
- [4] Serving on corporate, civic, religious, educational and/or charitable boards or committees but only if this activity **[a]** does not interfere with the Executive's performance of the duties assumed under this Agreement and **[b]** is approved in writing by the Company.

**4.02 Confidential Information.**

[1] **Obligation to Protect Confidential Information.** The Executive acknowledges that the Company, its parent, affiliates, predecessor, successor, subsidiaries and other related companies, including entities that become related entities after the Effective Date (collectively, "Group" and separately, "Group Member") have a legitimate and continuing proprietary interest in the protection of Confidential Information (as defined in Section 4.02[2]) and Intellectual Property (as defined in Section 4.02[3]) and have invested, and will continue to invest, substantial sums of money to develop, maintain and protect Confidential Information and Intellectual Property. The Executive agrees **[a]** during and after employment with the Company and as to all Group Members **[i]** that any Confidential Information and Intellectual Property will be held in confidence and treated as proprietary to the Group, **[ii]** not to use or disclose any Confidential Information or Intellectual Property except to promote and advance the Group's business interests and **[b]** immediately upon termination for any reason from employment with the Company, to return to the Company any Confidential Information and Intellectual Property.

[2] **Definition of Confidential Information.** For purposes of this Agreement, Confidential Information includes any confidential data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, supplier information, tax records, personnel histories and records, information regarding sales, information regarding properties and any other information of a similar confidential nature regarding the business, operations, properties or personnel of the Group, the Company or any other Group Member which are disclosed to or learned by the Executive while employed by a Group Member, but will not include [a] the Executive's own personal personnel records or [b] any information that [i] the Executive possessed before the date of initial employment (including periods before the Effective Date) with the Group that was a matter of public knowledge, [ii] became or becomes a matter of public knowledge through authorized sources independent of the Executive, [iii] has been or is disclosed by any Group Member without restriction on its use, [iv] has been or is required to be disclosed by law or governmental order or regulation or [v] is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only if its disclosure is a necessary part of any proceedings described in Section 9.00. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's General Counsel or Chief Executive Officer confirms to the Executive that the information is public knowledge or an adjudicator finally decides that the information is public knowledge.

[3] **Intellectual Property.** The Executive expressly acknowledges that all right, title and interest to all inventions, designs, discoveries, works of authorship, and ideas conceived, produced, created, discovered, authored or reduced to practice during the Executive's performance of services under this Agreement, whether individually or jointly with any Group Member and whether or not it is deemed to be "work made for hire" (the "Intellectual Property") will be owned solely by the Group, and will be subject to the restrictions set forth in Section 4.02[1]. All Intellectual Property that constitutes copyrightable subject matter under the copyright laws of the United States will, from its conception, be deemed to be a "work made for hire" under the United States copyright laws and all right, title and interest in and to such copyrightable works will vest in the Company or the Group. All right, title and interest in and to all Intellectual Property developed or produced under this Agreement by the Executive, whether constituting patentable subject matter or copyrightable subject matter (to the extent deemed not to be a "work made for hire") or otherwise, will be assigned and is hereby irrevocably assigned to the Company or the Group by the Executive. Without any additional consideration, the Executive will execute all documents and take all other actions the Company reasonably believes are needed to convey the Executive's complete ownership interest in any Intellectual Property to the Company or the Group so that the Company or the Group will own and may protect the Intellectual Property and obtain patent, copyright and trademark registrations for it. The Executive agrees that any Group Member may alter or modify the Intellectual Property at the Group Member's sole discretion, and the Executive waives all right to claim or disclaim ownership.

**4.03 Solicitation of Employees.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members **[1]** not, directly or indirectly, to solicit (or facilitate the solicitation of) any employee of any Group Member to leave employment with the Group or any Group Member, **[2]** not, directly or indirectly, to employ, seek to employ or facilitate the employment of any employee of any Group Member by an entity that is not a Group Member and **[3]** not to cause or induce any entity described in Section 4.05[1] to solicit or employ (or to facilitate the solicitation or employment of ) any employee of any Group Member.

**4.04 Solicitation of Third Parties.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members not, directly or indirectly, to recruit, solicit or otherwise induce or influence any customer, supplier, sales representative, lender, lessor, lessee or any other person having a business relationship with the Group, the Company or any other Group Member to discontinue or reduce the extent of that relationship except in the course of discharging the duties described in this Agreement and with the good faith objective of advancing the Company's or the Group's (or any other Group Member's) business interests.

**4.05 Non-Competition.** The Executive acknowledges the nature of the Group's Business (as defined in Section 4.05[3][a] and that the Group is one of the limited number of entities which has developed this type of business; that the Group's Business is national in scope and the Executive's work for the Group, the Company and other Group Members will give Executive access to the confidential affairs of the Company and other Group Members, to Confidential Information and to Intellectual Property as defined in Sections 4.02[2] and 4.02[3] respectively; and that the agreements and covenants of the Executive contained in Section 4.00 are essential to preserving the Group's Business and good will. Accordingly, the Executive covenants and agrees that:

**[1 ]** During the Restriction Period (as defined in Section 4.05[3][c]) and within the Restricted Area (as defined in Section 4.05[3][b]) the Executive will not **[a]** engage in the Group's Business for the Executive's own account, **[b]** render any services to any person engaged in the Group's Business (other than to an entity that is a Group Member when those services are rendered); or **[c]** become employed in any manner by, or consult with, Wal-Mart, Sam's Club, Kmart, Target, Dollar General, Family Dollar, Dollar Tree, Value City/Schottenstein Stores Corporation, Fred's, 99¢ Stores, Canned Foods, Tuesday Morning and TJX Corporation. Further, the Executive agrees during the Restricted Period to not become employed in any manner by or to act as consultant to any successor, parent or subsidiary of the entities (or types of entities) listed above that compete directly with the Company other than in the course of discharging the duties described in this Agreement.

**[2] Maximum Enforceable Restriction.** If any or all of the covenants set forth in this Section 4.05 are determined by a court of competent jurisdiction to be unenforceable by reason of the temporal restrictions being too great, the geographic areas covered too great, the range of activities too great or for any other reason, the Court is authorized and will interpret them to extend over the maximum period of time, the maximum geographic area and the maximum range of activities or, as to any provision, in such a manner that all provisions may be given maximum restrictive effect in accordance with applicable law.

**[3] Definition Relating to Section 4.05.**

**[a] Group Business.** For purposes of this Agreement, “Group Business” includes the operation of Big Lots retail outlets, the inventories of which are acquired primarily through special purchases such as overstocks, close-outs, liquidations, bankruptcies, wholesale distribution of overstock, distress, liquidation and other volume inventories, the operation of Big Lots furniture stores, and related wholesale operations and other lines of business any Group Member develops during the Term of this Agreement.

**[b] Restricted Area.** For purposes of this Agreement, “Restricted Area” means the 50 mile radius surrounding any location in which the Group’s Business is conducted during the Term of this Agreement.

**[c] Restriction Period.** For purposes of this Agreement, “Restriction Period” means the Term of this Agreement and one year following termination of the Executive’s employment with all Group Members, regardless of the reason for termination; provided, however, that in the event of a Change of Control as defined in Section 5.07[3] of this Agreement, the Restricted Period shall be for a period of six (6) months.

**4.06 Post-Termination Cooperation.** The Executive agrees that during and after employment with the Group and without additional compensation (other than reimbursement for reasonable associated expenses), to cooperate with the Group, the Company and any other Group Member in the following areas:

**[1] Cooperation With the Group, the Company and Other Group Members.** The Executive agrees **[a]** to be reasonably available to answer questions for any Group Member’s officers or directors regarding any matter, project, initiative or effort with which the Executive was involved while employed by any Group Member and **[b]** to cooperate with the Group, the Company and any other Group Member during the course of all proceedings arising out of the Group’s Business about which the Executive has knowledge or information. For purposes of this Agreement, **[c]** “proceedings” includes internal investigations, administrative investigations or proceedings and lawsuits (including pre-trial discovery and trial testimony) and **[d]** “cooperation” includes **[i]** the Executive’s being reasonably available for interviews, meetings, depositions, hearings and/or trials without the need for subpoena or assurances by the Group, the Company or any other Group Member, **[ii]** providing any and all documents in the Executive’s possession that relate to the proceeding and **[iii]** providing assistance in locating any and all relevant notes and/or documents relevant to any proceedings.

**[2] Cooperation With Third Parties.** Unless compelled to do so by lawfully-served subpoena or court order or to the extent it is germane (but only to the extent that it is germane) to enforcement of the Executive’s rights under this Agreement and only as a necessary part of any proceedings under this Agreement, the Executive agrees not to communicate with, or give statements or testimony to, any opposing attorney, opposing attorney’s representative (including a private investigator) or current or former employee relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company and other Group Members. The Executive also agrees to notify the Company’s Chief Executive Officer or General Counsel immediately after being contacted by a third party or receiving a subpoena or court order to appear and testify with respect to any matter affected by this section.

**[3] Cooperation With Media.** The Executive agrees not to communicate with, or give statements to, any member of the media (including print, television, radio or electronic media) relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company or any other Group Member. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by any member of the media with respect to any matter affected by this section.

**4.07 Non-Disparagement.** The Executive and the Company agree (on its behalf and in behalf of the Group and other Group Members) that after the Executive's employment with the Group has ended neither will make any disparaging remarks about the other and the Executive will not make any disparaging remarks about the Company, the Company's Chairman, Chief Executive Officer or any of the Company's executives or directors or any other Group Member or their executives and directors. However, this section will not preclude **[1]** any remarks that may be made by the Executive **[a]** under the terms of Section 4.06[2], **[b]** that are required to discharge the duties described in this Agreement or **[c]** are germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement or **[2]** the Company or any other Group Member from making (or eliciting from any person) disparaging remarks about the Executive **[a]** concerning any conduct that may have led to a termination for Cause, as defined in Section 5.04[3] (including initiating an inquiry or investigation that may result in a termination for Cause) or **[b]** that are germane (but only to the extent that it is germane) to defending against any action begun by the Executive under this Agreement.

**4.08 Notice of Subsequent Employment.** The Executive agrees to notify the Company of any subsequent employment during the Restriction Period and any period during which any payment described in Section 5.00 is due or is being paid.

**4.09 Remedies.** The Executive:

**[1]** Acknowledges that the obligations and restrictions described in Sections 4.02 through 4.08 are reasonable in light of the nature of the Group's Business and the nature of the Executive's relationship with the Group and the Company; that the Group, the Company and all other Group Members have legitimate business reasons for requiring the Executive's agreement to all provisions of Section 4.00; and that the Executive understands these restrictions, has had an opportunity to fully discuss these restrictions with the Company and accepts the restrictions.



[2] Agrees that if any of the obligations to the Company under Sections 4.02 through 4.08 are breached, the periods during which the obligations described in Sections 4.02 through 4.08 apply will be extended for the length of time that the Executive failed to fulfill the obligations under Sections 4.02 through 4.08.

[3] Agrees that [a] any breach of any of the terms of this Section 4.00 would result in irreparable injury and damage to the Group, the Company and all other Group Members for which none would have an adequate remedy at law, [b] in the event of a breach or any threat of breach by the Executive, the Group, the Company and any Group Member will be entitled to an immediate injunction and restraining order to prevent that breach and/or threatened breach and/or continued breach by the Executive and/or any and all persons and/or entities acting for, with and/or through the Executive, without having to prove damages [c] no bond will be required of the Group, the Company or any other Group Member in connection with an action described in Section 4.09[3][a] and [d] not to defend any action seeking injunctive or other equitable relief on the basis that the Group, the Company or any other Group Member has an adequate remedy at law in money damages or otherwise. The terms of this Section 4.09 will not prevent the Company from pursuing any other available remedies for any breach or threatened breach by the Executive of Section 4.00, including, but not limited to, the recovery of monetary damages from the Executive or specific performance. In addition to any other available remedies, the Group, the Company or any Group Member may require the Executive to account for and pay over to the Company all compensation, profits, accruals, increments or other benefits derived or received by the Executive as a result of any transaction constituting a breach of any portion of Section 4.00. The Company may set off any amounts finally determined by a court of competent jurisdiction to be due under this section against any amount that may be owed to the Executive under this Agreement or under any other compensatory arrangement (other than a tax-qualified retirement plan) between the Executive and the Group, the Company or any other Group Member. The Parties agree that any action for breach of any of the provisions of Section 4.00 and/or injunctive relief will be venued in the Court of Common Pleas, Franklin County, Ohio.

**4.10 Return of Group Property.** Upon termination of employment, the Executive agrees to promptly return to the Company all property belonging to the Group or any Group Member; provided, however, that in the event the Executive's employment is terminated pursuant to Section 5.06 and the Executive is then utilizing an automobile provided by the Company, the Executive shall retain the automobile in accordance with the terms of Section 5.06[5].

**4.11 Effect of Termination of Agreement.** The provisions of Section 4.00 will survive any termination of this Agreement and the existence of any claim or cause of action by the Executive against the Company or any Group Member, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Group, the Company or any other Group Member of the covenants and agreements of this Section 4.00; provided, however, that this Section 4.11 will not, in and of itself, preclude the Executive from defending against the enforceability of the covenants and agreements of Section 4.00.

## 5.00 Termination and Related Benefits

This Agreement will terminate upon the occurrence of any of the events described in this section, although all of the obligations, restrictions and duties described in Sections 4.02 through 4.08 will continue after the Agreement terminates and will apply and continue to apply to the Executive and the Executive's estate, heirs and assigns for the period described in Sections 4.02 through 4.08.

**5.01 Rules of General Application.** The following rules apply generally to the implementation of Section 5.00:

**[1] Definition of Termination.** For purposes of this Agreement, any reference to a "termination" of employment or any form thereof shall mean a "separation from service" as defined in Treasury Regulation §1.409A-1(h) by the Executive with BLI, Big Lots and all persons with whom BLI would be considered a single employer under Sections 414(b) and (c) of the Internal Revenue Code of 1986, as amended (the "Code").

**[2] Application of Pro Rata.** Any pro rata amount to be paid under Section 5.00 **[a]** will be calculated as provided in the program through which the payment is due or **[b]** if the payment obligation arises solely under this Agreement, will be based on the number of days between the first day of the fiscal year during which the Executive terminates employment and the date that the Executive terminates employment divided by the number of days in the fiscal year during which the Executive terminates employment.

**[3] Payment of Bonus (or pro rata share of any Bonus).** Any Bonus (or pro rata portion thereof) payable pursuant to this Section 5.00 will be paid in accordance with the terms of the applicable bonus plan, but in no event later than the fifteenth day of the third month following the later of: **[a]** the end of the calendar year during which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable; or **[b]** the end of the Company's fiscal year in which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable.

**5.02 Termination Due to Executive's Death.** This Agreement will terminate automatically on the date the Executive dies. If all requirements of this Agreement are met (including those described in Section 7.00), as of the Executive's date of death, and subject to Section 5.04[5], the Company will make the following payments to the beneficiary the Executive designates on a form acceptable to the Company. If the Executive has not made an effective beneficiary designation (or has revoked all beneficiary designations), these payments will be made to the Executive's surviving spouse or, if the Executive dies without a surviving spouse, to the Executive's estate.

**[1] Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his death occurs had his death not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.03 Termination Due to Executive's Disability.** If the Executive becomes Disabled (as defined in Section 5.03[4]), this Agreement shall terminate automatically. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[4] **Definition of Disability.** For purposes of this Agreement, "Disability" (and any of its forms) means that, for more than six consecutive months, the Executive is unable, with reasonable accommodation, to perform the duties described in Section 4.01 on a full-time basis due to a physical or mental disability or infirmity.

**5.04 Termination for Cause.** The Company may terminate the Executive's employment for Cause (as defined in Section 5.04[3]). A termination for Cause shall only be effective after [a] the Company has delivered a written notice to the Executive stating that in the Company's opinion, the Executive may be terminated for Cause, specifying the details and [b] if the failure or action is one that can be cured, the Executive does not cure the issue giving rise to the Cause determination within 30 days after receiving notice. If the Executive is terminated for Cause and if all requirements of this Agreement are met (including those imposed under Section 7.00), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[3] **Definition of Cause.** For purposes of this Agreement, Cause means the Executive's [a] failure to comply with Company's policies and procedures which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [b] willful or illegal misconduct or grossly negligent conduct that is materially injurious to the Group, the Company or any other Group Member, monetarily or otherwise; [c] violation of laws or regulations governing the Group, the Company or any other Group Member (including the Sarbanes-Oxley Act of 2002) or violation of the Company's code of ethics; [d] breach of any fiduciary duty owed to the Group, the Company or any other Group Member; [e] misrepresentation or dishonesty which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [f] breach of any provision of Section 4.00 of this Agreement; [g] involvement in any act of moral turpitude that has a materially injurious effect on the Group, the Company or any other Group Member or their reputation; or [h] breach of the terms of any non-solicitation or confidentiality clauses contained in an employment agreement(s) with a former employer.

[4] [Reserved]

[5] **Subsequent Information.** The terms of Section 5.04 also will apply if, within 6 consecutive calendar months beginning after the Executive terminates under any other provision of Section 5.00, the Company learns of an event that, had it been known before the Executive terminated employment, would have justified a termination for Cause. In this case, the Company will be entitled to recover any amounts that the Executive or any beneficiary received under any other provision of Section 5.00, reduced by the amount the Executive is entitled to receive under this Section 5.04 and any other legally protected benefits paid or made available under this Agreement that originally was applied when the Executive terminated.

**5.05 Voluntary Termination by Executive.** The Executive may voluntarily terminate employment with the Company at any time. In this case, and if all other requirements of this Agreement are met, and subject to Section 5.04(5), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.06 Involuntary Termination Without Cause.** The Company may terminate the Executive's employment at any time without Cause by delivering to the Executive a written notice specifying the same. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04(5), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Income Continuation.** The Executive will be entitled to continue to receive his Base Salary until the last day of the twelfth complete calendar month beginning after the termination date. Such amounts shall be payable in accordance with the regularly scheduled payroll for similarly situated employees. These payments shall be treated as "separation pay" (within the meaning of Section 409A of the Code) to the maximum extent permitted by Treasury Regulation §1.409A-1(b)(9). Any payments in excess of the maximum amount that can be treated as separation pay pursuant to Treasury Regulation §1.409A-1(b)(9) shall be subject to the provisions of Section 5.08.

[4] **Health Care.** The Executive will be entitled to continue to receive the welfare benefits described in Section 3.03 until the last day of the twelfth complete calendar month beginning after the termination date. Thereafter, the Company will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium for this coverage, if any, until the earlier of [a] the last day of the twenty-fourth complete calendar month beginning after the termination date or [b] the date the Executive becomes eligible for the same or similar coverage under another benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.06[4], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.06[4] shall be subject to the following: [c] the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; [d] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [e] the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

[5] **Transportation.** The Executive will be entitled to continue to receive the automobile benefits described in Section 3.06 until the last day of the twelfth complete calendar month beginning after the termination date; provided, however, that: [a] the benefits provided or amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement or benefits to be provided in any other taxable year of the Executive; [b] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [c] the right to such benefit or reimbursement may not be subject to liquidation or exchange for another benefit.

[6] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.07 Termination in Connection With Change of Control.** If the Executive is Terminated in Connection With a Change of Control (as defined in Section 5.07[5]) at any time during the Protection Period (as defined in Section 5.07[4]) and if all other conditions of this Agreement have been met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Change Entity (as defined in Section 5.07[2]) will pay or make available the Change Benefits (as defined in Section 5.07[1]) in lieu of any other amounts of benefits that might otherwise be due under this Agreement on account of that termination.

[1] **Change Benefits.** For purposes of this Agreement, “Change Benefits” means the aggregate of the following, adjusted if appropriate under Sections 5.07[6] and [7]:

[a] **Base Salary.** The sum of [i] the Base Salary earned to the date of termination plus [ii] 200 percent of the Executive’s Base Salary at the highest rate in effect at any time during the Protection Period. This amount will be paid in a lump sum cash payment on the Change Entity’s first regular payroll date for senior executive officers of the Company following the effective date of the Executive’s Termination in Connection With a Change of Control.

[b] **Bonus.** Two hundred percent of the Executive’s Stretch Bonus in effect under the Bonus Program for the year in which the Executive’s employment is Terminated in Connection With a Change of Control or, if higher, the Stretch Bonus in effect under the Bonus Program (or comparable program) at any time during the Protection Period. This amount will be paid in a single lump sum on the Change Entity’s next regularly scheduled payroll date for senior executive officers of the Company following the date of the Executive’s Termination in Connection With a Change of Control.

[c] **Health Care.** The Change Entity will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium at the lowest rate in effect at any time during the Protection Period for this coverage, until the earlier of [i] the last day of the 24th complete calendar month beginning after the date the Executive is Terminated in Connection With a Change of Control or [ii] the date the Executive becomes eligible for comparable benefits at comparable costs to the Executive under another employer sponsored benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.07[1][c], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.07[1][c] shall be subject to the following: [A] the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; [B] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [C] the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

**[d] Other.** Any rights (including those arising on account of the Change of Control) accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Change Entity will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**[2] Change Entity.** For purposes of this Agreement, “Change Entity” means the Company, BLI and any other entity that is a party to the Change of Control.

**[3] Definition of Change of Control.** For purposes of this Agreement, “Change of Control” means the first to occur of any of the following events:

**[a]** The acquisition by any person (as defined under Section 409A of the Code), or more than one person acting as a group (as defined under Section 409A of the Code), of the stock of BLI that, together with the stock of BLI held by such person or group, constitutes more than fifty (50) percent of the total fair market value or total voting power of all of the stock of BLI;

**[b]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of the stock of BLI possessing thirty (30) percent or more of the total voting power of all of the stock of BLI;

**[c]** A majority of the members of the Board of Directors of BLI is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of BLI prior to the date of the appointment or election; or

**[d]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from BLI that have a total gross fair market value equal to or more than forty (40) percent of the total gross fair market value of all of the assets of BLI immediately prior to such acquisition or acquisitions.

This definition of Change of Control under this Section 5.07[3] shall be interpreted in a manner that is consistent with the definition of “change in control event” under Section 409A of the Code and the Treasury Regulations promulgated thereunder. The effective date of any such Change of Control will be the date upon which the last event occurs or last action is taken such that the definition of Change of Control (as set forth above) has been satisfied. For purposes of this Agreement, the term “affiliate” means any person or entity that, along with BLI, constitutes a single employer under Sections 414(b) and 414(c) of the Code. Determination of affiliate will be tested as of the date immediately prior to any event constituting a Change of Control. Notwithstanding the other provisions of this Section 5.07, the term “Change of Control” will not mean any transaction, merger, consolidation or reorganization in which BLI exchanges or offers to exchange newly issued or treasury shares in an amount less than 50 percent of the then-outstanding equity securities of BLI entitled to vote for the election of directors, for fifty-one (51) percent or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than BLI or an affiliate thereof (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.

**[4] Protection Period.** For purposes of this Agreement, “Protection Period” means the period beginning on the first day of the third full consecutive calendar month beginning before the date of the Change of Control and ending on the last day of the twenty-fourth consecutive full calendar month beginning after the date of the Change of Control.

**[5] Termination in Connection With a Change of Control.** For purposes of this Agreement, “Termination in Connection With a Change of Control” means, at any time during the Protection Period:

**[a]** The Change Entity involuntarily terminates the Executive without Cause (as defined in Section 5.06).

**[b]** The Executive terminates following the occurrence of any of the following conditions;

**[i]** The Change Entity breaches any provision of this Agreement;

**[ii]** The Change Entity unsuccessfully attempts to terminate the Executive for Cause (as defined in Section 5.04);

**[iii]** The Change Entity attempts to terminate the Executive for any reason without following the procedures described in this Agreement (including an acceleration of the periods described in Section 5.03[4] and 5.04[b]);

**[iv]** The Change Entity revokes or attempts to revoke or accelerate the duration of any leave of absence protected by law or authorized by the Company before the Protection Period or by the Change Entity at any time during the Protection Period;

**[v]** The Change Entity refuses to allow the Executive to return to active employment at the end of any leave of absence protected by law or authorized by the Company before the Protection Period or the Change Entity at any time during the Protection Period; or



[vi] The Change Entity causes the Executive to resign because of a material adverse change or material diminution in the Executive's reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by the Executive in his good faith discretion); provided, however, that the Executive shall notify the Company in writing at least forty- five (45) days in advance of any election by the Executive to terminate his employment hereunder, specifying the nature of the alleged adverse change or diminution, and the Company shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before the Executive shall be entitled to exercise any such rights and remedies.

For purposes of this Section 5.07[5], the termination of employment is deemed to occur on the Executive's actual date of termination.

**[6] Treatment of Taxes.** If payments under this Agreement, when combined with payments and benefits under all other plans and programs maintained by the Company or the Change Entity, constitute "excess" parachute payments as defined in Section 280G(b) of the Code, the Change Entity, subject to Section 5.07[7], will either:

**[a]** Reimburse the Executive for the amount of any excise tax due under Code §4999, if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][b]; or

**[b]** Reduce the Executive's benefits under this Agreement so that the Executive's total "parachute payment" as defined in Code §280G(b)(2)(A) under this Agreement and all other agreements will be \$1.00 less than the amount that would generate "excess" parachute payment penalties if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][a].

This comparison will be made as of the date of the corporate event generating the "parachute payments" although any reimbursement provided under Section 5.07[6][a] will be made when the parachute payment is actually made or distributed.

Within 10 business days of the date the Change Entity determines that Section 5.07[6][b] should be applied, the Change Entity will apprise the Executive of the amount of the reduction ("Notice of Reduction"). Within 10 business days of receiving that information, the Executive may specify how (and against which benefit or payment source) the reduction is to be applied ("Notice of Allocation"). The Change Entity will be required to implement these directions within 10 business days of receiving the Notice of Allocation. If the Change Entity has not received a Notice of Allocation from the Executive within 10 business days of the date of the Notice of Reduction or if the allocation provided in the Notice of Allocation is not sufficient to fully implement Section 5.07[6][b], the Change Entity will apply Section 5.07[6][b] proportionately based on the amounts otherwise payable under this Agreement or, if a Notice of Allocation has been returned that does not sufficiently implement Section 5.07[6][b], on the basis of the reductions specified in the Notice of Allocation. Any taxes reimbursed pursuant to Section 5.07[6][a] shall be paid by the end of Executive's taxable year next following the taxable year in which Executive remits payment of the tax or assessment being reimbursed. Any reduction pursuant to Section 5.07[6][b] shall be made in accordance with Section 409A of the Code and the Treasury Regulations promulgated thereunder.

**[7] Effect of Subsequent Tax Claim.** The Change Entity will establish procedures that will apply to any inquiries regarding the treatment of tax payments under this Section 5.07. Within 30 days following the termination of the Executive's employment under Section 5.07, the Change Entity will provide the Executive with a copy of such procedures.

**5.08 Six-Month Distribution Delay.** Notwithstanding the foregoing, if Executive is a "specified employee," within the meaning of Treasury Regulation §1.409A-1(i) and as determined under BLI's policy for determining specified employees, on the Executive's date of termination, and the Executive is entitled to a payment and/or a benefit under this Agreement that is required to be delayed pursuant to Section 409A(a)(2) of the Code, then such payment or benefit shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following the Executive's date of termination (or, if earlier, the Executive's death). The first payment that can be made following such postponement period shall include the cumulative amount of any payments or benefits that could not be paid or provided during such postponement period due to the application of Section 409A(a)(2)(B)(i) of the Code.

## **6.00 Notice**

**6.01 How Given.** Any notice permitted or required to be given under this Agreement must be given in writing and delivered in person or by registered, U.S. mail, return receipt requested, postage prepaid; or through Federal Express, UPS, DHL or any other reputable professional delivery service that maintains a confirmation of delivery system. Any delivery must be **[1]** in the case of notices to the Company or the Change Entity, addressed to the Company's Chief Executive Office and General Counsel at the Company's then-current corporate offices and **[2]** in the case of notices to the Executive, addressed to the Executive's last mailing address contained in the Executive's personnel file.

**6.02 Effective Date.** Any notice permitted or required to be given under this Agreement will be deemed to have been given and will be effective on the date it is delivered.

## **7.00 Execution of Release**

The Executive agrees that as a condition of receiving any post-termination benefit as set forth in Section 5.00 except for earned but unpaid Base Salary to the date of termination and any legally protected rights the Executive has under any employee benefit plan maintained by the Company, the Executive or, in the case of any amounts due after the Executive's death, the person to whom those amounts are payable (collectively, the "Payee") must execute a comprehensive release in the form determined from time to time by the Company in its sole discretion. Generally, the release will require the Payee and the Payee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns to release and forever discharge the Group, the Company and all other Group Members, past, present and future, and their executives, officers, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action that grow out of or are in any way related to the Executive's recruitment and employment with the Company that arose on or before the date of the release, other than any claim that the Company has breached this Agreement. This release will include, but not be limited to, any claim that the Company violated the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act; any state, federal law or local ordinance prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state; or any federal, state or local law (each as in effect on the Effective Date and as subsequently amended) relating to any matter within the purview of this Agreement. Upon the Executive's termination of employment with all Group Members, the Payee will be presented with a release and if the Payee fails to execute the release, the Payee agrees to forego any payment described in the first sentence of this section. The Executive acknowledges that the Executive is an experienced senior executive knowledgeable about the claims that might arise in the course of employment with and termination from the Company and any other Group Member and knowingly agrees that the payments upon termination provided for in this Agreement are satisfactory consideration for the release of all possible claims described in the release. Notwithstanding anything to the contrary, the failure of the Executive to execute the release described in this Section 7.00 shall not otherwise cause any payment made pursuant to this Agreement to be delayed beyond the date on which such payment was originally scheduled to occur.

## **8.00 Insurance and Indemnification**

The Company will indemnify Executive (including his heirs, executors and administrators) to the fullest extent permitted under the Company's Regulations and Ohio law. This obligation to provide insurance for the Executive will survive termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions occurring during the Executive's employment with or termination from the Group, the Company or with any other Group Member. Concurrently with the execution of this Agreement, BLI will enter into an indemnification agreement with the Executive.

## **9.00 Arbitration**

**9.01 Acknowledgement of Arbitration.** Unless stated otherwise in this Agreement or any other compensatory or any employee benefit plan, fund or program maintained by the Company, the Parties agree that arbitration is the sole and exclusive remedy for each of them to resolve (except as specifically provided in Section 4.09) and redress any dispute, claim or controversy involving the interpretation or application of this Agreement, the terms, conditions or termination of this Agreement and the terms, conditions or termination of the Executive's employment with the Company, including any claims for any tort, breach of contract, violation of public policy or discrimination, whether such claim arises under federal, state law or local law.

**9.02 Scope of Arbitration.** The Executive expressly understands and agrees that claims subject to arbitration under this section include asserted violations of the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964 (as amended); the Family and Medical Leave Act; any federal, state or local law or ordinances prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state, or any federal, state or local law (each as in effect on the Effective Date or as subsequently amended) relating to any matter within the purview of this Agreement.

**9.03 Effect of Arbitration.** The Parties intend that any arbitration award relating to any matter described in Section 9.01 will be final and binding on them and that a judgment on the award may be entered in any court of competent jurisdiction and that enforcement may be had according to the terms of that award. This Section 9.03 will survive the termination of this Agreement.

**9.04 Location and Conduct of Arbitration.** Arbitration will be held in Columbus, Ohio, and will be conducted by a retired federal judge or other qualified arbitrator. The arbitrator will be mutually agreed upon by the Parties and the arbitration will be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The Parties will have the right to conduct discovery pursuant to the Federal Rules of Civil Procedure; provided, however, that the arbitrator will have the authority to establish an expedited discovery schedule and cutoff and to resolve any discovery disputes. The arbitrator will have no jurisdiction or authority to change any provision of this Agreement by alterations of, additions to or subtractions from the terms of this Agreement. The arbitrator's sole authority will be to interpret or apply any provision(s) of this Agreement or any public law alleged to have been violated. The arbitrator has the authority to award damages and other relief expressly provided by law.

**9.05 Time for Initiating Arbitration.** Any claim or controversy relating to any matter described in Section 9.01 not sought to be submitted to arbitration, in writing, within 60 days of the date the Party asserting the claim knew, or through reasonable diligence should have known, of the facts giving rise to that Party's claim, will be deemed waived and the Party asserting the claim will have no further right to seek arbitration or recovery with respect to that claim or controversy. Both Parties agree to strictly comply with the time limitation specified in this section. For purposes of this section, a claim or controversy is sought to be submitted to arbitration on the date the complaining Party gives written notice to the other that **[1]** an issue has arisen or is likely to arise that, unless resolved otherwise, may be resolved through arbitration under this Section 9.00 and **[2]** unless the issue is resolved otherwise, the complaining Party intends to submit the matter to arbitration under the terms of Section 9.00.

**9.06 Costs of Arbitration and Attorney's Fees.** The Company will bear the arbitrator's fee and other costs associated with any arbitration, unless the arbitrator, acting under Federal Rule of Civil Procedure 54(d)(1), elects to award these fees to the Company. Attorney's fees **[1]** may be awarded to the prevailing party if expressly authorized by statute, or otherwise each party will bear its own attorney's fees and costs but **[2]** Executive's attorney's fees and other associated costs and expenses will be borne by the Change Entity with respect to any claim arising under Section 5.07 but only if the arbitrator concludes the claim legitimately relates to matters within the contemplation of Section 5.07 (otherwise, the rule described in Section 9.06[1] will apply). Notwithstanding the foregoing: **[a]** any costs being reimbursed must relate to a claim brought during the lifetime of the Executive with respect to an alleged breach of any obligation of the Company under this Agreement; **[b]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement in any other taxable year; **[c]** any reimbursement must be made on or before the last day of the Executive's taxable year following the taxable year in which the cost was incurred; and **[d]** the right to reimbursement for such costs is not subject to liquidation or exchange for another benefit.

**9.07 Arbitration Exclusive Remedy.** The Parties acknowledge that, because arbitration is the exclusive remedy for resolving the issues described in Section 9.01, neither Party may resort to any federal, state or local court or administrative agency concerning those issues and that the decision of the arbitrator will be a complete defense to any suit, action or proceeding instituted in any federal, state or local court before any administrative agency with respect to any arbitrable claim or controversy.

**9.08 Waiver of Jury.** The Executive (personally and in behalf of all the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns) and the Company (on its own behalf's and in behalf of its successors, including any Change Entity) each waive the right to have a claim or dispute with one another decided in a judicial forum or by a jury, except as otherwise provided in this Agreement.

## **10.00 General Provisions**

**10.01 Representation of Executive.** The Executive represents and warrants that the Executive is an experienced senior executive knowledgeable about the issues (and their effect) within the purview of this Agreement and is not under any contractual or legal restraint that prevents or prohibits the Executive from entering into this Agreement or performing the duties and obligations described in this Agreement.

**10.02 Modification or Waiver; Entire Agreement.** No provision of this Agreement may be modified or waived except in a document signed by the Executive and the Company's Chief Executive Officer or other person designated by the Company's Board of Directors. This Agreement, and any attachments referenced in the Agreement, constitute the entire agreement between the Parties regarding the employment relationship described in this Agreement, and, except as otherwise specifically provided in this Agreement, any other agreements are terminated and of no further force or legal effect. No agreements or representations, oral or otherwise, with respect to the Executive's employment relationship with the Company have been made or relied upon by either Party which are not set forth expressly in this Agreement.

**10.03 Governing Law; Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application of any provision of this Agreement to any person or circumstance, is, for any reason and to any extent, held invalid or unenforceable, such invalidity and unenforceability will not affect the remaining provisions of this Agreement of its application to other persons or circumstances, all of which will be enforced to the greatest extent permitted by law and the Parties agree that any invalid or unenforceable provision may and will be reformed and applied **[1]** as provided in Section 4.05, with respect to the matters specifically contemplated in Section 4.00 and **[2]** with respect to other matters, **[a]** to the extent needed to avoid that invalidity or unenforceability and **[b]** in a manner that is as similar as possible to the Parties' intent (as described in this Agreement). The validity, construction and interpretation of this Agreement and the rights and duties of the Parties will be governed by the laws of the State of Ohio, without reference to the Ohio choice of law rules.

**10.04 No Waiver.** Except as otherwise provided in Section 9.05, failure to insist upon strict compliance with any term of this Agreement will not be considered a waiver of any such term or any other term of this Agreement.

**10.05 Withholding.** All payments made to or on behalf of the Executive under this Agreement will be reduced by any amount:

[1] That the Company is required by law to withhold in advance payment of the Executive's federal, state and local income, wage and employment tax liability; and

[2] To the extent allowed by law, that the Executive owes (or, after employment is deemed to owe) to the Group, the Company or any other Group Member.

Application of Section 10.05[2] will not extinguish the Company's right to seek additional amounts from the Executive (or to pursue other appropriate remedies) to the extent that the amount recovered by application of Section 10.05[2] does not fully discharge the amount the Executive owes to the Group, the Company or other Group Member and does not preclude the Group, the Company or any other Group Member from proceeding directly against the Executive without first exhausting its right of recovery under Section 10.05[2].

**10.06 Survival.** The Parties agree that the covenants and promises set forth in this Agreement will survive the termination of this Agreement and continue in full force and effect after this Agreement terminates to the extent that their performance is required to occur after this Agreement terminates.

**10.07 Miscellaneous.**

[1] The Executive may not assign any right or interest to, or in, any payments payable under this Agreement; provided, however, that this prohibition does not preclude the Executive from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and does not preclude the legal representative of the Executive's estate from assigning any right under this Agreement to the person or persons entitled to it.

[2] This Agreement will be binding upon and will inure to the benefit of the Executive, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns and the Company and its successors and, to the extent applicable, the Group and all Group Members.

[3] The headings in this Agreement are inserted for convenience of reference only and will not be a part of or control or affect the meaning of any provision of the Agreement.

**10.08 Successors to Company.** This Agreement may and will be assigned or transferred to, and will be binding upon and will inure to the benefit of, any successor of the Company, including any Change Entity, and any successor will be substituted for the Company under the terms of this Agreement. As used in this Agreement, the term “successor” means any person, firm, corporation or business entity which at any time, whether by merger, purchase or otherwise, acquires all or essentially all of the assets of the business of the Company. Notwithstanding any assignment, the Company will remain, with any successor, jointly and severally liable for all its obligations under this Agreement.

**10.09 Section 409A of the Code.** This Agreement is intended to comply with Section 409A of the Code and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to the Executive and neither the Company nor the Boards of Directors of BLI or Big Lots shall be liable to the Executive for failure to comply with the requirements of Section 409A of the Code. Furthermore, the Company may accelerate the time or schedule of a payment to the Executive if at any time this Agreement fails to meet the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder.

Notwithstanding the foregoing, if the Executive terminates for any reason, dies or becomes Disabled on or prior to December 31, 2008 and is entitled to payment or benefit as a result of such termination, death or Disability, such payment or benefit shall be paid or provided [1] pursuant to the terms of this Agreement in effect immediately prior to the Effective Date, but [2] modified to the extent necessary for good faith compliance with the requirements of Section 409A of the Code. Nothing in this Agreement shall be construed as causing a payment or benefit to be paid or distributed in calendar year 2008 which is not otherwise payable or distributable in calendar year 2008.

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement, which includes an arbitration provision, and consists of 23 pages.

BIG LOTS, INC.

By: /s/ Dennis B. Tishkoff

Signed: December 5, 2008

BIG LOTS STORES, INC.

By: /s/ Brad A. Waite

Signed: December 5, 2008

JOE R. COOPER

/s/ Joe R. Cooper

Signed: December 5, 2008



**AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT  
BY AND AMONG  
BIG LOTS, INC.,  
BIG LOTS STORES, INC.  
AND  
BRAD A. WAITE**

This amended and restated employment agreement (“Agreement”) by and among Big Lots, Inc. (“BLI”), Big Lots Stores, Inc. (“Big Lots”) and their affiliates, predecessor, successor, subsidiaries and other related companies (collectively the “Company”) and Brad A. Waite (“Executive”), collectively, the “Parties,” is effective as of December 5, 2008 (“Effective Date”) and supersedes and replaces any other oral or written agreement or understanding concerning the terms of the Executive’s employment with the Company but does not supersede or replace any agreement or arrangement between the Executive or any Group Member (as defined in Section 4.02[1]) relating to the payment of compensation or benefits earned (or deemed earned) on account of services performed for a Group Member before the Effective Date.

**1.00      Duration**

This Agreement will remain in effect from the Effective Date until it terminates as provided in Section 5.00 (“Term”). Any notice of termination required to be given under this Agreement must be given as provided in Section 6.00 and will be effective on the date prescribed in Section 5.00.

**2.00      Executive’s Employment Function**

**2.01      Position.** The Executive agrees to serve as the Company’s Executive Vice President (or other equivalent title conferred by the Company in its sole discretion) with the authority and duties customarily associated with this position. The Executive agrees at all times to observe and to be bound by all Company rules, policies, practices, procedures and resolutions which apply to Company employees with a similar title and position and which do not conflict with the specific terms of this Agreement. In performance of these duties, Executive shall be subject to the direction of and report to an individual holding one or more of the following titles: Chief Executive Officer, President, and/or Chief Administrative Officer of Company.

**2.02      Place of Performance.** Unless the Company requires the Executive to perform duties at another location, the Executive’s duties will be performed principally in Columbus, Ohio, except for travel on the business of any Group Member.

**3.00      Compensation**

The Company will pay the Executive the amounts described in Sections 3.00 and 5.00 as compensation for the services described in this Agreement and in exchange for the duties and responsibilities described in Section 4.00.

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**3.01 Base Salary.** The Company will pay to the Executive an annualized base salary of \$550,000, which, at the discretion of the Company, may be adjusted from time to time in a manner that is consistent with the Company's compensation policies in effect for Company employees with a similar title and position ("Base Amount") but may not be adjusted to any amount lower than \$550,000 without the Executive's consent. The Executive's Base Salary will be paid in installments that correspond with the Company's normal payroll practices.

**3.02 Bonus.** The Executive will be eligible to receive bonus compensation ("Bonus") under and subject to the terms of the Company's Big Lots 2006 Bonus Plan, as amended (or any such successor plan, hereinafter, "Bonus Program") for the fiscal year beginning January 30, 2008 and for each subsequent fiscal year during the Term of this Agreement. The Executive's Bonus will be an amount equal to the Base Salary at the end of each fiscal year multiplied by the Bonus Payout percentage as determined under the Bonus Program. The Bonus Program is based upon the achievement of the Company's annual financial plan. The Executive's Bonus Payout percentage will consist of a Target Bonus of 75 percent of Base Salary and a Stretch Bonus of 150 percent of Base Salary. Both "Target Bonus" and a "Stretch Bonus" are defined in the Bonus Program and are subject to adjustment as provided in the Bonus Program; provided, however, the Executive's Target Bonus will never be set at less than 75 percent of Base Salary and the Executive's Stretch Bonus will never be set at less than 150 percent of Base Salary.

[1] **Payment.** The payment of any earned Bonuses is subject to the terms of the Bonus Program and any agreements issued thereunder.

[2] **Fiscal Year.** The term "fiscal year" means the period beginning on the first Sunday after the Saturday closest to January 31<sup>st</sup> of each calendar year and ending on the Saturday closest to January 31<sup>st</sup> of the following calendar year.

**3.03 Benefit and Other Compensatory Plans.** Subject to their terms (which the Company may amend at any time), the Executive may participate in any Company-sponsored employee pension or welfare benefit plan at a level commensurate with the Executive's title and position. The Executive also may participate in any other deferred incentive or similar compensation program maintained by the Company and generally made available to other senior executive officers of the Company.

**3.04 Vacation and Sick Leave.** The Executive will be entitled to the same periods of vacation and sick leave each year that the Company provides under its vacation and sick leave policy to other senior executive officers of the Company.

**3.05 Expenses.** Consistent with the terms of its business expense reimbursement policies and procedures, the Company will reimburse Executive for all normal and reasonable expenses incurred while performing services under this Agreement, including reasonable travel expenses. Reimbursement for these expenses will be made as soon as administratively feasible after the date the Executive submits appropriate evidence of the expenditure and otherwise complies with the Company's business expense reimbursement policies and procedures.

**3.06 Automobile Allowance.** The Company will provide the Executive with an automobile or a monthly automobile allowance in accordance with applicable Company policies for employees with a similar title and position; provided, however, that the automobile allowance may not be adjusted to a value lower than the value the Executive is entitled to receive as of the Effective Date.

**3.07 Termination Benefits.** The Company will provide the Executive with only those termination benefits described in Section 5.00.

#### **4.00 Executive's Obligations**

The amounts described in Sections 3.00 and 5.00 of this Agreement are provided by the Company in exchange for (and have a value to the Company equivalent to) the Executive's performance of the obligations described in this Agreement, including performance of the duties and the covenants made and entered into by and between the Executive and the Company in this Agreement.

**4.01 Scope of Duties.** The Executive will:

- [1] Devote all available business time, best efforts and undivided attention to the Company's business and affairs; and
- [2] Not engage in any other business activity, whether for gain, profit or other pecuniary benefit except for services benefiting the Group or any Group Member.

However, the restrictions described in Sections 4.01[1] and [2] will not preclude the Executive from:

- [3] Making or holding passive investments; or
- [4] Serving on corporate, civic, religious, educational and/or charitable boards or committees but only if this activity **[a]** does not interfere with the Executive's performance of the duties assumed under this Agreement and **[b]** is approved in writing by the Company.

**4.02 Confidential Information.**

[1] **Obligation to Protect Confidential Information.** The Executive acknowledges that the Company, its parent, affiliates, predecessor, successor, subsidiaries and other related companies, including entities that become related entities after the Effective Date (collectively, "Group" and separately, "Group Member") have a legitimate and continuing proprietary interest in the protection of Confidential Information (as defined in Section 4.02[2]) and Intellectual Property (as defined in Section 4.02[3]) and have invested, and will continue to invest, substantial sums of money to develop, maintain and protect Confidential Information and Intellectual Property. The Executive agrees **[a]** during and after employment with the Company and as to all Group Members **[i]** that any Confidential Information and Intellectual Property will be held in confidence and treated as proprietary to the Group, **[ii]** not to use or disclose any Confidential Information or Intellectual Property except to promote and advance the Group's business interests and **[b]** immediately upon termination for any reason from employment with the Company, to return to the Company any Confidential Information and Intellectual Property.

[2] **Definition of Confidential Information.** For purposes of this Agreement, Confidential Information includes any confidential data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, supplier information, tax records, personnel histories and records, information regarding sales, information regarding properties and any other information of a similar confidential nature regarding the business, operations, properties or personnel of the Group, the Company or any other Group Member which are disclosed to or learned by the Executive while employed by a Group Member, but will not include [a] the Executive's own personal personnel records or [b] any information that [i] the Executive possessed before the date of initial employment (including periods before the Effective Date) with the Group that was a matter of public knowledge, [ii] became or becomes a matter of public knowledge through authorized sources independent of the Executive, [iii] has been or is disclosed by any Group Member without restriction on its use, [iv] has been or is required to be disclosed by law or governmental order or regulation or [v] is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only if its disclosure is a necessary part of any proceedings described in Section 9.00. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's General Counsel or Chief Executive Officer confirms to the Executive that the information is public knowledge or an adjudicator finally decides that the information is public knowledge.

[3] **Intellectual Property.** The Executive expressly acknowledges that all right, title and interest to all inventions, designs, discoveries, works of authorship, and ideas conceived, produced, created, discovered, authored or reduced to practice during the Executive's performance of services under this Agreement, whether individually or jointly with any Group Member and whether or not it is deemed to be "work made for hire" (the "Intellectual Property") will be owned solely by the Group, and will be subject to the restrictions set forth in Section 4.02[1]. All Intellectual Property that constitutes copyrightable subject matter under the copyright laws of the United States will, from its conception, be deemed to be a "work made for hire" under the United States copyright laws and all right, title and interest in and to such copyrightable works will vest in the Company or the Group. All right, title and interest in and to all Intellectual Property developed or produced under this Agreement by the Executive, whether constituting patentable subject matter or copyrightable subject matter (to the extent deemed not to be a "work made for hire") or otherwise, will be assigned and is hereby irrevocably assigned to the Company or the Group by the Executive. Without any additional consideration, the Executive will execute all documents and take all other actions the Company reasonably believes are needed to convey the Executive's complete ownership interest in any Intellectual Property to the Company or the Group so that the Company or the Group will own and may protect the Intellectual Property and obtain patent, copyright and trademark registrations for it. The Executive agrees that any Group Member may alter or modify the Intellectual Property at the Group Member's sole discretion, and the Executive waives all right to claim or disclaim ownership.

**4.03 Solicitation of Employees.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members **[1]** not, directly or indirectly, to solicit (or facilitate the solicitation of) any employee of any Group Member to leave employment with the Group or any Group Member, **[2]** not, directly or indirectly, to employ, seek to employ or facilitate the employment of any employee of any Group Member by an entity that is not a Group Member and **[3]** not to cause or induce any entity described in Section 4.05[1] to solicit or employ (or to facilitate the solicitation or employment of ) any employee of any Group Member.

**4.04 Solicitation of Third Parties.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members not, directly or indirectly, to recruit, solicit or otherwise induce or influence any customer, supplier, sales representative, lender, lessor, lessee or any other person having a business relationship with the Group, the Company or any other Group Member to discontinue or reduce the extent of that relationship except in the course of discharging the duties described in this Agreement and with the good faith objective of advancing the Company's or the Group's (or any other Group Member's) business interests.

**4.05 Non-Competition.** The Executive acknowledges the nature of the Group's Business (as defined in Section 4.05[3][a] and that the Group is one of the limited number of entities which has developed this type of business; that the Group's Business is national in scope and the Executive's work for the Group, the Company and other Group Members will give Executive access to the confidential affairs of the Company and other Group Members, to Confidential Information and to Intellectual Property as defined in Sections 4.02[2] and 4.02[3] respectively; and that the agreements and covenants of the Executive contained in Section 4.00 are essential to preserving the Group's Business and good will. Accordingly, the Executive covenants and agrees that:

**[1]** During the Restriction Period (as defined in Section 4.05[3][c]) and within the Restricted Area (as defined in Section 4.05[3][b]) the Executive will not **[a]** engage in the Group's Business for the Executive's own account, **[b]** render any services to any person engaged in the Group's Business (other than to an entity that is a Group Member when those services are rendered); or **[c]** render any services to, become employed in any manner by, or consult with, Wal-Mart, Kmart, Target, Dollar General, Family Dollar, Dollar Tree, Retail Ventures, Inc., Fred's, 99¢ Stores, Canned Foods, Tuesday Morning, TJX Corporation, or any grocery store chain, regardless of size. Further, the Executive agrees during the Restricted Period to not become employed in any manner by or to act as consultant to any successor, parent or subsidiary of the entities (or types of entities) listed above other than in the course of discharging the duties described in this Agreement.

**[2] Maximum Enforceable Restriction.** If any or all of the covenants set forth in this Section 4.05 are determined by a court of competent jurisdiction to be unenforceable by reason of the temporal restrictions being too great, the geographic areas covered too great, the range of activities too great or for any other reason, the Court is authorized and will interpret them to extend over the maximum period of time, the maximum geographic area and the maximum range of activities or, as to any provision, in such a manner that all provisions may be given maximum restrictive effect in accordance with applicable law.

**[3] Definition Relating to Section 4.05.**

**[a] Group Business.** For purposes of this Agreement, “Group Business” includes the operation of Big Lots retail outlets, the inventories of which are acquired primarily through special purchases such as overstocks, close-outs, liquidations, bankruptcies, wholesale distribution of overstock, distress, liquidation and other volume inventories, the operation of Big Lots furniture stores, and related wholesale operations and other lines of business any Group Member develops during the Term of this Agreement.

**[b] Restricted Area.** For purposes of this Agreement, “Restricted Area” means the 50 mile radius surrounding any location in which the Group’s Business is conducted during the Term of this Agreement.

**[c] Restriction Period.** For purposes of this Agreement, “Restriction Period” means the Term of this Agreement and one year following termination of the Executive’s employment with all Group Members, regardless of the reason for termination; provided, however, that in the event of a Change of Control as defined in Section 5.07[3] of this Agreement, the Restricted Period shall be for a period of six (6) months.

**4.06 Post-Termination Cooperation.** The Executive agrees that during and after employment with the Group and without additional compensation (other than reimbursement for reasonable associated expenses), to cooperate with the Group, the Company and any other Group Member in the following areas:

**[1] Cooperation With the Group, the Company and Other Group Members.** The Executive agrees **[a]** to be reasonably available to answer questions for any Group Member’s officers or directors regarding any matter, project, initiative or effort with which the Executive was involved while employed by any Group Member and **[b]** to cooperate with the Group, the Company and any other Group Member during the course of all proceedings arising out of the Group’s Business about which the Executive has knowledge or information. For purposes of this Agreement, **[c]** “proceedings” includes internal investigations, administrative investigations or proceedings and lawsuits (including pre-trial discovery and trial testimony) and **[d]** “cooperation” includes **[i]** the Executive’s being reasonably available for interviews, meetings, depositions, hearings and/or trials without the need for subpoena or assurances by the Group, the Company or any other Group Member, **[ii]** providing any and all documents in the Executive’s possession that relate to the proceeding and **[iii]** providing assistance in locating any and all relevant notes and/or documents relevant to any proceedings.

**[2] Cooperation With Third Parties.** Unless compelled to do so by lawfully-served subpoena or court order or to the extent it is germane (but only to the extent that it is germane) to enforcement of the Executive’s rights under this Agreement and only as a necessary part of any proceedings under this Agreement, the Executive agrees not to communicate with, or give statements or testimony to, any opposing attorney, opposing attorney’s representative (including a private investigator) or current or former employee relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company and other Group Members. The Executive also agrees to notify the Company’s Chief Executive Officer or General Counsel immediately after being contacted by a third party or receiving a subpoena or court order to appear and testify with respect to any matter affected by this section.

**[3] Cooperation With Media.** The Executive agrees not to communicate with, or give statements to, any member of the media (including print, television, radio or electronic media) relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company or any other Group Member. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by any member of the media with respect to any matter affected by this section.

**4.07 Non-Disparagement.** The Executive and the Company agree (on its behalf and in behalf of the Group and other Group Members) that after the Executive's employment with the Group has ended neither will make any disparaging remarks about the other and the Executive will not make any disparaging remarks about the Company, the Company's Chairman, Chief Executive Officer or any of the Company's executives or directors or any other Group Member or their executives and directors. However, this section will not preclude **[1]** any remarks that may be made by the Executive **[a]** under the terms of Section 4.06[2], **[b]** that are required to discharge the duties described in this Agreement or **[c]** are germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement or **[2]** the Company or any other Group Member from making (or eliciting from any person) disparaging remarks about the Executive **[a]** concerning any conduct that may have led to a termination for Cause, as defined in Section 5.04[3] (including initiating an inquiry or investigation that may result in a termination for Cause) or **[b]** that are germane (but only to the extent that it is germane) to defending against any action begun by the Executive under this Agreement.

**4.08 Notice of Subsequent Employment.** The Executive agrees to notify the Company of any subsequent employment during the Restriction Period and any period during which any payment described in Section 5.00 is due or is being paid.

**4.09 Remedies.** The Executive:

**[1]** Acknowledges that the obligations and restrictions described in Sections 4.02 through 4.08 are reasonable in light of the nature of the Group's Business and the nature of the Executive's relationship with the Group and the Company; that the Group, the Company and all other Group Members have legitimate business reasons for requiring the Executive's agreement to all provisions of Section 4.00; and that the Executive understands these restrictions, has had an opportunity to fully discuss these restrictions with the Company and accepts the restrictions.

[2] Agrees that if any of the obligations to the Company under Sections 4.02 through 4.08 are breached, the periods during which the obligations described in Sections 4.02 through 4.08 apply will be extended for the length of time that the Executive failed to fulfill the obligations under Sections 4.02 through 4.08.

[3] Agrees that [a] any breach of any of the terms of this Section 4.00 would result in irreparable injury and damage to the Group, the Company and all other Group Members for which none would have an adequate remedy at law, [b] in the event of a breach or any threat of breach by the Executive, the Group, the Company and any Group Member will be entitled to an immediate injunction and restraining order to prevent that breach and/or threatened breach and/or continued breach by the Executive and/or any and all persons and/or entities acting for, with and/or through the Executive, without having to prove damages [c] no bond will be required of the Group, the Company or any other Group Member in connection with an action described in Section 4.09[3][a] and [d] not to defend any action seeking injunctive or other equitable relief on the basis that the Group, the Company or any other Group Member has an adequate remedy at law in money damages or otherwise. The terms of this Section 4.09 will not prevent the Company from pursuing any other available remedies for any breach or threatened breach by the Executive of Section 4.00, including, but not limited to, the recovery of monetary damages from the Executive or specific performance. In addition to any other available remedies, the Group, the Company or any Group Member may require the Executive to account for and pay over to the Company all compensation, profits, accruals, increments or other benefits derived or received by the Executive as a result of any transaction constituting a breach of any portion of Section 4.00. The Company may set off any amounts finally determined by a court of competent jurisdiction to be due under this section against any amount that may be owed to the Executive under this Agreement or under any other compensatory arrangement (other than a tax-qualified retirement plan) between the Executive and the Group, the Company or any other Group Member. The Parties agree that any action for breach of any of the provisions of Section 4.00 and/or injunctive relief will be venued in the Court of Common Pleas, Franklin County, Ohio.

**4.10 Return of Group Property.** Upon termination of employment, the Executive agrees to promptly return to the Company all property belonging to the Group or any Group Member; provided, however, that in the event the Executive's employment is terminated pursuant to Section 5.06 and the Executive is then utilizing an automobile provided by the Company, the Executive shall retain the automobile in accordance with the terms of Section 5.06[5].

**4.11 Effect of Termination of Agreement.** The provisions of Section 4.00 will survive any termination of this Agreement and the existence of any claim or cause of action by the Executive against the Company or any Group Member, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Group, the Company or any other Group Member of the covenants and agreements of this Section 4.00; provided, however, that this Section 4.11 will not, in and of itself, preclude the Executive from defending against the enforceability of the covenants and agreements of Section 4.00.



## 5.00 Termination and Related Benefits

This Agreement will terminate upon the occurrence of any of the events described in this section, although all of the obligations, restrictions and duties described in Sections 4.02 through 4.08 will continue after the Agreement terminates and will apply and continue to apply to the Executive and the Executive's estate, heirs and assigns for the period described in Sections 4.02 through 4.08.

**5.01 Rules of General Application.** The following rules apply generally to the implementation of Section 5.00:

**[1] Definition of Termination.** For purposes of this Agreement, any reference to a "termination" of employment or any form thereof shall mean a "separation from service" as defined in Treasury Regulation §1.409A-1(h) by the Executive with BLI, Big Lots and all persons with whom BLI would be considered a single employer under Sections 414(b) and (c) of the Internal Revenue Code of 1986, as amended (the "Code").

**[2] Application of Pro Rata.** Any pro rata amount to be paid under Section 5.00 **[a]** will be calculated as provided in the program through which the payment is due or **[b]** if the payment obligation arises solely under this Agreement, will be based on the number of days between the first day of the fiscal year during which the Executive terminates employment and the date that the Executive terminates employment divided by the number of days in the fiscal year during which the Executive terminates employment.

**[3] Payment of Bonus (or pro rata share of any Bonus).** Any Bonus (or pro rata portion thereof) payable pursuant to this Section 5.00 will be paid in accordance with the terms of the applicable bonus plan, but in no event later than the fifteenth day of the third month following the later of: **[a]** the end of the calendar year during which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable; or **[b]** the end of the Company's fiscal year in which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable.

**5.02 Termination Due to Executive's Death.** This Agreement will terminate automatically on the date the Executive dies. If all requirements of this Agreement are met (including those described in Section 7.00), as of the Executive's date of death, and subject to Section 5.04[5], the Company will make the following payments to the beneficiary the Executive designates on a form acceptable to the Company. If the Executive has not made an effective beneficiary designation (or has revoked all beneficiary designations), these payments will be made to the Executive's surviving spouse or, if the Executive dies without a surviving spouse, to the Executive's estate.

**[1] Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his death occurs had his death not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.03 Termination Due to Executive's Disability.** If the Executive becomes Disabled (as defined in Section 5.03[4]), this Agreement shall terminate automatically. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[4] **Definition of Disability.** For purposes of this Agreement, "Disability" (and any of its forms) means that, for more than six consecutive months, the Executive is unable, with reasonable accommodation, to perform the duties described in Section 4.01 on a full-time basis due to a physical or mental disability or infirmity.

**5.04 Termination for Cause.** The Company may terminate the Executive's employment for Cause (as defined in Section 5.04[3]). A termination for Cause shall only be effective after [a] the Company has delivered a written notice to the Executive stating that in the Company's opinion, the Executive may be terminated for Cause, specifying the details and [b] if the failure or action is one that can be cured, the Executive does not cure the issue giving rise to the Cause determination within 30 days after receiving notice. If the Executive is terminated for Cause and if all requirements of this Agreement are met (including those imposed under Section 7.00), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[3] **Definition of Cause.** For purposes of this Agreement, Cause means the Executive's [a] failure to comply with Company's policies and procedures which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [b] willful or illegal misconduct or grossly negligent conduct that is materially injurious to the Group, the Company or any other Group Member, monetarily or otherwise; [c] violation of laws or regulations governing the Group, the Company or any other Group Member (including the Sarbanes-Oxley Act of 2002) or violation of the Company's code of ethics; [d] breach of any fiduciary duty owed to the Group, the Company or any other Group Member; [e] misrepresentation or dishonesty which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [f] breach of any provision of Section 4.00 of this Agreement; [g] involvement in any act of moral turpitude that has a materially injurious effect on the Group, the Company or any other Group Member or their reputation; or [h] breach of the terms of any non-solicitation or confidentiality clauses contained in an employment agreement(s) with a former employer.

[4] [Reserved]

[5] **Subsequent Information.** The terms of Section 5.04 also will apply if, within 6 consecutive calendar months beginning after the Executive terminates under any other provision of Section 5.00, the Company learns of an event that, had it been known before the Executive terminated employment, would have justified a termination for Cause. In this case, the Company will be entitled to recover any amounts that the Executive or any beneficiary received under any other provision of Section 5.00, reduced by the amount the Executive is entitled to receive under this Section 5.04 and any other legally protected benefits paid or made available under this Agreement that originally was applied when the Executive terminated.

**5.05 Voluntary Termination by Executive.** The Executive may voluntarily terminate employment with the Company at any time upon thirty (30) days notice to Company. In this case, and if all other requirements of this Agreement are met, and subject to Section 5.04(5), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.06 Involuntary Termination Without Cause.** The Company may terminate the Executive's employment at any time upon thirty (30) days notice to Executive without Cause by delivering to the Executive a written notice specifying the same. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04(5), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Income Continuation.** The Executive will be entitled to continue to receive his Base Salary until the last day of the twelfth complete calendar month beginning after the termination date. Such amounts shall be payable in accordance with the regularly scheduled payroll for similarly situated employees. These payments shall be treated as "separation pay" (within the meaning of Section 409A of the Code) to the maximum extent permitted by Treasury Regulation §1.409A-1(b)(9). Any payments in excess of the maximum amount that can be treated as separation pay pursuant to Treasury Regulation §1.409A-1(b)(9) shall be subject to the provisions of Section 5.08.

[4] **Health Care.** The Executive will be entitled to continue to receive the welfare benefits described in Section 3.03 until the last day of the twelfth complete calendar month beginning after the termination date. Thereafter, the Company will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium for this coverage, if any, until the earlier of [a] the last day of the twenty-fourth complete calendar month beginning after the termination date or [b] the date the Executive becomes eligible for the same or similar coverage under another benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.06[4], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.06[4] shall be subject to the following: [i] the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; [ii] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [iii] the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

[5] **Transportation.** The Executive will be entitled to continue to receive the automobile benefits described in Section 3.06 until the last day of the twelfth complete calendar month beginning after the termination date; provided, however, that: [a] the benefits provided or amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement or benefits to be provided in any other taxable year of the Executive; [b] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [c] the right to such benefit or reimbursement may not be subject to liquidation or exchange for another benefit.

**[6] Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.07 Termination in Connection With Change of Control.** If the Executive is Terminated in Connection With a Change of Control (as defined in Section 5.07[5]) at any time during the Protection Period (as defined in Section 5.07[4]) and if all other conditions of this Agreement have been met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Change Entity (as defined in Section 5.07[2]) will pay or make available the Change Benefits (as defined in Section 5.07[1]) in lieu of any other amounts of benefits that might otherwise be due under this Agreement on account of that termination.

**[1] Change Benefits.** For purposes of this Agreement, “Change Benefits” means the aggregate of the following, adjusted if appropriate under Sections 5.07[6] and [7]:

**[a] Base Salary.** The sum of **[i]** the Base Salary earned to the date of termination plus **[ii]** 200 percent of the Executive’s Base Salary at the highest rate in effect at any time during the Protection Period. This amount will be paid in a lump sum cash payment on the Change Entity’s first regular payroll date for senior executive officers of the Company following the effective date of the Executive’s Termination in Connection With a Change of Control.

**[b] Bonus.** Two hundred percent of the Executive’s Stretch Bonus in effect under the Bonus Program for the year in which the Executive’s employment is Terminated in Connection With a Change of Control or, if higher, the Stretch Bonus in effect under the Bonus Program (or comparable program) at any time during the Protection Period. This amount will be paid in a single lump sum on the Change Entity’s next regularly scheduled payroll date for senior executive officers of the Company following the date of the Executive’s Termination in Connection With a Change of Control.

**[c] Health Care.** The Change Entity will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium at the lowest rate in effect at any time during the Protection Period for this coverage, until the earlier of **[i]** the last day of the 24th complete calendar month beginning after the date the Executive is Terminated in Connection With a Change of Control or **[ii]** the date the Executive becomes eligible for comparable benefits at comparable costs to the Executive under another employer sponsored benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.07[1][c], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.07[1][c] shall be subject to the following: **[A]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; **[B]** any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and **[C]** the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

**[d] Other.** Any rights (including those arising on account of the Change of Control) accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Change Entity will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**[2] Change Entity.** For purposes of this Agreement, “Change Entity” means the Company, BLI and any other entity that is a party to the Change of Control.

**[3] Definition of Change of Control.** For purposes of this Agreement, “Change of Control” means the first to occur of any of the following events:

**[a]** The acquisition by any person (as defined under Section 409A of the Code), or more than one person acting as a group (as defined under Section 409A of the Code), of the stock of BLI that, together with the stock of BLI held by such person or group, constitutes more than fifty (50) percent of the total fair market value or total voting power of all of the stock of BLI;

**[b]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of the stock of BLI possessing thirty (30) percent or more of the total voting power of all of the stock of BLI;

**[c]** A majority of the members of the Board of Directors of BLI is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of BLI prior to the date of the appointment or election; or

**[d]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from BLI that have a total gross fair market value equal to or more than forty (40) percent of the total gross fair market value of all of the assets of BLI immediately prior to such acquisition or acquisitions.

This definition of Change of Control under this Section 5.07[3] shall be interpreted in a manner that is consistent with the definition of “change in control event” under Section 409A of the Code and the Treasury Regulations promulgated thereunder. The effective date of any such Change of Control will be the date upon which the last event occurs or last action is taken such that the definition of Change of Control (as set forth above) has been satisfied. For purposes of this Agreement, the term “affiliate” means any person or entity that, along with BLI, constitutes a single employer under Sections 414(b) and 414(c) of the Code. Determination of affiliate will be tested as of the date immediately prior to any event constituting a Change of Control. Notwithstanding the other provisions of this Section 5.07, the term “Change of Control” will not mean any transaction, merger, consolidation or reorganization in which BLI exchanges or offers to exchange newly issued or treasury shares in an amount less than 50 percent of the then-outstanding equity securities of BLI entitled to vote for the election of directors, for fifty-one (51) percent or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than BLI or an affiliate thereof (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.

**[4] Protection Period.** For purposes of this Agreement, “Protection Period” means the period beginning on the first day of the third full consecutive calendar month beginning before the date of the Change of Control and ending on the last day of the twenty-fourth consecutive full calendar month beginning after the date of the Change of Control.

**[5] Termination in Connection With a Change of Control.** For purposes of this Agreement, “Termination in Connection With a Change of Control” means, at any time during the Protection Period:

**[a]** The Change Entity involuntarily terminates the Executive without Cause (as defined in Section 5.06).

**[b]** The Executive terminates following the occurrence of any of the following conditions;

**[i]** The Change Entity breaches any provision of this Agreement;

**[ii]** The Change Entity unsuccessfully attempts to terminate the Executive for Cause (as defined in Section 5.04);

**[iii]** The Change Entity attempts to terminate the Executive for any reason without following the procedures described in this Agreement (including an acceleration of the periods described in Section 5.03[4] and 5.04[b]);

**[iv]** The Change Entity revokes or attempts to revoke or accelerate the duration of any leave of absence protected by law or authorized by the Company before the Protection Period or by the Change Entity at any time during the Protection Period;

**[v]** The Change Entity refuses to allow the Executive to return to active employment at the end of any leave of absence protected by law or authorized by the Company before the Protection Period or the Change Entity at any time during the Protection Period; or

[vi] The Change Entity causes the Executive to resign because of a material adverse change or material diminution in the Executive's reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by the Executive in his good faith discretion); provided, however, that the Executive shall notify the Company in writing at least forty- five (45) days in advance of any election by the Executive to terminate his employment hereunder, specifying the nature of the alleged adverse change or diminution, and the Company shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before the Executive shall be entitled to exercise any such rights and remedies.

For purposes of this Section 5.07[5], the termination of employment is deemed to occur on the Executive's actual date of termination.

**[6] Treatment of Taxes.** If payments under this Agreement, when combined with payments and benefits under all other plans and programs maintained by the Company or the Change Entity, constitute "excess" parachute payments as defined in Section 280G(b) of the Code, the Change Entity, subject to Section 5.07[7], will either:

**[a]** Reimburse the Executive for the amount of any excise tax due under Code §4999, if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][b]; or

**[b]** Reduce the Executive's benefits under this Agreement so that the Executive's total "parachute payment" as defined in Code §280G(b)(2)(A) under this Agreement and all other agreements will be \$1.00 less than the amount that would generate "excess" parachute payment penalties if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][a].

This comparison will be made as of the date of the corporate event generating the "parachute payments" although any reimbursement provided under Section 5.07[6][a] will be made when the parachute payment is actually made or distributed.

Within 10 business days of the date the Change Entity determines that Section 5.07[6][b] should be applied, the Change Entity will apprise the Executive of the amount of the reduction ("Notice of Reduction"). Within 10 business days of receiving that information, the Executive may specify how (and against which benefit or payment source) the reduction is to be applied ("Notice of Allocation"). The Change Entity will be required to implement these directions within 10 business days of receiving the Notice of Allocation. If the Change Entity has not received a Notice of Allocation from the Executive within 10 business days of the date of the Notice of Reduction or if the allocation provided in the Notice of Allocation is not sufficient to fully implement Section 5.07[6][b], the Change Entity will apply Section 5.07[6][b] proportionately based on the amounts otherwise payable under this Agreement or, if a Notice of Allocation has been returned that does not sufficiently implement Section 5.07[6][b], on the basis of the reductions specified in the Notice of Allocation. Any taxes reimbursed pursuant to Section 5.07[6][a] shall be paid by the end of Executive's taxable year next following the taxable year in which Executive remits payment of the tax or assessment being reimbursed. Any reduction pursuant to Section 5.07[6][b] shall be made in accordance with Section 409A of the Code and the Treasury Regulations promulgated thereunder.



**[7] Effect of Subsequent Tax Claim.** The Change Entity will establish procedures that will apply to any inquiries regarding the treatment of tax payments under this Section 5.07. Within 30 days following the termination of the Executive's employment under Section 5.07, the Change Entity will provide the Executive with a copy of such procedures.

**5.08 Six-Month Distribution Delay.** Notwithstanding the foregoing, if Executive is a "specified employee," within the meaning of Treasury Regulation §1.409A-1(i) and as determined under BLI's policy for determining specified employees, on the Executive's date of termination, and the Executive is entitled to a payment and/or a benefit under this Agreement that is required to be delayed pursuant to Section 409A(a)(2) of the Code, then such payment or benefit shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following the Executive's date of termination (or, if earlier, the Executive's death). The first payment that can be made following such postponement period shall include the cumulative amount of any payments or benefits that could not be paid or provided during such postponement period due to the application of Section 409A(a)(2)(B)(i) of the Code.

## **6.00 Notice**

**6.01 How Given.** Any notice permitted or required to be given under this Agreement must be given in writing and delivered in person or by registered, U.S. mail, return receipt requested, postage prepaid; or through Federal Express, UPS, DHL or any other reputable professional delivery service that maintains a confirmation of delivery system. Any delivery must be **[1]** in the case of notices to the Company or the Change Entity, addressed to the Company's Chief Executive Office at the Company's then-current corporate offices and **[2]** in the case of notices to the Executive, addressed to the Executive's last mailing address contained in the Executive's personnel file.

**6.02 Effective Date.** Any notice permitted or required to be given under this Agreement will be deemed to have been given and will be effective on the date it is delivered.

## **7.00 Execution of Release**

The Executive agrees that as a condition of receiving any post-termination benefit as set forth in Section 5.00 except for earned but unpaid Base Salary to the date of termination and any legally protected rights the Executive has under any employee benefit plan maintained by the Company, the Executive or, in the case of any amounts due after the Executive's death, the person to whom those amounts are payable (collectively, the "Payee") must execute a comprehensive release in the form determined from time to time by the Company in its sole discretion. Generally, the release will require the Payee and the Payee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns to release and forever discharge the Group, the Company and all other Group Members, past, present and future, and their executives, officers, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action that grow out of or are in any way related to the Executive's recruitment and employment with the Company that arose on or before the date of the release, other than any claim that the Company has breached this Agreement. This release will include, but not be limited to, any claim that the Company violated the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act; any state, federal law or local ordinance prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state; or any federal, state or local law (each as in effect on the Effective Date and as subsequently amended) relating to any matter within the purview of this Agreement. Upon the Executive's termination of employment with all Group Members, the Payee will be presented with a release and if the Payee fails to execute the release, the Payee agrees to forego any payment described in the first sentence of this section. The Executive acknowledges that the Executive is an experienced senior executive knowledgeable about the claims that might arise in the course of employment with and termination from the Company and any other Group Member and knowingly agrees that the payments upon termination provided for in this Agreement are satisfactory consideration for the release of all possible claims described in the release. Notwithstanding anything to the contrary, the failure of the Executive to execute the release described in this Section 7.00 shall not otherwise cause any payment made pursuant to this Agreement to be delayed beyond the date on which such payment was originally scheduled to occur.

## **8.00 Insurance and Indemnification**

The Company will indemnify Executive (including his heirs, executors and administrators) to the fullest extent permitted under the Company's Regulations and Ohio law. This obligation to provide insurance for the Executive will survive termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions occurring during the Executive's employment with or termination from the Group, the Company or with any other Group Member. Concurrently with the execution of this Agreement, BLI will enter into an indemnification agreement with the Executive.

## **9.00 Arbitration**

**9.01 Acknowledgement of Arbitration.** Unless stated otherwise in this Agreement or any other compensatory or any employee benefit plan, fund or program maintained by the Company, the Parties agree that arbitration is the sole and exclusive remedy for each of them to resolve (except as specifically provided in Section 4.09) and redress any dispute, claim or controversy involving the interpretation or application of this Agreement, the terms, conditions or termination of this Agreement and the terms, conditions or termination of the Executive's employment with the Company, including any claims for any tort, breach of contract, violation of public policy or discrimination, whether such claim arises under federal, state law or local law.

**9.02 Scope of Arbitration.** The Executive expressly understands and agrees that claims subject to arbitration under this section include asserted violations of the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964 (as amended); the Family and Medical Leave Act; any federal, state or local law or ordinances prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state, or any federal, state or local law (each as in effect on the Effective Date or as subsequently amended) relating to any matter within the purview of this Agreement.

**9.03 Effect of Arbitration.** The Parties intend that any arbitration award relating to any matter described in Section 9.01 will be final and binding on them and that a judgment on the award may be entered in any court of competent jurisdiction and that enforcement may be had according to the terms of that award. This Section 9.03 will survive the termination of this Agreement.

**9.04 Location and Conduct of Arbitration.** Arbitration will be held in Columbus, Ohio, and will be conducted by a retired federal judge or other qualified arbitrator. The arbitrator will be mutually agreed upon by the Parties and the arbitration will be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The Parties will have the right to conduct discovery pursuant to the Federal Rules of Civil Procedure; provided, however, that the arbitrator will have the authority to establish an expedited discovery schedule and cutoff and to resolve any discovery disputes. The arbitrator will have no jurisdiction or authority to change any provision of this Agreement by alterations of, additions to or subtractions from the terms of this Agreement. The arbitrator's sole authority will be to interpret or apply any provision(s) of this Agreement or any public law alleged to have been violated. The arbitrator has the authority to award damages and other relief expressly provided by law.

**9.05 Time for Initiating Arbitration.** Any claim or controversy relating to any matter described in Section 9.01 not sought to be submitted to arbitration, in writing, within 60 days of the date the Party asserting the claim knew, or through reasonable diligence should have known, of the facts giving rise to that Party's claim, will be deemed waived and the Party asserting the claim will have no further right to seek arbitration or recovery with respect to that claim or controversy. Both Parties agree to strictly comply with the time limitation specified in this section. For purposes of this section, a claim or controversy is sought to be submitted to arbitration on the date the complaining Party gives written notice to the other that **[1]** an issue has arisen or is likely to arise that, unless resolved otherwise, may be resolved through arbitration under this Section 9.00 and **[2]** unless the issue is resolved otherwise, the complaining Party intends to submit the matter to arbitration under the terms of Section 9.00.

**9.06 Costs of Arbitration and Attorney's Fees.** The Company will bear the arbitrator's fee and other costs associated with any arbitration, unless the arbitrator, acting under Federal Rule of Civil Procedure 54(d)(1), elects to award these fees to the Company. Attorney's fees **[1]** may be awarded to the prevailing party if expressly authorized by statute, or otherwise each party will bear its own attorney's fees and costs but **[2]** Executive's attorney's fees and other associated costs and expenses will be borne by the Change Entity with respect to any claim arising under Section 5.07 but only if the arbitrator concludes the claim legitimately relates to matters within the contemplation of Section 5.07 (otherwise, the rule described in Section 9.06[1] will apply). Notwithstanding the foregoing: **[a]** any costs being reimbursed must relate to a claim brought during the lifetime of the Executive with respect to an alleged breach of any obligation of the Company under this Agreement; **[b]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement in any other taxable year; **[c]** any reimbursement must be made on or before the last day of the Executive's taxable year following the taxable year in which the cost was incurred; and **[d]** the right to reimbursement for such costs is not subject to liquidation or exchange for another benefit.

**9.07 Arbitration Exclusive Remedy.** The Parties acknowledge that, because arbitration is the exclusive remedy for resolving the issues described in Section 9.01, neither Party may resort to any federal, state or local court or administrative agency concerning those issues and that the decision of the arbitrator will be a complete defense to any suit, action or proceeding instituted in any federal, state or local court before any administrative agency with respect to any arbitrable claim or controversy.

**9.08 Waiver of Jury.** The Executive (personally and in behalf of all the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns) and the Company (on its own behalf's and in behalf of its successors, including any Change Entity) each waive the right to have a claim or dispute with one another decided in a judicial forum or by a jury, except as otherwise provided in this Agreement.

## **10.00 General Provisions**

**10.01 Representation of Executive.** The Executive represents and warrants that the Executive is an experienced senior executive knowledgeable about the issues (and their effect) within the purview of this Agreement and is not under any contractual or legal restraint that prevents or prohibits the Executive from entering into this Agreement or performing the duties and obligations described in this Agreement.

**10.02 Modification or Waiver; Entire Agreement.** No provision of this Agreement may be modified or waived except in a document signed by the Executive and the Company's Chief Executive Officer or other person designated by the Company's Board of Directors. This Agreement, and any attachments referenced in the Agreement, constitute the entire agreement between the Parties regarding the employment relationship described in this Agreement, and, except as otherwise specifically provided in this Agreement, any other agreements are terminated and of no further force or legal effect. No agreements or representations, oral or otherwise, with respect to the Executive's employment relationship with the Company have been made or relied upon by either Party which are not set forth expressly in this Agreement.

**10.03 Governing Law; Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application of any provision of this Agreement to any person or circumstance, is, for any reason and to any extent, held invalid or unenforceable, such invalidity and unenforceability will not affect the remaining provisions of this Agreement of its application to other persons or circumstances, all of which will be enforced to the greatest extent permitted by law and the Parties agree that any invalid or unenforceable provision may and will be reformed and applied **[1]** as provided in Section 4.05, with respect to the matters specifically contemplated in Section 4.00 and **[2]** with respect to other matters, **[a]** to the extent needed to avoid that invalidity or unenforceability and **[b]** in a manner that is as similar as possible to the Parties' intent (as described in this Agreement). The validity, construction and interpretation of this Agreement and the rights and duties of the Parties will be governed by the laws of the State of Ohio, without reference to the Ohio choice of law rules.

**10.04 No Waiver.** Except as otherwise provided in Section 9.05, failure to insist upon strict compliance with any term of this Agreement will not be considered a waiver of any such term or any other term of this Agreement.

**10.05 Withholding.** All payments made to or on behalf of the Executive under this Agreement will be reduced by any amount:

[1] That the Company is required by law to withhold in advance payment of the Executive's federal, state and local income, wage and employment tax liability; and

[2] To the extent allowed by law, that the Executive owes (or, after employment is deemed to owe) to the Group, the Company or any other Group Member.

Application of Section 10.05[2] will not extinguish the Company's right to seek additional amounts from the Executive (or to pursue other appropriate remedies) to the extent that the amount recovered by application of Section 10.05[2] does not fully discharge the amount the Executive owes to the Group, the Company or other Group Member and does not preclude the Group, the Company or any other Group Member from proceeding directly against the Executive without first exhausting its right of recovery under Section 10.05[2].

**10.06 Survival.** The Parties agree that the covenants and promises set forth in this Agreement will survive the termination of this Agreement and continue in full force and effect after this Agreement terminates to the extent that their performance is required to occur after this Agreement terminates.

**10.07 Miscellaneous.**

[1] The Executive may not assign any right or interest to, or in, any payments payable under this Agreement; provided, however, that this prohibition does not preclude the Executive from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and does not preclude the legal representative of the Executive's estate from assigning any right under this Agreement to the person or persons entitled to it.

[2] This Agreement will be binding upon and will inure to the benefit of the Executive, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns and the Company and its successors and, to the extent applicable, the Group and all Group Members.

[3] The headings in this Agreement are inserted for convenience of reference only and will not be a part of or control or affect the meaning of any provision of the Agreement.

**10.08 Successors to Company.** This Agreement may and will be assigned or transferred to, and will be binding upon and will inure to the benefit of, any successor of the Company, including any Change Entity, and any successor will be substituted for the Company under the terms of this Agreement. As used in this Agreement, the term “successor” means any person, firm, corporation or business entity which at any time, whether by merger, purchase or otherwise, acquires all or essentially all of the assets of the business of the Company. Notwithstanding any assignment, the Company will remain, with any successor, jointly and severally liable for all its obligations under this Agreement.

**10.09 Section 409A of the Code.** This Agreement is intended to comply with Section 409A of the Code and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to the Executive and neither the Company nor the Boards of Directors of BLI or Big Lots shall be liable to the Executive for failure to comply with the requirements of Section 409A of the Code. Furthermore, the Company may accelerate the time or schedule of a payment to the Executive if at any time this Agreement fails to meet the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder.

Notwithstanding the foregoing, if the Executive terminates for any reason, dies or becomes Disabled on or prior to December 31, 2008 and is entitled to payment or benefit as a result of such termination, death or Disability, such payment or benefit shall be paid or provided [1] pursuant to the terms of this Agreement in effect immediately prior to the Effective Date, but [2] modified to the extent necessary for good faith compliance with the requirements of Section 409A of the Code. Nothing in this Agreement shall be construed as causing a payment or benefit to be paid or distributed in calendar year 2008 which is not otherwise payable or distributable in calendar year 2008.

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement, which includes an arbitration provision, and consists of 23 pages.

BIG LOTS, INC.

By: /s/ Dennis B. Tishkoff

Signed: December 5, 2008

BIG LOTS STORES, INC.

By: /s/ Steven S. Fishman

Signed: December 5, 2008

Brad A. Waite

/s/ Brad A. Waite

Signed: December 5, 2008

**AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT  
BY AND AMONG  
BIG LOTS, INC.,  
BIG LOTS STORES, INC.  
AND  
JOHN C. MARTIN**

This amended and restated employment agreement (“Agreement”) by and among Big Lots, Inc. (“BLI”), Big Lots Stores, Inc. (“Big Lots”) and their affiliates, predecessor, successor, subsidiaries and other related companies (collectively the “Company”) and John C. Martin (“Executive”), collectively, the “Parties,” is effective as of December 5, 2008 (“Effective Date”) and supersedes and replaces any other oral or written agreement or understanding concerning the terms of the Executive’s employment with the Company but does not supersede or replace any agreement or arrangement between the Executive or any Group Member (as defined in Section 4.02[1]) relating to the payment of compensation or benefits earned (or deemed earned) on account of services performed for a Group Member before the Effective Date.

**1.00      Duration**

This Agreement will remain in effect from the Effective Date until it terminates as provided in Section 5.00 (“Term”). Any notice of termination required to be given under this Agreement must be given as provided in Section 6.00 and will be effective on the date prescribed in Section 5.00.

**2.00      Executive’s Employment Function**

**2.01      Position.** The Executive agrees to serve as the Company’s Executive Vice President (or other equivalent title conferred by the Company in its sole discretion) with the authority and duties customarily associated with this position. The Executive agrees at all times to observe and to be bound by all Company rules, policies, practices, procedures and resolutions which apply to Company employees with a similar title and position and which do not conflict with the specific terms of this Agreement. In performance of these duties, Executive shall be subject to the direction of and report to an individual holding one or more of the following titles: Chief Executive Officer, President, and/or Chief Administrative Officer of Company.

**2.02      Place of Performance.** Unless the Company requires the Executive to perform duties at another location, the Executive’s duties will be performed principally in Columbus, Ohio, except for travel on the business of any Group Member.

**3.00      Compensation**

The Company will pay the Executive the amounts described in Sections 3.00 and 5.00 as compensation for the services described in this Agreement and in exchange for the duties and responsibilities described in Section 4.00.

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**3.01 Base Salary.** The Company will pay to the Executive an annualized base salary of \$520,000, which, at the discretion of the Company, may be adjusted from time to time in a manner that is consistent with the Company's compensation policies in effect for Company employees with a similar title and position ("Base Amount") but may not be adjusted to any amount lower than \$520,000 without the Executive's consent. The Executive's Base Salary will be paid in installments that correspond with the Company's normal payroll practices.

**3.02 Bonus.** The Executive will be eligible to receive bonus compensation ("Bonus") under and subject to the terms of the Company's Big Lots 2006 Bonus Plan, as amended (or any such successor plan, hereinafter, "Bonus Program") for the fiscal year beginning January 30, 2008 and for each subsequent fiscal year during the Term of this Agreement. The Executive's Bonus will be an amount equal to the Base Salary at the end of each fiscal year multiplied by the Bonus Payout percentage as determined under the Bonus Program. The Bonus Program is based upon the achievement of the Company's annual financial plan. The Executive's Bonus Payout percentage will consist of a Target Bonus of 60 percent of Base Salary and a Stretch Bonus of 120 percent of Base Salary. Both "Target Bonus" and a "Stretch Bonus" are defined in the Bonus Program and are subject to adjustment as provided in the Bonus Program; provided, however, the Executive's Target Bonus will never be set at less than 60 percent of Base Salary and the Executive's Stretch Bonus will never be set at less than 120 percent of Base Salary.

[1] **Payment.** The payment of any earned Bonuses is subject to the terms of the Bonus Program and any agreements issued thereunder.

[2] **Fiscal Year.** The term "fiscal year" means the period beginning on the first Sunday after the Saturday closest to January 31<sup>st</sup> of each calendar year and ending on the Saturday closest to January 31<sup>st</sup> of the following calendar year.

**3.03 Benefit and Other Compensatory Plans.** Subject to their terms (which the Company may amend at any time), the Executive may participate in any Company-sponsored employee pension or welfare benefit plan at a level commensurate with the Executive's title and position. The Executive also may participate in any other deferred incentive or similar compensation program maintained by the Company and generally made available to other senior executive officers of the Company.

**3.04 Vacation and Sick Leave.** The Executive will be entitled to the same periods of vacation and sick leave each year that the Company provides under its vacation and sick leave policy to other senior executive officers of the Company.

**3.05 Expenses.** Consistent with the terms of its business expense reimbursement policies and procedures, the Company will reimburse Executive for all normal and reasonable expenses incurred while performing services under this Agreement, including reasonable travel expenses. Reimbursement for these expenses will be made as soon as administratively feasible after the date the Executive submits appropriate evidence of the expenditure and otherwise complies with the Company's business expense reimbursement policies and procedures.

**3.06 Automobile Allowance.** The Company will provide the Executive with an automobile or a monthly automobile allowance in accordance with applicable Company policies for employees with a similar title and position; provided, however, that the automobile allowance may not be adjusted to a value lower than the value the Executive is entitled to receive as of the Effective Date.

**3.07 Termination Benefits.** The Company will provide the Executive with only those termination benefits described in Section 5.00.

#### **4.00 Executive's Obligations**

The amounts described in Sections 3.00 and 5.00 of this Agreement are provided by the Company in exchange for (and have a value to the Company equivalent to) the Executive's performance of the obligations described in this Agreement, including performance of the duties and the covenants made and entered into by and between the Executive and the Company in this Agreement.

**4.01 Scope of Duties.** The Executive will:

- [1] Devote all available business time, best efforts and undivided attention to the Company's business and affairs; and
- [2] Not engage in any other business activity, whether for gain, profit or other pecuniary benefit except for services benefiting the Group or any Group Member.

However, the restrictions described in Sections 4.01[1] and [2] will not preclude the Executive from:

- [3] Making or holding passive investments; or
- [4] Serving on corporate, civic, religious, educational and/or charitable boards or committees but only if this activity **[a]** does not interfere with the Executive's performance of the duties assumed under this Agreement and **[b]** is approved in writing by the Company.

**4.02 Confidential Information.**

[1] **Obligation to Protect Confidential Information.** The Executive acknowledges that the Company, its parent, affiliates, predecessor, successor, subsidiaries and other related companies, including entities that become related entities after the Effective Date (collectively, "Group" and separately, "Group Member") have a legitimate and continuing proprietary interest in the protection of Confidential Information (as defined in Section 4.02[2]) and Intellectual Property (as defined in Section 4.02[3]) and have invested, and will continue to invest, substantial sums of money to develop, maintain and protect Confidential Information and Intellectual Property. The Executive agrees **[a]** during and after employment with the Company and as to all Group Members **[i]** that any Confidential Information and Intellectual Property will be held in confidence and treated as proprietary to the Group, **[ii]** not to use or disclose any Confidential Information or Intellectual Property except to promote and advance the Group's business interests and **[b]** immediately upon termination for any reason from employment with the Company, to return to the Company any Confidential Information and Intellectual Property.

[2] **Definition of Confidential Information.** For purposes of this Agreement, Confidential Information includes any confidential data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, supplier information, tax records, personnel histories and records, information regarding sales, information regarding properties and any other information of a similar confidential nature regarding the business, operations, properties or personnel of the Group, the Company or any other Group Member which are disclosed to or learned by the Executive while employed by a Group Member, but will not include [a] the Executive's own personal personnel records or [b] any information that [i] the Executive possessed before the date of initial employment (including periods before the Effective Date) with the Group that was a matter of public knowledge, [ii] became or becomes a matter of public knowledge through authorized sources independent of the Executive, [iii] has been or is disclosed by any Group Member without restriction on its use, [iv] has been or is required to be disclosed by law or governmental order or regulation or [v] is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only if its disclosure is a necessary part of any proceedings described in Section 9.00. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's General Counsel or Chief Executive Officer confirms to the Executive that the information is public knowledge or an adjudicator finally decides that the information is public knowledge.

[3] **Intellectual Property.** The Executive expressly acknowledges that all right, title and interest to all inventions, designs, discoveries, works of authorship, and ideas conceived, produced, created, discovered, authored or reduced to practice during the Executive's performance of services under this Agreement, whether individually or jointly with any Group Member and whether or not it is deemed to be "work made for hire" (the "Intellectual Property") will be owned solely by the Group, and will be subject to the restrictions set forth in Section 4.02[1]. All Intellectual Property that constitutes copyrightable subject matter under the copyright laws of the United States will, from its conception, be deemed to be a "work made for hire" under the United States copyright laws and all right, title and interest in and to such copyrightable works will vest in the Company or the Group. All right, title and interest in and to all Intellectual Property developed or produced under this Agreement by the Executive, whether constituting patentable subject matter or copyrightable subject matter (to the extent deemed not to be a "work made for hire") or otherwise, will be assigned and is hereby irrevocably assigned to the Company or the Group by the Executive. Without any additional consideration, the Executive will execute all documents and take all other actions the Company reasonably believes are needed to convey the Executive's complete ownership interest in any Intellectual Property to the Company or the Group so that the Company or the Group will own and may protect the Intellectual Property and obtain patent, copyright and trademark registrations for it. The Executive agrees that any Group Member may alter or modify the Intellectual Property at the Group Member's sole discretion, and the Executive waives all right to claim or disclaim ownership.

**4.03 Solicitation of Employees.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members **[1]** not, directly or indirectly, to solicit (or facilitate the solicitation of) any employee of any Group Member to leave employment with the Group or any Group Member, **[2]** not, directly or indirectly, to employ, seek to employ or facilitate the employment of any employee of any Group Member by an entity that is not a Group Member and **[3]** not to cause or induce any entity described in Section 4.05[1] to solicit or employ (or to facilitate the solicitation or employment of ) any employee of any Group Member.

**4.04 Solicitation of Third Parties.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members not, directly or indirectly, to recruit, solicit or otherwise induce or influence any customer, supplier, sales representative, lender, lessor, lessee or any other person having a business relationship with the Group, the Company or any other Group Member to discontinue or reduce the extent of that relationship except in the course of discharging the duties described in this Agreement and with the good faith objective of advancing the Company's or the Group's (or any other Group Member's) business interests.

**4.05 Non-Competition.** The Executive acknowledges the nature of the Group's Business (as defined in Section 4.05[3][a] and that the Group is one of the limited number of entities which has developed this type of business; that the Group's Business is national in scope and the Executive's work for the Group, the Company and other Group Members will give Executive access to the confidential affairs of the Company and other Group Members, to Confidential Information and to Intellectual Property as defined in Sections 4.02[2] and 4.02[3] respectively; and that the agreements and covenants of the Executive contained in Section 4.00 are essential to preserving the Group's Business and good will. Accordingly, the Executive covenants and agrees that:

**[1]** During the Restriction Period (as defined in Section 4.05[3][c]) and within the Restricted Area (as defined in Section 4.05[3][b]) the Executive will not **[a]** engage in the Group's Business for the Executive's own account **[b]** render any services to any person engaged in the Group's Business (other than to an entity that is a Group Member when those services are rendered); or **[c]** render any services to, become employed in any manner by, or consult with, Wal-Mart Kmart, Retail Ventures, Inc., Target, Dollar General, Family Dollar, Dollar Tree, Fred's, 99¢ Stores, Canned Foods, Tuesday Morning and TJX Corporation, or any grocery store chain, regardless of size. Further, the Executive agrees during the Restricted Period to not become employed in any manner by or to act as consultant to any successor, parent or subsidiary of the entities (or types of entities) listed above other than in the course of discharging the duties described in this Agreement.

**[2] Maximum Enforceable Restriction.** If any or all of the covenants set forth in this Section 4.05 are determined by a court of competent jurisdiction to be unenforceable by reason of the temporal restrictions being too great, the geographic areas covered too great, the range of activities too great or for any other reason, the Court is authorized and will interpret them to extend over the maximum period of time, the maximum geographic area and the maximum range of activities or, as to any provision, in such a manner that all provisions may be given maximum restrictive effect in accordance with applicable law.

**[3] Definition Relating to Section 4.05.**

**[a] Group Business.** For purposes of this Agreement, “Group Business” includes the operation of Big Lots retail outlets, the inventories of which are acquired primarily through special purchases such as overstocks, close-outs, liquidations, bankruptcies, wholesale distribution of overstock, distress, liquidation and other volume inventories, the operation of Big Lots furniture stores, and related wholesale operations and other lines of business any Group Member develops during the Term of this Agreement.

**[b] Restricted Area.** For purposes of this Agreement, “Restricted Area” means the 50 mile radius surrounding any location in which the Group’s Business is conducted during the Term of this Agreement.

**[c] Restriction Period.** For purposes of this Agreement, “Restriction Period” means the Term of this Agreement and one year following termination of the Executive’s employment with all Group Members, regardless of the reason for termination; provided, however, that in the event of a Change of Control as defined in Section 5.07[3] of this Agreement, the Restricted Period shall be for a period of six (6) months.

**4.06 Post-Termination Cooperation.** The Executive agrees that during and after employment with the Group and without additional compensation (other than reimbursement for reasonable associated expenses), to cooperate with the Group, the Company and any other Group Member in the following areas:

**[1] Cooperation With the Group, the Company and Other Group Members.** The Executive agrees **[a]** to be reasonably available to answer questions for any Group Member’s officers or directors regarding any matter, project, initiative or effort with which the Executive was involved while employed by any Group Member and **[b]** to cooperate with the Group, the Company and any other Group Member during the course of all proceedings arising out of the Group’s Business about which the Executive has knowledge or information. For purposes of this Agreement, **[c]** “proceedings” includes internal investigations, administrative investigations or proceedings and lawsuits (including pre-trial discovery and trial testimony) and **[d]** “cooperation” includes **[i]** the Executive’s being reasonably available for interviews, meetings, depositions, hearings and/or trials without the need for subpoena or assurances by the Group, the Company or any other Group Member, **[ii]** providing any and all documents in the Executive’s possession that relate to the proceeding and **[iii]** providing assistance in locating any and all relevant notes and/or documents relevant to any proceedings.

**[2] Cooperation With Third Parties.** Unless compelled to do so by lawfully-served subpoena or court order or to the extent it is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement, the Executive agrees not to communicate with, or give statements or testimony to, any opposing attorney, opposing attorney's representative (including a private investigator) or current or former employee relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company and other Group Members. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by a third party or receiving a subpoena or court order to appear and testify with respect to any matter affected by this section.

**[3] Cooperation With Media.** The Executive agrees not to communicate with, or give statements to, any member of the media (including print, television, radio or electronic media) relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company or any other Group Member. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by any member of the media with respect to any matter affected by this section.

**4.07 Non-Disparagement.** The Executive and the Company agree (on its behalf and in behalf of the Group and other Group Members) that after the Executive's employment with the Group has ended neither will make any disparaging remarks about the other and the Executive will not make any disparaging remarks about the Company, the Company's Chairman, Chief Executive Officer or any of the Company's executives or directors or any other Group Member or their executives and directors. However, this section will not preclude **[1]** any remarks that may be made by the Executive **[a]** under the terms of Section 4.06[2], **[b]** that are required to discharge the duties described in this Agreement or **[c]** are germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement or **[2]** the Company or any other Group Member from making (or eliciting from any person) disparaging remarks about the Executive **[a]** concerning any conduct that may have led to a termination for Cause, as defined in Section 5.04[3] (including initiating an inquiry or investigation that may result in a termination for Cause) or **[b]** that are germane (but only to the extent that it is germane) to defending against any action begun by the Executive under this Agreement.

**4.08 Notice of Subsequent Employment.** The Executive agrees to notify the Company of any subsequent employment during the Restriction Period and any period during which any payment described in Section 5.00 is due or is being paid.

**4.09 Remedies.** The Executive:

**[1]** Acknowledges that the obligations and restrictions described in Sections 4.02 through 4.08 are reasonable in light of the nature of the Group's Business and the nature of the Executive's relationship with the Group and the Company; that the Group, the Company and all other Group Members have legitimate business reasons for requiring the Executive's agreement to all provisions of Section 4.00; and that the Executive understands these restrictions, has had an opportunity to fully discuss these restrictions with the Company and accepts the restrictions.

[2] Agrees that if any of the obligations to the Company under Sections 4.02 through 4.08 are breached, the periods during which the obligations described in Sections 4.02 through 4.08 apply will be extended for the length of time that the Executive failed to fulfill the obligations under Sections 4.02 through 4.08.

[3] Agrees that [a] any breach of any of the terms of this Section 4.00 would result in irreparable injury and damage to the Group, the Company and all other Group Members for which none would have an adequate remedy at law, [b] in the event of a breach or any threat of breach by the Executive, the Group, the Company and any Group Member will be entitled to an immediate injunction and restraining order to prevent that breach and/or threatened breach and/or continued breach by the Executive and/or any and all persons and/or entities acting for, with and/or through the Executive, without having to prove damages [c] no bond will be required of the Group, the Company or any other Group Member in connection with an action described in Section 4.09[3][a] and [d] not to defend any action seeking injunctive or other equitable relief on the basis that the Group, the Company or any other Group Member has an adequate remedy at law in money damages or otherwise. The terms of this Section 4.09 will not prevent the Company from pursuing any other available remedies for any breach or threatened breach by the Executive of Section 4.00, including, but not limited to, the recovery of monetary damages from the Executive or specific performance. In addition to any other available remedies, the Group, the Company or any Group Member may require the Executive to account for and pay over to the Company all compensation, profits, accruals, increments or other benefits derived or received by the Executive as a result of any transaction constituting a breach of any portion of Section 4.00. The Company may set off any amounts finally determined by a court of competent jurisdiction to be due under this section against any amount that may be owed to the Executive under this Agreement or under any other compensatory arrangement (other than a tax-qualified retirement plan) between the Executive and the Group, the Company or any other Group Member. The Parties agree that any action for breach of any of the provisions of Section 4.00 and/or injunctive relief will be venued in the Court of Common Pleas, Franklin County, Ohio.

**4.10 Return of Group Property.** Upon termination of employment, the Executive agrees to promptly return to the Company all property belonging to the Group or any Group Member; provided, however, that in the event the Executive's employment is terminated pursuant to Section 5.06 and the Executive is then utilizing an automobile provided by the Company, the Executive shall retain the automobile in accordance with the terms of Section 5.06[5].

**4.11 Effect of Termination of Agreement.** The provisions of Section 4.00 will survive any termination of this Agreement and the existence of any claim or cause of action by the Executive against the Company or any Group Member, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Group, the Company or any other Group Member of the covenants and agreements of this Section 4.00; provided, however, that this Section 4.11 will not, in and of itself, preclude the Executive from defending against the enforceability of the covenants and agreements of Section 4.00.

## 5.00 Termination and Related Benefits

This Agreement will terminate upon the occurrence of any of the events described in this section, although all of the obligations, restrictions and duties described in Sections 4.02 through 4.08 will continue after the Agreement terminates and will apply and continue to apply to the Executive and the Executive's estate, heirs and assigns for the period described in Sections 4.02 through 4.08.

**5.01 Rules of General Application.** The following rules apply generally to the implementation of Section 5.00:

**[1] Definition of Termination.** For purposes of this Agreement, any reference to a "termination" of employment or any form thereof shall mean a "separation from service" as defined in Treasury Regulation §1.409A-1(h) by the Executive with BLI, Big Lots and all persons with whom BLI would be considered a single employer under Sections 414(b) and (c) of the Internal Revenue Code of 1986, as amended (the "Code").

**[2] Application of Pro Rata.** Any pro rata amount to be paid under Section 5.00 **[a]** will be calculated as provided in the program through which the payment is due or **[b]** if the payment obligation arises solely under this Agreement, will be based on the number of days between the first day of the fiscal year during which the Executive terminates employment and the date that the Executive terminates employment divided by the number of days in the fiscal year during which the Executive terminates employment.

**[3] Payment of Bonus (or pro rata share of any Bonus).** Any Bonus (or pro rata portion thereof) payable pursuant to this Section 5.00 will be paid in accordance with the terms of the applicable bonus plan, but in no event later than the fifteenth day of the third month following the later of: **[a]** the end of the calendar year during which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable; or **[b]** the end of the Company's fiscal year in which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable.

**5.02 Termination Due to Executive's Death.** This Agreement will terminate automatically on the date the Executive dies. If all requirements of this Agreement are met (including those described in Section 7.00), as of the Executive's date of death, and subject to Section 5.04[5], the Company will make the following payments to the beneficiary the Executive designates on a form acceptable to the Company. If the Executive has not made an effective beneficiary designation (or has revoked all beneficiary designations), these payments will be made to the Executive's surviving spouse or, if the Executive dies without a surviving spouse, to the Executive's estate.



[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his death occurs had his death not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.03 Termination Due to Executive's Disability.** If the Executive becomes Disabled (as defined in Section 5.03[4]), this Agreement shall terminate automatically. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[4] **Definition of Disability.** For purposes of this Agreement, "Disability" (and any of its forms) means that, for more than six consecutive months, the Executive is unable, with reasonable accommodation, to perform the duties described in Section 4.01 on a full-time basis due to a physical or mental disability or infirmity.

**5.04 Termination for Cause.** The Company may terminate the Executive's employment for Cause (as defined in Section 5.04[3]). A termination for Cause shall only be effective after [a] the Company has delivered a written notice to the Executive stating that in the Company's opinion, the Executive may be terminated for Cause, specifying the details and [b] if the failure or action is one that can be cured, the Executive does not cure the issue giving rise to the Cause determination within 30 days after receiving notice. If the Executive is terminated for Cause and if all requirements of this Agreement are met (including those imposed under Section 7.00), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[3] **Definition of Cause.** For purposes of this Agreement, Cause means the Executive's [a] failure to comply with Company's policies and procedures which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [b] willful or illegal misconduct or grossly negligent conduct that is materially injurious to the Group, the Company or any other Group Member, monetarily or otherwise; [c] violation of laws or regulations governing the Group, the Company or any other Group Member (including the Sarbanes-Oxley Act of 2002) or violation of the Company's code of ethics; [d] breach of any fiduciary duty owed to the Group, the Company or any other Group Member; [e] misrepresentation or dishonesty which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [f] breach of any provision of Section 4.00 of this Agreement; [g] involvement in any act of moral turpitude that has a materially injurious effect on the Group, the Company or any other Group Member or their reputation; or [h] breach of the terms of any non-solicitation or confidentiality clauses contained in an employment agreement(s) with a former employer.

[4] [Reserved]

[5] **Subsequent Information.** The terms of Section 5.04 also will apply if, within 6 consecutive calendar months beginning after the Executive terminates under any other provision of Section 5.00, the Company learns of an event that, had it been known before the Executive terminated employment, would have justified a termination for Cause. In this case, the Company will be entitled to recover any amounts that the Executive or any beneficiary received under any other provision of Section 5.00, reduced by the amount the Executive is entitled to receive under this Section 5.04 and any other legally protected benefits paid or made available under this Agreement that originally was applied when the Executive terminated.

**5.05 Voluntary Termination by Executive.** The Executive may voluntarily terminate employment with the Company at any time upon thirty (30) days notice to Company. In this case, and if all other requirements of this Agreement are met, and subject to Section 5.04[5], the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.06 Involuntary Termination Without Cause.** The Company may terminate the Executive's employment at any time upon thirty (30) days notice to Executive without Cause by delivering to the Executive a written notice specifying the same. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Income Continuation.** The Executive will be entitled to continue to receive his Base Salary until the last day of the twelfth complete calendar month beginning after the termination date. Such amounts shall be payable in accordance with the regularly scheduled payroll for similarly situated employees. These payments shall be treated as "separation pay" (within the meaning of Section 409A of the Code) to the maximum extent permitted by Treasury Regulation §1.409A-1(b)(9). Any payments in excess of the maximum amount that can be treated as separation pay pursuant to Treasury Regulation §1.409A-1(b)(9) shall be subject to the provisions of Section 5.08.

[4] **Health Care.** The Executive will be entitled to continue to receive the welfare benefits described in Section 3.03 until the last day of the twelfth complete calendar month beginning after the termination date. Thereafter, the Company will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium for this coverage, if any, until the earlier of [a] the last day of the twenty-fourth complete calendar month beginning after the termination date or [b] the date the Executive becomes eligible for the same or similar coverage under another benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.06[4], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.06[4] shall be subject to the following: [i] the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; [ii] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [iii] the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

[5] **Transportation.** The Executive will be entitled to continue to receive the automobile benefits described in Section 3.06 until the last day of the twelfth complete calendar month beginning after the termination date; provided, however, that: [a] the benefits provided or amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement or benefits to be provided in any other taxable year of the Executive; [b] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [c] the right to such benefit or reimbursement may not be subject to liquidation or exchange for another benefit.

**[6] Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.07 Termination in Connection With Change of Control.** If the Executive is Terminated in Connection With a Change of Control (as defined in Section 5.07[5]) at any time during the Protection Period (as defined in Section 5.07[4]) and if all other conditions of this Agreement have been met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Change Entity (as defined in Section 5.07[2]) will pay or make available the Change Benefits (as defined in Section 5.07[1]) in lieu of any other amounts of benefits that might otherwise be due under this Agreement on account of that termination.

**[1] Change Benefits.** For purposes of this Agreement, “Change Benefits” means the aggregate of the following, adjusted if appropriate under Sections 5.07[6] and [7]:

**[a] Base Salary.** The sum of **[i]** the Base Salary earned to the date of termination plus **[ii]** 200 percent of the Executive’s Base Salary at the highest rate in effect at any time during the Protection Period. This amount will be paid in a lump sum cash payment on the Change Entity’s first regular payroll date for senior executive officers of the Company following the effective date of the Executive’s Termination in Connection With a Change of Control.

**[b] Bonus.** Two hundred percent of the Executive’s Stretch Bonus in effect under the Bonus Program for the year in which the Executive’s employment is Terminated in Connection With a Change of Control or, if higher, the Stretch Bonus in effect under the Bonus Program (or comparable program) at any time during the Protection Period. This amount will be paid in a single lump sum on the Change Entity’s next regularly scheduled payroll date for senior executive officers of the Company following the date of the Executive’s Termination in Connection With a Change of Control.

**[c] Health Care.** The Change Entity will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium at the lowest rate in effect at any time during the Protection Period for this coverage, until the earlier of **[i]** the last day of the 24th complete calendar month beginning after the date the Executive is Terminated in Connection With a Change of Control or **[ii]** the date the Executive becomes eligible for comparable benefits at comparable costs to the Executive under another employer sponsored benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.07[1][c], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.07[1][c] shall be subject to the following: **[A]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; **[B]** any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and **[C]** the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

**[d] Other.** Any rights (including those arising on account of the Change of Control) accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Change Entity will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**[2] Change Entity.** For purposes of this Agreement, “Change Entity” means the Company, BLI and any other entity that is a party to the Change of Control.

**[3] Definition of Change of Control.** For purposes of this Agreement, “Change of Control” means the first to occur of any of the following events:

**[a]** The acquisition by any person (as defined under Section 409A of the Code), or more than one person acting as a group (as defined under Section 409A of the Code), of the stock of BLI that, together with the stock of BLI held by such person or group, constitutes more than fifty (50) percent of the total fair market value or total voting power of all of the stock of BLI;

**[b]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of the stock of BLI possessing thirty (30) percent or more of the total voting power of all of the stock of BLI;

**[c]** A majority of the members of the Board of Directors of BLI is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of BLI prior to the date of the appointment or election; or

**[d]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from BLI that have a total gross fair market value equal to or more than forty (40) percent of the total gross fair market value of all of the assets of BLI immediately prior to such acquisition or acquisitions.

This definition of Change of Control under this Section 5.07[3] shall be interpreted in a manner that is consistent with the definition of “change in control event” under Section 409A of the Code and the Treasury Regulations promulgated thereunder. The effective date of any such Change of Control will be the date upon which the last event occurs or last action is taken such that the definition of Change of Control (as set forth above) has been satisfied. For purposes of this Agreement, the term “affiliate” means any person or entity that, along with BLI, constitutes a single employer under Sections 414(b) and 414(c) of the Code. Determination of affiliate will be tested as of the date immediately prior to any event constituting a Change of Control. Notwithstanding the other provisions of this Section 5.07, the term “Change of Control” will not mean any transaction, merger, consolidation or reorganization in which BLI exchanges or offers to exchange newly issued or treasury shares in an amount less than 50 percent of the then-outstanding equity securities of BLI entitled to vote for the election of directors, for fifty-one (51) percent or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than BLI or an affiliate thereof (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.

**[4] Protection Period.** For purposes of this Agreement, “Protection Period” means the period beginning on the first day of the third full consecutive calendar month beginning before the date of the Change of Control and ending on the last day of the twenty-fourth consecutive full calendar month beginning after the date of the Change of Control.

**[5] Termination in Connection With a Change of Control.** For purposes of this Agreement, “Termination in Connection With a Change of Control” means, at any time during the Protection Period:

**[a]** The Change Entity involuntarily terminates the Executive without Cause (as defined in Section 5.06).

**[b]** The Executive terminates following the occurrence of any of the following conditions;

**[i]** The Change Entity breaches any provision of this Agreement;

**[ii]** The Change Entity unsuccessfully attempts to terminate the Executive for Cause (as defined in Section 5.04);

**[iii]** The Change Entity attempts to terminate the Executive for any reason without following the procedures described in this Agreement (including an acceleration of the periods described in Section 5.03[4] and 5.04[b]);

**[iv]** The Change Entity revokes or attempts to revoke or accelerate the duration of any leave of absence protected by law or authorized by the Company before the Protection Period or by the Change Entity at any time during the Protection Period;

[v] The Change Entity refuses to allow the Executive to return to active employment at the end of any leave of absence protected by law or authorized by the Company before the Protection Period or the Change Entity at any time during the Protection Period; or

[vi] The Change Entity causes the Executive to resign because of a material adverse change or material diminution in the Executive's reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by the Executive in his good faith discretion); provided, however, that the Executive shall notify the Company in writing at least forty- five (45) days in advance of any election by the Executive to terminate his employment hereunder, specifying the nature of the alleged adverse change or diminution, and the Company shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before the Executive shall be entitled to exercise any such rights and remedies.

For purposes of this Section 5.07[5], the termination of employment is deemed to occur on the Executive's actual date of termination.

**[6] Treatment of Taxes.** If payments under this Agreement, when combined with payments and benefits under all other plans and programs maintained by the Company or the Change Entity, constitute "excess" parachute payments as defined in Section 280G(b) of the Code, the Change Entity, subject to Section 5.07[7], will either:

**[a]** Reimburse the Executive for the amount of any excise tax due under Code §4999, if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][b]; or

**[b]** Reduce the Executive's benefits under this Agreement so that the Executive's total "parachute payment" as defined in Code §280G(b)(2)(A) under this Agreement and all other agreements will be \$1.00 less than the amount that would generate "excess" parachute payment penalties if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][a].

This comparison will be made as of the date of the corporate event generating the "parachute payments" although any reimbursement provided under Section 5.07[6][a] will be made when the parachute payment is actually made or distributed.

Within 10 business days of the date the Change Entity determines that Section 5.07[6][b] should be applied, the Change Entity will apprise the Executive of the amount of the reduction ("Notice of Reduction"). Within 10 business days of receiving that information, the Executive may specify how (and against which benefit or payment source) the reduction is to be applied ("Notice of Allocation"). The Change Entity will be required to implement these directions within 10 business days of receiving the Notice of Allocation. If the Change Entity has not received a Notice of Allocation from the Executive within 10 business days of the date of the Notice of Reduction or if the allocation provided in the Notice of Allocation is not sufficient to fully implement Section 5.07[6][b], the Change Entity will apply Section 5.07[6][b] proportionately based on the amounts otherwise payable under this Agreement or, if a Notice of Allocation has been returned that does not sufficiently implement Section 5.07[6][b], on the basis of the reductions specified in the Notice of Allocation. Any taxes reimbursed pursuant to Section 5.07[6][a] shall be paid by the end of Executive's taxable year next following the taxable year in which Executive remits payment of the tax or assessment being reimbursed. Any reduction pursuant to Section 5.07[6][b] shall be made in accordance with Section 409A of the Code and the Treasury Regulations promulgated thereunder.

**[7] Effect of Subsequent Tax Claim.** The Change Entity will establish procedures that will apply to any inquiries regarding the treatment of tax payments under this Section 5.07. Within 30 days following the termination of the Executive's employment under Section 5.07, the Change Entity will provide the Executive with a copy of such procedures.

**5.08 Six-Month Distribution Delay.** Notwithstanding the foregoing, if Executive is a "specified employee," within the meaning of Treasury Regulation §1.409A-1(i) and as determined under BLI's policy for determining specified employees, on the Executive's date of termination, and the Executive is entitled to a payment and/or a benefit under this Agreement that is required to be delayed pursuant to Section 409A(a)(2) of the Code, then such payment or benefit shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following the Executive's date of termination (or, if earlier, the Executive's death). The first payment that can be made following such postponement period shall include the cumulative amount of any payments or benefits that could not be paid or provided during such postponement period due to the application of Section 409A(a)(2)(B)(i) of the Code.

## **6.00 Notice**

**6.01 How Given.** Any notice permitted or required to be given under this Agreement must be given in writing and delivered in person or by registered, U.S. mail, return receipt requested, postage prepaid; or through Federal Express, UPS, DHL or any other reputable professional delivery service that maintains a confirmation of delivery system. Any delivery must be **[1]** in the case of notices to the Company or the Change Entity, addressed to the Company's Chief Executive Office at the Company's then-current corporate offices and **[2]** in the case of notices to the Executive, addressed to the Executive's last mailing address contained in the Executive's personnel file.

**6.02 Effective Date.** Any notice permitted or required to be given under this Agreement will be deemed to have been given and will be effective on the date it is delivered.

## **7.00 Execution of Release**

The Executive agrees that as a condition of receiving any post-termination benefit as set forth in Section 5.00 except for earned but unpaid Base Salary to the date of termination and any legally protected rights the Executive has under any employee benefit plan maintained by the Company, the Executive or, in the case of any amounts due after the Executive's death, the person to whom those amounts are payable (collectively, the "Payee") must execute a comprehensive release in the form determined from time to time by the Company in its sole discretion. Generally, the release will require the Payee and the Payee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns to release and forever discharge the Group, the Company and all other Group Members, past, present and future, and their executives, officers, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action that grow out of or are in any way related to the Executive's recruitment and employment with the Company that arose on or before the date of the release, other than any claim that the Company has breached this Agreement. This release will include, but not be limited to, any claim that the Company violated the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act; any state, federal law or local ordinance prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state; or any federal, state or local law (each as in effect on the Effective Date and as subsequently amended) relating to any matter within the purview of this Agreement. Upon the Executive's termination of employment with all Group Members, the Payee will be presented with a release and if the Payee fails to execute the release, the Payee agrees to forego any payment described in the first sentence of this section. The Executive acknowledges that the Executive is an experienced senior executive knowledgeable about the claims that might arise in the course of employment with and termination from the Company and any other Group Member and knowingly agrees that the payments upon termination provided for in this Agreement are satisfactory consideration for the release of all possible claims described in the release. Notwithstanding anything to the contrary, the failure of the Executive to execute the release described in this Section 7.00 shall not otherwise cause any payment made pursuant to this Agreement to be delayed beyond the date on which such payment was originally scheduled to occur.



## **8.00 Insurance and Indemnification**

The Company will indemnify Executive (including his heirs, executors and administrators) to the fullest extent permitted under the Company's Regulations and Ohio law. This obligation to provide insurance for the Executive will survive termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions occurring during the Executive's employment with or termination from the Group, the Company or with any other Group Member. Concurrently with the execution of this Agreement, BLI will enter into an indemnification agreement with Executive.

## **9.00 Arbitration**

**9.01 Acknowledgement of Arbitration.** Unless stated otherwise in this Agreement or any other compensatory or any employee benefit plan, fund or program maintained by the Company, the Parties agree that arbitration is the sole and exclusive remedy for each of them to resolve (except as specifically provided in Section 4.09) and redress any dispute, claim or controversy involving the interpretation or application of this Agreement, the terms, conditions or termination of this Agreement and the terms, conditions or termination of the Executive's employment with the Company, including any claims for any tort, breach of contract, violation of public policy or discrimination, whether such claim arises under federal, state law or local law.

**9.02 Scope of Arbitration.** The Executive expressly understands and agrees that claims subject to arbitration under this section include asserted violations of the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964 (as amended); the Family and Medical Leave Act; any federal, state or local law or ordinances prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state, or any federal, state or local law (each as in effect on the Effective Date or as subsequently amended) relating to any matter within the purview of this Agreement.

**9.03 Effect of Arbitration.** The Parties intend that any arbitration award relating to any matter described in Section 9.01 will be final and binding on them and that a judgment on the award may be entered in any court of competent jurisdiction and that enforcement may be had according to the terms of that award. This Section 9.03 will survive the termination of this Agreement.

**9.04 Location and Conduct of Arbitration.** Arbitration will be held in Columbus, Ohio, and will be conducted by a retired federal judge or other qualified arbitrator. The arbitrator will be mutually agreed upon by the Parties and the arbitration will be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The Parties will have the right to conduct discovery pursuant to the Federal Rules of Civil Procedure; provided, however, that the arbitrator will have the authority to establish an expedited discovery schedule and cutoff and to resolve any discovery disputes. The arbitrator will have no jurisdiction or authority to change any provision of this Agreement by alterations of, additions to or subtractions from the terms of this Agreement. The arbitrator's sole authority will be to interpret or apply any provision(s) of this Agreement or any public law alleged to have been violated. The arbitrator has the authority to award damages and other relief expressly provided by law.

**9.05 Time for Initiating Arbitration.** Any claim or controversy relating to any matter described in Section 9.01 not sought to be submitted to arbitration, in writing, within 60 days of the date the Party asserting the claim knew, or through reasonable diligence should have known, of the facts giving rise to that Party's claim, will be deemed waived and the Party asserting the claim will have no further right to seek arbitration or recovery with respect to that claim or controversy. Both Parties agree to strictly comply with the time limitation specified in this section. For purposes of this section, a claim or controversy is sought to be submitted to arbitration on the date the complaining Party gives written notice to the other that **[1]** an issue has arisen or is likely to arise that, unless resolved otherwise, may be resolved through arbitration under this Section 9.00 and **[2]** unless the issue is resolved otherwise, the complaining Party intends to submit the matter to arbitration under the terms of Section 9.00.

**9.06 Costs of Arbitration and Attorney's Fees.** The Company will bear the arbitrator's fee and other costs associated with any arbitration, unless the arbitrator, acting under Federal Rule of Civil Procedure 54(d)(1), elects to award these fees to the Company. Attorney's fees **[1]** may be awarded to the prevailing party if expressly authorized by statute, or otherwise each party will bear its own attorney's fees and costs but **[2]** Executive's attorney's fees and other associated costs and expenses will be borne by the Change Entity with respect to any claim arising under Section 5.07 but only if the arbitrator concludes the claim legitimately relates to matters within the contemplation of Section 5.07 (otherwise, the rule described in Section 9.06[1] will apply). Notwithstanding the foregoing: **[a]** any costs being reimbursed must relate to a claim brought during the lifetime of the Executive with respect to an alleged breach of any obligation of the Company under this Agreement; **[b]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement in any other taxable year; **[c]** any reimbursement must be made on or before the last day of the Executive's taxable year following the taxable year in which the cost was incurred; and **[d]** the right to reimbursement for such costs is not subject to liquidation or exchange for another benefit.

**9.07 Arbitration Exclusive Remedy.** The Parties acknowledge that, because arbitration is the exclusive remedy for resolving the issues described in Section 9.01, neither Party may resort to any federal, state or local court or administrative agency concerning those issues and that the decision of the arbitrator will be a complete defense to any suit, action or proceeding instituted in any federal, state or local court before any administrative agency with respect to any arbitrable claim or controversy.

**9.08 Waiver of Jury.** The Executive (personally and in behalf of all the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns) and the Company (on its own behalf's and in behalf of its successors, including any Change Entity) each waive the right to have a claim or dispute with one another decided in a judicial forum or by a jury, except as otherwise provided in this Agreement.

## **10.00 General Provisions**

**10.01 Representation of Executive.** The Executive represents and warrants that the Executive is an experienced senior executive knowledgeable about the issues (and their effect) within the purview of this Agreement and is not under any contractual or legal restraint that prevents or prohibits the Executive from entering into this Agreement or performing the duties and obligations described in this Agreement.

**10.02 Modification or Waiver; Entire Agreement.** No provision of this Agreement may be modified or waived except in a document signed by the Executive and the Company's Chief Executive Officer or other person designated by the Company's Board of Directors. This Agreement, and any attachments referenced in the Agreement, constitute the entire agreement between the Parties regarding the employment relationship described in this Agreement, and, except as otherwise specifically provided in this Agreement, any other agreements are terminated and of no further force or legal effect. No agreements or representations, oral or otherwise, with respect to the Executive's employment relationship with the Company have been made or relied upon by either Party which are not set forth expressly in this Agreement.

**10.03 Governing Law; Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application of any provision of this Agreement to any person or circumstance, is, for any reason and to any extent, held invalid or unenforceable, such invalidity and unenforceability will not affect the remaining provisions of this Agreement of its application to other persons or circumstances, all of which will be enforced to the greatest extent permitted by law and the Parties agree that any invalid or unenforceable provision may and will be reformed and applied **[1]** as provided in Section 4.05, with respect to the matters specifically contemplated in Section 4.00 and **[2]** with respect to other matters, **[a]** to the extent needed to avoid that invalidity or unenforceability and **[b]** in a manner that is as similar as possible to the Parties' intent (as described in this Agreement). The validity, construction and interpretation of this Agreement and the rights and duties of the Parties will be governed by the laws of the State of Ohio, without reference to the Ohio choice of law rules.

**10.04 No Waiver.** Except as otherwise provided in Section 9.05, failure to insist upon strict compliance with any term of this Agreement will not be considered a waiver of any such term or any other term of this Agreement.

**10.05 Withholding.** All payments made to or on behalf of the Executive under this Agreement will be reduced by any amount:

[1] That the Company is required by law to withhold in advance payment of the Executive's federal, state and local income, wage and employment tax liability; and

[2] To the extent allowed by law, that the Executive owes (or, after employment is deemed to owe) to the Group, the Company or any other Group Member.

Application of Section 10.05[2] will not extinguish the Company's right to seek additional amounts from the Executive (or to pursue other appropriate remedies) to the extent that the amount recovered by application of Section 10.05[2] does not fully discharge the amount the Executive owes to the Group, the Company or other Group Member and does not preclude the Group, the Company or any other Group Member from proceeding directly against the Executive without first exhausting its right of recovery under Section 10.05[2].

**10.06 Survival.** The Parties agree that the covenants and promises set forth in this Agreement will survive the termination of this Agreement and continue in full force and effect after this Agreement terminates to the extent that their performance is required to occur after this Agreement terminates.

**10.07 Miscellaneous.**

[1] The Executive may not assign any right or interest to, or in, any payments payable under this Agreement; provided, however, that this prohibition does not preclude the Executive from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and does not preclude the legal representative of the Executive's estate from assigning any right under this Agreement to the person or persons entitled to it.

[2] This Agreement will be binding upon and will inure to the benefit of the Executive, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns and the Company and its successors and, to the extent applicable, the Group and all Group Members.

[3] The headings in this Agreement are inserted for convenience of reference only and will not be a part of or control or affect the meaning of any provision of the Agreement.

**10.08 Successors to Company.** This Agreement may and will be assigned or transferred to, and will be binding upon and will inure to the benefit of, any successor of the Company, including any Change Entity, and any successor will be substituted for the Company under the terms of this Agreement. As used in this Agreement, the term “successor” means any person, firm, corporation or business entity which at any time, whether by merger, purchase or otherwise, acquires all or essentially all of the assets of the business of the Company. Notwithstanding any assignment, the Company will remain, with any successor, jointly and severally liable for all its obligations under this Agreement.

**10.09 Section 409A of the Code.** This Agreement is intended to comply with Section 409A of the Code and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to the Executive and neither the Company nor the Boards of Directors of BLI or Big Lots shall be liable to the Executive for failure to comply with the requirements of Section 409A of the Code. Furthermore, the Company may accelerate the time or schedule of a payment to the Executive if at any time this Agreement fails to meet the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder.

Notwithstanding the foregoing, if the Executive terminates for any reason, dies or becomes Disabled on or prior to December 31, 2008 and is entitled to payment or benefit as a result of such termination, death or Disability, such payment or benefit shall be paid or provided [1] pursuant to the terms of this Agreement in effect immediately prior to the Effective Date, but [2] modified to the extent necessary for good faith compliance with the requirements of Section 409A of the Code. Nothing in this Agreement shall be construed as causing a payment or benefit to be paid or distributed in calendar year 2008 which is not otherwise payable or distributable in calendar year 2008.

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement, which includes an arbitration provision, and consists of 23 pages.

BIG LOTS, INC.

By: /s/ Dennis B. Tishkoff

Signed: December 5, 2008

BIG LOTS STORES, INC.

By: /s/ Brad A. Waite

Signed: December 5, 2008

John C. Martin

/s/ John C. Martin

Signed: December 5, 2008

**AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT  
BY AND AMONG  
BIG LOTS, INC.,  
BIG LOTS STORES, INC.  
AND  
LISA M. BACHMANN**

This amended and restated employment agreement ("Agreement") by and among Big Lots, Inc. ("BLI"), Big Lots Stores, Inc. ("Big Lots") and their affiliates, predecessor, successor, subsidiaries and other related companies (collectively the "Company") and Lisa M. Bachmann ("Executive"), collectively, the "Parties," is effective as of December 5, 2008 ("Effective Date") and supersedes and replaces any other oral or written agreement or understanding concerning the terms of the Executive's employment with the Company but does not supersede or replace any agreement or arrangement between the Executive or any Group Member (as defined in Section 4.02[1]) relating to the payment of compensation or benefits earned (or deemed earned) on account of services performed for a Group Member before the Effective Date.

**1.00      Duration**

This Agreement will remain in effect from the Effective Date until it terminates as provided in Section 5.00 ("Term"). Any notice of termination required to be given under this Agreement must be given as provided in Section 6.00 and will be effective on the date prescribed in Section 5.00.

**2.00      Executive's Employment Function**

**2.01      Position.** The Executive agrees to serve as the Company's Senior Vice President (or other equivalent title conferred by the Company in its sole discretion) with the authority and duties customarily associated with this position. The Executive agrees at all times to observe and to be bound by all Company rules, policies, practices, procedures and resolutions which apply to Company employees with a similar title and position and which do not conflict with the specific terms of this Agreement. In performance of these duties, Executive shall be subject to the direction of and report to an individual holding one or more of the following titles: Chief Executive Officer, President, Chief Administrative Officer and/or Executive Vice President of Company. Company agrees that whoever Executive reports to will hold one or more of the above titles and that such person will also have the responsibility for merchandising.

**2.02      Place of Performance.** Unless the Company requires the Executive to perform duties at another location, the Executive's duties will be performed principally in Columbus, Ohio, except for travel on the business of any Group Member.

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### 3.00 Compensation

The Company will pay the Executive the amounts described in Sections 3.00 and 5.00 as compensation for the services described in this Agreement and in exchange for the duties and responsibilities described in Section 4.00.

**3.01 Base Salary.** The Company will pay to the Executive an annualized base salary of \$440,000, which, at the discretion of the Company, may be adjusted from time to time in a manner that is consistent with the Company's compensation policies in effect for Company employees with a similar title and position ("Base Amount") but may not be adjusted to any amount lower than \$440,000 without the Executive's consent. The Executive's Base Salary will be paid in installments that correspond with the Company's normal payroll practices.

**3.02 Bonus.** The Executive will be eligible to receive bonus compensation ("Bonus") under and subject to the terms of the Company's Big Lots 2006 Bonus Plan, as amended (or any such successor plan, hereinafter, "Bonus Program") for the fiscal year beginning January 30, 2008 and for each subsequent fiscal year during the Term of this Agreement. The Executive's Bonus will be an amount equal to the Base Salary at the end of each fiscal year multiplied by the Bonus Payout percentage as determined under the Bonus Program. The Bonus Program is based upon the achievement of the Company's annual financial plan. The Executive's Bonus Payout percentage will consist of a Target Bonus of 60 percent of Base Salary and a Stretch Bonus of 120 percent of Base Salary. Both "Target Bonus" and a "Stretch Bonus" are defined in the Bonus Program and are subject to adjustment as provided in the Bonus Program; provided, however, the Executive's Target Bonus will never be set at less than 60 percent of Base Salary and the Executive's Stretch Bonus will never be set at less than 120 percent of Base Salary.

[1] **Payment.** The payment of any earned Bonuses is subject to the terms of the Bonus Program and any agreements issued thereunder.

[2] **Fiscal Year.** The term "fiscal year" means the period beginning on the first Sunday after the Saturday closest to January 31<sup>st</sup> of each calendar year and ending on the Saturday closest to January 31<sup>st</sup> of the following calendar year.

**3.03 Benefit and Other Compensatory Plans.** Subject to their terms (which the Company may amend at any time), the Executive may participate in any Company-sponsored employee pension or welfare benefit plan at a level commensurate with the Executive's title and position. The Executive also may participate in any other deferred incentive or similar compensation program maintained by the Company and generally made available to other senior executive officers of the Company.

**3.04 Vacation and Sick Leave.** The Executive will be entitled to the same periods of vacation and sick leave each year that the Company provides under its vacation and sick leave policy to other senior executive officers of the Company.

**3.05 Expenses.** Consistent with the terms of its business expense reimbursement policies and procedures, the Company will reimburse Executive for all normal and reasonable expenses incurred while performing services under this Agreement, including reasonable travel expenses. Reimbursement for these expenses will be made as soon as administratively feasible after the date the Executive submits appropriate evidence of the expenditure and otherwise complies with the Company's business expense reimbursement policies and procedures.



**3.06 Automobile Allowance.** The Company will provide the Executive with an automobile or a monthly automobile allowance in accordance with applicable Company policies for employees with a similar title and position; provided, however, that the automobile allowance may not be adjusted to a value lower than the value the Executive is entitled to receive as of the Effective Date.

**3.07 Termination Benefits.** The Company will provide the Executive with only those termination benefits described in Section 5.00.

#### **4.00 Executive's Obligations**

The amounts described in Sections 3.00 and 5.00 of this Agreement are provided by the Company in exchange for (and have a value to the Company equivalent to) the Executive's performance of the obligations described in this Agreement, including performance of the duties and the covenants made and entered into by and between the Executive and the Company in this Agreement.

**4.01 Scope of Duties.** The Executive will:

- [1]** Devote all available business time, best efforts and undivided attention to the Company's business and affairs; and
- [2]** Not engage in any other business activity, whether for gain, profit or other pecuniary benefit except for services benefiting the Group or any Group Member.

However, the restrictions described in Sections 4.01[1] and [2] will not preclude the Executive from:

- [3]** Making or holding passive investments; or
- [4]** Serving on corporate, civic, religious, educational and/or charitable boards or committees but only if this activity **[a]** does not interfere with the Executive's performance of the duties assumed under this Agreement and **[b]** is approved in writing by the Company.

**4.02 Confidential Information.**

**[1] Obligation to Protect Confidential Information.** The Executive acknowledges that the Company, its parent, affiliates, predecessor, successor, subsidiaries and other related companies, including entities that become related entities after the Effective Date (collectively, "Group" and separately, "Group Member") have a legitimate and continuing proprietary interest in the protection of Confidential Information (as defined in Section 4.02[2]) and Intellectual Property (as defined in Section 4.02[3]) and have invested, and will continue to invest, substantial sums of money to develop, maintain and protect Confidential Information and Intellectual Property. The Executive agrees **[a]** during and after employment with the Company and as to all Group Members **[i]** that any Confidential Information and Intellectual Property will be held in confidence and treated as proprietary to the Group, **[ii]** not to use or disclose any Confidential Information or Intellectual Property except to promote and advance the Group's business interests and **[b]** immediately upon termination for any reason from employment with the Company, to return to the Company any Confidential Information and Intellectual Property.

**[2] Definition of Confidential Information.** For purposes of this Agreement, Confidential Information includes any confidential data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, supplier information, tax records, personnel histories and records, information regarding sales, information regarding properties and any other information of a similar confidential nature regarding the business, operations, properties or personnel of the Group, the Company or any other Group Member which are disclosed to or learned by the Executive while employed by a Group Member, but will not include **[a]** the Executive's own personal personnel records or **[b]** any information that **[i]** the Executive possessed before the date of initial employment (including periods before the Effective Date) with the Group that was a matter of public knowledge, **[ii]** became or becomes a matter of public knowledge through authorized sources independent of the Executive, **[iii]** has been or is disclosed by any Group Member without restriction on its use, **[iv]** has been or is required to be disclosed by law or governmental order or regulation or **[v]** is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only if its disclosure is a necessary part of any proceedings described in Section 9.00. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's General Counsel or Chief Executive Officer confirms to the Executive that the information is public knowledge or an adjudicator finally decides that the information is public knowledge.

**[3] Intellectual Property.** The Executive expressly acknowledges that all right, title and interest to all inventions, designs, discoveries, works of authorship, and ideas conceived, produced, created, discovered, authored or reduced to practice during the Executive's performance of services under this Agreement, whether individually or jointly with any Group Member and whether or not it is deemed to be "work made for hire" (the "Intellectual Property") will be owned solely by the Group, and will be subject to the restrictions set forth in Section 4.02[1]. All Intellectual Property that constitutes copyrightable subject matter under the copyright laws of the United States will, from its conception, be deemed to be a "work made for hire" under the United States copyright laws and all right, title and interest in and to such copyrightable works will vest in the Company or the Group. All right, title and interest in and to all Intellectual Property developed or produced under this Agreement by the Executive, whether constituting patentable subject matter or copyrightable subject matter (to the extent deemed not to be a "work made for hire") or otherwise, will be assigned and is hereby irrevocably assigned to the Company or the Group by the Executive. Without any additional consideration, the Executive will execute all documents and take all other actions the Company reasonably believes are needed to convey the Executive's complete ownership interest in any Intellectual Property to the Company or the Group so that the Company or the Group will own and may protect the Intellectual Property and obtain patent, copyright and trademark registrations for it. The Executive agrees that any Group Member may alter or modify the Intellectual Property at the Group Member's sole discretion, and the Executive waives all right to claim or disclaim ownership.

**4.03 Solicitation of Employees.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members **[1]** not, directly or indirectly, to solicit (or facilitate the solicitation of) any employee of any Group Member to leave employment with the Group or any Group Member, **[2]** not, directly or indirectly, to employ, seek to employ or facilitate the employment of any employee of any Group Member by an entity that is not a Group Member and **[3]** not to cause or induce any entity described in Section 4.05[1] to solicit or employ (or to facilitate the solicitation or employment of ) any employee of any Group Member.

**4.04 Solicitation of Third Parties.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members not, directly or indirectly, to recruit, solicit or otherwise induce or influence any customer, supplier, sales representative, lender, lessor, lessee or any other person having a business relationship with the Group, the Company or any other Group Member to discontinue or reduce the extent of that relationship except in the course of discharging the duties described in this Agreement and with the good faith objective of advancing the Company's or the Group's (or any other Group Member's) business interests.

**4.05 Non-Competition.** The Executive acknowledges the nature of the Group's Business (as defined in Section 4.05[3][a] and that the Group is one of the limited number of entities which has developed this type of business; that the Group's Business is national in scope and the Executive's work for the Group, the Company and other Group Members will give Executive access to the confidential affairs of the Company and other Group Members, to Confidential Information and to Intellectual Property as defined in Sections 4.02[2] and 4.02[3] respectively; and that the agreements and covenants of the Executive contained in Section 4.00 are essential to preserving the Group's Business and good will. Accordingly, the Executive covenants and agrees that:

**[1]** During the Restriction Period (as defined in Section 4.05[3][c]) and within the Restricted Area (as defined in Section 4.05[3][b]) the Executive will not **[a]** engage in the Group's Business for the Executive's own account or **[b]** become employed in any manner by, Kmart, Retail Ventures, Inc., Dollar General, Family Dollar, Dollar Tree, Fred's, 99¢ Stores, Canned Foods, Tuesday Morning and TJX Corporation. Further, the Executive agrees during the Restricted Period to not become employed by any successor, parent or subsidiary of the entities (or types of entities) listed above other than in the course of discharging the duties described in this Agreement.

**[2] Maximum Enforceable Restriction.** If any or all of the covenants set forth in this Section 4.05 are determined by a court of competent jurisdiction to be unenforceable by reason of the temporal restrictions being too great, the geographic areas covered too great, the range of activities too great or for any other reason, the Court is authorized and will interpret them to extend over the maximum period of time, the maximum geographic area and the maximum range of activities or, as to any provision, in such a manner that all provisions may be given maximum restrictive effect in accordance with applicable law.

**[3] Definition Relating to Section 4.05.**

**[a] Group Business.** For purposes of this Agreement, “Group Business” includes the operation of Big Lots retail outlets, the inventories of which are acquired primarily through special purchases such as overstocks, close-outs, liquidations, bankruptcies, wholesale distribution of overstock, distress, liquidation and other volume inventories, the operation of Big Lots furniture stores, and related wholesale operations and other lines of business any Group Member develops during the Term of this Agreement.

**[b] Restricted Area.** For purposes of this Agreement, “Restricted Area” means the 50 mile radius surrounding any location in which the Group’s Business is conducted during the Term of this Agreement.

**[c] Restriction Period.** For purposes of this Agreement, “Restriction Period” means the Term of this Agreement and one year following termination of the Executive’s employment with all Group Members, regardless of the reason for termination; provided, however, that in the event of a Change of Control as defined in Section 5.07[3] of this Agreement, the Restricted Period shall be for a period of six (6) months.

**4.06 Post-Termination Cooperation.** The Executive agrees that during and after employment with the Group and without additional compensation (other than reimbursement for reasonable associated expenses), to cooperate with the Group, the Company and any other Group Member in the following areas:

**[1] Cooperation With the Group, the Company and Other Group Members.** The Executive agrees **[a]** to be reasonably available to answer questions for any Group Member’s officers or directors regarding any matter, project, initiative or effort with which the Executive was involved while employed by any Group Member and **[b]** to cooperate with the Group, the Company and any other Group Member during the course of all proceedings arising out of the Group’s Business about which the Executive has knowledge or information. For purposes of this Agreement, **[c]** “proceedings” includes internal investigations, administrative investigations or proceedings and lawsuits (including pre-trial discovery and trial testimony) and **[d]** “cooperation” includes **[i]** the Executive’s being reasonably available for interviews, meetings, depositions, hearings and/or trials without the need for subpoena or assurances by the Group, the Company or any other Group Member, **[ii]** providing any and all documents in the Executive’s possession that relate to the proceeding and **[iii]** providing assistance in locating any and all relevant notes and/or documents relevant to any proceedings.

**[2] Cooperation With Third Parties.** Unless compelled to do so by lawfully-served subpoena or court order or to the extent it is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement, the Executive agrees not to communicate with, or give statements or testimony to, any opposing attorney, opposing attorney's representative (including a private investigator) or current or former employee relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company and other Group Members. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by a third party or receiving a subpoena or court order to appear and testify with respect to any matter affected by this section.

**[3] Cooperation With Media.** The Executive agrees not to communicate with, or give statements to, any member of the media (including print, television, radio or electronic media) relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company or any other Group Member. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by any member of the media with respect to any matter affected by this section.

**4.07 Non-Disparagement.** The Executive and the Company agree (on its behalf and in behalf of the Group and other Group Members) that after the Executive's employment with the Group has ended neither will make any disparaging remarks about the other and the Executive will not make any disparaging remarks about the Company, the Company's Chairman, Chief Executive Officer or any of the Company's executives or directors or any other Group Member or their executives and directors. However, this section will not preclude **[1]** any remarks that may be made by the Executive **[a]** under the terms of Section 4.06[2], **[b]** that are required to discharge the duties described in this Agreement or **[c]** are germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement or **[2]** the Company or any other Group Member from making (or eliciting from any person) disparaging remarks about the Executive **[a]** concerning any conduct that may have led to a termination for Cause, as defined in Section 5.04[3] (including initiating an inquiry or investigation that may result in a termination for Cause) or **[b]** that are germane (but only to the extent that it is germane) to defending against any action begun by the Executive under this Agreement.

**4.08 Notice of Subsequent Employment.** The Executive agrees to notify the Company of any subsequent employment during the Restriction Period and any period during which any payment described in Section 5.00 is due or is being paid.

**4.09 Remedies.** The Executive:

**[1]** Acknowledges that the obligations and restrictions described in Sections 4.02 through 4.08 are reasonable in light of the nature of the Group's Business and the nature of the Executive's relationship with the Group and the Company; that the Group, the Company and all other Group Members have legitimate business reasons for requiring the Executive's agreement to all provisions of Section 4.00; and that the Executive understands these restrictions, has had an opportunity to fully discuss these restrictions with the Company and accepts the restrictions.

[2] Agrees that if any of the obligations to the Company under Sections 4.02 through 4.08 are breached, the periods during which the obligations described in Sections 4.02 through 4.08 apply will be extended for the length of time that the Executive failed to fulfill the obligations under Sections 4.02 through 4.08.

[3] Agrees that [a] any breach of any of the terms of this Section 4.00 would result in irreparable injury and damage to the Group, the Company and all other Group Members for which none would have an adequate remedy at law, [b] in the event of a breach or any threat of breach by the Executive, the Group, the Company and any Group Member will be entitled to an immediate injunction and restraining order to prevent that breach and/or threatened breach and/or continued breach by the Executive and/or any and all persons and/or entities acting for, with and/or through the Executive, without having to prove damages [c] no bond will be required of the Group, the Company or any other Group Member in connection with an action described in Section 4.09[3][a] and [d] not to defend any action seeking injunctive or other equitable relief on the basis that the Group, the Company or any other Group Member has an adequate remedy at law in money damages or otherwise. The terms of this Section 4.09 will not prevent the Company from pursuing any other available remedies for any breach or threatened breach by the Executive of Section 4.00, including, but not limited to, the recovery of monetary damages from the Executive or specific performance. In addition to any other available remedies, the Group, the Company or any Group Member may require the Executive to account for and pay over to the Company all compensation, profits, accruals, increments or other benefits derived or received by the Executive as a result of any transaction constituting a breach of any portion of Section 4.00. The Company may set off any amounts finally determined by a court of competent jurisdiction to be due under this section against any amount that may be owed to the Executive under this Agreement or under any other compensatory arrangement (other than a tax-qualified retirement plan) between the Executive and the Group, the Company or any other Group Member. The Parties agree that any action for breach of any of the provisions of Section 4.00 and/or injunctive relief will be venued in the Court of Common Pleas, Franklin County, Ohio.

**4.10 Return of Group Property.** Upon termination of employment, the Executive agrees to promptly return to the Company all property belonging to the Group or any Group Member; provided, however, that in the event the Executive's employment is terminated pursuant to Section 5.06 and the Executive is then utilizing an automobile provided by the Company, the Executive shall retain the automobile in accordance with the terms of Section 5.06[5].

**4.11 Effect of Termination of Agreement.** The provisions of Section 4.00 will survive any termination of this Agreement and the existence of any claim or cause of action by the Executive against the Company or any Group Member, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Group, the Company or any other Group Member of the covenants and agreements of this Section 4.00; provided, however, that this Section 4.11 will not, in and of itself, preclude the Executive from defending against the enforceability of the covenants and agreements of Section 4.00.

## 5.00 Termination and Related Benefits

This Agreement will terminate upon the occurrence of any of the events described in this section, although all of the obligations, restrictions and duties described in Sections 4.02 through 4.08 will continue after the Agreement terminates and will apply and continue to apply to the Executive and the Executive's estate, heirs and assigns for the period described in Sections 4.02 through 4.08.

**5.01 Rules of General Application.** The following rules apply generally to the implementation of Section 5.00:

**[1] Definition of Termination.** For purposes of this Agreement, any reference to a "termination" of employment or any form thereof shall mean a "separation from service" as defined in Treasury Regulation §1.409A-1(h) by the Executive with BLI, Big Lots and all persons with whom BLI would be considered a single employer under Sections 414(b) and (c) of the Internal Revenue Code of 1986, as amended (the "Code").

**[2] Application of Pro Rata.** Any pro rata amount to be paid under Section 5.00 **[a]** will be calculated as provided in the program through which the payment is due or **[b]** if the payment obligation arises solely under this Agreement, will be based on the number of days between the first day of the fiscal year during which the Executive terminates employment and the date that the Executive terminates employment divided by the number of days in the fiscal year during which the Executive terminates employment.

**[3] Payment of Bonus (or pro rata share of any Bonus).** Any Bonus (or pro rata portion thereof) payable pursuant to this Section 5.00 will be paid in accordance with the terms of the applicable bonus plan, but in no event later than the fifteenth day of the third month following the later of: **[a]** the end of the calendar year during which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable; or **[b]** the end of the Company's fiscal year in which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable.

**5.02 Termination Due to Executive's Death.** This Agreement will terminate automatically on the date the Executive dies. If all requirements of this Agreement are met (including those described in Section 7.00), as of the Executive's date of death, and subject to Section 5.04[5], the Company will make the following payments to the beneficiary the Executive designates on a form acceptable to the Company. If the Executive has not made an effective beneficiary designation (or has revoked all beneficiary designations), these payments will be made to the Executive's surviving spouse or, if the Executive dies without a surviving spouse, to the Executive's estate.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which her death occurs had her death had not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.03 Termination Due to Executive's Disability.** If the Executive becomes Disabled (as defined in Section 5.03[4]), this Agreement shall terminate automatically. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which her termination occurs if such termination had not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[4] **Definition of Disability.** For purposes of this Agreement, "Disability" (and any of its forms) means that, for more than six consecutive months, the Executive is unable, with reasonable accommodation, to perform the duties described in Section 4.01 on a full-time basis due to a physical or mental disability or infirmity.

**5.04 Termination for Cause.** The Company may terminate the Executive's employment for Cause (as defined in Section 5.04[3]). A termination for Cause shall only be effective after [a] the Company has delivered a written notice to the Executive stating that in the Company's opinion, the Executive may be terminated for Cause, specifying the details and [b] if the failure or action is one that can be cured, the Executive does not cure the issue giving rise to the Cause determination within 30 days after receiving notice. If the Executive is terminated for Cause and if all requirements of this Agreement are met (including those imposed under Section 7.00), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.



[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[3] **Definition of Cause.** For purposes of this Agreement, Cause means the Executive's [a] failure to comply with Company's policies and procedures which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [b] willful or illegal misconduct or grossly negligent conduct that is materially injurious to the Group, the Company or any other Group Member, monetarily or otherwise; [c] violation of laws or regulations governing the Group, the Company or any other Group Member (including the Sarbanes-Oxley Act of 2002) or violation of the Company's code of ethics; [d] breach of any fiduciary duty owed to the Group, the Company or any other Group Member; [e] misrepresentation or dishonesty which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [f] breach of any provision of Section 4.00 of this Agreement; [g] involvement in any act of moral turpitude that has a materially injurious effect on the Group, the Company or any other Group Member or their reputation; or [h] breach of the terms of any non-solicitation or confidentiality clauses contained in an employment agreement(s) with a former employer.

[4] [Reserved]

[5] **Subsequent Information.** The terms of Section 5.04 also will apply if, within 6 consecutive calendar months beginning after the Executive terminates under any other provision of Section 5.00, the Company learns of an event that, had it been known before the Executive terminated employment, would have justified a termination for Cause. In this case, the Company will be entitled to recover any amounts that the Executive or any beneficiary received under any other provision of Section 5.00, reduced by the amount the Executive is entitled to receive under this Section 5.04 and any other legally protected benefits paid or made available under this Agreement that originally was applied when the Executive terminated.

**5.05 Voluntary Termination by Executive.** The Executive may voluntarily terminate employment with the Company at any time upon thirty (30) days notice to Company. In this case, and if all other requirements of this Agreement are met, and subject to Section 5.04[5], the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.06 Involuntary Termination Without Cause.** The Company may terminate the Executive's employment at any time upon thirty (30) days notice to Executive without Cause by delivering to the Executive a written notice specifying the same. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which her termination occurs if such termination had not occurred.

[3] **Income Continuation.** The Executive will be entitled to continue to receive her Base Salary until the last day of the twelfth complete calendar month beginning after the termination date. Such amounts shall be payable in accordance with the regularly scheduled payroll for similarly situated employees. These payments shall be treated as "separation pay" (within the meaning of Section 409A of the Code) to the maximum extent permitted by Treasury Regulation §1.409A-1(b)(9). Any payments in excess of the maximum amount that can be treated as separation pay pursuant to Treasury Regulation §1.409A-1(b)(9) shall be subject to the provisions of Section 5.09.

[4] **Health Care.** The Executive will be entitled to continue to receive the welfare benefits described in Section 3.03 until the last day of the twelfth complete calendar month beginning after the termination date. Thereafter, the Company will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium for this coverage, if any, until the earlier of [a] the last day of the twenty-fourth complete calendar month beginning after the termination date or [b] the date the Executive becomes eligible for the same or similar coverage under another benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.06[4], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.06[4] shall be subject to the following: [c] the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; [d] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [e] the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

[5] **Transportation.** The Executive will be entitled to continue to receive the automobile benefits described in Section 3.06 until the last day of the twelfth complete calendar month beginning after the termination date; provided, however, that: [a] the benefits provided or amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement or benefits to be provided in any other taxable year of the Executive; [b] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [c] the right to such benefit or reimbursement may not be subject to liquidation or exchange for another benefit.

**[6] Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.07 Termination in Connection With Change of Control.** If the Executive is Terminated in Connection With a Change of Control (as defined in Section 5.07[5]) at any time during the Protection Period (as defined in Section 5.07[4]) and if all other conditions of this Agreement have been met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Change Entity (as defined in Section 5.07[2]) will pay or make available the Change Benefits (as defined in Section 5.07[1]) in lieu of any other amounts of benefits that might otherwise be due under this Agreement on account of that termination.

**[1] Change Benefits.** For purposes of this Agreement, “Change Benefits” means the aggregate of the following, adjusted if appropriate under Sections 5.07[6] and [7]:

**[a] Base Salary.** The sum of **[i]** the Base Salary earned to the date of termination plus **[ii]** 200 percent of the Executive’s Base Salary at the highest rate in effect at any time during the Protection Period. This amount will be paid in a lump sum cash payment on the Change Entity’s first regular payroll date for senior executive officers of the Company following the effective date of the Executive’s Termination in Connection With a Change of Control.

**[b] Bonus.** Two hundred percent of the Executive’s Stretch Bonus in effect under the Bonus Program for the year in which the Executive’s employment is Terminated in Connection With a Change of Control or, if higher, the Stretch Bonus in effect under the Bonus Program (or comparable program) at any time during the Protection Period. This amount will be paid in a single lump sum on the Change Entity’s next regularly scheduled payroll date for senior executive officers of the Company following the date of the Executive’s Termination in Connection With a Change of Control.

**[c] Health Care.** The Change Entity will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium at the lowest rate in effect at any time during the Protection Period for this coverage, until the earlier of **[i]** the last day of the 24th complete calendar month beginning after the date the Executive is Terminated in Connection With a Change of Control or **[ii]** the date the Executive becomes eligible for comparable benefits at comparable costs to the Executive under another employer sponsored benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.07[1][c], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.07[1][c] shall be subject to the following: **[A]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; **[B]** any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and **[C]** the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

**[d] Other.** Any rights (including those arising on account of the Change of Control) accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Change Entity will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**[2] Change Entity.** For purposes of this Agreement, “Change Entity” means the Company, BLI and any other entity that is a party to the Change of Control.

**[3] Definition of Change of Control.** For purposes of this Agreement, “Change of Control” means the first to occur of any of the following events:

**[a]** The acquisition by any person (as defined under Section 409A of the Code), or more than one person acting as a group (as defined under Section 409A of the Code), of the stock of BLI that, together with the stock of BLI held by such person or group, constitutes more than fifty (50) percent of the total fair market value or total voting power of all of the stock of BLI;

**[b]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of the stock of BLI possessing thirty (30) percent or more of the total voting power of all of the stock of BLI;

**[c]** A majority of the members of the Board of Directors of BLI is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of BLI prior to the date of the appointment or election; or

**[d]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from BLI that have a total gross fair market value equal to or more than forty (40) percent of the total gross fair market value of all of the assets of BLI immediately prior to such acquisition or acquisitions.

This definition of Change of Control under this Section 5.07[3] shall be interpreted in a manner that is consistent with the definition of “change in control event” under Section 409A of the Code and the Treasury Regulations promulgated thereunder. The effective date of any such Change of Control will be the date upon which the last event occurs or last action is taken such that the definition of Change of Control (as set forth above) has been satisfied. For purposes of this Agreement, the term “affiliate” means any person or entity that, along with BLI, constitutes a single employer under Sections 414(b) and 414(c) of the Code. Determination of affiliate will be tested as of the date immediately prior to any event constituting a Change of Control. Notwithstanding the other provisions of this Section 5.07, the term “Change of Control” will not mean any transaction, merger, consolidation or reorganization in which BLI exchanges or offers to exchange newly issued or treasury shares in an amount less than 50 percent of the then-outstanding equity securities of BLI entitled to vote for the election of directors, for fifty-one (51) percent or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than BLI or an affiliate thereof (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.

**[4] Protection Period.** For purposes of this Agreement, “Protection Period” means the period beginning on the first day of the third full consecutive calendar month beginning before the date of the Change of Control and ending on the last day of the twenty-fourth consecutive full calendar month beginning after the date of the Change of Control.

**[5] Termination in Connection With a Change of Control.** For purposes of this Agreement, “Termination in Connection With a Change of Control” means, at any time during the Protection Period:

**[a]** The Change Entity involuntarily terminates the Executive without Cause (as defined in Section 5.06).

**[b]** The Executive terminates following the occurrence of any of the following conditions;

**[i]** The Change Entity breaches any provision of this Agreement;

**[ii]** The Change Entity unsuccessfully attempts to terminate the Executive for Cause (as defined in Section 5.04);

**[iii]** The Change Entity attempts to terminate the Executive for any reason without following the procedures described in this Agreement (including an acceleration of the periods described in Section 5.03[4] and 5.04[b]);

**[iv]** The Change Entity revokes or attempts to revoke or accelerate the duration of any leave of absence protected by law or authorized by the Company before the Protection Period or by the Change Entity at any time during the Protection Period;

[v] The Change Entity refuses to allow the Executive to return to active employment at the end of any leave of absence protected by law or authorized by the Company before the Protection Period or the Change Entity at any time during the Protection Period; or

[vi] The Change Entity causes the Executive to resign because of a material adverse change or material diminution in the Executive's reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by the Executive in her good faith discretion); provided, however, that the Executive shall notify the Company in writing at least forty- five (45) days in advance of any election by the Executive to terminate her employment hereunder, specifying the nature of the alleged adverse change or diminution, and the Company shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before the Executive shall be entitled to exercise any such rights and remedies.

For purposes of this Section 5.07[5], the termination of employment is deemed to occur on the Executive's actual date of termination.

**[6] Treatment of Taxes.** If payments under this Agreement, when combined with payments and benefits under all other plans and programs maintained by the Company or the Change Entity, constitute "excess" parachute payments as defined in Section 280G(b) of the Code, the Change Entity, subject to Section 5.07[7], will either:

**[a]** Reimburse the Executive for the amount of any excise tax due under Code §4999, if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][b]; or

**[b]** Reduce the Executive's benefits under this Agreement so that the Executive's total "parachute payment" as defined in Code §280G(b)(2)(A) under this Agreement and all other agreements will be \$1.00 less than the amount that would generate "excess" parachute payment penalties if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][a].

This comparison will be made as of the date of the corporate event generating the "parachute payments" although any reimbursement provided under Section 5.07[6][a] will be made when the parachute payment is actually made or distributed.

Within 10 business days of the date the Change Entity determines that Section 5.07[6][b] should be applied, the Change Entity will apprise the Executive of the amount of the reduction ("Notice of Reduction"). Within 10 business days of receiving that information, the Executive may specify how (and against which benefit or payment source) the reduction is to be applied ("Notice of Allocation"). The Change Entity will be required to implement these directions within 10 business days of receiving the Notice of Allocation. If the Change Entity has not received a Notice of Allocation from the Executive within 10 business days of the date of the Notice of Reduction or if the allocation provided in the Notice of Allocation is not sufficient to fully implement Section 5.07[6][b], the Change Entity will apply Section 5.07[6][b] proportionately based on the amounts otherwise payable under this Agreement or, if a Notice of Allocation has been returned that does not sufficiently implement Section 5.07[6][b], on the basis of the reductions specified in the Notice of Allocation. Any taxes reimbursed pursuant to Section 5.07[6][a] shall be paid by the end of Executive's taxable year next following the taxable year in which Executive remits payment of the tax or assessment being reimbursed. Any reduction pursuant to Section 5.07[6][b] shall be made in accordance with Section 409A of the Code and the Treasury Regulations promulgated thereunder.

**[7] Effect of Subsequent Tax Claim.** The Change Entity will establish procedures that will apply to any inquiries regarding the treatment of tax payments under this Section 5.07. Within 30 days following the termination of the Executive's employment under Section 5.07, the Change Entity will provide the Executive with a copy of such procedures.

**5.08 Constructive Termination.** Any material adverse modification or diminution of Executive's duties that occurs without Executive's consent shall be considered a constructive discharge of Executive by Company and shall entitle Executive, in addition to any other rights that Executive may have, to the rights and remedies provided in Section 5.06 hereof; provided, however, that in order to exercise the rights under Section 5.06, Executive must: (i) notify Company of the existence of any alleged modification or diminution specifying the same within thirty (30) days of the initial existence of the modification or diminution; (ii) provide Company with a period of thirty (30) days following receipt of such notice to cure the modification or diminution; and (iii) terminate employment within ten (10) days following the end of the such period if the modification or diminution is not cured.

**5.09 Six-Month Distribution Delay.** Notwithstanding the foregoing, if Executive is a "specified employee," within the meaning of Treasury Regulation §1.409A-1(i) and as determined under BLI's policy for determining specified employees, on the Executive's date of termination, and the Executive is entitled to a payment and/or a benefit under this Agreement that is required to be delayed pursuant to Section 409A(a)(2) of the Code, then such payment or benefit shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following the Executive's date of termination (or, if earlier, the Executive's death). The first payment that can be made following such postponement period shall include the cumulative amount of any payments or benefits that could not be paid or provided during such postponement period due to the application of Section 409A(a)(2)(B)(i) of the Code.

## **6.00 Notice**

**6.01 How Given.** Any notice permitted or required to be given under this Agreement must be given in writing and delivered in person or by registered, U.S. mail, return receipt requested, postage prepaid; or through Federal Express, UPS, DHL or any other reputable professional delivery service that maintains a confirmation of delivery system. Any delivery must be **[1]** in the case of notices to the Company or the Change Entity, addressed to the Company's Chief Executive Office at the Company's then-current corporate offices and **[2]** in the case of notices to the Executive, addressed to the Executive's last mailing address contained in the Executive's personnel file.

**6.02 Effective Date.** Any notice permitted or required to be given under this Agreement will be deemed to have been given and will be effective on the date it is delivered.

## **7.00 Execution of Release**

The Executive agrees that as a condition of receiving any post-termination benefit as set forth in Section 5.00 except for earned but unpaid Base Salary to the date of termination and any legally protected rights the Executive has under any employee benefit plan maintained by the Company, the Executive or, in the case of any amounts due after the Executive's death, the person to whom those amounts are payable (collectively, the "Payee") must execute a comprehensive release in the form determined from time to time by the Company in its sole discretion. Generally, the release will require the Payee and the Payee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns to release and forever discharge the Group, the Company and all other Group Members, past, present and future, and their executives, officers, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action that grow out of or are in any way related to the Executive's recruitment and employment with the Company that arose on or before the date of the release, other than any claim that the Company has breached this Agreement. This release will include, but not be limited to, any claim that the Company violated the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act; any state, federal law or local ordinance prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state; or any federal, state or local law (each as in effect on the Effective Date and as subsequently amended) relating to any matter within the purview of this Agreement. Upon the Executive's termination of employment with all Group Members, the Payee will be presented with a release and if the Payee fails to execute the release, the Payee agrees to forego any payment described in the first sentence of this section. The Executive acknowledges that the Executive is an experienced senior executive knowledgeable about the claims that might arise in the course of employment with and termination from the Company and any other Group Member and knowingly agrees that the payments upon termination provided for in this Agreement are satisfactory consideration for the release of all possible claims described in the release. Notwithstanding anything to the contrary, the failure of the Executive to execute the release described in this Section 7.00 shall not otherwise cause any payment made pursuant to this Agreement to be delayed beyond the date on which such payment was originally scheduled to occur.

## **8.00 Insurance and Indemnification**

The Company will indemnify Executive (including her heirs, executors and administrators) to the fullest extent permitted under the Company's Regulations and Ohio law. This obligation to provide insurance for the Executive will survive termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions occurring during the Executive's employment with or termination from the Group, the Company or with any other Group Member. Concurrently with the execution of this Agreement, BLI will enter into an indemnification agreement with the Executive.



## 9.00 Arbitration

**9.01 Acknowledgement of Arbitration.** Unless stated otherwise in this Agreement or any other compensatory or any employee benefit plan, fund or program maintained by the Company, the Parties agree that arbitration is the sole and exclusive remedy for each of them to resolve (except as specifically provided in Section 4.09) and redress any dispute, claim or controversy involving the interpretation or application of this Agreement, the terms, conditions or termination of this Agreement and the terms, conditions or termination of the Executive's employment with the Company, including any claims for any tort, breach of contract, violation of public policy or discrimination, whether such claim arises under federal, state law or local law.

**9.02 Scope of Arbitration.** The Executive expressly understands and agrees that claims subject to arbitration under this section include asserted violations of the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964 (as amended); the Family and Medical Leave Act; any federal, state or local law or ordinances prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state, or any federal, state or local law (each as in effect on the Effective Date or as subsequently amended) relating to any matter within the purview of this Agreement.

**9.03 Effect of Arbitration.** The Parties intend that any arbitration award relating to any matter described in Section 9.01 will be final and binding on them and that a judgment on the award may be entered in any court of competent jurisdiction and that enforcement may be had according to the terms of that award. This Section 9.03 will survive the termination of this Agreement.

**9.04 Location and Conduct of Arbitration.** Arbitration will be held in Columbus, Ohio, and will be conducted by a retired federal judge or other qualified arbitrator. The arbitrator will be mutually agreed upon by the Parties and the arbitration will be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The Parties will have the right to conduct discovery pursuant to the Federal Rules of Civil Procedure; provided, however, that the arbitrator will have the authority to establish an expedited discovery schedule and cutoff and to resolve any discovery disputes. The arbitrator will have no jurisdiction or authority to change any provision of this Agreement by alterations of, additions to or subtractions from the terms of this Agreement. The arbitrator's sole authority will be to interpret or apply any provision(s) of this Agreement or any public law alleged to have been violated. The arbitrator has the authority to award damages and other relief expressly provided by law.

**9.05 Time for Initiating Arbitration.** Any claim or controversy relating to any matter described in Section 9.01 not sought to be submitted to arbitration, in writing, within 60 days of the date the Party asserting the claim knew, or through reasonable diligence should have known, of the facts giving rise to that Party's claim, will be deemed waived and the Party asserting the claim will have no further right to seek arbitration or recovery with respect to that claim or controversy. Both Parties agree to strictly comply with the time limitation specified in this section. For purposes of this section, a claim or controversy is sought to be submitted to arbitration on the date the complaining Party gives written notice to the other that **[a]** an issue has arisen or is likely to arise that, unless resolved otherwise, may be resolved through arbitration under this Section 9.00 and **[b]** unless the issue is resolved otherwise, the complaining Party intends to submit the matter to arbitration under the terms of Section 9.00.

**9.06 Costs of Arbitration and Attorney's Fees.** The Company will bear the arbitrator's fee and other costs associated with any arbitration, unless the arbitrator, acting under Federal Rule of Civil Procedure 54(d)(1), elects to award these fees to the Company. Attorney's fees **[1]** may be awarded to the prevailing party if expressly authorized by statute, or otherwise each party will bear its own attorney's fees and costs but **[2]** Executive's attorney's fees and other associated costs and expenses will be borne by the Change Entity with respect to any claim arising under Section 5.07 but only if the arbitrator concludes the claim legitimately relates to matters within the contemplation of Section 5.07 (otherwise, the rule described in Section 9.06[1] will apply). Notwithstanding the foregoing: **[a]** any costs being reimbursed must relate to a claim brought during the lifetime of the Executive with respect to an alleged breach of any obligation of the Company under this Agreement; **[b]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement in any other taxable year; **[c]** any reimbursement must be made on or before the last day of the Executive's taxable year following the taxable year in which the cost was incurred; and **[d]** the right to reimbursement for such costs is not subject to liquidation or exchange for another benefit.

**9.07 Arbitration Exclusive Remedy.** The Parties acknowledge that, because arbitration is the exclusive remedy for resolving the issues described in Section 9.01, neither Party may resort to any federal, state or local court or administrative agency concerning those issues and that the decision of the arbitrator will be a complete defense to any suit, action or proceeding instituted in any federal, state or local court before any administrative agency with respect to any arbitrable claim or controversy.

**9.08 Waiver of Jury.** The Executive (personally and in behalf of all the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns) and the Company (on its own behalf's and in behalf of its successors, including any Change Entity) each waive the right to have a claim or dispute with one another decided in a judicial forum or by a jury, except as otherwise provided in this Agreement.

## **10.00 General Provisions**

**10.01 Representation of Executive.** The Executive represents and warrants that the Executive is an experienced senior executive knowledgeable about the issues (and their effect) within the purview of this Agreement and is not under any contractual or legal restraint that prevents or prohibits the Executive from entering into this Agreement or performing the duties and obligations described in this Agreement.

**10.02 Modification or Waiver; Entire Agreement.** No provision of this Agreement may be modified or waived except in a document signed by the Executive and the Company's Chief Executive Officer or other person designated by the Company's Board of Directors. This Agreement, and any attachments referenced in the Agreement, constitute the entire agreement between the Parties regarding the employment relationship described in this Agreement, and, except as otherwise specifically provided in this Agreement, any other agreements are terminated and of no further force or legal effect. No agreements or representations, oral or otherwise, with respect to the Executive's employment relationship with the Company have been made or relied upon by either Party which are not set forth expressly in this Agreement.

**10.03 Governing Law; Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application of any provision of this Agreement to any person or circumstance, is, for any reason and to any extent, held invalid or unenforceable, such invalidity and unenforceability will not affect the remaining provisions of this Agreement of its application to other persons or circumstances, all of which will be enforced to the greatest extent permitted by law and the Parties agree that any invalid or unenforceable provision may and will be reformed and applied **[1]** as provided in Section 4.05, with respect to the matters specifically contemplated in Section 4.00 and **[2]** with respect to other matters, **[a]** to the extent needed to avoid that invalidity or unenforceability and **[b]** in a manner that is as similar as possible to the Parties' intent (as described in this Agreement). The validity, construction and interpretation of this Agreement and the rights and duties of the Parties will be governed by the laws of the State of Ohio, without reference to the Ohio choice of law rules.

**10.04 No Waiver.** Except as otherwise provided in Section 9.05, failure to insist upon strict compliance with any term of this Agreement will not be considered a waiver of any such term or any other term of this Agreement.

**10.05 Withholding.** All payments made to or on behalf of the Executive under this Agreement will be reduced by any amount:

**[1]** That the Company is required by law to withhold in advance payment of the Executive's federal, state and local income, wage and employment tax liability; and

**[2]** To the extent allowed by law, that the Executive owes (or, after employment is deemed to owe) to the Group, the Company or any other Group Member.

Application of Section 10.05[2] will not extinguish the Company's right to seek additional amounts from the Executive (or to pursue other appropriate remedies) to the extent that the amount recovered by application of Section 10.05[2] does not fully discharge the amount the Executive owes to the Group, the Company or other Group Member and does not preclude the Group, the Company or any other Group Member from proceeding directly against the Executive without first exhausting its right of recovery under Section 10.05[2].

**10.06 Survival.** The Parties agree that the covenants and promises set forth in this Agreement will survive the termination of this Agreement and continue in full force and effect after this Agreement terminates to the extent that their performance is required to occur after this Agreement terminates.

**10.07 Miscellaneous.**

[1] The Executive may not assign any right or interest to, or in, any payments payable under this Agreement; provided, however, that this prohibition does not preclude the Executive from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and does not preclude the legal representative of the Executive's estate from assigning any right under this Agreement to the person or persons entitled to it.

[2] This Agreement will be binding upon and will inure to the benefit of the Executive, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns and the Company and its successors and, to the extent applicable, the Group and all Group Members.

[3] The headings in this Agreement are inserted for convenience of reference only and will not be a part of or control or affect the meaning of any provision of the Agreement.

**10.08 Successors to Company.** This Agreement may and will be assigned or transferred to, and will be binding upon and will inure to the benefit of, any successor of the Company, including any Change Entity, and any successor will be substituted for the Company under the terms of this Agreement. As used in this Agreement, the term "successor" means any person, firm, corporation or business entity which at any time, whether by merger, purchase or otherwise, acquires all or essentially all of the assets of the business of the Company. Notwithstanding any assignment, the Company will remain, with any successor, jointly and severally liable for all its obligations under this Agreement.

**10.09 Section 409A of the Code.** This Agreement is intended to comply with Section 409A of the Code and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to the Executive and neither the Company nor the Boards of Directors of BLI or Big Lots shall be liable to the Executive for failure to comply with the requirements of Section 409A of the Code. Furthermore, the Company may accelerate the time or schedule of a payment to the Executive if at any time this Agreement fails to meet the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder.

Notwithstanding the foregoing, if the Executive terminates for any reason, dies or becomes Disabled on or prior to December 31, 2008 and is entitled to payment or benefit as a result of such termination, death or Disability, such payment or benefit shall be paid or provided [1] pursuant to the terms of this Agreement in effect immediately prior to the Effective Date, but [2] modified to the extent necessary for good faith compliance with the requirements of Section 409A of the Code. Nothing in this Agreement shall be construed as causing a payment or benefit to be paid or distributed in calendar year 2008 which is not otherwise payable or distributable in calendar year 2008.

**IN WITNESS WHEREOF**, the Parties have duly executed and delivered this Agreement, which includes an arbitration provision, and consists of 23 pages.

BIG LOTS, INC.

By: /s/ Dennis B. Tishkoff

Signed: December 5, 2008

BIG LOTS STORES, INC.

By: /s/ Brad A. Waite

Signed: December 5, 2008

Lisa M. Bachmann

/s/ Lisa M. Bachmann

Signed: December 5, 2008

**EMPLOYMENT AGREEMENT  
BY AND AMONG  
BIG LOTS, INC.,  
BIG LOTS STORES, INC.  
AND  
ROBERT C. CLAXTON**

This employment agreement ("Agreement") by and among Big Lots, Inc. ("BLI"), Big Lots Stores, Inc. ("Big Lots") and their affiliates, predecessor, successor, subsidiaries and other related companies (collectively the "Company") and Robert Claxton ("Executive"), collectively, the "Parties," is effective as of December 5, 2008 ("Effective Date") and supersedes and replaces any other oral or written agreement or understanding concerning the terms of the Executive's employment with the Company but does not supersede or replace any agreement or arrangement between the Executive or any Group Member (as defined in Section 4.02[1]) relating to the payment of compensation or benefits earned (or deemed earned) on account of services performed for a Group Member before the Effective Date.

**1.00      Duration**

This Agreement will remain in effect from the Effective Date until it terminates as provided in Section 5.00 ("Term"). Any notice of termination required to be given under this Agreement must be given as provided in Section 6.00 and will be effective on the date prescribed in Section 5.00.

**2.00      Executive's Employment Function**

**2.01      Position.** The Executive agrees to serve as the Company's Senior Vice President of Marketing (or other equivalent title conferred by the Company in its sole discretion) with the authority and duties customarily associated with this position. The Executive agrees at all times to observe and to be bound by all Company rules, policies, practices, procedures and resolutions which apply to Company employees with a similar title and position and which do not conflict with the specific terms of this Agreement.

**2.02      Place of Performance.** Unless the Company requires the Executive to perform duties at another location, the Executive's duties will be performed principally in Columbus, Ohio, except for travel on the business of any Group Member.

**3.00      Compensation**

The Company will pay the Executive the amounts described in Sections 3.00 and 5.00 as compensation for the services described in this Agreement and in exchange for the duties and responsibilities described in Section 4.00.

**3.01      Base Salary.** The Company will pay to the Executive an annualized base salary of \$340,000, which, at the discretion of the Company, may be adjusted from time to time in a manner that is consistent with the Company's compensation policies in effect for Company employees with a similar title and position ("Base Amount") but may not be adjusted to any amount lower than \$340,000 without the Executive's consent. The Executive's Base Salary will be paid in installments that correspond with the Company's normal payroll practices.

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**3.02 Bonus.** The Executive will be eligible to receive bonus compensation (“Bonus”) under and subject to the terms of the Company’s Big Lots 2006 Bonus Plan, as amended (or any such successor plan, hereinafter, “Bonus Program”) for the fiscal year beginning January 30, 2008 and for each subsequent fiscal year during the Term of this Agreement. The Executive’s Bonus will be an amount equal to the Base Salary at the end of each fiscal year multiplied by the Bonus Payout percentage as determined under the Bonus Program. The Bonus Program is based upon the achievement of the Company’s annual financial plan. The Executive’s Bonus Payout percentage will consist of a Target Bonus of 50 percent of Base Salary and a Stretch Bonus of 100 percent of Base Salary. Both “Target Bonus” and a “Stretch Bonus” are defined in the Bonus Program and are subject to adjustment as provided in the Bonus Program; provided, however, the Executive’s Target Bonus will never be set at less than 50 percent of Base Salary and the Executive’s Stretch Bonus will never be set at less than 100 percent of Base Salary.

[1] **Payment.** The payment of any earned Bonuses is subject to the terms of the Bonus Program and any agreements issued thereunder.

[2] **Fiscal Year.** The term “fiscal year” means the period beginning on the first Sunday after the Saturday closest to January 31<sup>st</sup> of each calendar year and ending on the Saturday closest to January 31<sup>st</sup> of the following calendar year.

**3.03 Benefit and Other Compensatory Plans.** Subject to their terms (which the Company may amend at any time), the Executive may participate in any Company-sponsored employee pension or welfare benefit plan at a level commensurate with the Executive’s title and position. The Executive also may participate in any other deferred incentive or similar compensation program maintained by the Company and generally made available to other senior executive officers of the Company.

**3.04 Vacation and Sick Leave.** The Executive will be entitled to the same periods of vacation and sick leave each year that the Company provides under its vacation and sick leave policy to other senior executive officers of the Company.

**3.05 Expenses.** Consistent with the terms of its business expense reimbursement policies and procedures, the Company will reimburse Executive for all normal and reasonable expenses incurred while performing services under this Agreement, including reasonable travel expenses. Reimbursement for these expenses will be made as soon as administratively feasible after the date the Executive submits appropriate evidence of the expenditure and otherwise complies with the Company’s business expense reimbursement policies and procedures.

**3.06 Automobile Allowance.** The Company will provide the Executive with an automobile or a monthly automobile allowance in accordance with applicable Company policies for employees with a similar title and position; provided, however, that the automobile allowance may not be adjusted to a value lower than the value the Executive is entitled to receive as of the Effective Date.

**3.07 Termination Benefits.** The Company will provide the Executive with only those termination benefits described in Section 5.00.

#### **4.00 Executive's Obligations**

The amounts described in Sections 3.00 and 5.00 of this Agreement are provided by the Company in exchange for (and have a value to the Company equivalent to) the Executive's performance of the obligations described in this Agreement, including performance of the duties and the covenants made and entered into by and between the Executive and the Company in this Agreement.

**4.01 Scope of Duties.** The Executive will:

- [1] Devote all available business time, best efforts and undivided attention to the Company's business and affairs; and
- [2] Not engage in any other business activity, whether for gain, profit or other pecuniary benefit except for services benefiting the Group or any Group Member.

However, the restrictions described in Sections 4.01[1] and [2] will not preclude the Executive from:

- [3] Making or holding passive investments; or
- [4] Serving on corporate, civic, religious, educational and/or charitable boards or committees but only if this activity **[a]** does not interfere with the Executive's performance of the duties assumed under this Agreement and **[b]** is approved in writing by the Company.

**4.02 Confidential Information.**

[1] **Obligation to Protect Confidential Information.** The Executive acknowledges that the Company, its parent, affiliates, predecessor, successor, subsidiaries and other related companies, including entities that become related entities after the Effective Date (collectively, "Group" and separately, "Group Member") have a legitimate and continuing proprietary interest in the protection of Confidential Information (as defined in Section 4.02[2]) and Intellectual Property (as defined in Section 4.02[3]) and have invested, and will continue to invest, substantial sums of money to develop, maintain and protect Confidential Information and Intellectual Property. The Executive agrees **[a]** during and after employment with the Company and as to all Group Members **[i]** that any Confidential Information and Intellectual Property will be held in confidence and treated as proprietary to the Group, **[ii]** not to use or disclose any Confidential Information or Intellectual Property except to promote and advance the Group's business interests and **[b]** immediately upon termination for any reason from employment with the Company, to return to the Company any Confidential Information and Intellectual Property.



[2] **Definition of Confidential Information.** For purposes of this Agreement, Confidential Information includes any confidential data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, supplier information, tax records, personnel histories and records, information regarding sales, information regarding properties and any other information of a similar confidential nature regarding the business, operations, properties or personnel of the Group, the Company or any other Group Member which are disclosed to or learned by the Executive while employed by a Group Member, but will not include [a] the Executive's own personal personnel records or [b] any information that [i] the Executive possessed before the date of initial employment (including periods before the Effective Date) with the Group that was a matter of public knowledge, [ii] became or becomes a matter of public knowledge through authorized sources independent of the Executive, [iii] has been or is disclosed by any Group Member without restriction on its use, [iv] has been or is required to be disclosed by law or governmental order or regulation or [v] is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only if its disclosure is a necessary part of any proceedings described in Section 9.00. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's General Counsel or Chief Executive Officer confirms to the Executive that the information is public knowledge or an adjudicator finally decides that the information is public knowledge.

[3] **Intellectual Property.** The Executive expressly acknowledges that all right, title and interest to all inventions, designs, discoveries, works of authorship, and ideas conceived, produced, created, discovered, authored or reduced to practice during the Executive's performance of services under this Agreement, whether individually or jointly with any Group Member and whether or not it is deemed to be "work made for hire" (the "Intellectual Property") will be owned solely by the Group, and will be subject to the restrictions set forth in Section 4.02[1]. All Intellectual Property that constitutes copyrightable subject matter under the copyright laws of the United States will, from its conception, be deemed to be a "work made for hire" under the United States copyright laws and all right, title and interest in and to such copyrightable works will vest in the Company or the Group. All right, title and interest in and to all Intellectual Property developed or produced under this Agreement by the Executive, whether constituting patentable subject matter or copyrightable subject matter (to the extent deemed not to be a "work made for hire") or otherwise, will be assigned and is hereby irrevocably assigned to the Company or the Group by the Executive. Without any additional consideration, the Executive will execute all documents and take all other actions the Company reasonably believes are needed to convey the Executive's complete ownership interest in any Intellectual Property to the Company or the Group so that the Company or the Group will own and may protect the Intellectual Property and obtain patent, copyright and trademark registrations for it. The Executive agrees that any Group Member may alter or modify the Intellectual Property at the Group Member's sole discretion, and the Executive waives all right to claim or disclaim ownership.

**4.03 Solicitation of Employees.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members **[1]** not, directly or indirectly, to solicit (or facilitate the solicitation of) any employee of any Group Member to leave employment with the Group or any Group Member, **[2]** not, directly or indirectly, to employ, seek to employ or facilitate the employment of any employee of any Group Member by an entity that is not a Group Member and **[3]** not to cause or induce any entity described in Section 4.05[1] to solicit or employ (or to facilitate the solicitation or employment of ) any employee of any Group Member.

**4.04 Solicitation of Third Parties.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members not, directly or indirectly, to recruit, solicit or otherwise induce or influence any customer, supplier, sales representative, lender, lessor, lessee or any other person having a business relationship with the Group, the Company or any other Group Member to discontinue or reduce the extent of that relationship except in the course of discharging the duties described in this Agreement and with the good faith objective of advancing the Company's or the Group's (or any other Group Member's) business interests.

**4.05 Non-Competition.** The Executive acknowledges the nature of the Group's Business (as defined in Section 4.05[3][a] and that the Group is one of the limited number of entities which has developed this type of business; that the Group's Business is national in scope and the Executive's work for the Group, the Company and other Group Members will give Executive access to the confidential affairs of the Company and other Group Members, to Confidential Information and to Intellectual Property as defined in Sections 4.02[2] and 4.02[3] respectively; and that the agreements and covenants of the Executive contained in Section 4.00 are essential to preserving the Group's Business and good will. Accordingly, the Executive covenants and agrees that:

**[1]** During the Restriction Period (as defined in Section 4.05[3][c]) and within the Restricted Area (as defined in Section 4.05[3][b]) the Executive will not **[a]** engage in the Group's Business for the Executive's own account, **[b]** render any services to any person engaged in the Group's Business (other than to an entity that is a Group Member when those services are rendered); or **[c]** become employed in any manner by, or consult with, Wal-Mart, Sam's Club, Kmart, Target, Dollar General, Family Dollar, Dollar Tree, Value City/Schottenstein Stores Corporation, Fred's, 99¢ Stores, Canned Foods, Tuesday Morning and TJX Corporation. Further, the Executive agrees during the Restricted Period to not become employed in any manner by or to act as consultant to any successor, parent or subsidiary of the entities (or types of entities) listed above other than in the course of discharging the duties described in this Agreement; provided, however, that nothing contained herein will prevent the Executive from becoming employed by, or becoming an owner or member of an employer that renders services to, or otherwise consults with, a person engaged in the Group's Business or an entity listed in 4.05[1][c] so long as the Executive has no involvement with such employer's account or relationship during the Restriction Period.

[2] **Maximum Enforceable Restriction.** If any or all of the covenants set forth in this Section 4.05 are determined by a court of competent jurisdiction to be unenforceable by reason of the temporal restrictions being too great, the geographic areas covered too great, the range of activities too great or for any other reason, the Court is authorized and will interpret them to extend over the maximum period of time, the maximum geographic area and the maximum range of activities or, as to any provision, in such a manner that all provisions may be given maximum restrictive effect in accordance with applicable law.

[3] **Definition Relating to Section 4.05.**

[a] **Group Business.** For purposes of this Agreement, “Group Business” includes the operation of Big Lots retail outlets, the inventories of which are acquired primarily through special purchases such as overstocks, close-outs, liquidations, bankruptcies, wholesale distribution of overstock, distress, liquidation and other volume inventories, the operation of Big Lots furniture stores, and related wholesale operations and other lines of business any Group Member develops during the Term of this Agreement.

[b] **Restricted Area.** For purposes of this Agreement, “Restricted Area” means the 50 mile radius surrounding any location in which the Group’s Business is conducted during the Term of this Agreement.

[c] **Restriction Period.** For purposes of this Agreement, “Restriction Period” means the Term of this Agreement and one year following termination of the Executive’s employment with all Group Members, regardless of the reason for termination; provided, however, that in the event of a Change of Control as defined in Section 5.07[3] of this Agreement, the Restricted Period shall be for a period of six (6) months.

**4.06 Post-Termination Cooperation.** The Executive agrees that during and after employment with the Group and without additional compensation (other than reimbursement for reasonable associated expenses), to cooperate with the Group, the Company and any other Group Member in the following areas:

[1] **Cooperation With the Group, the Company and Other Group Members.** The Executive agrees [a] to be reasonably available to answer questions for any Group Member’s officers or directors regarding any matter, project, initiative or effort with which the Executive was involved while employed by any Group Member and [b] to cooperate with the Group, the Company and any other Group Member during the course of all proceedings arising out of the Group’s Business about which the Executive has knowledge or information. For purposes of this Agreement, [c] “proceedings” includes internal investigations, administrative investigations or proceedings and lawsuits (including pre-trial discovery and trial testimony) and [d] “cooperation” includes [i] the Executive’s being reasonably available for interviews, meetings, depositions, hearings and/or trials without the need for subpoena or assurances by the Group, the Company or any other Group Member, [ii] providing any and all documents in the Executive’s possession that relate to the proceeding and [iii] providing assistance in locating any and all relevant notes and/or documents relevant to any proceedings.

**[2] Cooperation With Third Parties.** Unless compelled to do so by lawfully-served subpoena or court order or to the extent it is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement, the Executive agrees not to communicate with, or give statements or testimony to, any opposing attorney, opposing attorney's representative (including a private investigator) or current or former employee relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company and other Group Members. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by a third party or receiving a subpoena or court order to appear and testify with respect to any matter affected by this section.

**[3] Cooperation With Media.** The Executive agrees not to communicate with, or give statements to, any member of the media (including print, television, radio or electronic media) relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company or any other Group Member. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by any member of the media with respect to any matter affected by this section.

**4.07 Non-Disparagement.** The Executive and the Company agree (on its behalf and in behalf of the Group and other Group Members) that after the Executive's employment with the Group has ended neither will make any disparaging remarks about the other and the Executive will not make any disparaging remarks about the Company, the Company's Chairman, Chief Executive Officer or any of the Company's executives or directors or any other Group Member or their executives and directors. However, this section will not preclude **[1]** any remarks that may be made by the Executive **[a]** under the terms of Section 4.06[2], **[b]** that are required to discharge the duties described in this Agreement or **[c]** are germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement or **[2]** the Company or any other Group Member from making (or eliciting from any person) disparaging remarks about the Executive **[a]** concerning any conduct that may have led to a termination for Cause, as defined in Section 5.04[3] (including initiating an inquiry or investigation that may result in a termination for Cause) or **[b]** that are germane (but only to the extent that it is germane) to defending against any action begun by the Executive under this Agreement.

**4.08 Notice of Subsequent Employment.** The Executive agrees to notify the Company of any subsequent employment during the Restriction Period and any period during which any payment described in Section 5.00 is due or is being paid.

**4.09 Remedies.** The Executive:

[1] Acknowledges that the obligations and restrictions described in Sections 4.02 through 4.08 are reasonable in light of the nature of the Group's Business and the nature of the Executive's relationship with the Group and the Company; that the Group, the Company and all other Group Members have legitimate business reasons for requiring the Executive's agreement to all provisions of Section 4.00; and that the Executive understands these restrictions, has had an opportunity to fully discuss these restrictions with the Company and accepts the restrictions.

[2] Agrees that if any of the obligations to the Company under Sections 4.02 through 4.08 are breached, the periods during which the obligations described in Sections 4.02 through 4.08 apply will be extended for the length of time that the Executive failed to fulfill the obligations under Sections 4.02 through 4.08.

[3] Agrees that [a] any breach of any of the terms of this Section 4.00 would result in irreparable injury and damage to the Group, the Company and all other Group Members for which none would have an adequate remedy at law, [b] in the event of a breach or any threat of breach by the Executive, the Group, the Company and any Group Member will be entitled to an immediate injunction and restraining order to prevent that breach and/or threatened breach and/or continued breach by the Executive and/or any and all persons and/or entities acting for, with and/or through the Executive, without having to prove damages [c] no bond will be required of the Group, the Company or any other Group Member in connection with an action described in Section 4.09[3][a] and [d] not to defend any action seeking injunctive or other equitable relief on the basis that the Group, the Company or any other Group Member has an adequate remedy at law in money damages or otherwise. The terms of this Section 4.09 will not prevent the Company from pursuing any other available remedies for any breach or threatened breach by the Executive of Section 4.00, including, but not limited to, the recovery of monetary damages from the Executive or specific performance. In addition to any other available remedies, the Group, the Company or any Group Member may require the Executive to account for and pay over to the Company all compensation, profits, accruals, increments or other benefits derived or received by the Executive as a result of any transaction constituting a breach of any portion of Section 4.00. The Company may set off any amounts finally determined by a court of competent jurisdiction to be due under this section against any amount that may be owed to the Executive under this Agreement or under any other compensatory arrangement (other than a tax-qualified retirement plan) between the Executive and the Group, the Company or any other Group Member. The Parties agree that any action for breach of any of the provisions of Section 4.00 and/or injunctive relief will be venued in the Court of Common Pleas, Franklin County, Ohio.

**4.10 Return of Group Property.** Upon termination of employment, the Executive agrees to promptly return to the Company all property belonging to the Group or any Group Member; provided, however, that in the event the Executive's employment is terminated pursuant to Section 5.06 and the Executive is then utilizing an automobile provided by the Company, the Executive shall retain the automobile in accordance with the terms of Section 5.06[5].

**4.11 Effect of Termination of Agreement.** The provisions of Section 4.00 will survive any termination of this Agreement and the existence of any claim or cause of action by the Executive against the Company or any Group Member, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Group, the Company or any other Group Member of the covenants and agreements of this Section 4.00; provided, however, that this Section 4.11 will not, in and of itself, preclude the Executive from defending against the enforceability of the covenants and agreements of Section 4.00.

## 5.00 Termination and Related Benefits

This Agreement will terminate upon the occurrence of any of the events described in this section, although all of the obligations, restrictions and duties described in Sections 4.02 through 4.08 will continue after the Agreement terminates and will apply and continue to apply to the Executive and the Executive's estate, heirs and assigns for the period described in Sections 4.02 through 4.08.

**5.01 Rules of General Application.** The following rules apply generally to the implementation of Section 5.00:

**[1] Definition of Termination.** For purposes of this Agreement, any reference to a "termination" of employment or any form thereof shall mean a "separation from service" as defined in Treasury Regulation §1.409A-1(h) by the Executive with BLI, Big Lots and all persons with whom BLI would be considered a single employer under Sections 414(b) and (c) of the Internal Revenue Code of 1986, as amended (the "Code").

**[2] Application of Pro Rata.** Any pro rata amount to be paid under Section 5.00 **[a]** will be calculated as provided in the program through which the payment is due or **[b]** if the payment obligation arises solely under this Agreement, will be based on the number of days between the first day of the fiscal year during which the Executive terminates employment and the date that the Executive terminates employment divided by the number of days in the fiscal year during which the Executive terminates employment.

**[3] Payment of Bonus (or pro rata share of any Bonus).** Any Bonus (or pro rata portion thereof) payable pursuant to this Section 5.00 will be paid in accordance with the terms of the applicable bonus plan, but in no event later than the fifteenth day of the third month following the later of: **[a]** the end of the calendar year during which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable; or **[b]** the end of the Company's fiscal year in which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable.

**5.02 Termination Due to Executive's Death.** This Agreement will terminate automatically on the date the Executive dies. If all requirements of this Agreement are met (including those described in Section 7.00), as of the Executive's date of death, and subject to Section 5.04[5], the Company will make the following payments to the beneficiary the Executive designates on a form acceptable to the Company. If the Executive has not made an effective beneficiary designation (or has revoked all beneficiary designations), these payments will be made to the Executive's surviving spouse or, if the Executive dies without a surviving spouse, to the Executive's estate.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his death occurs had his death not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.03 Termination Due to Executive's Disability.** If the Executive becomes Disabled (as defined in Section 5.03[4]), this Agreement shall terminate automatically. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[4] **Definition of Disability.** For purposes of this Agreement, "Disability" (and any of its forms) means that, for more than six consecutive months, the Executive is unable, with reasonable accommodation, to perform the duties described in Section 4.01 on a full-time basis due to a physical or mental disability or infirmity.

**5.04 Termination for Cause.** The Company may terminate the Executive's employment for Cause (as defined in Section 5.04[3]). A termination for Cause shall only be effective after [a] the Company has delivered a written notice to the Executive stating that in the Company's opinion, the Executive may be terminated for Cause, specifying the details and [b] if the failure or action is one that can be cured, the Executive does not cure the issue giving rise to the Cause determination within 30 days after receiving notice. If the Executive is terminated for Cause and if all requirements of this Agreement are met (including those imposed under Section 7.00), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[3] **Definition of Cause.** For purposes of this Agreement, Cause means the Executive's [a] failure to comply with Company's policies and procedures which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [b] willful or illegal misconduct or grossly negligent conduct that is materially injurious to the Group, the Company or any other Group Member, monetarily or otherwise; [c] violation of laws or regulations governing the Group, the Company or any other Group Member (including the Sarbanes-Oxley Act of 2002) or violation of the Company's code of ethics; [d] breach of any fiduciary duty owed to the Group, the Company or any other Group Member; [e] misrepresentation or dishonesty which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [f] breach of any provision of Section 4.00 of this Agreement; [g] involvement in any act of moral turpitude that has a materially injurious effect on the Group, the Company or any other Group Member or their reputation; or [h] breach of the terms of any non-solicitation or confidentiality clauses contained in an employment agreement(s) with a former employer.

[4] [Reserved]

[5] **Subsequent Information.** The terms of Section 5.04 also will apply if, within 6 consecutive calendar months beginning after the Executive terminates under any other provision of Section 5.00, the Company learns of an event that, had it been known before the Executive terminated employment, would have justified a termination for Cause. In this case, the Company will be entitled to recover any amounts that the Executive or any beneficiary received under any other provision of Section 5.00, reduced by the amount the Executive is entitled to receive under this Section 5.04 and any other legally protected benefits paid or made available under this Agreement that originally was applied when the Executive terminated.

**5.05 Voluntary Termination by Executive.** The Executive may voluntarily terminate employment with the Company at any time. In this case, and if all other requirements of this Agreement are met, and subject to Section 5.04(5), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.



**5.06 Involuntary Termination Without Cause.** The Company may terminate the Executive's employment at any time without Cause by delivering to the Executive a written notice specifying the same. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Income Continuation.** The Executive will be entitled to continue to receive his Base Salary until the last day of the twelfth complete calendar month beginning after the termination date. Such amounts shall be payable in accordance with the regularly scheduled payroll for similarly situated employees. These payments shall be treated as "separation pay" (within the meaning of Section 409A of the Code) to the maximum extent permitted by Treasury Regulation §1.409A-1(b)(9). Any payments in excess of the maximum amount that can be treated as separation pay pursuant to Treasury Regulation §1.409A-1(b)(9) shall be subject to the provisions of Section 5.08.

[4] **Health Care.** The Executive will be entitled to continue to receive the welfare benefits described in Section 3.03 until the last day of the twelfth complete calendar month beginning after the termination date. Thereafter, the Company will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium for this coverage, if any, until the earlier of [a] the last day of the twenty-fourth complete calendar month beginning after the termination date or [b] the date the Executive becomes eligible for the same or similar coverage under another benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.06[4], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.06[4] shall be subject to the following: [i] the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; [ii] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [iii] the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

[5] **Transportation.** The Executive will be entitled to continue to receive the automobile benefits described in Section 3.06 until the last day of the twelfth complete calendar month beginning after the termination date; provided, however, that: [a] the benefits provided or amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement or benefits to be provided in any other taxable year of the Executive; [b] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [c] the right to such benefit or reimbursement may not be subject to liquidation or exchange for another benefit.

**[6] Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.07 Termination in Connection With Change of Control.** If the Executive is Terminated in Connection With a Change of Control (as defined in Section 5.07[5]) at any time during the Protection Period (as defined in Section 5.07[4]) and if all other conditions of this Agreement have been met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Change Entity (as defined in Section 5.07[2]) will pay or make available the Change Benefits (as defined in Section 5.07[1]) in lieu of any other amounts of benefits that might otherwise be due under this Agreement on account of that termination.

**[1] Change Benefits.** For purposes of this Agreement, “Change Benefits” means the aggregate of the following, adjusted if appropriate under Sections 5.07[6] and [7]:

**[a] Base Salary.** The sum of **[i]** the Base Salary earned to the date of termination plus **[ii]** 200 percent of the Executive’s Base Salary at the highest rate in effect at any time during the Protection Period. This amount will be paid in a lump sum cash payment on the Change Entity’s first regular payroll date for senior executive officers of the Company following the effective date of the Executive’s Termination in Connection With a Change of Control.

**[b] Bonus.** Two hundred percent of the Executive’s Stretch Bonus in effect under the Bonus Program for the year in which the Executive’s employment is Terminated in Connection With a Change of Control or, if higher, the Stretch Bonus in effect under the Bonus Program (or comparable program) at any time during the Protection Period. This amount will be paid in a single lump sum on the Change Entity’s next regularly scheduled payroll date for senior executive officers of the Company following the date of the Executive’s Termination in Connection With a Change of Control.

**[c] Health Care.** The Change Entity will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium at the lowest rate in effect at any time during the Protection Period for this coverage, until the earlier of **[i]** the last day of the 24th complete calendar month beginning after the date the Executive is Terminated in Connection With a Change of Control or **[ii]** the date the Executive becomes eligible for comparable benefits at comparable costs to the Executive under another employer sponsored benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.07[1][c], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.07[1][c] shall be subject to the following: **[A]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; **[B]** any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and **[C]** the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

**[d] Other.** Any rights (including those arising on account of the Change of Control) accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Change Entity will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**[2] Change Entity.** For purposes of this Agreement, “Change Entity” means the Company, BLI and any other entity that is a party to the Change of Control.

**[3] Definition of Change of Control.** For purposes of this Agreement, “Change of Control” means the first to occur of any of the following events:

**[a]** The acquisition by any person (as defined under Section 409A of the Code), or more than one person acting as a group (as defined under Section 409A of the Code), of the stock of BLI that, together with the stock of BLI held by such person or group, constitutes more than fifty (50) percent of the total fair market value or total voting power of all of the stock of BLI;

**[b]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of the stock of BLI possessing thirty (30) percent or more of the total voting power of all of the stock of BLI;

**[c]** A majority of the members of the Board of Directors of BLI is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of BLI prior to the date of the appointment or election; or

**[d]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from BLI that have a total gross fair market value equal to or more than forty (40) percent of the total gross fair market value of all of the assets of BLI immediately prior to such acquisition or acquisitions.

This definition of Change of Control under this Section 5.07[3] shall be interpreted in a manner that is consistent with the definition of “change in control event” under Section 409A of the Code and the Treasury Regulations promulgated thereunder. The effective date of any such Change of Control will be the date upon which the last event occurs or last action is taken such that the definition of Change of Control (as set forth above) has been satisfied. For purposes of this Agreement, the term “affiliate” means any person or entity that, along with BLI, constitutes a single employer under Sections 414(b) and 414(c) of the Code. Determination of affiliate will be tested as of the date immediately prior to any event constituting a Change of Control. Notwithstanding the other provisions of this Section 5.07, the term “Change of Control” will not mean any transaction, merger, consolidation or reorganization in which BLI exchanges or offers to exchange newly issued or treasury shares in an amount less than 50 percent of the then-outstanding equity securities of BLI entitled to vote for the election of directors, for fifty-one (51) percent or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than BLI or an affiliate thereof (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.

**[4] Protection Period.** For purposes of this Agreement, “Protection Period” means the period beginning on the first day of the third full consecutive calendar month beginning before the date of the Change of Control and ending on the last day of the twenty-fourth consecutive full calendar month beginning after the date of the Change of Control.

**[5] Termination in Connection With a Change of Control.** For purposes of this Agreement, “Termination in Connection With a Change of Control” means, at any time during the Protection Period:

**[a]** The Change Entity involuntarily terminates the Executive without Cause (as defined in Section 5.06).

**[b]** The Executive terminates following the occurrence of any of the following conditions;

**[i]** The Change Entity breaches any provision of this Agreement;

**[ii]** The Change Entity unsuccessfully attempts to terminate the Executive for Cause (as defined in Section 5.04);

**[iii]** The Change Entity attempts to terminate the Executive for any reason without following the procedures described in this Agreement (including an acceleration of the periods described in Section 5.03[4] and 5.04[b]);

**[iv]** The Change Entity revokes or attempts to revoke or accelerate the duration of any leave of absence protected by law or authorized by the Company before the Protection Period or by the Change Entity at any time during the Protection Period;

[v] The Change Entity refuses to allow the Executive to return to active employment at the end of any leave of absence protected by law or authorized by the Company before the Protection Period or the Change Entity at any time during the Protection Period; or

[vi] The Change Entity causes the Executive to resign because of a material adverse change or material diminution in the Executive's reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by the Executive in his good faith discretion); provided, however, that the Executive shall notify the Company in writing at least forty- five (45) days in advance of any election by the Executive to terminate his employment hereunder, specifying the nature of the alleged adverse change or diminution, and the Company shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before the Executive shall be entitled to exercise any such rights and remedies.

For purposes of this Section 5.07[5], the termination of employment is deemed to occur on the Executive's actual date of termination.

**[6] Treatment of Taxes.** If payments under this Agreement, when combined with payments and benefits under all other plans and programs maintained by the Company or the Change Entity, constitute "excess" parachute payments as defined in Section 280G(b) of the Code, the Change Entity, subject to Section 5.07[7], will either:

**[a]** Reimburse the Executive for the amount of any excise tax due under Code §4999, if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][b]; or

**[b]** Reduce the Executive's benefits under this Agreement so that the Executive's total "parachute payment" as defined in Code §280G(b)(2)(A) under this Agreement and all other agreements will be \$1.00 less than the amount that would generate "excess" parachute payment penalties if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][a].

This comparison will be made as of the date of the corporate event generating the "parachute payments" although any reimbursement provided under Section 5.07[6][a] will be made when the parachute payment is actually made or distributed.

Within 10 business days of the date the Change Entity determines that Section 5.07[6][b] should be applied, the Change Entity will apprise the Executive of the amount of the reduction ("Notice of Reduction"). Within 10 business days of receiving that information, the Executive may specify how (and against which benefit or payment source) the reduction is to be applied ("Notice of Allocation"). The Change Entity will be required to implement these directions within 10 business days of receiving the Notice of Allocation. If the Change Entity has not received a Notice of Allocation from the Executive within 10 business days of the date of the Notice of Reduction or if the allocation provided in the Notice of Allocation is not sufficient to fully implement Section 5.07[6][b], the Change Entity will apply Section 5.07[6][b] proportionately based on the amounts otherwise payable under this Agreement or, if a Notice of Allocation has been returned that does not sufficiently implement Section 5.07[6][b], on the basis of the reductions specified in the Notice of Allocation. Any taxes reimbursed pursuant to Section 5.07[6][a] shall be paid by the end of Executive's taxable year next following the taxable year in which Executive remits payment of the tax or assessment being reimbursed. Any reduction pursuant to Section 5.07[6][b] shall be made in accordance with Section 409A of the Code and the Treasury Regulations promulgated thereunder.

**[7] Effect of Subsequent Tax Claim.** The Change Entity will establish procedures that will apply to any inquiries regarding the treatment of tax payments under this Section 5.07. Within 30 days following the termination of the Executive's employment under Section 5.07, the Change Entity will provide the Executive with a copy of such procedures.

**5.08 Six-Month Distribution Delay.** Notwithstanding the foregoing, if Executive is a "specified employee," within the meaning of Treasury Regulation §1.409A-1(i) and as determined under BLI's policy for determining specified employees, on the Executive's date of termination, and the Executive is entitled to a payment and/or a benefit under this Agreement that is required to be delayed pursuant to Section 409A(a)(2) of the Code, then such payment or benefit shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following the Executive's date of termination (or, if earlier, the Executive's death). The first payment that can be made following such postponement period shall include the cumulative amount of any payments or benefits that could not be paid or provided during such postponement period due to the application of Section 409A(a)(2)(B)(i) of the Code.

## **6.00 Notice**

**6.01 How Given.** Any notice permitted or required to be given under this Agreement must be given in writing and delivered in person or by registered, U.S. mail, return receipt requested, postage prepaid; or through Federal Express, UPS, DHL or any other reputable professional delivery service that maintains a confirmation of delivery system. Any delivery must be **[1]** in the case of notices to the Company or the Change Entity, addressed to the Company's Chief Executive Office at the Company's then-current corporate offices and **[2]** in the case of notices to the Executive, addressed to the Executive's last mailing address contained in the Executive's personnel file.

**6.02 Effective Date.** Any notice permitted or required to be given under this Agreement will be deemed to have been given and will be effective on the date it is delivered.

## **7.00 Execution of Release**

The Executive agrees that as a condition of receiving any post-termination benefit as set forth in Section 5.00 except for earned but unpaid Base Salary to the date of termination and any legally protected rights the Executive has under any employee benefit plan maintained by the Company, the Executive or, in the case of any amounts due after the Executive's death, the person to whom those amounts are payable (collectively, the "Payee") must execute a comprehensive release in the form determined from time to time by the Company in its sole discretion. Generally, the release will require the Payee and the Payee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns to release and forever discharge the Group, the Company and all other Group Members, past, present and future, and their executives, officers, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action that grow out of or are in any way related to the Executive's recruitment and employment with the Company that arose on or before the date of the release, other than any claim that the Company has breached this Agreement. This release will include, but not be limited to, any claim that the Company violated the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act; any state, federal law or local ordinance prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state; or any federal, state or local law (each as in effect on the Effective Date and as subsequently amended) relating to any matter within the purview of this Agreement. Upon the Executive's termination of employment with all Group Members, the Payee will be presented with a release and if the Payee fails to execute the release, the Payee agrees to forego any payment described in the first sentence of this section. The Executive acknowledges that the Executive is an experienced senior executive knowledgeable about the claims that might arise in the course of employment with and termination from the Company and any other Group Member and knowingly agrees that the payments upon termination provided for in this Agreement are satisfactory consideration for the release of all possible claims described in the release. Notwithstanding anything to the contrary, the failure of the Executive to execute the release described in this Section 7.00 shall not otherwise cause any payment made pursuant to this Agreement to be delayed beyond the date on which such payment was originally scheduled to occur.

## **8.00 Insurance and Indemnification**

The Company will indemnify Executive (including his heirs, executors and administrators) to the fullest extent permitted under the Company's Regulations and Ohio law. This obligation to provide insurance for the Executive will survive termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions occurring during the Executive's employment with or termination from the Group, the Company or with any other Group Member. Concurrently with the execution of this Agreement, BLI will enter into an indemnification agreement with the Executive.

## **9.00 Arbitration**

**9.01 Acknowledgement of Arbitration.** Unless stated otherwise in this Agreement or any other compensatory or any employee benefit plan, fund or program maintained by the Company, the Parties agree that arbitration is the sole and exclusive remedy for each of them to resolve (except as specifically provided in Section 4.09) and redress any dispute, claim or controversy involving the interpretation or application of this Agreement, the terms, conditions or termination of this Agreement and the terms, conditions or termination of the Executive's employment with the Company, including any claims for any tort, breach of contract, violation of public policy or discrimination, whether such claim arises under federal, state law or local law.

**9.02 Scope of Arbitration.** The Executive expressly understands and agrees that claims subject to arbitration under this section include asserted violations of the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964 (as amended); the Family and Medical Leave Act; any federal, state or local law or ordinances prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state, or any federal, state or local law (each as in effect on the Effective Date or as subsequently amended) relating to any matter within the purview of this Agreement.

**9.03 Effect of Arbitration.** The Parties intend that any arbitration award relating to any matter described in Section 9.01 will be final and binding on them and that a judgment on the award may be entered in any court of competent jurisdiction and that enforcement may be had according to the terms of that award. This Section 9.03 will survive the termination of this Agreement.

**9.04 Location and Conduct of Arbitration.** Arbitration will be held in Columbus, Ohio, and will be conducted by a retired federal judge or other qualified arbitrator. The arbitrator will be mutually agreed upon by the Parties and the arbitration will be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The Parties will have the right to conduct discovery pursuant to the Federal Rules of Civil Procedure; provided, however, that the arbitrator will have the authority to establish an expedited discovery schedule and cutoff and to resolve any discovery disputes. The arbitrator will have no jurisdiction or authority to change any provision of this Agreement by alterations of, additions to or subtractions from the terms of this Agreement. The arbitrator's sole authority will be to interpret or apply any provision(s) of this Agreement or any public law alleged to have been violated. The arbitrator has the authority to award damages and other relief expressly provided by law.

**9.05 Time for Initiating Arbitration.** Any claim or controversy relating to any matter described in Section 9.01 not sought to be submitted to arbitration, in writing, within 60 days of the date the Party asserting the claim knew, or through reasonable diligence should have known, of the facts giving rise to that Party's claim, will be deemed waived and the Party asserting the claim will have no further right to seek arbitration or recovery with respect to that claim or controversy. Both Parties agree to strictly comply with the time limitation specified in this section. For purposes of this section, a claim or controversy is sought to be submitted to arbitration on the date the complaining Party gives written notice to the other that **[1]** an issue has arisen or is likely to arise that, unless resolved otherwise, may be resolved through arbitration under this Section 9.00 and **[2]** unless the issue is resolved otherwise, the complaining Party intends to submit the matter to arbitration under the terms of Section 9.00.

**9.06 Costs of Arbitration and Attorney's Fees.** The Company will bear the arbitrator's fee and other costs associated with any arbitration, unless the arbitrator, acting under Federal Rule of Civil Procedure 54(d)(1), elects to award these fees to the Company. Attorney's fees **[1]** may be awarded to the prevailing party if expressly authorized by statute, or otherwise each party will bear its own attorney's fees and costs but **[2]** Executive's attorney's fees and other associated costs and expenses will be borne by the Change Entity with respect to any claim arising under Section 5.07 but only if the arbitrator concludes the claim legitimately relates to matters within the contemplation of Section 5.07 (otherwise, the rule described in Section 9.06[1] will apply). Notwithstanding the foregoing: **[a]** any costs being reimbursed must relate to a claim brought during the lifetime of the Executive with respect to an alleged breach of any obligation of the Company under this Agreement; **[b]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement in any other taxable year; **[c]** any reimbursement must be made on or before the last day of the Executive's taxable year following the taxable year in which the cost was incurred; and **[d]** the right to reimbursement for such costs is not subject to liquidation or exchange for another benefit.



**9.07 Arbitration Exclusive Remedy.** The Parties acknowledge that, because arbitration is the exclusive remedy for resolving the issues described in Section 9.01, neither Party may resort to any federal, state or local court or administrative agency concerning those issues and that the decision of the arbitrator will be a complete defense to any suit, action or proceeding instituted in any federal, state or local court before any administrative agency with respect to any arbitrable claim or controversy.

**9.08 Waiver of Jury.** The Executive (personally and in behalf of all the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns) and the Company (on its own behalf's and in behalf of its successors, including any Change Entity) each waive the right to have a claim or dispute with one another decided in a judicial forum or by a jury, except as otherwise provided in this Agreement.

## **10.00 General Provisions**

**10.01 Representation of Executive.** The Executive represents and warrants that the Executive is an experienced senior executive knowledgeable about the issues (and their effect) within the purview of this Agreement and is not under any contractual or legal restraint that prevents or prohibits the Executive from entering into this Agreement or performing the duties and obligations described in this Agreement.

**10.02 Modification or Waiver; Entire Agreement.** No provision of this Agreement may be modified or waived except in a document signed by the Executive and the Company's Chief Executive Officer or other person designated by the Company's Board of Directors. This Agreement, and any attachments referenced in the Agreement, constitute the entire agreement between the Parties regarding the employment relationship described in this Agreement, and, except as otherwise specifically provided in this Agreement, any other agreements are terminated and of no further force or legal effect. No agreements or representations, oral or otherwise, with respect to the Executive's employment relationship with the Company have been made or relied upon by either Party which are not set forth expressly in this Agreement.

**10.03 Governing Law; Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application of any provision of this Agreement to any person or circumstance, is, for any reason and to any extent, held invalid or unenforceable, such invalidity and unenforceability will not affect the remaining provisions of this Agreement of its application to other persons or circumstances, all of which will be enforced to the greatest extent permitted by law and the Parties agree that any invalid or unenforceable provision may and will be reformed and applied **[1]** as provided in Section 4.05, with respect to the matters specifically contemplated in Section 4.00 and **[2]** with respect to other matters, **[a]** to the extent needed to avoid that invalidity or unenforceability and **[b]** in a manner that is as similar as possible to the Parties' intent (as described in this Agreement). The validity, construction and interpretation of this Agreement and the rights and duties of the Parties will be governed by the laws of the State of Ohio, without reference to the Ohio choice of law rules.

**10.04 No Waiver.** Except as otherwise provided in Section 9.05, failure to insist upon strict compliance with any term of this Agreement will not be considered a waiver of any such term or any other term of this Agreement.

**10.05 Withholding.** All payments made to or on behalf of the Executive under this Agreement will be reduced by any amount:

[1] That the Company is required by law to withhold in advance payment of the Executive's federal, state and local income, wage and employment tax liability; and

[2] To the extent allowed by law, that the Executive owes (or, after employment is deemed to owe) to the Group, the Company or any other Group Member.

Application of Section 10.05[2] will not extinguish the Company's right to seek additional amounts from the Executive (or to pursue other appropriate remedies) to the extent that the amount recovered by application of Section 10.05[2] does not fully discharge the amount the Executive owes to the Group, the Company or other Group Member and does not preclude the Group, the Company or any other Group Member from proceeding directly against the Executive without first exhausting its right of recovery under Section 10.05[2].

**10.06 Survival.** The Parties agree that the covenants and promises set forth in this Agreement will survive the termination of this Agreement and continue in full force and effect after this Agreement terminates to the extent that their performance is required to occur after this Agreement terminates.

**10.07 Miscellaneous.**

[1] The Executive may not assign any right or interest to, or in, any payments payable under this Agreement; provided, however, that this prohibition does not preclude the Executive from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and does not preclude the legal representative of the Executive's estate from assigning any right under this Agreement to the person or persons entitled to it.

[2] This Agreement will be binding upon and will inure to the benefit of the Executive, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns and the Company and its successors and, to the extent applicable, the Group and all Group Members.

[3] The headings in this Agreement are inserted for convenience of reference only and will not be a part of or control or affect the meaning of any provision of the Agreement.

**10.08 Successors to Company.** This Agreement may and will be assigned or transferred to, and will be binding upon and will inure to the benefit of, any successor of the Company, including any Change Entity, and any successor will be substituted for the Company under the terms of this Agreement. As used in this Agreement, the term “successor” means any person, firm, corporation or business entity which at any time, whether by merger, purchase or otherwise, acquires all or essentially all of the assets of the business of the Company. Notwithstanding any assignment, the Company will remain, with any successor, jointly and severally liable for all its obligations under this Agreement.

**10.09 Section 409A of the Code.** This Agreement is intended to comply with Section 409A of the Code and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to the Executive and neither the Company nor the Boards of Directors of BLI or Big Lots shall be liable to the Executive for failure to comply with the requirements of Section 409A of the Code. Furthermore, the Company may accelerate the time or schedule of a payment to the Executive if at any time this Agreement fails to meet the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder.

**IN WITNESS WHEREOF,** the Parties have duly executed and delivered this Agreement, which includes an arbitration provision, and consists of 22 pages.

BIG LOTS, INC.

By: /s/ Dennis B. Tishkoff

Signed: December 5, 2008

BIG LOTS STORES, INC.

By: /s/ Brad A. Waite

Signed: December 5, 2008

ROBERT C. CLAXTON

/s/ Robert C. Claxton

Signed: December 5, 2008

**AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT  
BY AND AMONG  
BIG LOTS, INC.,  
BIG LOTS STORES, INC.  
AND  
CHARLES W. HAUBIEL II**

This amended and restated employment agreement (“Agreement”) by and among Big Lots, Inc. (“BLI”), Big Lots Stores, Inc. (“Big Lots”) and their affiliates, predecessor, successor, subsidiaries and other related companies (collectively the “Company”) and Charles W. Haubiel II (“Executive”), collectively, the “Parties,” is effective as of December 5, 2008 (“Effective Date”) and supersedes and replaces any other oral or written agreement or understanding concerning the terms of the Executive’s employment with the Company but does not supersede or replace any agreement or arrangement between the Executive or any Group Member (as defined in Section 4.02[1]) relating to the payment of compensation or benefits earned (or deemed earned) on account of services performed for a Group Member before the Effective Date.

**1.00      Duration**

This Agreement will remain in effect from the Effective Date until it terminates as provided in Section 5.00 (“Term”). Any notice of termination required to be given under this Agreement must be given as provided in Section 6.00 and will be effective on the date prescribed in Section 5.00.

**2.00      Executive’s Employment Function**

**2.01      Position.** The Executive agrees to serve as the Company’s Senior Vice President and General Counsel (or other equivalent title conferred by the Company in its sole discretion) with the authority and duties customarily associated with this position. The Executive agrees at all times to observe and to be bound by all Company rules, policies, practices, procedures and resolutions which apply to Company employees with a similar title and position and which do not conflict with the specific terms of this Agreement.

**2.02      Place of Performance.** Unless the Company requires the Executive to perform duties at another location, the Executive’s duties will be performed principally in Columbus, Ohio, except for travel on the business of any Group Member.

**3.00      Compensation**

The Company will pay the Executive the amounts described in Sections 3.00 and 5.00 as compensation for the services described in this Agreement and in exchange for the duties and responsibilities described in Section 4.00.

**3.01      Base Salary.** The Company will pay to the Executive an annualized base salary of \$350,000, which, at the discretion of the Company, may be adjusted from time to time in a manner that is consistent with the Company’s compensation policies in effect for Company employees with a similar title and position (“Base Amount”) but may not be adjusted to any amount lower than \$350,000 without the Executive’s consent. The Executive’s Base Salary will be paid in installments that correspond with the Company’s normal payroll practices.

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**3.02 Bonus.** The Executive will be eligible to receive bonus compensation (“Bonus”) under and subject to the terms of the Company’s Big Lots 2006 Bonus Plan, as amended (or any such successor plan, hereinafter, “Bonus Program”) for the fiscal year beginning January 30, 2008 and for each subsequent fiscal year during the Term of this Agreement. The Executive’s Bonus will be an amount equal to the Base Salary at the end of each fiscal year multiplied by the Bonus Payout percentage as determined under the Bonus Program. The Bonus Program is based upon the achievement of the Company’s annual financial plan. The Executive’s Bonus Payout percentage will consist of a Target Bonus of 50 percent of Base Salary and a Stretch Bonus of 100 percent of Base Salary. Both “Target Bonus” and a “Stretch Bonus” are defined in the Bonus Program and are subject to adjustment as provided in the Bonus Program; provided, however, the Executive’s Target Bonus will never be set at less than 50 percent of Base Salary and the Executive’s Stretch Bonus will never be set at less than 100 percent of Base Salary.

[1] **Payment.** The payment of any earned Bonuses is subject to the terms of the Bonus Program and any agreements issued thereunder.

[2] **Fiscal Year.** The term “fiscal year” means the period beginning on the first Sunday after the Saturday closest to January 31<sup>st</sup> of each calendar year and ending on the Saturday closest to January 31<sup>st</sup> of the following calendar year.

**3.03 Benefit and Other Compensatory Plans.** Subject to their terms (which the Company may amend at any time), the Executive may participate in any Company-sponsored employee pension or welfare benefit plan at a level commensurate with the Executive’s title and position. The Executive also may participate in any other deferred incentive or similar compensation program maintained by the Company and generally made available to other senior executive officers of the Company.

**3.04 Vacation and Sick Leave.** The Executive will be entitled to the same periods of vacation and sick leave each year that the Company provides under its vacation and sick leave policy to other senior executive officers of the Company.

**3.05 Expenses.** Consistent with the terms of its business expense reimbursement policies and procedures, the Company will reimburse Executive for all normal and reasonable expenses incurred while performing services under this Agreement, including reasonable travel expenses. Reimbursement for these expenses will be made as soon as administratively feasible after the date the Executive submits appropriate evidence of the expenditure and otherwise complies with the Company’s business expense reimbursement policies and procedures.

**3.06 Automobile Allowance.** The Company will provide the Executive with an automobile or a monthly automobile allowance in accordance with applicable Company policies for employees with a similar title and position; provided, however, that the automobile allowance may not be adjusted to a value lower than the value the Executive is entitled to receive as of the Effective Date.

**3.07 Termination Benefits.** The Company will provide the Executive with only those termination benefits described in Section 5.00.

#### **4.00 Executive's Obligations**

The amounts described in Sections 3.00 and 5.00 of this Agreement are provided by the Company in exchange for (and have a value to the Company equivalent to) the Executive's performance of the obligations described in this Agreement, including performance of the duties and the covenants made and entered into by and between the Executive and the Company in this Agreement.

**4.01 Scope of Duties.** The Executive will:

- [1] Devote all available business time, best efforts and undivided attention to the Company's business and affairs; and
- [2] Not engage in any other business activity, whether for gain, profit or other pecuniary benefit except for services benefiting the Group or any Group Member.

However, the restrictions described in Sections 4.01[1] and [2] will not preclude the Executive from:

- [3] Making or holding passive investments; or
- [4] Serving on corporate, civic, religious, educational and/or charitable boards or committees but only if this activity [a] does not interfere with the Executive's performance of the duties assumed under this Agreement and [b] is approved in writing by the Company.

**4.02 Confidential Information.**

[1] **Obligation to Protect Confidential Information.** The Executive acknowledges that the Company, its parent, affiliates, predecessor, successor, subsidiaries and other related companies, including entities that become related entities after the Effective Date (collectively, "Group" and separately, "Group Member") have a legitimate and continuing proprietary interest in the protection of Confidential Information (as defined in Section 4.02[2]) and Intellectual Property (as defined in Section 4.02[3]) and have invested, and will continue to invest, substantial sums of money to develop, maintain and protect Confidential Information and Intellectual Property. The Executive agrees [a] during and after employment with the Company and as to all Group Members [i] that any Confidential Information and Intellectual Property will be held in confidence and treated as proprietary to the Group, [ii] not to use or disclose any Confidential Information or Intellectual Property except to promote and advance the Group's business interests and [b] immediately upon termination for any reason from employment with the Company, to return to the Company any Confidential Information and Intellectual Property.

[2] **Definition of Confidential Information.** For purposes of this Agreement, Confidential Information includes any confidential data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, supplier information, tax records, personnel histories and records, information regarding sales, information regarding properties and any other information of a similar confidential nature regarding the business, operations, properties or personnel of the Group, the Company or any other Group Member which are disclosed to or learned by the Executive while employed by a Group Member, but will not include [a] the Executive's own personal personnel records or [b] any information that [i] the Executive possessed before the date of initial employment (including periods before the Effective Date) with the Group that was a matter of public knowledge, [ii] became or becomes a matter of public knowledge through authorized sources independent of the Executive, [iii] has been or is disclosed by any Group Member without restriction on its use, [iv] has been or is required to be disclosed by law or governmental order or regulation or [v] is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only if its disclosure is a necessary part of any proceedings described in Section 9.00. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's General Counsel or Chief Executive Officer confirms to the Executive that the information is public knowledge or an adjudicator finally decides that the information is public knowledge.

[3] **Intellectual Property.** The Executive expressly acknowledges that all right, title and interest to all inventions, designs, discoveries, works of authorship, and ideas conceived, produced, created, discovered, authored or reduced to practice during the Executive's performance of services under this Agreement, whether individually or jointly with any Group Member and whether or not it is deemed to be "work made for hire" (the "Intellectual Property") will be owned solely by the Group, and will be subject to the restrictions set forth in Section 4.02[1]. All Intellectual Property that constitutes copyrightable subject matter under the copyright laws of the United States will, from its conception, be deemed to be a "work made for hire" under the United States copyright laws and all right, title and interest in and to such copyrightable works will vest in the Company or the Group. All right, title and interest in and to all Intellectual Property developed or produced under this Agreement by the Executive, whether constituting patentable subject matter or copyrightable subject matter (to the extent deemed not to be a "work made for hire") or otherwise, will be assigned and is hereby irrevocably assigned to the Company or the Group by the Executive. Without any additional consideration, the Executive will execute all documents and take all other actions the Company reasonably believes are needed to convey the Executive's complete ownership interest in any Intellectual Property to the Company or the Group so that the Company or the Group will own and may protect the Intellectual Property and obtain patent, copyright and trademark registrations for it. The Executive agrees that any Group Member may alter or modify the Intellectual Property at the Group Member's sole discretion, and the Executive waives all right to claim or disclaim ownership.

**4.03 Solicitation of Employees.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members **[1]** not, directly or indirectly, to solicit (or facilitate the solicitation of) any employee of any Group Member to leave employment with the Group or any Group Member, **[2]** not, directly or indirectly, to employ, seek to employ or facilitate the employment of any employee of any Group Member by an entity that is not a Group Member and **[3]** not to cause or induce any entity described in Section 4.05[1] to solicit or employ (or to facilitate the solicitation or employment of ) any employee of any Group Member.

**4.04 Solicitation of Third Parties.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members not, directly or indirectly, to recruit, solicit or otherwise induce or influence any customer, supplier, sales representative, lender, lessor, lessee or any other person having a business relationship with the Group, the Company or any other Group Member to discontinue or reduce the extent of that relationship except in the course of discharging the duties described in this Agreement and with the good faith objective of advancing the Company's or the Group's (or any other Group Member's) business interests.

**4.05 Non-Competition.** The Executive acknowledges the nature of the Group's Business (as defined in Section 4.05[3][a] and that the Group is one of the limited number of entities which has developed this type of business; that the Group's Business is national in scope and the Executive's work for the Group, the Company and other Group Members will give Executive access to the confidential affairs of the Company and other Group Members, to Confidential Information and to Intellectual Property as defined in Sections 4.02[2] and 4.02[3] respectively; and that the agreements and covenants of the Executive contained in Section 4.00 are essential to preserving the Group's Business and good will. Accordingly, the Executive covenants and agrees that:

**[1]** During the Restriction Period (as defined in Section 4.05[3][c]) and within the Restricted Area (as defined in Section 4.05[3][b]) the Executive will not **[a]** engage in the Group's Business for the Executive's own account, **[b]** render any services to any person engaged in the Group's Business (other than to an entity that is a Group Member when those services are rendered); or **[c]** become employed in any manner by, or consult with, Wal-Mart, Sam's Club, Kmart, Target, Dollar General, Family Dollar, Dollar Tree, Value City/Schottenstein Stores Corporation, Fred's, 99¢ Stores, Canned Foods, Tuesday Morning and TJX Corporation. Further, the Executive agrees during the Restricted Period to not become employed in any manner by or to act as consultant to any successor, parent or subsidiary of the entities (or types of entities) listed above other than in the course of discharging the duties described in this Agreement; provided, however, that nothing contained herein will prevent the Executive from becoming employed by, or becoming an owner or member of an employer that renders services to, or otherwise consults with, a person engaged in the Group's Business or an entity listed in 4.05[1][c] so long as the Executive has no involvement with such employer's account or relationship during the Restriction Period.



[2] **Maximum Enforceable Restriction.** If any or all of the covenants set forth in this Section 4.05 are determined by a court of competent jurisdiction to be unenforceable by reason of the temporal restrictions being too great, the geographic areas covered too great, the range of activities too great or for any other reason, the Court is authorized and will interpret them to extend over the maximum period of time, the maximum geographic area and the maximum range of activities or, as to any provision, in such a manner that all provisions may be given maximum restrictive effect in accordance with applicable law.

[3] **Definition Relating to Section 4.05.**

[a] **Group Business.** For purposes of this Agreement, “Group Business” includes the operation of Big Lots retail outlets, the inventories of which are acquired primarily through special purchases such as overstocks, close-outs, liquidations, bankruptcies, wholesale distribution of overstock, distress, liquidation and other volume inventories, the operation of Big Lots furniture stores, and related wholesale operations and other lines of business any Group Member develops during the Term of this Agreement.

[b] **Restricted Area.** For purposes of this Agreement, “Restricted Area” means the 50 mile radius surrounding any location in which the Group’s Business is conducted during the Term of this Agreement.

[c] **Restriction Period.** For purposes of this Agreement, “Restriction Period” means the Term of this Agreement and one year following termination of the Executive’s employment with all Group Members, regardless of the reason for termination; provided, however, that in the event of a Change of Control as defined in Section 5.07[3] of this Agreement, the Restricted Period shall be for a period of six (6) months.

**4.06 Post-Termination Cooperation.** The Executive agrees that during and after employment with the Group and without additional compensation (other than reimbursement for reasonable associated expenses), to cooperate with the Group, the Company and any other Group Member in the following areas:

[1] **Cooperation With the Group, the Company and Other Group Members.** The Executive agrees [a] to be reasonably available to answer questions for any Group Member’s officers or directors regarding any matter, project, initiative or effort with which the Executive was involved while employed by any Group Member and [b] to cooperate with the Group, the Company and any other Group Member during the course of all proceedings arising out of the Group’s Business about which the Executive has knowledge or information. For purposes of this Agreement, [c] “proceedings” includes internal investigations, administrative investigations or proceedings and lawsuits (including pre-trial discovery and trial testimony) and [d] “cooperation” includes [i] the Executive’s being reasonably available for interviews, meetings, depositions, hearings and/or trials without the need for subpoena or assurances by the Group, the Company or any other Group Member, [ii] providing any and all documents in the Executive’s possession that relate to the proceeding and [iii] providing assistance in locating any and all relevant notes and/or documents relevant to any proceedings.

**[2] Cooperation With Third Parties.** Unless compelled to do so by lawfully-served subpoena or court order or to the extent it is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement, the Executive agrees not to communicate with, or give statements or testimony to, any opposing attorney, opposing attorney's representative (including a private investigator) or current or former employee relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company and other Group Members. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by a third party or receiving a subpoena or court order to appear and testify with respect to any matter affected by this section.

**[3] Cooperation With Media.** The Executive agrees not to communicate with, or give statements to, any member of the media (including print, television, radio or electronic media) relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company or any other Group Member. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by any member of the media with respect to any matter affected by this section.

**4.07 Non-Disparagement.** The Executive and the Company agree (on its behalf and in behalf of the Group and other Group Members) that after the Executive's employment with the Group has ended neither will make any disparaging remarks about the other and the Executive will not make any disparaging remarks about the Company, the Company's Chairman, Chief Executive Officer or any of the Company's executives or directors or any other Group Member or their executives and directors. However, this section will not preclude **[1]** any remarks that may be made by the Executive **[a]** under the terms of Section 4.06[2], **[b]** that are required to discharge the duties described in this Agreement or **[c]** are germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement or **[2]** the Company or any other Group Member from making (or eliciting from any person) disparaging remarks about the Executive **[a]** concerning any conduct that may have led to a termination for Cause, as defined in Section 5.04[3] (including initiating an inquiry or investigation that may result in a termination for Cause) or **[b]** that are germane (but only to the extent that it is germane) to defending against any action begun by the Executive under this Agreement.

**4.08 Notice of Subsequent Employment.** The Executive agrees to notify the Company of any subsequent employment during the Restriction Period and any period during which any payment described in Section 5.00 is due or is being paid.

#### **4.09 Remedies.** The Executive:

[1] Acknowledges that the obligations and restrictions described in Sections 4.02 through 4.08 are reasonable in light of the nature of the Group's Business and the nature of the Executive's relationship with the Group and the Company; that the Group, the Company and all other Group Members have legitimate business reasons for requiring the Executive's agreement to all provisions of Section 4.00; and that the Executive understands these restrictions, has had an opportunity to fully discuss these restrictions with the Company and accepts the restrictions.

[2] Agrees that if any of the obligations to the Company under Sections 4.02 through 4.08 are breached, the periods during which the obligations described in Sections 4.02 through 4.08 apply will be extended for the length of time that the Executive failed to fulfill the obligations under Sections 4.02 through 4.08.

[3] Agrees that [a] any breach of any of the terms of this Section 4.00 would result in irreparable injury and damage to the Group, the Company and all other Group Members for which none would have an adequate remedy at law, [b] in the event of a breach or any threat of breach by the Executive, the Group, the Company and any Group Member will be entitled to an immediate injunction and restraining order to prevent that breach and/or threatened breach and/or continued breach by the Executive and/or any and all persons and/or entities acting for, with and/or through the Executive, without having to prove damages [c] no bond will be required of the Group, the Company or any other Group Member in connection with an action described in Section 4.09[3][a] and [d] not to defend any action seeking injunctive or other equitable relief on the basis that the Group, the Company or any other Group Member has an adequate remedy at law in money damages or otherwise. The terms of this Section 4.09 will not prevent the Company from pursuing any other available remedies for any breach or threatened breach by the Executive of Section 4.00, including, but not limited to, the recovery of monetary damages from the Executive or specific performance. In addition to any other available remedies, the Group, the Company or any Group Member may require the Executive to account for and pay over to the Company all compensation, profits, accruals, increments or other benefits derived or received by the Executive as a result of any transaction constituting a breach of any portion of Section 4.00. The Company may set off any amounts finally determined by a court of competent jurisdiction to be due under this section against any amount that may be owed to the Executive under this Agreement or under any other compensatory arrangement (other than a tax-qualified retirement plan) between the Executive and the Group, the Company or any other Group Member. The Parties agree that any action for breach of any of the provisions of Section 4.00 and/or injunctive relief will be venued in the Court of Common Pleas, Franklin County, Ohio.

**4.10 Return of Group Property.** Upon termination of employment, the Executive agrees to promptly return to the Company all property belonging to the Group or any Group Member; provided, however, that in the event the Executive's employment is terminated pursuant to Section 5.06 and the Executive is then utilizing an automobile provided by the Company, the Executive shall retain the automobile in accordance with the terms of Section 5.06[5].

**4.11 Effect of Termination of Agreement.** The provisions of Section 4.00 will survive any termination of this Agreement and the existence of any claim or cause of action by the Executive against the Company or any Group Member, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Group, the Company or any other Group Member of the covenants and agreements of this Section 4.00; provided, however, that this Section 4.11 will not, in and of itself, preclude the Executive from defending against the enforceability of the covenants and agreements of Section 4.00.

## 5.00 Termination and Related Benefits

This Agreement will terminate upon the occurrence of any of the events described in this section, although all of the obligations, restrictions and duties described in Sections 4.02 through 4.08 will continue after the Agreement terminates and will apply and continue to apply to the Executive and the Executive's estate, heirs and assigns for the period described in Sections 4.02 through 4.08.

**5.01 Rules of General Application.** The following rules apply generally to the implementation of Section 5.00:

**[1] Definition of Termination.** For purposes of this Agreement, any reference to a "termination" of employment or any form thereof shall mean a "separation from service" as defined in Treasury Regulation §1.409A-1(h) by the Executive with BLI, Big Lots and all persons with whom BLI would be considered a single employer under Sections 414(b) and (c) of the Internal Revenue Code of 1986, as amended (the "Code").

**[2] Application of Pro Rata.** Any pro rata amount to be paid under Section 5.00 **[a]** will be calculated as provided in the program through which the payment is due or **[b]** if the payment obligation arises solely under this Agreement, will be based on the number of days between the first day of the fiscal year during which the Executive terminates employment and the date that the Executive terminates employment divided by the number of days in the fiscal year during which the Executive terminates employment.

**[3] Payment of Bonus (or pro rata share of any Bonus).** Any Bonus (or pro rata portion thereof) payable pursuant to this Section 5.00 will be paid in accordance with the terms of the applicable bonus plan, but in no event later than the fifteenth day of the third month following the later of: **[a]** the end of the calendar year during which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable; or **[b]** the end of the Company's fiscal year in which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable.

**5.02 Termination Due to Executive's Death.** This Agreement will terminate automatically on the date the Executive dies. If all requirements of this Agreement are met (including those described in Section 7.00), as of the Executive's date of death, and subject to Section 5.04[5], the Company will make the following payments to the beneficiary the Executive designates on a form acceptable to the Company. If the Executive has not made an effective beneficiary designation (or has revoked all beneficiary designations), these payments will be made to the Executive's surviving spouse or, if the Executive dies without a surviving spouse, to the Executive's estate.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his death occurs had his death not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.03 Termination Due to Executive's Disability.** If the Executive becomes Disabled (as defined in Section 5.03[4]), this Agreement shall terminate automatically. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[4] **Definition of Disability.** For purposes of this Agreement, "Disability" (and any of its forms) means that, for more than six consecutive months, the Executive is unable, with reasonable accommodation, to perform the duties described in Section 4.01 on a full-time basis due to a physical or mental disability or infirmity.

**5.04 Termination for Cause.** The Company may terminate the Executive's employment for Cause (as defined in Section 5.04[3]). A termination for Cause shall only be effective after [a] the Company has delivered a written notice to the Executive stating that in the Company's opinion, the Executive may be terminated for Cause, specifying the details and [b] if the failure or action is one that can be cured, the Executive does not cure the issue giving rise to the Cause determination within 30 days after receiving notice. If the Executive is terminated for Cause and if all requirements of this Agreement are met (including those imposed under Section 7.00), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[3] **Definition of Cause.** For purposes of this Agreement, Cause means the Executive's [a] failure to comply with Company's policies and procedures which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [b] willful or illegal misconduct or grossly negligent conduct that is materially injurious to the Group, the Company or any other Group Member, monetarily or otherwise; [c] violation of laws or regulations governing the Group, the Company or any other Group Member (including the Sarbanes-Oxley Act of 2002) or violation of the Company's code of ethics; [d] breach of any fiduciary duty owed to the Group, the Company or any other Group Member; [e] misrepresentation or dishonesty which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [f] breach of any provision of Section 4.00 of this Agreement; [g] involvement in any act of moral turpitude that has a materially injurious effect on the Group, the Company or any other Group Member or their reputation; or [h] breach of the terms of any non-solicitation or confidentiality clauses contained in an employment agreement(s) with a former employer.

[4] [Reserved]

[5] **Subsequent Information.** The terms of Section 5.04 also will apply if, within 6 consecutive calendar months beginning after the Executive terminates under any other provision of Section 5.00, the Company learns of an event that, had it been known before the Executive terminated employment, would have justified a termination for Cause. In this case, the Company will be entitled to recover any amounts that the Executive or any beneficiary received under any other provision of Section 5.00, reduced by the amount the Executive is entitled to receive under this Section 5.04 and any other legally protected benefits paid or made available under this Agreement that originally was applied when the Executive terminated.

**5.05 Voluntary Termination by Executive.** The Executive may voluntarily terminate employment with the Company at any time. In this case, and if all other requirements of this Agreement are met, and subject to Section 5.04(5), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.06 Involuntary Termination Without Cause.** The Company may terminate the Executive's employment at any time without Cause by delivering to the Executive a written notice specifying the same. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive:

**[1] Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

**[2] Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

**[3] Income Continuation.** The Executive will be entitled to continue to receive his Base Salary until the last day of the twelfth complete calendar month beginning after the termination date. Such amounts shall be payable in accordance with the regularly scheduled payroll for similarly situated employees. These payments shall be treated as "separation pay" (within the meaning of Section 409A of the Code) to the maximum extent permitted by Treasury Regulation §1.409A-1(b)(9). Any payments in excess of the maximum amount that can be treated as separation pay pursuant to Treasury Regulation §1.409A-1(b)(9) shall be subject to the provisions of Section 5.08.

**[4] Health Care.** The Executive will be entitled to continue to receive the welfare benefits described in Section 3.03 until the last day of the twelfth complete calendar month beginning after the termination date. Thereafter, the Company will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium for this coverage, if any, until the earlier of **[a]** the last day of the twenty-fourth complete calendar month beginning after the termination date or **[b]** the date the Executive becomes eligible for the same or similar coverage under another benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.06[4], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.06[4] shall be subject to the following: **[i]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; **[ii]** any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and **[iii]** the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

[5] **Transportation.** The Executive will be entitled to continue to receive the automobile benefits described in Section 3.06 until the last day of the twelfth complete calendar month beginning after the termination date; provided, however, that: [a] the benefits provided or amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement or benefits to be provided in any other taxable year of the Executive; [b] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [c] the right to such benefit or reimbursement may not be subject to liquidation or exchange for another benefit.

[6] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

5.07 **Termination in Connection With Change of Control.** If the Executive is Terminated in Connection With a Change of Control (as defined in Section 5.07[5]) at any time during the Protection Period (as defined in Section 5.07[4]) and if all other conditions of this Agreement have been met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Change Entity (as defined in Section 5.07[2]) will pay or make available the Change Benefits (as defined in Section 5.07[1]) in lieu of any other amounts of benefits that might otherwise be due under this Agreement on account of that termination.

[1] **Change Benefits.** For purposes of this Agreement, “Change Benefits” means the aggregate of the following, adjusted if appropriate under Sections 5.07[6] and [7]:

[a] **Base Salary.** The sum of [i] the Base Salary earned to the date of termination plus [ii] 200 percent of the Executive’s Base Salary at the highest rate in effect at any time during the Protection Period. This amount will be paid in a lump sum cash payment on the Change Entity’s first regular payroll date for senior executive officers of the Company following the effective date of the Executive’s Termination in Connection With a Change of Control.

[b] **Bonus.** Two hundred percent of the Executive’s Stretch Bonus in effect under the Bonus Program for the year in which the Executive’s employment is Terminated in Connection With a Change of Control or, if higher, the Stretch Bonus in effect under the Bonus Program (or comparable program) at any time during the Protection Period. This amount will be paid in a single lump sum on the Change Entity’s next regularly scheduled payroll date for senior executive officers of the Company following the date of the Executive’s Termination in Connection With a Change of Control.



**[c] Health Care.** The Change Entity will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium at the lowest rate in effect at any time during the Protection Period for this coverage, until the earlier of **[i]** the last day of the 24th complete calendar month beginning after the date the Executive is Terminated in Connection With a Change of Control or **[ii]** the date the Executive becomes eligible for comparable benefits at comparable costs to the Executive under another employer sponsored benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.07[1][c], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.07[1][c] shall be subject to the following: **[A]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; **[B]** any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and **[C]** the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

**[d] Other.** Any rights (including those arising on account of the Change of Control) accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Change Entity will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**[2] Change Entity.** For purposes of this Agreement, “Change Entity” means the Company, BLI and any other entity that is a party to the Change of Control.

**[3] Definition of Change of Control.** For purposes of this Agreement, “Change of Control” means the first to occur of any of the following events:

**[a]** The acquisition by any person (as defined under Section 409A of the Code), or more than one person acting as a group (as defined under Section 409A of the Code), of the stock of BLI that, together with the stock of BLI held by such person or group, constitutes more than fifty (50) percent of the total fair market value or total voting power of all of the stock of BLI;

**[b]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of the stock of BLI possessing thirty (30) percent or more of the total voting power of all of the stock of BLI;

**[c]** A majority of the members of the Board of Directors of BLI is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of BLI prior to the date of the appointment or election; or

**[d]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from BLI that have a total gross fair market value equal to or more than forty (40) percent of the total gross fair market value of all of the assets of BLI immediately prior to such acquisition or acquisitions.

This definition of Change of Control under this Section 5.07[3] shall be interpreted in a manner that is consistent with the definition of “change in control event” under Section 409A of the Code and the Treasury Regulations promulgated thereunder. The effective date of any such Change of Control will be the date upon which the last event occurs or last action is taken such that the definition of Change of Control (as set forth above) has been satisfied. For purposes of this Agreement, the term “affiliate” means any person or entity that, along with BLI, constitutes a single employer under Sections 414(b) and 414(c) of the Code. Determination of affiliate will be tested as of the date immediately prior to any event constituting a Change of Control. Notwithstanding the other provisions of this Section 5.07, the term “Change of Control” will not mean any transaction, merger, consolidation or reorganization in which BLI exchanges or offers to exchange newly issued or treasury shares in an amount less than 50 percent of the then-outstanding equity securities of BLI entitled to vote for the election of directors, for fifty-one (51) percent or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than BLI or an affiliate thereof (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.

**[4] Protection Period.** For purposes of this Agreement, “Protection Period” means the period beginning on the first day of the third full consecutive calendar month beginning before the date of the Change of Control and ending on the last day of the twenty-fourth consecutive full calendar month beginning after the date of the Change of Control.

**[5] Termination in Connection With a Change of Control.** For purposes of this Agreement, “Termination in Connection With a Change of Control” means, at any time during the Protection Period:

**[a]** The Change Entity involuntarily terminates the Executive without Cause (as defined in Section 5.06).

**[b]** The Executive terminates following the occurrence of any of the following conditions;

**[i]** The Change Entity breaches any provision of this Agreement;

**[ii]** The Change Entity unsuccessfully attempts to terminate the Executive for Cause (as defined in Section 5.04);

**[iii]** The Change Entity attempts to terminate the Executive for any reason without following the procedures described in this Agreement (including an acceleration of the periods described in Section 5.03[4] and 5.04[b]);

**[iv]** The Change Entity revokes or attempts to revoke or accelerate the duration of any leave of absence protected by law or authorized by the Company before the Protection Period or by the Change Entity at any time during the Protection Period;

[v] The Change Entity refuses to allow the Executive to return to active employment at the end of any leave of absence protected by law or authorized by the Company before the Protection Period or the Change Entity at any time during the Protection Period; or

[vi] The Change Entity causes the Executive to resign because of a material adverse change or material diminution in the Executive's reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by the Executive in his good faith discretion); provided, however, that the Executive shall notify the Company in writing at least forty- five (45) days in advance of any election by the Executive to terminate his employment hereunder, specifying the nature of the alleged adverse change or diminution, and the Company shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before the Executive shall be entitled to exercise any such rights and remedies.

For purposes of this Section 5.07[5], the termination of employment is deemed to occur on the Executive's actual date of termination.

**[6] Treatment of Taxes.** If payments under this Agreement, when combined with payments and benefits under all other plans and programs maintained by the Company or the Change Entity, constitute "excess" parachute payments as defined in Section 280G(b) of the Code, the Change Entity, subject to Section 5.07[7], will either:

**[a]** Reimburse the Executive for the amount of any excise tax due under Code §4999, if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][b]; or

**[b]** Reduce the Executive's benefits under this Agreement so that the Executive's total "parachute payment" as defined in Code §280G(b)(2)(A) under this Agreement and all other agreements will be \$1.00 less than the amount that would generate "excess" parachute payment penalties if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][a].

This comparison will be made as of the date of the corporate event generating the "parachute payments" although any reimbursement provided under Section 5.07[6][a] will be made when the parachute payment is actually made or distributed.

Within 10 business days of the date the Change Entity determines that Section 5.07[6][b] should be applied, the Change Entity will apprise the Executive of the amount of the reduction ("Notice of Reduction"). Within 10 business days of receiving that information, the Executive may specify how (and against which benefit or payment source) the reduction is to be applied ("Notice of Allocation"). The Change Entity will be required to implement these directions within 10 business days of receiving the Notice of Allocation. If the Change Entity has not received a Notice of Allocation from the Executive within 10 business days of the date of the Notice of Reduction or if the allocation provided in the Notice of Allocation is not sufficient to fully implement Section 5.07[6][b], the Change Entity will apply Section 5.07[6][b] proportionately based on the amounts otherwise payable under this Agreement or, if a Notice of Allocation has been returned that does not sufficiently implement Section 5.07[6][b], on the basis of the reductions specified in the Notice of Allocation. Any taxes reimbursed pursuant to Section 5.07[6][a] shall be paid by the end of Executive's taxable year next following the taxable year in which Executive remits payment of the tax or assessment being reimbursed. Any reduction pursuant to Section 5.07[6][b] shall be made in accordance with Section 409A of the Code and the Treasury Regulations promulgated thereunder.

**[7] Effect of Subsequent Tax Claim.** The Change Entity will establish procedures that will apply to any inquiries regarding the treatment of tax payments under this Section 5.07. Within 30 days following the termination of the Executive's employment under Section 5.07, the Change Entity will provide the Executive with a copy of such procedures.

**5.08 Six-Month Distribution Delay.** Notwithstanding the foregoing, if Executive is a "specified employee," within the meaning of Treasury Regulation §1.409A-1(i) and as determined under BLI's policy for determining specified employees, on the Executive's date of termination, and the Executive is entitled to a payment and/or a benefit under this Agreement that is required to be delayed pursuant to Section 409A(a)(2) of the Code, then such payment or benefit shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following the Executive's date of termination (or, if earlier, the Executive's death). The first payment that can be made following such postponement period shall include the cumulative amount of any payments or benefits that could not be paid or provided during such postponement period due to the application of Section 409A(a)(2)(B)(i) of the Code.

## **6.00 Notice**

**6.01 How Given.** Any notice permitted or required to be given under this Agreement must be given in writing and delivered in person or by registered, U.S. mail, return receipt requested, postage prepaid; or through Federal Express, UPS, DHL or any other reputable professional delivery service that maintains a confirmation of delivery system. Any delivery must be **[1]** in the case of notices to the Company or the Change Entity, addressed to the Company's Chief Executive Office at the Company's then-current corporate offices and **[2]** in the case of notices to the Executive, addressed to the Executive's last mailing address contained in the Executive's personnel file.

**6.02 Effective Date.** Any notice permitted or required to be given under this Agreement will be deemed to have been given and will be effective on the date it is delivered.

## **7.00 Execution of Release**

The Executive agrees that as a condition of receiving any post-termination benefit as set forth in Section 5.00 except for earned but unpaid Base Salary to the date of termination and any legally protected rights the Executive has under any employee benefit plan maintained by the Company, the Executive or, in the case of any amounts due after the Executive's death, the person to whom those amounts are payable (collectively, the "Payee") must execute a comprehensive release in the form determined from time to time by the Company in its sole discretion. Generally, the release will require the Payee and the Payee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns to release and forever discharge the Group, the Company and all other Group Members, past, present and future, and their executives, officers, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action that grow out of or are in any way related to the Executive's recruitment and employment with the Company that arose on or before the date of the release, other than any claim that the Company has breached this Agreement. This release will include, but not be limited to, any claim that the Company violated the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act; any state, federal law or local ordinance prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state; or any federal, state or local law (each as in effect on the Effective Date and as subsequently amended) relating to any matter within the purview of this Agreement. Upon the Executive's termination of employment with all Group Members, the Payee will be presented with a release and if the Payee fails to execute the release, the Payee agrees to forego any payment described in the first sentence of this section. The Executive acknowledges that the Executive is an experienced senior executive knowledgeable about the claims that might arise in the course of employment with and termination from the Company and any other Group Member and knowingly agrees that the payments upon termination provided for in this Agreement are satisfactory consideration for the release of all possible claims described in the release. Notwithstanding anything to the contrary, the failure of the Executive to execute the release described in this Section 7.00 shall not otherwise cause any payment made pursuant to this Agreement to be delayed beyond the date on which such payment was originally scheduled to occur.

## **8.00 Insurance and Indemnification**

The Company will indemnify Executive (including his heirs, executors and administrators) to the fullest extent permitted under the Company's Regulations and Ohio law. This obligation to provide insurance for the Executive will survive termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions occurring during the Executive's employment with or termination from the Group, the Company or with any other Group Member. Concurrently with the execution of this Agreement, BLI will enter into an indemnification agreement with the Executive.

## **9.00 Arbitration**

**9.01 Acknowledgement of Arbitration.** Unless stated otherwise in this Agreement or any other compensatory or any employee benefit plan, fund or program maintained by the Company, the Parties agree that arbitration is the sole and exclusive remedy for each of them to resolve (except as specifically provided in Section 4.09) and redress any dispute, claim or controversy involving the interpretation or application of this Agreement, the terms, conditions or termination of this Agreement and the terms, conditions or termination of the Executive's employment with the Company, including any claims for any tort, breach of contract, violation of public policy or discrimination, whether such claim arises under federal, state law or local law.

**9.02 Scope of Arbitration.** The Executive expressly understands and agrees that claims subject to arbitration under this section include asserted violations of the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964 (as amended); the Family and Medical Leave Act; any federal, state or local law or ordinances prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state, or any federal, state or local law (each as in effect on the Effective Date or as subsequently amended) relating to any matter within the purview of this Agreement.

**9.03 Effect of Arbitration.** The Parties intend that any arbitration award relating to any matter described in Section 9.01 will be final and binding on them and that a judgment on the award may be entered in any court of competent jurisdiction and that enforcement may be had according to the terms of that award. This Section 9.03 will survive the termination of this Agreement.

**9.04 Location and Conduct of Arbitration.** Arbitration will be held in Columbus, Ohio, and will be conducted by a retired federal judge or other qualified arbitrator. The arbitrator will be mutually agreed upon by the Parties and the arbitration will be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The Parties will have the right to conduct discovery pursuant to the Federal Rules of Civil Procedure; provided, however, that the arbitrator will have the authority to establish an expedited discovery schedule and cutoff and to resolve any discovery disputes. The arbitrator will have no jurisdiction or authority to change any provision of this Agreement by alterations of, additions to or subtractions from the terms of this Agreement. The arbitrator's sole authority will be to interpret or apply any provision(s) of this Agreement or any public law alleged to have been violated. The arbitrator has the authority to award damages and other relief expressly provided by law.

**9.05 Time for Initiating Arbitration.** Any claim or controversy relating to any matter described in Section 9.01 not sought to be submitted to arbitration, in writing, within 60 days of the date the Party asserting the claim knew, or through reasonable diligence should have known, of the facts giving rise to that Party's claim, will be deemed waived and the Party asserting the claim will have no further right to seek arbitration or recovery with respect to that claim or controversy. Both Parties agree to strictly comply with the time limitation specified in this section. For purposes of this section, a claim or controversy is sought to be submitted to arbitration on the date the complaining Party gives written notice to the other that **[1]** an issue has arisen or is likely to arise that, unless resolved otherwise, may be resolved through arbitration under this Section 9.00 and **[2]** unless the issue is resolved otherwise, the complaining Party intends to submit the matter to arbitration under the terms of Section 9.00.

**9.06 Costs of Arbitration and Attorney's Fees.** The Company will bear the arbitrator's fee and other costs associated with any arbitration, unless the arbitrator, acting under Federal Rule of Civil Procedure 54(d)(1), elects to award these fees to the Company. Attorney's fees **[1]** may be awarded to the prevailing party if expressly authorized by statute, or otherwise each party will bear its own attorney's fees and costs but **[2]** Executive's attorney's fees and other associated costs and expenses will be borne by the Change Entity with respect to any claim arising under Section 5.07 but only if the arbitrator concludes the claim legitimately relates to matters within the contemplation of Section 5.07 (otherwise, the rule described in Section 9.06[1] will apply). Notwithstanding the foregoing: **[a]** any costs being reimbursed must relate to a claim brought during the lifetime of the Executive with respect to an alleged breach of any obligation of the Company under this Agreement; **[b]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement in any other taxable year; **[c]** any reimbursement must be made on or before the last day of the Executive's taxable year following the taxable year in which the cost was incurred; and **[d]** the right to reimbursement for such costs is not subject to liquidation or exchange for another benefit.

**9.07 Arbitration Exclusive Remedy.** The Parties acknowledge that, because arbitration is the exclusive remedy for resolving the issues described in Section 9.01, neither Party may resort to any federal, state or local court or administrative agency concerning those issues and that the decision of the arbitrator will be a complete defense to any suit, action or proceeding instituted in any federal, state or local court before any administrative agency with respect to any arbitrable claim or controversy.

**9.08 Waiver of Jury.** The Executive (personally and in behalf of all the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns) and the Company (on its own behalf's and in behalf of its successors, including any Change Entity) each waive the right to have a claim or dispute with one another decided in a judicial forum or by a jury, except as otherwise provided in this Agreement.

## **10.00 General Provisions**

**10.01 Representation of Executive.** The Executive represents and warrants that the Executive is an experienced senior executive knowledgeable about the issues (and their effect) within the purview of this Agreement and is not under any contractual or legal restraint that prevents or prohibits the Executive from entering into this Agreement or performing the duties and obligations described in this Agreement.

**10.02 Modification or Waiver; Entire Agreement.** No provision of this Agreement may be modified or waived except in a document signed by the Executive and the Company's Chief Executive Officer or other person designated by the Company's Board of Directors. This Agreement, and any attachments referenced in the Agreement, constitute the entire agreement between the Parties regarding the employment relationship described in this Agreement, and, except as otherwise specifically provided in this Agreement, any other agreements are terminated and of no further force or legal effect. No agreements or representations, oral or otherwise, with respect to the Executive's employment relationship with the Company have been made or relied upon by either Party which are not set forth expressly in this Agreement.

**10.03 Governing Law; Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application of any provision of this Agreement to any person or circumstance, is, for any reason and to any extent, held invalid or unenforceable, such invalidity and unenforceability will not affect the remaining provisions of this Agreement of its application to other persons or circumstances, all of which will be enforced to the greatest extent permitted by law and the Parties agree that any invalid or unenforceable provision may and will be reformed and applied **[1]** as provided in Section 4.05, with respect to the matters specifically contemplated in Section 4.00 and **[2]** with respect to other matters, **[a]** to the extent needed to avoid that invalidity or unenforceability and **[b]** in a manner that is as similar as possible to the Parties' intent (as described in this Agreement). The validity, construction and interpretation of this Agreement and the rights and duties of the Parties will be governed by the laws of the State of Ohio, without reference to the Ohio choice of law rules.

**10.04 No Waiver.** Except as otherwise provided in Section 9.05, failure to insist upon strict compliance with any term of this Agreement will not be considered a waiver of any such term or any other term of this Agreement.

**10.05 Withholding.** All payments made to or on behalf of the Executive under this Agreement will be reduced by any amount:

**[1]** That the Company is required by law to withhold in advance payment of the Executive's federal, state and local income, wage and employment tax liability; and

**[2]** To the extent allowed by law, that the Executive owes (or, after employment is deemed to owe) to the Group, the Company or any other Group Member.

Application of Section 10.05[2] will not extinguish the Company's right to seek additional amounts from the Executive (or to pursue other appropriate remedies) to the extent that the amount recovered by application of Section 10.05[2] does not fully discharge the amount the Executive owes to the Group, the Company or other Group Member and does not preclude the Group, the Company or any other Group Member from proceeding directly against the Executive without first exhausting its right of recovery under Section 10.05[2].

**10.06 Survival.** The Parties agree that the covenants and promises set forth in this Agreement will survive the termination of this Agreement and continue in full force and effect after this Agreement terminates to the extent that their performance is required to occur after this Agreement terminates.

**10.07 Miscellaneous.**

**[1]** The Executive may not assign any right or interest to, or in, any payments payable under this Agreement; provided, however, that this prohibition does not preclude the Executive from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and does not preclude the legal representative of the Executive's estate from assigning any right under this Agreement to the person or persons entitled to it.

**[2]** This Agreement will be binding upon and will inure to the benefit of the Executive, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns and the Company and its successors and, to the extent applicable, the Group and all Group Members.



[3] The headings in this Agreement are inserted for convenience of reference only and will not be a part of or control or affect the meaning of any provision of the Agreement.

**10.08 Successors to Company.** This Agreement may and will be assigned or transferred to, and will be binding upon and will inure to the benefit of, any successor of the Company, including any Change Entity, and any successor will be substituted for the Company under the terms of this Agreement. As used in this Agreement, the term “successor” means any person, firm, corporation or business entity which at any time, whether by merger, purchase or otherwise, acquires all or essentially all of the assets of the business of the Company. Notwithstanding any assignment, the Company will remain, with any successor, jointly and severally liable for all its obligations under this Agreement.

**10.09 Section 409A of the Code.** This Agreement is intended to comply with Section 409A of the Code and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to the Executive and neither the Company nor the Boards of Directors of BLI or Big Lots shall be liable to the Executive for failure to comply with the requirements of Section 409A of the Code. Furthermore, the Company may accelerate the time or schedule of a payment to the Executive if at any time this Agreement fails to meet the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder.

Notwithstanding the foregoing, if the Executive terminates for any reason, dies or becomes Disabled on or prior to December 31, 2008 and is entitled to payment or benefit as a result of such termination, death or Disability, such payment or benefit shall be paid or provided [1] pursuant to the terms of this Agreement in effect immediately prior to the Effective Date, but [2] modified to the extent necessary for good faith compliance with the requirements of Section 409A of the Code. Nothing in this Agreement shall be construed as causing a payment or benefit to be paid or distributed in calendar year 2008 which is not otherwise payable or distributable in calendar year 2008.

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement, which includes an arbitration provision, and consists of 23 pages.

BIG LOTS, INC.

By: /s/ Dennis B. Tishkoff

Signed: December 5, 2008

BIG LOTS STORES, INC.

By: /s/ Brad A. Waite

Signed: December 5, 2008

CHARLES W. HAUBIEL II

/s/ Charles W. Haubiel II

Signed: December 5, 2008

**AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT  
BY AND AMONG  
BIG LOTS, INC.,  
BIG LOTS STORES, INC.  
AND  
NORMAN J. RANKIN**

This amended and restated employment agreement ("Agreement") by and among Big Lots, Inc. ("BLI"), Big Lots Stores, Inc. ("Big Lots") and their affiliates, predecessor, successor, subsidiaries and other related companies (collectively the "Company") and Norman J. Rankin ("Executive"), collectively, the "Parties," is effective as of December 5, 2008 ("Effective Date") and supersedes and replaces any other oral or written agreement or understanding concerning the terms of the Executive's employment with the Company but does not supersede or replace any agreement or arrangement between the Executive or any Group Member (as defined in Section 4.02[1]) relating to the payment of compensation or benefits earned (or deemed earned) on account of services performed for a Group Member before the Effective Date.

**1.00      Duration**

This Agreement will remain in effect from the Effective Date until it terminates as provided in Section 5.00 ("Term"). Any notice of termination required to be given under this Agreement must be given as provided in Section 6.00 and will be effective on the date prescribed in Section 5.00.

**2.00      Executive's Employment Function**

**2.01      Position.** The Executive agrees to serve as the Company's Senior Vice President (or other equivalent title conferred by the Company in its sole discretion) with the authority and duties customarily associated with this position. The Executive agrees at all times to observe and to be bound by all Company rules, policies, practices, procedures and resolutions which apply to Company employees with a similar title and position and which do not conflict with the specific terms of this Agreement. In performance of these duties, Executive shall be subject to the direction of and report to an individual holding one or more of the following titles: Chief Executive Officer, President, Chief Administrative Officer and/or Executive Vice President of Company.

**2.02      Place of Performance.** Unless the Company requires the Executive to perform duties at another location, the Executive's duties will be performed principally in Columbus, Ohio, except for travel on the business of any Group Member.

**3.00      Compensation**

The Company will pay the Executive the amounts described in Sections 3.00 and 5.00 as compensation for the services described in this Agreement and in exchange for the duties and responsibilities described in Section 4.00.

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**3.01 Base Salary.** The Company will pay to the Executive an annualized base salary of \$400,000, which, at the discretion of the Company, may be adjusted from time to time in a manner that is consistent with the Company's compensation policies in effect for Company employees with a similar title and position ("Base Amount") but may not be adjusted to any amount lower than \$400,000 without the Executive's consent. The Executive's Base Salary will be paid in installments that correspond with the Company's normal payroll practices.

**3.02 Bonus.** The Executive will be eligible to receive bonus compensation ("Bonus") under and subject to the terms of the Company's Big Lots 2006 Bonus Plan, as amended (or any such successor plan, hereinafter, "Bonus Program") for the fiscal year beginning January 30, 2008 and for each subsequent fiscal year during the Term of this Agreement. The Executive's Bonus will be an amount equal to the Base Salary at the end of each fiscal year multiplied by the Bonus Payout percentage as determined under the Bonus Program. The Bonus Program is based upon the achievement of the Company's annual financial plan. The Executive's Bonus Payout percentage will consist of a Target Bonus of 50 percent of Base Salary and a Stretch Bonus of 100 percent of Base Salary. Both "Target Bonus" and a "Stretch Bonus" are defined in the Bonus Program and are subject to adjustment as provided in the Bonus Program; provided, however, the Executive's Target Bonus will never be set at less than 50 percent of Base Salary and the Executive's Stretch Bonus will never be set at less than 100 percent of Base Salary.

[1] **Payment.** The payment of any earned Bonuses is subject to the terms of the Bonus Program and any agreements issued thereunder.

[2] **Fiscal Year.** The term "fiscal year" means the period beginning on the first Sunday after the Saturday closest to January 31<sup>st</sup> of each calendar year and ending on the Saturday closest to January 31<sup>st</sup> of the following calendar year.

**3.03 Benefit and Other Compensatory Plans.** Subject to their terms (which the Company may amend at any time), the Executive may participate in any Company-sponsored employee pension or welfare benefit plan at a level commensurate with the Executive's title and position. The Executive also may participate in any other deferred incentive or similar compensation program maintained by the Company and generally made available to other senior executive officers of the Company.

**3.04 Vacation and Sick Leave.** The Executive will be entitled to the same periods of vacation and sick leave each year that the Company provides under its vacation and sick leave policy to other senior executive officers of the Company.

**3.05 Expenses.** Consistent with the terms of its business expense reimbursement policies and procedures, the Company will reimburse Executive for all normal and reasonable expenses incurred while performing services under this Agreement, including reasonable travel expenses. Reimbursement for these expenses will be made as soon as administratively feasible after the date the Executive submits appropriate evidence of the expenditure and otherwise complies with the Company's business expense reimbursement policies and procedures.

**3.06 Automobile Allowance.** The Company will provide the Executive with an automobile or a monthly automobile allowance in accordance with applicable Company policies for employees with a similar title and position; provided, however, that the automobile allowance may not be adjusted to a value lower than the value the Executive is entitled to receive as of the Effective Date.

**3.07 Termination Benefits.** The Company will provide the Executive with only those termination benefits described in Section 5.00.

#### **4.00 Executive's Obligations**

The amounts described in Sections 3.00 and 5.00 of this Agreement are provided by the Company in exchange for (and have a value to the Company equivalent to) the Executive's performance of the obligations described in this Agreement, including performance of the duties and the covenants made and entered into by and between the Executive and the Company in this Agreement.

**4.01 Scope of Duties.** The Executive will:

- [1]** Devote all available business time, best efforts and undivided attention to the Company's business and affairs; and
- [2]** Not engage in any other business activity, whether for gain, profit or other pecuniary benefit except for services benefiting the Group or any Group Member.

However, the restrictions described in Sections 4.01[1] and [2] will not preclude the Executive from:

- [3]** Making or holding passive investments; or
- [4]** Serving on corporate, civic, religious, educational and/or charitable boards or committees but only if this activity **[a]** does not interfere with the Executive's performance of the duties assumed under this Agreement and **[b]** is approved in writing by the Company.

**4.02 Confidential Information.**

**[1] Obligation to Protect Confidential Information.** The Executive acknowledges that the Company, its parent, affiliates, predecessor, successor, subsidiaries and other related companies, including entities that become related entities after the Effective Date (collectively, "Group" and separately, "Group Member") have a legitimate and continuing proprietary interest in the protection of Confidential Information (as defined in Section 4.02[2]) and Intellectual Property (as defined in Section 4.02[3]) and have invested, and will continue to invest, substantial sums of money to develop, maintain and protect Confidential Information and Intellectual Property. The Executive agrees **[a]** during and after employment with the Company and as to all Group Members **[i]** that any Confidential Information and Intellectual Property will be held in confidence and treated as proprietary to the Group, **[ii]** not to use or disclose any Confidential Information or Intellectual Property except to promote and advance the Group's business interests and **[b]** immediately upon termination for any reason from employment with the Company, to return to the Company any Confidential Information and Intellectual Property.

[2] **Definition of Confidential Information.** For purposes of this Agreement, Confidential Information includes any confidential data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, supplier information, tax records, personnel histories and records, information regarding sales, information regarding properties and any other information of a similar confidential nature regarding the business, operations, properties or personnel of the Group, the Company or any other Group Member which are disclosed to or learned by the Executive while employed by a Group Member, but will not include [a] the Executive's own personal personnel records or [b] any information that [i] the Executive possessed before the date of initial employment (including periods before the Effective Date) with the Group that was a matter of public knowledge, [ii] became or becomes a matter of public knowledge through authorized sources independent of the Executive, [iii] has been or is disclosed by any Group Member without restriction on its use, [iv] has been or is required to be disclosed by law or governmental order or regulation or [v] is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only if its disclosure is a necessary part of any proceedings described in Section 9.00. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's General Counsel or Chief Executive Officer confirms to the Executive that the information is public knowledge or an adjudicator finally decides that the information is public knowledge.

[3] **Intellectual Property.** The Executive expressly acknowledges that all right, title and interest to all inventions, designs, discoveries, works of authorship, and ideas conceived, produced, created, discovered, authored or reduced to practice during the Executive's performance of services under this Agreement, whether individually or jointly with any Group Member and whether or not it is deemed to be "work made for hire" (the "Intellectual Property") will be owned solely by the Group, and will be subject to the restrictions set forth in Section 4.02[1]. All Intellectual Property that constitutes copyrightable subject matter under the copyright laws of the United States will, from its conception, be deemed to be a "work made for hire" under the United States copyright laws and all right, title and interest in and to such copyrightable works will vest in the Company or the Group. All right, title and interest in and to all Intellectual Property developed or produced under this Agreement by the Executive, whether constituting patentable subject matter or copyrightable subject matter (to the extent deemed not to be a "work made for hire") or otherwise, will be assigned and is hereby irrevocably assigned to the Company or the Group by the Executive. Without any additional consideration, the Executive will execute all documents and take all other actions the Company reasonably believes are needed to convey the Executive's complete ownership interest in any Intellectual Property to the Company or the Group so that the Company or the Group will own and may protect the Intellectual Property and obtain patent, copyright and trademark registrations for it. The Executive agrees that any Group Member may alter or modify the Intellectual Property at the Group Member's sole discretion, and the Executive waives all right to claim or disclaim ownership.

**4.03 Solicitation of Employees.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members **[1]** not, directly or indirectly, to solicit (or facilitate the solicitation of) any employee of any Group Member to leave employment with the Group or any Group Member, **[2]** not, directly or indirectly, to employ, seek to employ or facilitate the employment of any employee of any Group Member by an entity that is not a Group Member and **[3]** not to cause or induce any entity described in Section 4.05[1] to solicit or employ (or to facilitate the solicitation or employment of ) any employee of any Group Member.

**4.04 Solicitation of Third Parties.** The Executive agrees that during employment, and for two years after terminating employment with all Group Members not, directly or indirectly, to recruit, solicit or otherwise induce or influence any customer, supplier, sales representative, lender, lessor, lessee or any other person having a business relationship with the Group, the Company or any other Group Member to discontinue or reduce the extent of that relationship except in the course of discharging the duties described in this Agreement and with the good faith objective of advancing the Company's or the Group's (or any other Group Member's) business interests.

**4.05 Non-Competition.** The Executive acknowledges the nature of the Group's Business (as defined in Section 4.05[3][a] and that the Group is one of the limited number of entities which has developed this type of business; that the Group's Business is national in scope and the Executive's work for the Group, the Company and other Group Members will give Executive access to the confidential affairs of the Company and other Group Members, to Confidential Information and to Intellectual Property as defined in Sections 4.02[2] and 4.02[3] respectively; and that the agreements and covenants of the Executive contained in Section 4.00 are essential to preserving the Group's Business and good will. Accordingly, the Executive covenants and agrees that:

**[1]** During the Restriction Period (as defined in Section 4.05[3][c]) and within the Restricted Area (as defined in Section 4.05[3][b]) the Executive will not **[a]** engage in the Group's Business for the Executive's own account, **[b]** render any services to any person engaged in the Group's Business (other than to an entity that is a Group Member when those services are rendered); or **[c]** become employed by Wal-Mart, Kmart, Target, Dollar General, Family Dollar, Dollar Tree, Retail Ventures, Inc., Fred's, 99¢ Stores, Canned Foods, Tuesday Morning and TJX Corporation, or any grocery store chain, regardless of size. Further, the Executive agrees during the Restricted Period to not become employed in any manner by or to act as consultant to any successor, parent or subsidiary of the entities (or types of entities) listed above other than in the course of discharging the duties described in this Agreement.

**[2] Maximum Enforceable Restriction.** If any or all of the covenants set forth in this Section 4.05 are determined by a court of competent jurisdiction to be unenforceable by reason of the temporal restrictions being too great, the geographic areas covered too great, the range of activities too great or for any other reason, the Court is authorized and will interpret them to extend over the maximum period of time, the maximum geographic area and the maximum range of activities or, as to any provision, in such a manner that all provisions may be given maximum restrictive effect in accordance with applicable law.

**[3] Definition Relating to Section 4.05.**

**[a] Group Business.** For purposes of this Agreement, “Group Business” includes the operation of Big Lots retail outlets, the inventories of which are acquired primarily through special purchases such as overstocks, close-outs, liquidations, bankruptcies, wholesale distribution of overstock, distress, liquidation and other volume inventories, the operation of Big Lots furniture stores, and related wholesale operations and other lines of business any Group Member develops during the Term of this Agreement.

**[b] Restricted Area.** For purposes of this Agreement, “Restricted Area” means the 50 mile radius surrounding any location in which the Group’s Business is conducted during the Term of this Agreement.

**[c] Restriction Period.** For purposes of this Agreement, “Restriction Period” means the Term of this Agreement and one year following termination of the Executive’s employment with all Group Members, regardless of the reason for termination; provided, however, that in the event of a Change of Control as defined in Section 5.07[3] of this Agreement, the Restricted Period shall be for a period of six (6) months.

**4.06 Post-Termination Cooperation.** The Executive agrees that during and after employment with the Group and without additional compensation (other than reimbursement for reasonable associated expenses), to cooperate with the Group, the Company and any other Group Member in the following areas:

**[1] Cooperation With the Group, the Company and Other Group Members.** The Executive agrees **[a]** to be reasonably available to answer questions for any Group Member’s officers or directors regarding any matter, project, initiative or effort with which the Executive was involved while employed by any Group Member and **[b]** to cooperate with the Group, the Company and any other Group Member during the course of all proceedings arising out of the Group’s Business about which the Executive has knowledge or information. For purposes of this Agreement, **[c]** “proceedings” includes internal investigations, administrative investigations or proceedings and lawsuits (including pre-trial discovery and trial testimony) and **[d]** “cooperation” includes **[i]** the Executive’s being reasonably available for interviews, meetings, depositions, hearings and/or trials without the need for subpoena or assurances by the Group, the Company or any other Group Member, **[ii]** providing any and all documents in the Executive’s possession that relate to the proceeding and **[iii]** providing assistance in locating any and all relevant notes and/or documents relevant to any proceedings.



**[2] Cooperation With Third Parties.** Unless compelled to do so by lawfully-served subpoena or court order or to the extent it is germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement, the Executive agrees not to communicate with, or give statements or testimony to, any opposing attorney, opposing attorney's representative (including a private investigator) or current or former employee relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company and other Group Members. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by a third party or receiving a subpoena or court order to appear and testify with respect to any matter affected by this section.

**[3] Cooperation With Media.** The Executive agrees not to communicate with, or give statements to, any member of the media (including print, television, radio or electronic media) relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information except in cooperation with the Group, the Company or any other Group Member. The Executive also agrees to notify the Company's Chief Executive Officer or General Counsel immediately after being contacted by any member of the media with respect to any matter affected by this section.

**4.07 Non-Disparagement.** The Executive and the Company agree (on its behalf and in behalf of the Group and other Group Members) that after the Executive's employment with the Group has ended neither will make any disparaging remarks about the other and the Executive will not make any disparaging remarks about the Company, the Company's Chairman, Chief Executive Officer or any of the Company's executives or directors or any other Group Member or their executives and directors. However, this section will not preclude **[1]** any remarks that may be made by the Executive **[a]** under the terms of Section 4.06[2], **[b]** that are required to discharge the duties described in this Agreement or **[c]** are germane (but only to the extent that it is germane) to enforcement of the Executive's rights under this Agreement and only as a necessary part of any proceedings under this Agreement or **[2]** the Company or any other Group Member from making (or eliciting from any person) disparaging remarks about the Executive **[a]** concerning any conduct that may have led to a termination for Cause, as defined in Section 5.04[3] (including initiating an inquiry or investigation that may result in a termination for Cause) or **[b]** that are germane (but only to the extent that it is germane) to defending against any action begun by the Executive under this Agreement.

**4.08 Notice of Subsequent Employment.** The Executive agrees to notify the Company of any subsequent employment during the Restriction Period and any period during which any payment described in Section 5.00 is due or is being paid.

**4.09 Remedies.** The Executive:

**[1]** Acknowledges that the obligations and restrictions described in Sections 4.02 through 4.08 are reasonable in light of the nature of the Group's Business and the nature of the Executive's relationship with the Group and the Company; that the Group, the Company and all other Group Members have legitimate business reasons for requiring the Executive's agreement to all provisions of Section 4.00; and that the Executive understands these restrictions, has had an opportunity to fully discuss these restrictions with the Company and accepts the restrictions.

[2] Agrees that if any of the obligations to the Company under Sections 4.02 through 4.08 are breached, the periods during which the obligations described in Sections 4.02 through 4.08 apply will be extended for the length of time that the Executive failed to fulfill the obligations under Sections 4.02 through 4.08.

[3] Agrees that [a] any breach of any of the terms of this Section 4.00 would result in irreparable injury and damage to the Group, the Company and all other Group Members for which none would have an adequate remedy at law, [b] in the event of a breach or any threat of breach by the Executive, the Group, the Company and any Group Member will be entitled to an immediate injunction and restraining order to prevent that breach and/or threatened breach and/or continued breach by the Executive and/or any and all persons and/or entities acting for, with and/or through the Executive, without having to prove damages [c] no bond will be required of the Group, the Company or any other Group Member in connection with an action described in Section 4.09[3][a] and [d] not to defend any action seeking injunctive or other equitable relief on the basis that the Group, the Company or any other Group Member has an adequate remedy at law in money damages or otherwise. The terms of this Section 4.09 will not prevent the Company from pursuing any other available remedies for any breach or threatened breach by the Executive of Section 4.00, including, but not limited to, the recovery of monetary damages from the Executive or specific performance. In addition to any other available remedies, the Group, the Company or any Group Member may require the Executive to account for and pay over to the Company all compensation, profits, accruals, increments or other benefits derived or received by the Executive as a result of any transaction constituting a breach of any portion of Section 4.00. The Company may set off any amounts finally determined by a court of competent jurisdiction to be due under this section against any amount that may be owed to the Executive under this Agreement or under any other compensatory arrangement (other than a tax-qualified retirement plan) between the Executive and the Group, the Company or any other Group Member. The Parties agree that any action for breach of any of the provisions of Section 4.00 and/or injunctive relief will be venued in the Court of Common Pleas, Franklin County, Ohio.

**4.10 Return of Group Property.** Upon termination of employment, the Executive agrees to promptly return to the Company all property belonging to the Group or any Group Member; provided, however, that in the event the Executive's employment is terminated pursuant to Section 5.06 and the Executive is then utilizing an automobile provided by the Company, the Executive shall retain the automobile in accordance with the terms of Section 5.06[5].

**4.11 Effect of Termination of Agreement.** The provisions of Section 4.00 will survive any termination of this Agreement and the existence of any claim or cause of action by the Executive against the Company or any Group Member, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Group, the Company or any other Group Member of the covenants and agreements of this Section 4.00; provided, however, that this Section 4.11 will not, in and of itself, preclude the Executive from defending against the enforceability of the covenants and agreements of Section 4.00.

## 5.00 Termination and Related Benefits

This Agreement will terminate upon the occurrence of any of the events described in this section, although all of the obligations, restrictions and duties described in Sections 4.02 through 4.08 will continue after the Agreement terminates and will apply and continue to apply to the Executive and the Executive's estate, heirs and assigns for the period described in Sections 4.02 through 4.08.

**5.01 Rules of General Application.** The following rules apply generally to the implementation of Section 5.00:

**[1] Definition of Termination.** For purposes of this Agreement, any reference to a "termination" of employment or any form thereof shall mean a "separation from service" as defined in Treasury Regulation §1.409A-1(h) by the Executive with BLI, Big Lots and all persons with whom BLI would be considered a single employer under Sections 414(b) and (c) of the Internal Revenue Code of 1986, as amended (the "Code").

**[2] Application of Pro Rata.** Any pro rata amount to be paid under Section 5.00 **[a]** will be calculated as provided in the program through which the payment is due or **[b]** if the payment obligation arises solely under this Agreement, will be based on the number of days between the first day of the fiscal year during which the Executive terminates employment and the date that the Executive terminates employment divided by the number of days in the fiscal year during which the Executive terminates employment.

**[3] Payment of Bonus (or pro rata share of any Bonus).** Any Bonus (or pro rata portion thereof) payable pursuant to this Section 5.00 will be paid in accordance with the terms of the applicable bonus plan, but in no event later than the fifteenth day of the third month following the later of: **[a]** the end of the calendar year during which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable; or **[b]** the end of the Company's fiscal year in which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable.

**5.02 Termination Due to Executive's Death.** This Agreement will terminate automatically on the date the Executive dies. If all requirements of this Agreement are met (including those described in Section 7.00), as of the Executive's date of death, and subject to Section 5.04[5], the Company will make the following payments to the beneficiary the Executive designates on a form acceptable to the Company. If the Executive has not made an effective beneficiary designation (or has revoked all beneficiary designations), these payments will be made to the Executive's surviving spouse or, if the Executive dies without a surviving spouse, to the Executive's estate.

**[1] Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his death occurs had his death not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.03 Termination Due to Executive's Disability.** If the Executive becomes Disabled (as defined in Section 5.03[4]), this Agreement shall terminate automatically. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[4] **Definition of Disability.** For purposes of this Agreement, "Disability" (and any of its forms) means that, for more than six consecutive months, the Executive is unable, with reasonable accommodation, to perform the duties described in Section 4.01 on a full-time basis due to a physical or mental disability or infirmity.

**5.04 Termination for Cause.** The Company may terminate the Executive's employment for Cause (as defined in Section 5.04[3]). A termination for Cause shall only be effective after [a] the Company has delivered a written notice to the Executive stating that in the Company's opinion, the Executive may be terminated for Cause, specifying the details and [b] if the failure or action is one that can be cured, the Executive does not cure the issue giving rise to the Cause determination within 30 days after receiving notice. If the Executive is terminated for Cause and if all requirements of this Agreement are met (including those imposed under Section 7.00), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

[3] **Definition of Cause.** For purposes of this Agreement, Cause means the Executive's [a] failure to comply with Company's policies and procedures which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [b] willful or illegal misconduct or grossly negligent conduct that is materially injurious to the Group, the Company or any other Group Member, monetarily or otherwise; [c] violation of laws or regulations governing the Group, the Company or any other Group Member (including the Sarbanes-Oxley Act of 2002) or violation of the Company's code of ethics; [d] breach of any fiduciary duty owed to the Group, the Company or any other Group Member; [e] misrepresentation or dishonesty which the Company reasonably determines has had or is likely to have a material adverse effect on the Group, the Company or any other Group Member; [f] breach of any provision of Section 4.00 of this Agreement; [g] involvement in any act of moral turpitude that has a materially injurious effect on the Group, the Company or any other Group Member or their reputation; or [h] breach of the terms of any non-solicitation or confidentiality clauses contained in an employment agreement(s) with a former employer.

[4] [Reserved]

[5] **Subsequent Information.** The terms of Section 5.04 also will apply if, within 6 consecutive calendar months beginning after the Executive terminates under any other provision of Section 5.00, the Company learns of an event that, had it been known before the Executive terminated employment, would have justified a termination for Cause. In this case, the Company will be entitled to recover any amounts that the Executive or any beneficiary received under any other provision of Section 5.00, reduced by the amount the Executive is entitled to receive under this Section 5.04 and any other legally protected benefits paid or made available under this Agreement that originally was applied when the Executive terminated.

**5.05 Voluntary Termination by Executive.** The Executive may voluntarily terminate employment with the Company at any time upon thirty (30) days notice to Company. In this case, and if all other requirements of this Agreement are met, and subject to Section 5.04[5], the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.06 Involuntary Termination Without Cause.** The Company may terminate the Executive's employment at any time upon thirty (30) days notice to Executive without Cause by delivering to the Executive a written notice specifying the same. If all requirements of this Agreement are met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly schedule payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Income Continuation.** The Executive will be entitled to continue to receive his Base Salary until the last day of the twelfth complete calendar month beginning after the termination date. Such amounts shall be payable in accordance with the regularly scheduled payroll for similarly situated employees. These payments shall be treated as "separation pay" (within the meaning of Section 409A of the Code) to the maximum extent permitted by Treasury Regulation §1.409A-1(b)(9). Any payments in excess of the maximum amount that can be treated as separation pay pursuant to Treasury Regulation §1.409A-1(b)(9) shall be subject to the provisions of Section 5.08.

[4] **Health Care.** The Executive will be entitled to continue to receive the welfare benefits described in Section 3.03 until the last day of the twelfth complete calendar month beginning after the termination date. Thereafter, the Company will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium for this coverage, if any, until the earlier of [a] the last day of the twenty-fourth complete calendar month beginning after the termination date or [b] the date the Executive becomes eligible for the same or similar coverage under another benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.06[4], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.06[4] shall be subject to the following: [i] the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; [ii] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [iii] the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

[5] **Transportation.** The Executive will be entitled to continue to receive the automobile benefits described in Section 3.06 until the last day of the twelfth complete calendar month beginning after the termination date; provided, however, that: [a] the benefits provided or amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement or benefits to be provided in any other taxable year of the Executive; [b] any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and [c] the right to such benefit or reimbursement may not be subject to liquidation or exchange for another benefit.

**[6] Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.07 Termination in Connection With Change of Control.** If the Executive is Terminated in Connection With a Change of Control (as defined in Section 5.07[5]) at any time during the Protection Period (as defined in Section 5.07[4]) and if all other conditions of this Agreement have been met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Change Entity (as defined in Section 5.07[2]) will pay or make available the Change Benefits (as defined in Section 5.07[1]) in lieu of any other amounts of benefits that might otherwise be due under this Agreement on account of that termination.

**[1] Change Benefits.** For purposes of this Agreement, “Change Benefits” means the aggregate of the following, adjusted if appropriate under Sections 5.07[6] and [7]:

**[a] Base Salary.** The sum of **[i]** the Base Salary earned to the date of termination plus **[ii]** 200 percent of the Executive’s Base Salary at the highest rate in effect at any time during the Protection Period. This amount will be paid in a lump sum cash payment on the Change Entity’s first regular payroll date for senior executive officers of the Company following the effective date of the Executive’s Termination in Connection With a Change of Control.

**[b] Bonus.** Two hundred percent of the Executive’s Stretch Bonus in effect under the Bonus Program for the year in which the Executive’s employment is Terminated in Connection With a Change of Control or, if higher, the Stretch Bonus in effect under the Bonus Program (or comparable program) at any time during the Protection Period. This amount will be paid in a single lump sum on the Change Entity’s next regularly scheduled payroll date for senior executive officers of the Company following the date of the Executive’s Termination in Connection With a Change of Control.

**[c] Health Care.** The Change Entity will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium at the lowest rate in effect at any time during the Protection Period for this coverage, until the earlier of **[i]** the last day of the 24th complete calendar month beginning after the date the Executive is Terminated in Connection With a Change of Control or **[ii]** the date the Executive becomes eligible for comparable benefits at comparable costs to the Executive under another employer sponsored benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.07[1][c], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.07[1][c] shall be subject to the following: **[A]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; **[B]** any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and **[C]** the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

**[d] Other.** Any rights (including those arising on account of the Change of Control) accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Change Entity will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**[2] Change Entity.** For purposes of this Agreement, “Change Entity” means the Company, BLI and any other entity that is a party to the Change of Control.

**[3] Definition of Change of Control.** For purposes of this Agreement, “Change of Control” means the first to occur of any of the following events:

**[a]** The acquisition by any person (as defined under Section 409A of the Code), or more than one person acting as a group (as defined under Section 409A of the Code), of the stock of BLI that, together with the stock of BLI held by such person or group, constitutes more than fifty (50) percent of the total fair market value or total voting power of all of the stock of BLI;

**[b]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of the stock of BLI possessing thirty (30) percent or more of the total voting power of all of the stock of BLI;

**[c]** A majority of the members of the Board of Directors of BLI is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of BLI prior to the date of the appointment or election; or

**[d]** The acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from BLI that have a total gross fair market value equal to or more than forty (40) percent of the total gross fair market value of all of the assets of BLI immediately prior to such acquisition or acquisitions.



This definition of Change of Control under this Section 5.07[3] shall be interpreted in a manner that is consistent with the definition of “change in control event” under Section 409A of the Code and the Treasury Regulations promulgated thereunder. The effective date of any such Change of Control will be the date upon which the last event occurs or last action is taken such that the definition of Change of Control (as set forth above) has been satisfied. For purposes of this Agreement, the term “affiliate” means any person or entity that, along with BLI, constitutes a single employer under Sections 414(b) and 414(c) of the Code. Determination of affiliate will be tested as of the date immediately prior to any event constituting a Change of Control. Notwithstanding the other provisions of this Section 5.07, the term “Change of Control” will not mean any transaction, merger, consolidation or reorganization in which BLI exchanges or offers to exchange newly issued or treasury shares in an amount less than 50 percent of the then-outstanding equity securities of BLI entitled to vote for the election of directors, for fifty-one (51) percent or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than BLI or an affiliate thereof (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.

**[4] Protection Period.** For purposes of this Agreement, “Protection Period” means the period beginning on the first day of the third full consecutive calendar month beginning before the date of the Change of Control and ending on the last day of the twenty-fourth consecutive full calendar month beginning after the date of the Change of Control.

**[5] Termination in Connection With a Change of Control.** For purposes of this Agreement, “Termination in Connection With a Change of Control” means, at any time during the Protection Period:

**[a]** The Change Entity involuntarily terminates the Executive without Cause (as defined in Section 5.06).

**[b]** The Executive terminates following the occurrence of any of the following conditions;

**[i]** The Change Entity breaches any provision of this Agreement;

**[ii]** The Change Entity unsuccessfully attempts to terminate the Executive for Cause (as defined in Section 5.04);

**[iii]** The Change Entity attempts to terminate the Executive for any reason without following the procedures described in this Agreement (including an acceleration of the periods described in Section 5.03[4] and 5.04[b]);

**[iv]** The Change Entity revokes or attempts to revoke or accelerate the duration of any leave of absence protected by law or authorized by the Company before the Protection Period or by the Change Entity at any time during the Protection Period;

**[v]** The Change Entity refuses to allow the Executive to return to active employment at the end of any leave of absence protected by law or authorized by the Company before the Protection Period or the Change Entity at any time during the Protection Period; or

[vi] The Change Entity causes the Executive to resign because of a material adverse change or material diminution in the Executive's reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by the Executive in his good faith discretion); provided, however, that the Executive shall notify the Company in writing at least forty- five (45) days in advance of any election by the Executive to terminate his employment hereunder, specifying the nature of the alleged adverse change or diminution, and the Company shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before the Executive shall be entitled to exercise any such rights and remedies.

For purposes of this Section 5.07[5], the termination of employment is deemed to occur on the Executive's actual date of termination.

**[6] Treatment of Taxes.** If payments under this Agreement, when combined with payments and benefits under all other plans and programs maintained by the Company or the Change Entity, constitute "excess" parachute payments as defined in Section 280G(b) of the Code, the Change Entity, subject to Section 5.07[7], will either:

**[a]** Reimburse the Executive for the amount of any excise tax due under Code §4999, if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][b]; or

**[b]** Reduce the Executive's benefits under this Agreement so that the Executive's total "parachute payment" as defined in Code §280G(b)(2)(A) under this Agreement and all other agreements will be \$1.00 less than the amount that would generate "excess" parachute payment penalties if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][a].

This comparison will be made as of the date of the corporate event generating the "parachute payments" although any reimbursement provided under Section 5.07[6][a] will be made when the parachute payment is actually made or distributed.

Within 10 business days of the date the Change Entity determines that Section 5.07[6][b] should be applied, the Change Entity will apprise the Executive of the amount of the reduction ("Notice of Reduction"). Within 10 business days of receiving that information, the Executive may specify how (and against which benefit or payment source) the reduction is to be applied ("Notice of Allocation"). The Change Entity will be required to implement these directions within 10 business days of receiving the Notice of Allocation. If the Change Entity has not received a Notice of Allocation from the Executive within 10 business days of the date of the Notice of Reduction or if the allocation provided in the Notice of Allocation is not sufficient to fully implement Section 5.07[6][b], the Change Entity will apply Section 5.07[6][b] proportionately based on the amounts otherwise payable under this Agreement or, if a Notice of Allocation has been returned that does not sufficiently implement Section 5.07[6][b], on the basis of the reductions specified in the Notice of Allocation. Any taxes reimbursed pursuant to Section 5.07[6][a] shall be paid by the end of Executive's taxable year next following the taxable year in which Executive remits payment of the tax or assessment being reimbursed. Any reduction pursuant to Section 5.07[6][b] shall be made in accordance with Section 409A of the Code and the Treasury Regulations promulgated thereunder.

**[7] Effect of Subsequent Tax Claim.** The Change Entity will establish procedures that will apply to any inquiries regarding the treatment of tax payments under this Section 5.07. Within 30 days following the termination of the Executive's employment under Section 5.07, the Change Entity will provide the Executive with a copy of such procedures.

**5.08 Six-Month Distribution Delay.** Notwithstanding the foregoing, if Executive is a "specified employee," within the meaning of Treasury Regulation §1.409A-1(i) and as determined under BLI's policy for determining specified employees, on the Executive's date of termination, and the Executive is entitled to a payment and/or a benefit under this Agreement that is required to be delayed pursuant to Section 409A(a)(2) of the Code, then such payment or benefit shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following the Executive's date of termination (or, if earlier, the Executive's death). The first payment that can be made following such postponement period shall include the cumulative amount of any payments or benefits that could not be paid or provided during such postponement period due to the application of Section 409A(a)(2)(B)(i) of the Code.

## **6.00 Notice**

**6.01 How Given.** Any notice permitted or required to be given under this Agreement must be given in writing and delivered in person or by registered, U.S. mail, return receipt requested, postage prepaid; or through Federal Express, UPS, DHL or any other reputable professional delivery service that maintains a confirmation of delivery system. Any delivery must be **[1]** in the case of notices to the Company or the Change Entity, addressed to the Company's Chief Executive Office at the Company's then-current corporate offices and **[2]** in the case of notices to the Executive, addressed to the Executive's last mailing address contained in the Executive's personnel file.

**6.02 Effective Date.** Any notice permitted or required to be given under this Agreement will be deemed to have been given and will be effective on the date it is delivered.

## **7.00 Execution of Release**

The Executive agrees that as a condition of receiving any post-termination benefit as set forth in Section 5.00 except for earned but unpaid Base Salary to the date of termination and any legally protected rights the Executive has under any employee benefit plan maintained by the Company, the Executive or, in the case of any amounts due after the Executive's death, the person to whom those amounts are payable (collectively, the "Payee") must execute a comprehensive release in the form determined from time to time by the Company in its sole discretion. Generally, the release will require the Payee and the Payee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns to release and forever discharge the Group, the Company and all other Group Members, past, present and future, and their executives, officers, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action that grow out of or are in any way related to the Executive's recruitment and employment with the Company that arose on or before the date of the release, other than any claim that the Company has breached this Agreement. This release will include, but not be limited to, any claim that the Company violated the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act; any state, federal law or local ordinance prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state; or any federal, state or local law (each as in effect on the Effective Date and as subsequently amended) relating to any matter within the purview of this Agreement. Upon the Executive's termination of employment with all Group Members, the Payee will be presented with a release and if the Payee fails to execute the release, the Payee agrees to forego any payment described in the first sentence of this section. The Executive acknowledges that the Executive is an experienced senior executive knowledgeable about the claims that might arise in the course of employment with and termination from the Company and any other Group Member and knowingly agrees that the payments upon termination provided for in this Agreement are satisfactory consideration for the release of all possible claims described in the release. Notwithstanding anything to the contrary, the failure of the Executive to execute the release described in this Section 7.00 shall not otherwise cause any payment made pursuant to this Agreement to be delayed beyond the date on which such payment was originally scheduled to occur.

## **8.00 Insurance and Indemnification**

The Company will indemnify Executive (including his heirs, executors and administrators) to the fullest extent permitted under the Company's Regulations and Ohio law. This obligation to provide insurance for the Executive will survive termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions occurring during the Executive's employment with or termination from the Group, the Company or with any other Group Member. Concurrently with the execution of this Agreement, BLI will enter into an indemnification agreement with Executive.

## **9.00 Arbitration**

**9.01 Acknowledgement of Arbitration.** Unless stated otherwise in this Agreement or any other compensatory or any employee benefit plan, fund or program maintained by the Company, the Parties agree that arbitration is the sole and exclusive remedy for each of them to resolve (except as specifically provided in Section 4.09) and redress any dispute, claim or controversy involving the interpretation or application of this Agreement, the terms, conditions or termination of this Agreement and the terms, conditions or termination of the Executive's employment with the Company, including any claims for any tort, breach of contract, violation of public policy or discrimination, whether such claim arises under federal, state law or local law.

**9.02 Scope of Arbitration.** The Executive expressly understands and agrees that claims subject to arbitration under this section include asserted violations of the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964 (as amended); the Family and Medical Leave Act; any federal, state or local law or ordinances prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state, or any federal, state or local law (each as in effect on the Effective Date or as subsequently amended) relating to any matter within the purview of this Agreement.

**9.03 Effect of Arbitration.** The Parties intend that any arbitration award relating to any matter described in Section 9.01 will be final and binding on them and that a judgment on the award may be entered in any court of competent jurisdiction and that enforcement may be had according to the terms of that award. This Section 9.03 will survive the termination of this Agreement.

**9.04 Location and Conduct of Arbitration.** Arbitration will be held in Columbus, Ohio, and will be conducted by a retired federal judge or other qualified arbitrator. The arbitrator will be mutually agreed upon by the Parties and the arbitration will be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The Parties will have the right to conduct discovery pursuant to the Federal Rules of Civil Procedure; provided, however, that the arbitrator will have the authority to establish an expedited discovery schedule and cutoff and to resolve any discovery disputes. The arbitrator will have no jurisdiction or authority to change any provision of this Agreement by alterations of, additions to or subtractions from the terms of this Agreement. The arbitrator's sole authority will be to interpret or apply any provision(s) of this Agreement or any public law alleged to have been violated. The arbitrator has the authority to award damages and other relief expressly provided by law.

**9.05 Time for Initiating Arbitration.** Any claim or controversy relating to any matter described in Section 9.01 not sought to be submitted to arbitration, in writing, within 60 days of the date the Party asserting the claim knew, or through reasonable diligence should have known, of the facts giving rise to that Party's claim, will be deemed waived and the Party asserting the claim will have no further right to seek arbitration or recovery with respect to that claim or controversy. Both Parties agree to strictly comply with the time limitation specified in this section. For purposes of this section, a claim or controversy is sought to be submitted to arbitration on the date the complaining Party gives written notice to the other that **[1]** an issue has arisen or is likely to arise that, unless resolved otherwise, may be resolved through arbitration under this Section 9.00 and **[2]** unless the issue is resolved otherwise, the complaining Party intends to submit the matter to arbitration under the terms of Section 9.00.

**9.06 Costs of Arbitration and Attorney's Fees.** The Company will bear the arbitrator's fee and other costs associated with any arbitration, unless the arbitrator, acting under Federal Rule of Civil Procedure 54(d)(1), elects to award these fees to the Company. Attorney's fees **[1]** may be awarded to the prevailing party if expressly authorized by statute, or otherwise each party will bear its own attorney's fees and costs but **[2]** Executive's attorney's fees and other associated costs and expenses will be borne by the Change Entity with respect to any claim arising under Section 5.07 but only if the arbitrator concludes the claim legitimately relates to matters within the contemplation of Section 5.07 (otherwise, the rule described in Section 9.06[1] will apply). Notwithstanding the foregoing: **[a]** any costs being reimbursed must relate to a claim brought during the lifetime of the Executive with respect to an alleged breach of any obligation of the Company under this Agreement; **[b]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement in any other taxable year; **[c]** any reimbursement must be made on or before the last day of the Executive's taxable year following the taxable year in which the cost was incurred; and **[d]** the right to reimbursement for such costs is not subject to liquidation or exchange for another benefit.

**9.07 Arbitration Exclusive Remedy.** The Parties acknowledge that, because arbitration is the exclusive remedy for resolving the issues described in Section 9.01, neither Party may resort to any federal, state or local court or administrative agency concerning those issues and that the decision of the arbitrator will be a complete defense to any suit, action or proceeding instituted in any federal, state or local court before any administrative agency with respect to any arbitrable claim or controversy.

**9.08 Waiver of Jury.** The Executive (personally and in behalf of all the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns) and the Company (on its own behalf's and in behalf of its successors, including any Change Entity) each waive the right to have a claim or dispute with one another decided in a judicial forum or by a jury, except as otherwise provided in this Agreement.

## **10.00 General Provisions**

**10.01 Representation of Executive.** The Executive represents and warrants that the Executive is an experienced senior executive knowledgeable about the issues (and their effect) within the purview of this Agreement and is not under any contractual or legal restraint that prevents or prohibits the Executive from entering into this Agreement or performing the duties and obligations described in this Agreement.

**10.02 Modification or Waiver; Entire Agreement.** No provision of this Agreement may be modified or waived except in a document signed by the Executive and the Company's Chief Executive Officer or other person designated by the Company's Board of Directors. This Agreement, and any attachments referenced in the Agreement, constitute the entire agreement between the Parties regarding the employment relationship described in this Agreement, and, except as otherwise specifically provided in this Agreement, any other agreements are terminated and of no further force or legal effect. No agreements or representations, oral or otherwise, with respect to the Executive's employment relationship with the Company have been made or relied upon by either Party which are not set forth expressly in this Agreement.

**10.03 Governing Law; Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application of any provision of this Agreement to any person or circumstance, is, for any reason and to any extent, held invalid or unenforceable, such invalidity and unenforceability will not affect the remaining provisions of this Agreement of its application to other persons or circumstances, all of which will be enforced to the greatest extent permitted by law and the Parties agree that any invalid or unenforceable provision may and will be reformed and applied **[1]** as provided in Section 4.05, with respect to the matters specifically contemplated in Section 4.00 and **[2]** with respect to other matters, **[a]** to the extent needed to avoid that invalidity or unenforceability and **[b]** in a manner that is as similar as possible to the Parties' intent (as described in this Agreement). The validity, construction and interpretation of this Agreement and the rights and duties of the Parties will be governed by the laws of the State of Ohio, without reference to the Ohio choice of law rules.

**10.04 No Waiver.** Except as otherwise provided in Section 9.05, failure to insist upon strict compliance with any term of this Agreement will not be considered a waiver of any such term or any other term of this Agreement.

**10.05 Withholding.** All payments made to or on behalf of the Executive under this Agreement will be reduced by any amount:

**[1]** That the Company is required by law to withhold in advance payment of the Executive's federal, state and local income, wage and employment tax liability; and

**[2]** To the extent allowed by law, that the Executive owes (or, after employment is deemed to owe) to the Group, the Company or any other Group Member.

Application of Section 10.05[2] will not extinguish the Company's right to seek additional amounts from the Executive (or to pursue other appropriate remedies) to the extent that the amount recovered by application of Section 10.05[2] does not fully discharge the amount the Executive owes to the Group, the Company or other Group Member and does not preclude the Group, the Company or any other Group Member from proceeding directly against the Executive without first exhausting its right of recovery under Section 10.05[2].

**10.06 Survival.** The Parties agree that the covenants and promises set forth in this Agreement will survive the termination of this Agreement and continue in full force and effect after this Agreement terminates to the extent that their performance is required to occur after this Agreement terminates.

**10.07 Miscellaneous.**

**[1]** The Executive may not assign any right or interest to, or in, any payments payable under this Agreement; provided, however, that this prohibition does not preclude the Executive from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and does not preclude the legal representative of the Executive's estate from assigning any right under this Agreement to the person or persons entitled to it.

**[2]** This Agreement will be binding upon and will inure to the benefit of the Executive, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns and the Company and its successors and, to the extent applicable, the Group and all Group Members.

[3] The headings in this Agreement are inserted for convenience of reference only and will not be a part of or control or affect the meaning of any provision of the Agreement.

**10.08 Successors to Company.** This Agreement may and will be assigned or transferred to, and will be binding upon and will inure to the benefit of, any successor of the Company, including any Change Entity, and any successor will be substituted for the Company under the terms of this Agreement. As used in this Agreement, the term “successor” means any person, firm, corporation or business entity which at any time, whether by merger, purchase or otherwise, acquires all or essentially all of the assets of the business of the Company. Notwithstanding any assignment, the Company will remain, with any successor, jointly and severally liable for all its obligations under this Agreement.

**10.09 Section 409A of the Code.** This Agreement is intended to comply with Section 409A of the Code and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to the Executive and neither the Company nor the Boards of Directors of BLI or Big Lots shall be liable to the Executive for failure to comply with the requirements of Section 409A of the Code. Furthermore, the Company may accelerate the time or schedule of a payment to the Executive if at any time this Agreement fails to meet the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder.

Notwithstanding the foregoing, if the Executive terminates for any reason, dies or becomes Disabled on or prior to December 31, 2008 and is entitled to payment or benefit as a result of such termination, death or Disability, such payment or benefit shall be paid or provided [1] pursuant to the terms of this Agreement in effect immediately prior to the Effective Date, but [2] modified to the extent necessary for good faith compliance with the requirements of Section 409A of the Code. Nothing in this Agreement shall be construed as causing a payment or benefit to be paid or distributed in calendar year 2008 which is not otherwise payable or distributable in calendar year 2008.

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement, which includes an arbitration provision, and consists of 23 pages.

BIG LOTS, INC.

By: /s/ Dennis B. Tishkoff

Signed: December 5, 2008



BIG LOTS STORES, INC.

By: /s/ Brad A. Waite

Signed: December 5, 2008

NORMAN J. RANKIN

/s/ Norman J. Rankin

Signed: December 5, 2008

**AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT  
BY AND AMONG  
BIG LOTS, INC.,  
BIG LOTS STORES, INC.  
AND  
ROBERT S. SEGAL**

This amended and restated employment agreement (“Agreement”) by and among Big Lots Inc. (“BLI”), Big Lots Stores, Inc. (“Big Lots”) and its parent, affiliates, predecessor, successor, subsidiaries and other related companies (the “Company”) and Robert S. Segal (the “Executive”), collectively, the “Parties,” is effective as of the date signed (“Effective Date”) and supersedes and replaces any other oral or written employment-related agreement between the Executive and the Company but does not supersede or replace any agreement or arrangement between the Executive or any Group Member (as defined in Section 4.02[1]) relating to the payment of compensation or benefits earned (or deemed earned) on account of services performed for a Group Member before the Effective Date.

**1.00      Duration**

This Agreement will remain in effect from the Effective Date until it terminates as provided in Section 5.00. Any notice of termination required to be given under this Agreement must be given as provided in Section 6.00 and will be effective on the date prescribed in Section 5.00.

**2.00      Executive’s Employment Function**

**2.01      Position.** The Executive agrees to serve as the Company’s Senior Vice President, General Merchandise Manager (or other appropriate title as designated by the Company in its sole discretion) with the authority and duties customarily associated with this position. The Executive agrees at all times to observe and be bound by all Company rules, policies, practices, procedures and resolutions which apply to Company employees and which do not conflict with the specific terms of this Agreement.

**2.02      Place of Performance.** The Executive’s duties will principally be performed in Columbus, Ohio, except for required travel on the Company’s business, unless the Company requires the Executive to perform duties at another location.

**3.00      Compensation**

The Company will pay the Executive the amounts described in this Section 3.00 as compensation for the services described in this Agreement and in exchange for the duties and responsibilities described in Section 4.00.

**3.01      Base Salary.** The Company will pay to the Executive an annualized base salary of \$360,000, which may be adjusted at the Company’s discretion (“Base Salary”). The Executive’s Base Salary will be paid in installments that correspond with the Company’s normal payroll practices. The Base Salary may be adjusted from time to time in a manner that is consistent with the Company’s compensation policies in effect for executives in the same or similar job classification at the discretion of the Company, but will not be adjusted to any amount lower than \$360,000.

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**3.02 Bonus.** The Executive shall be eligible to receive bonus compensation (“Bonus”), for the fiscal year beginning January 30, 2008, and for each subsequent fiscal year of employment completed during the term of this Agreement. The Executive’s bonus shall be an amount equal to the Base Salary at the end of such fiscal year multiplied by the Bonus Payout percentage as determined by the Bonus Program set each fiscal year by the compensation committee of Big Lots, Inc.’s Board of Directors. The Bonus Program is based upon the achievement of the Company’s annual financial plan. The target bonus for the Executive is 50% of Base Salary and the Stretch Bonus for the Executive is 100% of Base Salary, both of which are defined in the Bonus Program and are subject to adjustment by Big Lots, Inc.’s Board of Directors; provided, however, the Executive’s target bonus shall never fall below 50% of Base Salary and the Executive’s Stretch Bonus shall never fall below 100% of Base Salary.

**[1] Payment.** Any bonuses described herein will be paid at a time consistent with payment of bonuses to Executives in the same or similar job classifications.

**[2] Continuous Employment.** In order to receive any bonus as provided herein, Executive must remain continuously employed by the Company pursuant to the terms and conditions of this Agreement.

**[3] Fiscal Year.** The term “fiscal year” shall mean the period commencing on the Sunday next following the Saturday closest to January 31<sup>st</sup> in a calendar year and ending the next following calendar year on the Saturday closest to January 31<sup>st</sup>.

**3.03 Benefit Plans.** Subject to their terms, the Executive may participate in any Company-sponsored employee pension or welfare benefit plan at a level commensurate with the Executive’s title and position.

**3.04 Vacation and Sick Leave.** The Executive shall be entitled to such periods of vacation and sick leave each year as provided under the Company’s vacation and sick leave policy at a level commensurate with other senior executive officers of the Company.

**3.05 Expenses.** The Executive is entitled to receive reimbursement for all normal and reasonable expenses incurred while performing services under this Agreement, including reasonable travel expenses. Reimbursement for these expenses will be made as soon as administratively feasible after the date the Executive submits appropriate evidence of the expenditure and otherwise complies with the Company’s business expense reimbursement policies.

**3.06 Automobile Allowance.** The Company will provide the Executive with an automobile or a monthly automobile allowance in accordance with applicable Company policies for executives of the same or similar title and position.

**3.07 Termination Benefits.** The Company will provide the Executive with only those termination benefits described in Section 5.00.

#### 4.00 Executive's Obligations

The amounts described in Sections 3.00 and 5.00 of this Agreement are provided by the Company in exchange for (and have a value to the Company equivalent to) the Executive's performance of the obligations described in this Agreement, including performance of the duties and the covenants made and entered into by and between the Executive and the Company in this Agreement.

##### 4.01 Scope of Duties. The Executive will:

- [1] Devote all available business time, best efforts and undivided attention to the Company's business and affairs; and
- [2] Not engage in any other business activity, whether for gain, profit or other pecuniary benefit.
- [3] However, the restriction described in Subsections 4.01[1] and [2] will not preclude the Executive from:
  - [a] Making or holding passive investments in outstanding shares in the securities of publicly-owned companies or other businesses (other than organizations described in Section 4.05), regardless of when and how that investment was made; or
  - [b] Serving on corporate, civic, religious, educational and/or charitable boards or committees but only if this activity [i] does not interfere with the performance of duties under this Agreement and [ii] is approved in writing by the Company.

##### 4.02 Confidential Information.

[1] **Obligation to Protect Confidential Information.** The Executive acknowledges that the Company, its parent, affiliates, predecessor, successor, subsidiaries and other related companies (collectively, "Group" and separately, "Group Member") have a legitimate and continuing proprietary interest in the protection of Confidential Information (as defined in Subsection 4.02[2]) and have invested, and will continue to invest, substantial sums of money to develop, maintain and protect Confidential Information. The Executive agrees [a] during and after employment with the Company and as to all Group Members [i] that any Confidential Information will be held in confidence and treated as proprietary to the Group, [ii] not to use or disclose any Confidential Information except to promote and advance the Group's business interests and [b] immediately upon termination for any reason from employment with the Company, to return to the Company any Confidential Information.

**[2] Definition of Confidential Information.** For purposes of this Agreement, Confidential Information includes any confidential data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, supplier information, tax records, personnel histories and records, information regarding sales, information regarding properties and any other Confidential Information regarding the business, operations, properties or personnel of the Company or the Group (or any Group Member) which are disclosed to or learned by the Executive as a result of employment with the Company, but will not include **[a]** the Executive's personal personnel records or **[b]** any information that **[i]** the Executive possessed before the date of initial employment (including periods before the Effective Date) with the Company that was a matter of public knowledge, **[ii]** became or becomes a matter of public knowledge through sources independent of the Executive, **[iii]** has been or is disclosed by any Group Member without restriction on its use or **[iv]** has been or is required to be disclosed by law or governmental order or regulation. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's General Counsel confirms to the Executive that the information is public knowledge or an arbitrator, acting under Section 9.00, finally decides that the information is public knowledge.

**[3] Intellectual Property.** The Executive expressly acknowledges that all right, title and interest to all inventions, designs, discoveries, works of authorship, and ideas conceived, produced, created, discovered, authored, or reduced to practice during the Executive's performance of services under this Agreement, whether individually or jointly with the Company or any Group Member (the "Intellectual Property") shall be owned solely by the Company or the Group, and shall be subject to the restrictions set forth in Subsection 4.02[1] above. All Intellectual Property which constitutes copyrightable subject matter under the copyright laws of the United States shall, from the inception of creation, be deemed to be a "work made for hire" under the United States copyright laws and all right, title and interest in and to such copyrightable works shall vest in the Company or the Group. All right, title and interest in and to all Intellectual Property developed or produced under this Agreement by the Executive, whether constituting patentable subject matter or copyrightable subject matter (to the extent deemed not to be a "work made for hire") or otherwise, shall be assigned and is hereby irrevocably assigned to the Company or the Group by the Executive. The Executive shall, without any additional consideration, execute all documents and take all other actions needed to convey the Executive's complete ownership interest in any Intellectual Property to the Company or the Group or the Executive is directed so that the Company or the Group may own and protect such Intellectual Property and obtain patent, copyright and trademark registrations for it. The Executive agrees that any Group Member may alter or modify the Intellectual Property at the Group Member's sole discretion, and the Executive waives all right to claim or disclaim authorship.

**4.03 Solicitation of Employees.** The Executive agrees that during employment, or for two years after terminating employment with the Company **[1]** not, directly or indirectly, to solicit any employee of the Company or of any Group Member to leave employment with the Group, **[2]** not, directly or indirectly, to employ or seek to employ any employee of the Company or any Group Member and **[3]** not to cause or induce any of the Company's or the Group's (or Group Member's) competitors to solicit or employ any employee of the Company or any Group Member.

**4.04 Solicitation of Third Parties.** The Executive agrees that during employment, and for two years after terminating employment with the Company not, directly or indirectly, to recruit, solicit or otherwise induce or influence any customer, supplier, sales representative, lender, lessor, lessee or any other person having a business relationship with the Company or the Group (or any Group Member) to discontinue or reduce the extent of that relationship except in the course of discharging the duties described in this Agreement and with the good faith objective of advancing the Company's or the Group's (or any Group Member's) business interests.

**4.05 Non-Competition.** The Executive acknowledges that the principal business of the Company includes the operation of its Big Lots retail outlets, the inventories of which are acquired primarily through special purchases such as overstocks, close-outs, liquidations, bankruptcies, wholesale distribution of overstock, distress, liquidation and other volume inventories, the operation of its Big Lots Furniture stores, and its wholesale operations all of which comprise the Company's business (the "Company Business"); that Company is one of the limited number of entities which has developed such business; that the Company Business is national in scope and the Executive's work for the Company will give him access to the confidential affairs of the Company and the Group as defined in Subsection 4.02[2]; and the agreements and covenants of the Executive contained in Section 4.00 are essential to the business and the good will of the Company. Accordingly, the Executive covenants and agrees that:

[1] During the term of the Executive's employment with the Company and for a period of one year (the "Restricted Period") following the termination of his employment in any manner, the Executive shall not in any location where the Company's retail stores are located throughout the United States [a] engage in the Company Business for the Executive's own account, [b] render any services to any person engaged in the Company Business (other than to the Company); or [c] become employed in any manner by, or consult with, Wal-Mart, Sam's Club, Kmart, Target, Dollar General, Family Dollar, Dollar Tree, Value City/Schottenstein Stores Corporation, Fred's, 99¢ Stores, Canned Foods, Tuesday Morning, TJX Corporation, Rooms To Go, Office Depot, Costco, Staples, American Signature, Ashley Furniture, HomeStores, Art Van, Office Max, Value City Furniture or Nationwide Furniture Warehouse, or any grocery or furniture store chain regardless of size. Further, the Executive agrees to not become employed in any manner or to act as consultant to any parent or subsidiary of the above-listed entities. In the event of a change of control as defined in Subsection 5.07[2] of this Agreement, the restricted period shall be for a period of six (6) months.

[2] **Acknowledgement.** The Executive acknowledges that the non-competition agreement is reasonable in light of the nature of the Company Business; that the Company has legitimate business reasons for requiring the Executive's agreement to all provisions of Section 4.00; and that he understands the restrictions, has had an opportunity to fully discuss these restrictions with the Company and accepts the restrictions.

[3] **Maximum Enforceable Restriction.** In the event that any or all of the covenants set forth in this Section 4.05 are determined by a court of competent jurisdiction to be unenforceable by reason of the temporal restrictions being too great, the geographic areas covered too great, the range of activities too great or for any other reason, then the Court is authorized and shall interpret them to extend over the maximum period of time, the maximum geographic area and the maximum range of activities or, as to any provision, in such a manner that all provisions may be given maximum restrictive effect in accordance with applicable law.

[4] **Tolling.** The Executive agrees that if any of the obligations to the Company under this Subsection 4.05 are breached, then the restricted period shall be extended for the length of time that the Executive failed to fulfill his obligations under Subsection 4.05.

**4.06 Post-Termination Cooperation.** As is required of the Executive during employment, the Executive agrees that during and after employment with the Company and without additional compensation (other than reimbursement for reasonable associated expenses), to cooperate with the Company in the following areas:

[1] **Cooperation With the Company.** The Executive agrees [a] to be reasonably available to answer questions for the Company's officers regarding any matter, project, initiative or effort for which the Executive was responsible while employed by the Company and [b] to cooperate with the Company or any Group Member during the course of all third-party proceedings arising out of the Company Business about which the Executive has knowledge or information. For purposes of this Agreement, [c] "proceedings" includes internal investigations, administrative investigations or proceedings and lawsuits (including pre-trial discovery and trial testimony) and [d] "cooperation" includes [i] the Executive's being reasonably available for interviews, meetings, depositions, hearings and/or trials without the need for subpoena or assurances by the Company or any Group Member; [ii] providing any and all documents in the Executive's possession that relate to the proceeding; and [iii] providing assistance in locating any and all relevant notes and/or documents.

[2] **Cooperation With Third Parties.** Unless compelled to do so by lawfully-served subpoena or court order, the Executive agrees not to communicate with, or give statements or testimony to, any opposing attorney, opposing attorney's representative (including private investigator) or current or former employee relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information (other than knowledge or information that is not Confidential Information as defined in Subsection 4.02[2]) except in cooperation with the Company and Group Members. The Executive also agrees to notify the Company's General Counsel immediately after being contacted by a third party or receiving a subpoena or court order to appear and testify with respect to any matter affected by this section.

[3] **Cooperation With Media.** The Executive agrees not to communicate with, or give statements to, any member of the media (including print, television or radio media) relating to any matter (including pending or threatened lawsuits or administrative investigations) about which the Executive has knowledge or information (other than knowledge or information that is not Confidential Information as defined in Subsection 4.02[2]) except in cooperation with the Company or any Group Member. The Executive also agrees to notify the Company's General Counsel immediately after being contacted by any member of the media with respect to any matter affected by this section.

**4.07 Non-Disparagement.** The Executive and the Company agree that neither will make any disparaging remarks about the other and the Executive will not make any disparaging remarks about the Company, the Company's Chairman, Chief Executive Officer or any of the Company's executives or any Group Member or their executives. However, this section will not preclude [1] any remarks that may be made by the Executive under the terms of Subsection 4.06[2] or that are required to discharge the duties described in this Agreement or [2] the Company or Group Members from making (or eliciting from any person) disparaging remarks about the Executive concerning any conduct that may lead to a termination for Cause, as defined in Subsection 5.04[3] (including initiating an inquiry or investigation that may result in a termination for Cause).

**4.08 Notice of Subsequent Employment.** The Executive agrees to notify the Company of any subsequent employment during the Restricted Period after employment terminates.

**4.09 Remedies.** The Executive agrees that any breach of any of the terms of this Section 4.00 would result in irreparable injury and damage to the Company for which the Company would have no adequate remedy at law; the Executive therefore also agrees that in the event of a breach or any threat of breach, the Company shall be entitled to an immediate injunction and restraining order to prevent such breach and/or threatened breach and/or continued breach by the Executive and/or any and all persons and/or entities acting for and/or with the Executive, without having to prove damages. The Executive agrees that no bond shall be required of the Company and further agrees not to defend any action seeking injunctive or other equitable relief on the basis that the Company has an adequate remedy at law in money damages or otherwise. The terms of this Section 4.09 shall not prevent the Company from pursuing any other available remedies for any breach or threatened breach hereof including, but not limited to, the recovery of damages from the Executive or specific performance. In addition to any other available remedies, the Company may require the Executive to account for and pay over to the Company all compensation, profits, accruals, increments or other benefits derived or received by the Executive as a result of any transaction constituting a breach of any provision of Section 4.00. The Company may set off any amounts finally determined by a court of competent jurisdiction to be due under this section against any amount which may be owed to the Executive under this Agreement. The Parties agree that any action for breach of any of the provisions of Section 4.00 and/or injunctive relief shall be venued in the Court of Common Pleas, Franklin County, Ohio.

**4.10 Return of Company Property.** Upon termination of employment, the Executive agrees to promptly return to the Company all property belonging to the Group or any Group Member.

**4.11 Effect of Termination.** The provisions of Section 4.00 shall survive any termination of this Agreement, and the existence of any claim or cause of action by the Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of the covenants and agreements of this Section 4.00; provided, however, that this Section 4.11 shall not, in and of itself, preclude the Executive from defending himself against the enforceability of the covenants and agreements of Section 4.00.



## 5.00 Termination and Related Benefits

This Agreement will terminate upon the occurrence of any of the events described in this section.

**5.01 Rules of General Application.** The following rules apply generally to the implementation of Section 5.00:

[1] **Definition of Termination.** For purposes of this Agreement, any reference to a “termination” of employment or any form thereof shall mean a “separation from service” as defined in Treasury Regulation §1.409A-1(h) by the Executive with BLI, BLSI and all persons with whom BLI would be considered a single employer under Sections 414(b) and (c) of the Internal Revenue Code of 1986, as amended (the “Code”).

[2] **Application of Pro Rata.** Any pro rata amount to be paid under Section 5.00 [a] will be calculated as provided in the program through which the payment is due or [b] if the payment obligation arises solely under this Agreement, will be based on the number of days between the first day of the fiscal year during which the Executive terminates employment and the date that the Executive terminates employment, divided by the number of days in the fiscal year during which the Executive terminates employment.

[3] **Payment of Bonus (or pro rata share of any Bonus).** Any Bonus (or pro rata portion thereof) payable pursuant to this Section 5.00 will be paid in accordance with the terms of the applicable bonus plan, but in no event later than the fifteenth day of the third month following the later of: [a] the end of the calendar year during which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable; or [b] the end of the Company’s fiscal year in which the Executive died, became Disabled or was involuntary terminated without Cause, as applicable.

**5.02 Termination Due to Executive’s Death.** This Agreement will terminate automatically on the date the Executive dies. As of that date, and subject to Subsection 5.04[6], the Company will make the following payments to the person the Executive designates on the attached Beneficiary designation form.

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his death occurs had his death not occurred.

[3] **Other.** Any rights accruing to the Executive under any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the plan, fund or program or as required by law.

**5.03 Termination Due to Executive’s Disability.** If the Executive becomes Disabled (as defined in Section 5.03[4], this Agreement shall terminate automatically. If all requirements of this Agreement are met (including those imposed under Section 7.00), the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Other.** Any rights accruing to the Executive under any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the plan, fund or program or as required by law.

[4] **Definition of Disability.** For these purposes, “Disability” means that, for more than six consecutive months, the Executive is unable, with a reasonable accommodation, to perform the duties described in Section 4.01 on a full-time basis due to a physical or mental disability or infirmity.

**5.04 Termination for Cause.** The Company may terminate the Executive’s employment for Cause (as defined below - “Cause”) by delivering to the Executive a written notice describing the basis for this termination and the date the termination for Cause is to be effective. If the Executive is terminated for Cause and if all requirements of this Agreement are met, the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination.

[2] **Other.** Any rights accruing to the Executive under any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the plan, fund or program or as required by law.

[3] **Definition of Cause.** For these purposes, Cause means the Executive’s [a] failure to comply with Company’s policies and procedures, but only if [i] before issuing the notice of termination for Cause, the Company makes a written demand upon the Executive for compliance and specifically describes the basis for this demand and [ii] if the failure is one that can be cured, the Executive does not comply within 10 days after receiving the demand; [b] willful or illegal misconduct or grossly negligent conduct that is injurious to the Company monetarily or otherwise; [c] violation of laws or regulations governing the Company or violation of the Company’s code of ethics; [d] breach of any fiduciary duty owed to the Company; [e] misrepresentation or dishonesty which the Company determines has had or is likely to have a material adverse effect upon the Company; [f] breach of any provision of Section 4.00 of this Agreement; [g] involvement in any act of moral turpitude that has an injurious effect on the Company or its reputation; or [h] breach of the terms of any non-solicitation or confidentiality clauses contained in an employment agreement(s) with a former employer.

[4] **Subsequent Information.** The terms of Section 5.04 will apply if, after the Executive terminates under any other provision of Section 5.00, the Company learns of an event that, had it been known before the Executive terminated employment, would have justified a termination for Cause. In this case, the Company will be entitled to recover (and the Executive agrees to repay) any amounts (other than legally protected benefits) that the Executive received under any other provision of Section 5.00 reduced by the amount the Executive is entitled to receive under Section 5.04.

**5.05 Voluntary Termination by Executive.** The Executive may voluntarily terminate employment with the Company at any time, in which case the Company will make the following payments to the Executive if all requirements of this Agreement are met:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination.

[2] **Other.** Any rights accruing to the Executive under any employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the plan, fund or program or as required by law.

**5.06 Involuntary Termination Without Cause.** The Company may terminate the Executive's employment at any time without Cause (as defined below) by delivering to the Executive a written notice specifying the same. If all requirements of this Agreement are met (including those imposed under Section 7.00), and subject to Section 5.04[5], the Company will make the following payments to the Executive:

[1] **Base Salary.** The unpaid Base Salary the Executive earned to the date of termination. This amount will be paid in a single lump sum on the Company's next regularly scheduled payroll date for similarly situated employees.

[2] **Bonus.** A pro rata portion of any Bonus the Executive would have been eligible to receive for the fiscal year in which his termination occurs if such termination had not occurred.

[3] **Income Continuation.** The Executive will be entitled to continue to receive his Base Salary until the last day of the twelfth complete calendar month beginning after the termination date. Such amounts shall be payable in accordance with the regularly scheduled payroll for similarly situated employees. These payments shall be treated as "separation pay" (within the meaning of Section 409A of the Code) to the maximum extent permitted by Treasury Regulation §1.409A-1(b)(9). Any payments in excess of the maximum amount that can be treated as separation pay pursuant to Treasury Regulation §1.409A-1(b)(9) shall be subject to the provisions of Section 5.08.

**[4] Health Care.** The Executive will be entitled to continue to receive the welfare benefits described in Section 3.03 until the last day of the twelfth complete calendar month beginning after the termination date. Thereafter, the Company will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium for this coverage, if any, until the earlier of **[a]** the last day of the twenty-fourth complete calendar month beginning after the termination date or **[b]** the date the Executive becomes eligible for the same or similar coverage under another benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.06[4], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.06[4] shall be subject to the following: **[c]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; **[d]** any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and **[e]** the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

**[5] Transportation.** The Executive will be entitled to continue to receive the automobile benefits described in Section 3.06 until the last day of the twelfth complete calendar month beginning after the termination date; provided, however, that: **[a]** the benefits provided or amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement or benefits to be provided in any other taxable year of the Executive; **[b]** any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and **[c]** the right to such benefit or reimbursement may not be subject to liquidation or exchange for another benefit.

**[6] Other.** Any rights accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Company will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**5.07 Termination in Connection With Change of Control.** If the Executive is Terminated in Connection With a Change of Control (as defined in Section 5.07[5]) at any time during the Protection Period (as defined in Section 5.07[4]) and if all other conditions of this Agreement have been met (including those imposed under Section 7.00) and subject to Section 5.04[5], the Change Entity (as defined in Section 5.07[2]) will pay or make available the Change Benefits (as defined in Section 5.07[1]) in lieu of any other amounts of benefits that might otherwise be due under this Agreement on account of that termination.

**[1] Change Benefits.** For purposes of this Agreement, "Change Benefits" means the aggregate of the following, adjusted if appropriate under Sections 5.07[6] and [7]:

**[a] Base Salary.** The sum of **[i]** the Base Salary earned to the date of termination plus **[ii]** 200 percent of the Executive's Base Salary at the highest rate in effect at any time during the Protection Period. This amount will be paid in a lump sum cash payment on the Change Entity's first regular payroll date senior executive officers of the Company following the effective date of the Executive's Termination in Connection With a Change of Control.

**[b] Bonus.** Two hundred percent of the Executive's Stretch Bonus in effect under the Bonus Program for the year in which the Executive's employment is Terminated in Connection With a Change of Control or, if higher, the Stretch Bonus in effect under the Bonus Program (or comparable program) at any time during the Protection Period. This amount will be paid in a single lump sum on the Change Entity's next regularly scheduled payroll date for senior executive officers of the Company following the date of the Executive's Termination in Connection With a Change of Control.

**[c] Health Care.** The Change Entity will reimburse the Executive for the cost of continuing health coverage under COBRA, less the amount the Executive is expected to pay as an employee premium at the lowest rate in effect at any time during the Protection Period for this coverage, until the earlier of **[i]** the last day of the 24th complete calendar month beginning after the date the Executive is Terminated in Connection With a Change of Control or **[ii]** the date the Executive becomes eligible for comparable benefits at comparable costs to the Executive under another employer sponsored benefit program. The amounts payable under this section will be increased to reimburse the Executive for federal, state and local income, employment and wage taxes associated with that reimbursement. Any reimbursement for continuing health coverage under this Section 5.07[1][c], other than with respect to any continuing health coverage during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code, and any reimbursement for taxes remitted pursuant to this Section 5.07[1][c] shall be subject to the following: **[A]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement to the Executive in any other taxable year; **[B]** any reimbursement shall be made on or before the last day of the taxable year of the Executive following the taxable year of the Executive in which the expense is incurred; and **[C]** the right to such reimbursement may not be subject to liquidation or exchange for another benefit.

**[d] Other.** Any rights (including those arising on account of the Change of Control) accruing to the Executive under any other compensatory program and employee benefit plan, fund or program maintained by the Change Entity will be distributed or made available as required by the terms of the program, plan or fund or as required by law.

**[2] Change Entity.** For purposes of this Agreement, "Change Entity" means the Company, BLI and any other entity that is a party to the Change of Control.

[3] **Definition of Change of Control.** For purposes of this Agreement, “Change of Control” means the first to occur of any of the following events:

[a] The acquisition by any person (as defined under Section 409A of the Code), or more than one person acting as a group (as defined under Section 409A of the Code), of the stock of BLI that, together with the stock of BLI held by such person or group, constitutes more than fifty (50) percent of the total fair market value or total voting power of all of the stock of BLI;

[b] The acquisition by any person, or more than one person acting as a group, within any 12-month period, of the stock of BLI possessing thirty (30) percent or more of the total voting power of all of the stock of BLI;

[c] A majority of the members of the Board of Directors of BLI is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of BLI prior to the date of the appointment or election; or

[d] The acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from BLI that have a total gross fair market value equal to or more than forty (40) percent of the total gross fair market value of all of the assets of BLI immediately prior to such acquisition or acquisitions.

This definition of Change of Control under this Section 5.07[3] shall be interpreted in a manner that is consistent with the definition of “change in control event” under Section 409A of the Code and the Treasury Regulations promulgated thereunder. The effective date of any such Change of Control will be the date upon which the last event occurs or last action is taken such that the definition of Change of Control (as set forth above) has been satisfied. For purposes of this Agreement, the term “affiliate” means any person or entity that, along with BLI, constitutes a single employer under Sections 414(b) and 414(c) of the Code. Determination of affiliate will be tested as of the date immediately prior to any event constituting a Change of Control. Notwithstanding the other provisions of this Section 5.07, the term “Change of Control” will not mean any transaction, merger, consolidation or reorganization in which BLI exchanges or offers to exchange newly issued or treasury shares in an amount less than 50 percent of the then-outstanding equity securities of BLI entitled to vote for the election of directors, for fifty-one (51) percent or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than BLI or an affiliate thereof (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.

[4] **Protection Period.** For purposes of this Agreement, “Protection Period” means the period beginning on the first day of the third full consecutive calendar month beginning before the date of the Change of Control and ending on the last day of the twenty-fourth consecutive full calendar month beginning after the date of the Change of Control.

**[5] Termination in Connection With a Change of Control.** For purposes of this Agreement, “Termination in Connection With a Change of Control” means, at any time during the Protection Period:

**[a]** The Change Entity involuntarily terminates the Executive without Cause (as defined in Section 5.06).

**[b]** The Executive terminates following the occurrence of any of the following conditions;

**[i]** The Change Entity breaches any provision of this Agreement;

**[ii]** The Change Entity unsuccessfully attempts to terminate the Executive for Cause (as defined in Section 5.04);

**[iii]** The Change Entity attempts to terminate the Executive for any reason without following the procedures described in this Agreement (including an acceleration of the periods described in Section 5.03[4] and 5.04[b]);

**[iv]** The Change Entity revokes or attempts to revoke or accelerate the duration of any leave of absence protected by law or authorized by the Company before the Protection Period or by the Change Entity at any time during the Protection Period;

**[v]** The Change Entity refuses to allow the Executive to return to active employment at the end of any leave of absence protected by law or authorized by the Company before the Protection Period or the Change Entity at any time during the Protection Period; or

**[vi]** The Change Entity causes the Executive to resign because of a material adverse change or material diminution in the Executive’s reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by the Executive in his good faith discretion); provided, however, that the Executive shall notify the Company in writing at least forty- five (45) days in advance of any election by the Executive to terminate his employment hereunder, specifying the nature of the alleged adverse change or diminution, and the Company shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before the Executive shall be entitled to exercise any such rights and remedies.

For purposes of this Section 5.07[5], the termination of employment is deemed to occur on the Executive’s actual date of termination.

**[6] Treatment of Taxes.** If payments under this Agreement, when combined with payments and benefits under all other plans and programs maintained by the Company or the Change Entity, constitute “excess” parachute payments as defined in Section 280G(b) of the Code, the Change Entity, subject to Section 5.07[7], will either:

**[a]** Reimburse the Executive for the amount of any excise tax due under Code §4999, if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][b]; or

**[b]** Reduce the Executive's benefits under this Agreement so that the Executive's total "parachute payment" as defined in Code §280G(b)(2)(A) under this Agreement and all other agreements will be \$1.00 less than the amount that would generate "excess" parachute payment penalties if this procedure provides the Executive with an after-tax amount that is larger than the after-tax amount produced under Section 5.07[6][a].

This comparison will be made as of the date of the corporate event generating the "parachute payments" although any reimbursement provided under Section 5.07[6][a] will be made when the parachute payment is actually made or distributed.

Within 10 business days of the date the Change Entity determines that Section 5.07[6][b] should be applied, the Change Entity will apprise the Executive of the amount of the reduction ("Notice of Reduction"). Within 10 business days of receiving that information, the Executive may specify how (and against which benefit or payment source) the reduction is to be applied ("Notice of Allocation"). The Change Entity will be required to implement these directions within 10 business days of receiving the Notice of Allocation. If the Change Entity has not received a Notice of Allocation from the Executive within 10 business days of the date of the Notice of Reduction or if the allocation provided in the Notice of Allocation is not sufficient to fully implement Section 5.07[6][b], the Change Entity will apply Section 5.07[6][b] proportionately based on the amounts otherwise payable under this Agreement or, if a Notice of Allocation has been returned that does not sufficiently implement Section 5.07[6][b], on the basis of the reductions specified in the Notice of Allocation. Any taxes reimbursed pursuant to Section 5.07[6][a] shall be paid by the end of Executive's taxable year next following the taxable year in which Executive remits payment of the tax or assessment being reimbursed. Any reduction pursuant to Section 5.07[6][b] shall be made in accordance with Section 409A of the Code and the Treasury Regulations promulgated thereunder.

**[7] Effect of Subsequent Tax Claim.** The Change Entity will establish procedures that will apply to any inquiries regarding the treatment of tax payments under this Section 5.07. Within 30 days following the termination of the Executive's employment under Section 5.07, the Change Entity will provide the Executive with a copy of such procedures.

**5.08 Six-Month Distribution Delay.** Notwithstanding the foregoing, if Executive is a "specified employee," within the meaning of Treasury Regulation §1.409A-1(i) and as determined under BLI's policy for determining specified employees, on the Executive's date of termination, and the Executive is entitled to a payment and/or a benefit under this Agreement that is required to be delayed pursuant to Section 409A(a)(2) of the Code, then such payment or benefit shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following the Executive's date of termination (or, if earlier, the Executive's death). The first payment that can be made following such postponement period shall include the cumulative amount of any payments or benefits that could not be paid or provided during such postponement period due to the application of Section 409A(a)(2)(B)(i) of the Code.



## **6.00 Notice**

**6.01 How Given.** Any notice permitted or required to be given under this Agreement must be given in writing and delivered in person or by registered, U.S. mail, return receipt requested, postage prepaid; or through Federal Express, UPS, DHL or any other reputable professional delivery service that maintains a confirmation of delivery system. Any delivery must be addressed to the Company's Vice President and General Counsel with a copy to the Company's Chief Executive Officer at the Company's then-current corporate offices and to the Executive at the Executive's address as contained in the Executive's personnel file.

**6.02 Effective Date.** Any notice permitted or required to be given under this Agreement will be effective on the date it is delivered, in the event of personal delivery, or on the date its receipt is acknowledged, in the event of delivery by registered mail or through a professional delivery service described in Section 6.01.

## **7.00 Execution of Release**

The Executive agrees that as a condition of receiving any post-termination benefit as set forth in Section 5.00 except for earned but unpaid Base Salary to the date of termination, along with any accrued rights the Executive has under any employee benefit plan of the Company, he must execute a comprehensive release in the form as may be determined from time to time by the Company in its sole discretion. Generally, the release will require the Executive and the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns to release and forever discharge the Company (and all Group Members) and its executives, officers, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action that grow out of or are in any way related to the Executive's recruitment to or employment with the Company, other than any claim that the Company has breached this Agreement. This release will include, but not be limited to, any claim that the Company violated the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964 (as amended); the Family and Medical Leave Act; any state, federal law or local ordinance prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state; or any federal, state or local law. Upon termination, the Executive will be presented with a release and if the Executive fails to execute the release, the Executive agrees to forego any payment from the Company other than payments as if the Executive had terminated employment voluntarily under Section 5.05. The Executive acknowledges that the Executive is an experienced senior executive knowledgeable about the claims that might arise in the course of employment with the Company and knowingly agrees that the payments upon termination (except those payable in accordance with Sections 5.02, 5.04 and 5.05) provided for in this Agreement are satisfactory additional consideration for the release of all possible claims. Notwithstanding anything to the contrary, the failure of the Executive to execute the release described in this Section 7.00 shall not otherwise cause any payment made pursuant to this Agreement to be delayed beyond the date on which such payment was originally scheduled to occur.

## **8.00 Insurance and Indemnification**

To the extent permitted by law and its organizational documents, the Company will include the Executive under any liability insurance policy the Company maintains for employees of comparable status. The level of coverage will be at least as favorable to the Executive (in amount and each other material respect) as the coverage of other employees of comparable status. This obligation to provide insurance for the Executive will survive termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions occurring during the Executive's employment with the Company or with any Group Member. Concurrently with the execution of this Agreement, BLI will enter into an indemnification agreement with Executive.

## **9.00 Arbitration**

**9.01 Acknowledgement of Arbitration.** Unless stated otherwise in this Agreement, the Parties agree that arbitration is the sole and exclusive remedy for each of them to resolve and redress any dispute, claim or controversy involving the interpretation of this Agreement or the terms, conditions or termination of this Agreement or the terms, conditions or termination of the Executive's employment with the Company, including any claims for any tort, breach of contract, violation of public policy or discrimination, whether such claim arises under federal or state law.

**9.02 Scope of Arbitration.** The Executive expressly understands and agrees that claims subject to arbitration under this section include asserted violations of the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964 (as amended); the Family and Medical Leave Act; any law prohibiting discrimination, harassment or retaliation in employment; any claim of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state, or any federal, state or local law.

**9.03 Effect of Arbitration.** The Parties intend that any arbitration award relating to any matter described in Section 9.00 will be final and binding on them and that a judgment on the award may be entered in any court of competent jurisdiction, and enforcement may be had according to the terms of that award. This section will survive the termination or expiration of this Agreement.

**9.04 Location of Arbitration.** Arbitration will be held in Columbus, Ohio, and will be conducted by a retired federal judge or other qualified arbitrator. The arbitrator will be mutually agreed upon by the Parties and the arbitration will be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The Parties will have the right to conduct discovery pursuant to the Federal Rules of Civil Procedure; provided, however, that the arbitrator will have the authority to establish an expedited discovery schedule and cutoff and to resolve any discovery disputes. The arbitrator will have no jurisdiction or authority to change any provision of this Agreement by alterations of, additions to or subtractions from the terms of this Agreement. The arbitrator's sole authority will be to interpret or apply any provision(s) of this Agreement or any public law alleged to have been violated. The arbitrator has the authority to award damages and such other relief as expressly provided by law.

**9.05 Time for Initiating Arbitration.** Any claim or controversy not sought to be submitted to arbitration, in writing, within 60 days of the date the Party asserting the claim knew, or through reasonable diligence should have known, of the facts giving rise to that Party's claim, will be deemed waived and the Party asserting the claim will have no further right to seek arbitration or recovery with respect to that claim or controversy. Both Parties agree to strictly comply with the time limitation specified in Section 9.00. For purposes of this section, a claim or controversy is sought to be submitted to arbitration on the date the complaining Party gives written notice to the other that **[1]** an issue has arisen or is likely to arise that, unless resolved otherwise, may be resolved through arbitration under Section 9.00 and **[2]** unless the issue is resolved otherwise, the complaining Party intends to submit the matter to arbitration under the terms of Section 9.00.

**9.06 Costs of Arbitration and Attorney's Fees.** The Company will bear the arbitrator's fee and other costs associated with any arbitration, unless the arbitrator, acting under Federal Rule of Civil Procedure 54(d)(1), elects to award these fees to the Company. Attorney's fees may be awarded to the prevailing party if expressly authorized by statute, or otherwise each party shall bear its own attorney's fees and costs. Notwithstanding the foregoing: **[a]** any costs being reimbursed must relate to a claim brought during the lifetime of the Executive with respect to an alleged breach of any obligation of the Company under this Agreement; **[b]** the amount eligible for reimbursement during any taxable year of the Executive may not affect the amount eligible for reimbursement in any other taxable year; **[c]** any reimbursement must be made on or before the last day of the Executive's taxable year following the taxable year in which the cost was incurred; and **[d]** the right to reimbursement for such costs is not subject to liquidation or exchange for another benefit.

**9.07 Arbitration Exclusive Remedy.** The Parties acknowledge that, because arbitration is the exclusive remedy for resolving issues arising under this Agreement, neither Party may resort to any federal, state or local court or administrative agency concerning breaches of this Agreement or any other matter subject to arbitration under Section 9.00, except as otherwise provided in this Agreement, and that the decision of the arbitrator will be a complete defense to any suit, action or proceeding instituted in any federal, state or local court before any administrative agency with respect to any arbitrable claim or controversy.

**9.08 Waiver of Jury.** The Executive and the Company each waive the right to have a claim or dispute with one another decided in a judicial forum or by a jury, except as otherwise provided in this Agreement.

## **10.00 General Provisions**

**10.01 Representation of Executive.** The Executive represents and warrants that the Executive is not under any contractual or legal restraint that prevents or prohibits the Executive from entering into this Agreement or performing the duties and obligations described in this Agreement.

**10.02 Modification or Waiver; Entire Agreement.** No provision of this Agreement may be modified or waived except in a document signed by the Executive and the Company's Chief Executive Officer or other person designated by the Company's Board of Directors. This Agreement, and any attachments referenced in the Agreement, constitute the entire agreement between the Parties regarding the employment relationship described in this Agreement, and any other agreements are terminated and of no further force or legal effect. No agreements or representations, oral or otherwise, with respect to the Executive's employment relationship with the Company have been made or relied upon by either Party which are not set forth expressly in this Agreement.

**10.03 Governing Law; Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application of any provision of this Agreement to any person or circumstance, is, for any reason and to any extent, held invalid or unenforceable, such invalidity and unenforceability will not affect the remaining provisions of this Agreement of its application to other persons or circumstances, all of which will be enforced to the greatest extent permitted by law and the Executive and the Company agree that the arbitrator (or judge) is authorized to reform the invalid or unenforceable provision **[1]** to the extent needed to avoid the invalidity or unenforceability and **[2]** in a manner that is as similar as possible to the intent (as described in this Agreement). The validity, construction and interpretation of this Agreement and the rights and duties of the Parties will be governed by the laws of the State of Ohio, without reference to the Ohio choice of law rules.

**10.04 No Waiver.** Except as otherwise provided in Section 9.05, failure to insist upon strict compliance with any term of this Agreement will not be considered a waiver of any such term.

**10.05 Withholding.** All payments made to the Executive under this Agreement will be reduced by any amount:

**[1]** That the Company is required to withhold in advance payment of the Executive's federal, state and local income, wage and employment tax liability; and

**[2]** To the extent allowed by law, that the Executive owes (or, after employment is deemed to owe) to the Company.

However, application of Subsection 10.05[2] will not extinguish the Company's right to seek additional amounts from the Executive (or to pursue other appropriate remedies) to the extent that the amount that may be recovered by application of Subsection 10.05[2] does not fully discharge the amount the Executive owes to the Company and does not preclude the Company from proceeding directly against the Executive without first exhausting its right of recovery under Subsection 10.05[2].

**10.06 Survival.** Subject to the terms of the Executive's Beneficiary Designation form, the Parties agree that the covenants and promises set forth in this Agreement will survive the termination of this Agreement and continue in full force and effect.

#### **10.07 Miscellaneous.**

**[1]** The Executive may not assign any right or interest to, or in, any payments payable under this Agreement; provided, however, that this prohibition does not preclude the Executive from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and does not preclude the legal representative of the Executive's estate from assigning any right under this Agreement to the person or persons entitled to it.

**[2]** This Agreement will be binding upon and will inure to the benefit of the Executive, the Executive's heirs and legal representatives and the Company and its successors.

**[3]** The headings in this Agreement are inserted for convenience of reference only and will not be a part of or control or affect the meaning of any provision of the Agreement.

**10.08 Successors to Company.** This Agreement may and will be assigned or transferred to, and will be binding upon and will inure to the benefit of, any successor of the Company, and any successor will be substituted for the Company under the terms of this Agreement. As used in this Agreement, the term "successor" means any person, firm, corporation or business entity which at any time, whether by merger, purchase or otherwise, acquires all or essentially all of the assets of the business of the Company. Notwithstanding any assignment, the Company will remain, with any successor, jointly and severally liable for all its obligations under this Agreement.

**10.09 Section 409A of the Code.** This Agreement is intended to comply with Section 409A of the Code and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to the Executive and neither the Company nor the Boards of Directors of BLI or BLSI shall be liable to the Executive for failure to comply with the requirements of Section 409A of the Code. Furthermore, the Company may accelerate the time or schedule of a payment to the Executive if at any time this Agreement fails to meet the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder.

Notwithstanding the foregoing, if the Executive terminates for any reason, dies or becomes Disabled on or prior to December 31, 2008 and is entitled to payment or benefit as a result of such termination, death or Disability, such payment or benefit shall be paid or provided **[1]** pursuant to the terms of this Agreement in effect immediately prior to the Effective Date, but **[2]** modified to the extent necessary for good faith compliance with the requirements of Section 409A of the Code. Nothing in this Agreement shall be construed as causing a payment or benefit to be paid or distributed in calendar year 2008 which is not otherwise payable or distributable in calendar year 2008.

**IN WITNESS WHEREOF**, the Parties have duly executed and delivered this Agreement, which includes an arbitration provision, and consists of 21 pages.

BIG LOTS, INC.

By: /s/ Dennis B. Tishkoff

Signed: December 5, 2008

BIG LOTS STORES, INC.

By: Brad A. Waite

Signed: December 5, 2008

ROBERT S. SEGAL

/s/ Robert S. Segal

Signed: December 5, 2008

**AMENDED & RESTATED  
BIG LOTS 2006 BONUS PLAN**

**1. NAME**

- 1.01. The Big Lots 2006 Bonus Plan (the “Plan”) was originally established by Big Lots, Inc., effective as of January 29, 2006 (the “Effective Date”), subject to approval by the Company’s shareholders no later than June 1, 2006. The Plan is hereby amended and restated effective December 4, 2008 (the “Restatement Effective Date”) for the purpose of complying IRC section 409A.

**2. PURPOSE**

- 2.01. The Plan is designed to: (a) assist the Company and its Affiliates in attracting, retaining and motivating employees; (b) align Participants’ interests with those of the Company’s shareholders; and (c) qualify compensation paid to Participants who are “Covered Associates” as “other performance-based compensation” within the meaning of section 162(m) of the IRC or a successor provision.

**3. DEFINITIONS**

- 3.01. “Acquired Corporation” has the meaning ascribed in Section 3.07.
- 3.02. “Affiliate” means any person with whom the Company would be considered a single employer under IRC section 414(b) or (c).
- 3.03. “Base Salary” means as to a Performance Period a Participant’s actual gross salary rate in effect on the Determination Date. Such salary shall be before: (a) deductions for taxes and benefits; and (b) deferrals of salary pursuant to Company-sponsored plans.
- 3.04. “Beneficiary” means the person or persons entitled to receive the interest of a Participant in the event of the Participant’s death.
- 3.05. “Board” means the Board of Directors of the Company.
- 3.06. “Bonus” means a payment subject to the provisions of this Plan.

- 3.07. “Change of Control” means any one or more of the following events: (a) the acquisition by any person (as defined under IRC section 409A), or more than one person acting as a group (as defined under IRC section 409A), of stock of the Company that, together with stock held by such person or group, constitutes more than 50 percent of the total fair market value or total voting power of the Company; (b) the acquisition by an person or group, within any 12 month period, of stock of the Company possessing 30 percent or more of the total voting power of all of the stock of the Company; (c) a majority of the Board then in office is replaced within any period of 12 months or less by directors not nominated and approved by a majority of the directors in office at the beginning of such period (or their successors so nominated and approved); or d) the acquisition by any person, or more than one person acting as a group, within any 12 month period, of assets from the Company that have a total gross fair market value equal to or more than 40 percent of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. This definition of Change of Control under this Section 3.07 shall be interpreted in a manner that is consistent with the definition of “change in control event” under IRC section 409A and the Treasury Regulations promulgated thereunder. Provided, however, the other provisions of this Section 3.07 notwithstanding, the term “Change of Control” shall not mean any merger, consolidation, reorganization, or other transaction in which the Company exchanges or offers to exchange newly-issued or treasury Common Shares representing 20 percent or more, but less than 50 percent, of the outstanding equity securities of the Company entitled to vote for the election of directors, for 51 percent or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than the Company or an Affiliate (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.
- 3.08. “Committee” means the Compensation Committee of the Board, which shall consist of not less than three (3) members of the Board each of whom is a “non-employee director” as defined in Securities and Exchange Commission Rule 16b-3(b)(3)(i), or as such term may be defined in any successor regulation under Section 16 of the-Exchange Act. In addition, each member of the Committee shall be an outside director within the meaning of IRC section 162(m).
- 3.09. “Common Shares” means the common shares of the Company, its successors and assigns.
- 3.10. “Company” means Big Lots Inc., an Ohio Corporation, its successors and assigns and any corporation which shall acquire substantially all its assets.
- 3.11. “Conditional Payment” means prepaying a Bonus before the date of current payment in Section 6.02 and subjects the prepayment (or a portion thereof) to possible return to the Company.
- 3.12. “Covered Associate” means any Participant who is expected to be a “covered employee” (in the Fiscal Year the Bonus is expected to be payable) as defined in IRC section 162(m) and the regulations thereunder.
- 3.13. “Deferred Bonus Account” means the bookkeeping account established under Section 6.04.
- 3.14. “Determination Date” means as to a Performance Period: (a) the first day of the Performance Period; or (b) such other date set by the Committee provided such date will not jeopardize the Plan’s Bonus as performance-based compensation under IRC section 162(m).



- 3.15. “Eligible Position” means an employment position with the Company or an Affiliate which provides the employee in the position the opportunity to participate in the Plan. The Committee (or its designee) determines Eligible Positions.
- 3.16. “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.
- 3.17. “Fiscal Year” means the fiscal year of the Company (currently comprised of a 52/53 week fiscal year which ends on the Saturday nearest to January 31).
- 3.18. “Fiscal Year Bonus” means any Bonus relating to a period of service coextensive with one or more consecutive Fiscal Years, of which no amount is paid or payable during the Fiscal Year(s) constituting the period of service.
- 3.19. “IRC” means the Internal Revenue Code of 1986, as amended from time to time, and any successor.
- 3.20. “Participant” means a key employee of the Company or an Affiliate who has been approved for participation in the Plan by the Committee (or its designee).
- 3.21. “Performance Period” means the period (which, with respect to a Covered Associate, may be no shorter than a fiscal quarter of the Company) established by the Committee over which the Committee measures whether or not Bonuses have been earned. In most cases, the Performance Period will be a Fiscal Year. In the case of an inaugural Performance Period or a promotion, the Performance Period may be less than a Fiscal Year.
- 3.22. “Tax” means any net income, alternative or add-on minimum tax, gross income, gross receipts, commercial activity, sales, use, consumer, transfer, documentary, registration, ad valorem, value added, franchise, profits, license, withholding, payroll, employment, unemployment insurance contribution, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty, unclaimed fund/abandoned property, or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount imposed by any governmental authority responsible for the imposition of any such tax
- 3.23. “Termination” or any form thereof means a “separation from service” as defined in Treasury Regulation §1.409A-1(h) by a Participant with the Company and all its Affiliates.
- 3.24. “Unforeseeable Financial Emergency” means a severe financial hardship to a Participant within the meaning of Treasury Regulation §1.409A-3(i)(3) resulting from: (a) an illness or accident of the Participant or the Participant’s spouse, Beneficiary, or dependent (as defined in IRC section 152, without reference to IRC sections 152(b)(1), (b)(2) and (d)(1)(B)); (b) loss of the Participant’s property due to casualty; or (c) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

#### 4. ELIGIBILITY AND PARTICIPATION

- 4.01. Approval. Each key employee of the Company or an Affiliate who is approved for participation in the Plan by the Committee (or under the authority conveyed by the Committee) shall be a Participant as of the date designated. Notwithstanding the foregoing, any key employee of the Company or an Affiliate who was participating in the Plan as of the Restatement Effective Date shall remain a Participant as long as the key employee is in an Eligible Position.
- 4.02. Termination of Approval. The Committee may withdraw its approval for participation for a Participant at any time. In the event of such withdrawal, the key employee concerned shall cease to be an active Participant as of the date selected by the Committee. Nothing in this Section 4.02 shall permit distribution of amounts credited to a Participant's Deferred Bonus Account before the time specified in Section 6.04.
- 4.03. Transfers In, Out of and Between Eligible Positions.
- (a) A key employee may be approved for participation during a portion of a Fiscal Year.
    - (i) With respect to employees who are not Covered Associates, an employee newly hired or transferred into an Eligible Position shall have his/her participation prorated during the first Fiscal Year provided employment or transfer occurs at least two months prior to the end of the Fiscal Year.
    - (ii) An employee (other than a Covered Associate) transferred out of an Eligible Position may receive a prorated Bonus at the discretion of the Committee provided he/she served in the Eligible Position for at least two full months during the Fiscal Year.
    - (iii) With respect to Covered Associates approved for participation during a portion of a Fiscal Year, see Section 5.03 as it would relate to Performance Periods that are not equivalent to a Fiscal Year.
  - (b) Participants (who are not Covered Associates) transferring between Eligible Positions having different Bonus formulas will receive Bonuses prorated to months served in each Eligible Position. Generally, for Covered Associates transferring between Eligible Positions, Section 5.03 shall apply to each respective Performance Period applicable to the particular position unless an employment agreement provides otherwise.

4.04. Termination of Employment.

- (a) The Participant shall forfeit all rights to a Bonus unless the Participant is employed by the Company or an Affiliate on the day on which payments determined under Section 6.02 are in fact made (or would have been made if a deferred payment election under Section 6.04 had not been executed). However, a Participant shall not forfeit a Bonus for a Performance Period if the Participant is employed by the Company or an Affiliate at the end of the Performance Period and is involuntarily Terminated by the Company or an Affiliate without cause or Terminates by reason of retirement, disability, or death, after the end of the Performance Period, but before the Bonus payment date. Notwithstanding the foregoing, a Covered Associate who Terminates by reason of retirement during a Performance Period shall be entitled to a pro rata portion of any Bonus that the Covered Associate would have been eligible to receive for the Performance Period in which his or her retirement occurs had his or her retirement not occurred at all.
- (b) The Company shall have discretion to provide a pro-rated Bonus to a Participant whose employment with the Company or an Affiliate Terminated by reason of retirement, disability, or death during a Performance Period.

5. **DETERMINATION OF BONUSES**

- 5.01. In addition to the vesting requirements of Section 4.04, Bonuses will vest solely on account of: (1) the attainment of one or more pre-established performance objectives and (2) in the case of Covered Associates, the certification described in Section 5.07.
- 5.02. With respect to Bonuses for Covered Associates, the material terms of the performance measure(s) must be disclosed to, and subsequently approved by, the shareholders before the Bonus payout is executed, unless the performance measures conform individually, alternatively or in any combination of the performance criteria and the application thereof in Appendix A.
- 5.03. Prior to the completion of 25% of any Performance Period (which, by example, may be a full Fiscal Year or some portion thereof) or, if earlier, 90 days after the beginning of the applicable Performance Period or such earlier date as required under IRC section 162(m), the Committee shall in its sole discretion, for each such Performance Period determine and establish in writing a performance measure or performance measures (in accordance with Section 5.02) applicable to the Performance Period to any Covered Associate. Within the same period of time, the Committee (or its designee) for each such Performance Period shall determine and establish in writing the performance measures applicable to the Performance Period for Participants who are not Covered Associates. Such pre-established performance measures must state, in terms of an objective formula or standard, the method for computing the amount of the Bonus payable to the Participant if the objective(s) is (are) obtained. A formula or standard is objective if a third party having knowledge of the relevant performance results could calculate the amount to be paid to the Participant. The Committee may establish any number of Performance Periods, objectives and Bonuses for any associate running concurrently, in whole or in part, provided, that in so doing the Committee does not jeopardize the Company's deduction for such Bonuses under IRC section 162(m).

- 5.04. On or prior to the date specified in Section 5.03, the Committee, in its sole discretion, shall either: (a) assign each Participant a target Bonus opportunity level expressed as a percentage of Base Salary or a whole dollar amount (for Covered Associates, Base Salary must be fixed prior to the establishment of performance objectives applicable to a particular Performance Period); or (b) establish a payout table or formula for purposes of determining the Bonus (if any) payable to each Participant. The Committee may authorize a designee to establish a payout table or formula for those Participants who are not Covered Associates.
- 5.05. Each payout table or formula:
- (a) shall be in writing;
  - (b) shall be based on a comparison of actual performance to the performance objectives;
  - (c) may include a “floor” which is the level of achievement of the performance objective in which payout begins;
  - (d) shall include a ceiling (a/k/a “stretch”) which is the level of achievement for the maximum Bonus payout percentage (subject to Section 5.09); and
  - (e) shall provide for a formula for the actual Bonus attainment in relation to the Participant’s target Bonus, depending on the extent to which actual performance approached, reached or exceeded the performance criteria goal subject to Section 5.09.
- 5.06. In lieu of Bonuses based on a percentage of Base Salary (Section 5.04), Bonuses may be based on a percentage or share of a Bonus pool. The Committee (or its designee) shall determine (by the date specified in Section 5.03) the total dollar amount available for Bonuses (or a formula to calculate the total dollar amount available) known as a Bonus pool. The Committee, in its sole discretion, may establish two or more separate Bonus pools and assign the Participants to a particular Bonus pool. The Committee (or its designee in the case of Participants who are not Covered Associates) shall establish in writing a performance payout table or formula detailing the Bonus pool and the payout (or payout formula) based upon the relative level of attainment of performance goals. Each payout table or formula shall (a) be based on a comparison of actual performance to the performance goals, (b) provide the amount of a Participant’s Bonus or total pool dollars available (or a formula to calculate pool dollars available), if the performance goals for the Performance Period are achieved, and (c) provide for an actual Bonus (which may be based on a formula to calculate the percentage of the pool to be distributed to a particular Participant) based on the extent to which the performance goals were achieved. The payout table or formula may include a “floor” which is the level of achievement of the performance goals in which payout begins. In the case of Bonuses which are stated in terms of a percentage of a Bonus pool, the sum of the individual percentages for all Participants in the pool cannot exceed 100 percent. In no case shall a reduction in a Bonus of one Participant result in an increase in another Participant’s Bonus.

- 5.07. After the end of each Performance Period or such earlier date if the performance objective(s) are achieved, the Committee shall certify in writing, prior to the unconditional payment of any Bonus, which performance objective(s) for the Performance Period were satisfied and to what extent they were satisfied. The Committee (or its designee) shall determine the actual Bonus for each Participant based on the payout table/formula established in Section 5.05 or 5.06, as the case may be.
- 5.08. The Committee, in its discretion, may cancel or decrease a Bonus calculated under this Plan, but with respect to Covered Associates, may not under any circumstances increase such Bonus calculated under this Plan.
- 5.09. Any other provision of the Plan notwithstanding, the maximum aggregate Bonus payable to a Participant for a particular Fiscal Year may not exceed \$3,000,000.

## **6. PAYMENT OF INCENTIVE BONUSES**

- 6.01. In General. Once a Bonus has vested and the amount thereof is determined, payment of the Bonus (or the portion thereof not deferred under Section 6.04) shall be made pursuant to Section 6.02 or, if properly and timely elected, pursuant to Section 6.04, shall be deferred in accordance with Section 6.04.
- 6.02. Current Payment. A Participant's Bonus for a Performance Period, which is not deferred in accordance with the provisions of Section 6.04 hereof, and a Participant's Bonus, whether or not he/she elected deferred-payment thereof, for the Fiscal Year in which his/her employment Terminates, if any, as determined in accordance with Section 4.04, shall be paid in immediately available funds to the Participant, or his/her Beneficiary in the event of his/her death, no later than the later of (a) the 15th day of the third month following the Participant's first taxable year in which such Bonus is no longer subject to a substantial risk of forfeiture (within the meaning of IRC section 409A) or (b) the 15th day of the third month following the end of the first taxable year of the service recipient (within the meaning of IRC section 409A) in which such Bonus is no longer subject to a substantial risk of forfeiture.

6.03. Conditional Payment. The Committee may authorize a Payment of a Participant's Bonus, based upon the Committee's good faith determination. The Conditional Payment, at the discretion of the Committee may be discounted to reasonably reflect the time value of money for the prepayment. The amount of the Conditional Payment that will be returned to the Company is equal to the Conditional Payment less the Bonus payment that has vested, if any. For example, if the floor (see Section 5.05) was not attained for the performance goal or target for the Performance Period, all of the Conditional Payment made for that Performance Period to the Participant must be returned to the Company. Return of all or a portion of the Conditional Payment shall be made reasonably soon after it is determined the extent to which the performance goal or target was not achieved. Conditional payments shall not be made in connection with bonuses that otherwise would be subject to IRC section 409A if paid in the ordinary course.

6.04 Deferred Payment.

(a) Highly Compensated Employees. If a Participant in this Plan is a highly compensated employee who participates in the Big Lots, Inc. Amended and Restated Supplemental Savings Plan (the "Top Hat Plan"), as it may be amended and restated from time to time, elections to defer Bonus, elections as to the form of distribution of the deferred amount, establishment of a deferred account, distributions from the deferred accounts, and all other terms governing the deferred payment of a Bonus shall be governed by the terms of the Top Hat Plan. Any election to defer the Bonus of a Participant who participates in the Top Hat Plan will result in an account administered under the Top Hat Plan.

(b) Other Employees. The terms governing the deferral of a Bonus for Participants who do not participate in the Top Hat Plan are set forth below.

(i) Elections.

(1) Performance Periods. Except as provided in Section 6.04(b)(i)(2), a Participant may irrevocably elect in writing to have all or a part of a Bonus (but not less than \$5,000) deferred on or before December 31 of the calendar year preceding the calendar year in which the Performance Period begins. At the same time, the Participant also shall elect the form of distribution from the Deferred Bonus Account from among the choices set forth in Section 6.04(b)(v) of the Plan.

(2) Fiscal Year Bonus. Notwithstanding the foregoing, a Participant may irrevocably elect in writing to have all or a part of a Fiscal Year Bonus (but not less than \$5,000) deferred before the first day of the applicable Fiscal Year. At the same time, the Participant shall also elect the form of distribution from the Deferred Bonus Account from among the choices set forth in Section 6.04(b)(v) of the Plan.

Such deferred payment shall be credited to a bookkeeping reserve account which shall be established for the Participant and set up on the books of the Company or an Affiliate and known as his/her "Deferred Bonus Account".

- (ii) Credits to Deferred Bonus Account. When a Participant has elected to have a part or all of his/her Bonus credited to a Deferred Bonus Account, the unpaid balance in such account shall be credited with a simple annual interest equivalent, as follows: As of the May 1 next following the Fiscal Year for which the deferred Bonus was paid, such Bonus shall become part of the unpaid balance of such Deferred Bonus Account. Such Deferred Bonus Account shall be credited on April 30 of each year with an amount equal to interest on the unpaid balance of such account from time to time outstanding during the year ending on such April 30 at the rate determined by adding together the Three--month Treasury Bill rate on the last banking day prior to the beginning of such year and the Three--month Treasury Bill rate in effect on the last banking days of each of the calendar months of April through March of such year and dividing such total by 12. In the event that the Deferred Bonus Account shall be terminated for any reason prior to April 30 of any year, such account shall upon such termination date be credited with an amount equal to interest at the average Three-month Treasury Bill rate determined as aforesaid on the unpaid balance from time to time outstanding during that portion of such year prior to the date of termination.
- (iii) Alternate Deferral Plans. The Committee, at its discretion, may provide alternate deferral arrangements of which Bonuses under this Plan may be included; provided that such deferral arrangements conform with the requirements imposed by IRC section 409A.
- (iv) Trust Deposits. The Committee, at its discretion, may establish an irrevocable trust in which the assets of the trust are subject to the general creditors of the Company and/or the Affiliate as the case may be. Such trust may upon the occurrence of certain events, as determined by the Committee, receive assets equal to the value of all Participants' Deferred Bonus Accounts on the date of the event.

- (v) **Distribution upon Termination of Employment.** Upon Termination of a Participant's employment for any reason, the Participant, or his/her Beneficiary in the event of his/her death, shall be entitled to payment of the entire Deferred Bonus Account in one lump-sum payment payable on the date of the first regular payroll after the thirtieth day following the date of Termination of employment, or in ten (10) substantially equal annual installment payments payable as set forth below, as elected by the Participant at the time the Participant elects to defer all or part of his or her Bonus pursuant to Section 6.04(b). Installment payments shall be payable beginning on the thirtieth day following the date of Termination and, thereafter, on the first regular payroll date of each succeeding Fiscal Year following the year during which the first anniversary of the date of Termination of employment occurs.
- (vi) **Six-Month Distribution Delay.** Notwithstanding any other provision of the Plan, if the Participant is a "specified employee" (within the meaning of IRC section 409A and the Treasury Regulations promulgated thereunder and as determined under the Company's policy for determining specified employees) on the date of the Participant's Termination, and the Participant is entitled to a distribution under the Plan that is required to be delayed pursuant to IRC section 409A(a)(2), then such distribution shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following the Participant's date of Termination (or, if earlier, the Participant's death).
- (vii) **Distribution in Event of Financial Emergency.** If requested by a Participant while in the employ of the Company or an Affiliate and if the Committee (or in the case of Participants who are not Covered Associates, its designee) determines that an Unforeseeable Financial Emergency has occurred with respect to a Participant, all or a portion of the Deferred Bonus Account of the Participant may be distributed at the sole discretion of the Committee (or its designee, as applicable) in an amount no greater than the amount reasonably necessary to satisfy the emergency need (including amounts necessary to pay any Federal, state or local income taxes reasonably anticipated to result from such distribution). The Participant must supply written evidence of the Unforeseeable Financial Emergency and must declare, under penalty of perjury, that the Participant has no other resources available to meet the emergency, including the resources of the Participant's spouse and minor children that are reasonably available to the Participant. The Participant must also declare that the need cannot be met by reimbursement or compensation by insurance or otherwise, or by reasonable liquidation of the Participant's assets (or the assets of the spouse or minor children of the Participant) to the extent such liquidation will not itself cause severe financial hardship. Any such distribution shall be paid within 7 days of the determination by the Committee that an Unforeseeable Financial Emergency exists.



- (viii) Cash Outs. Notwithstanding the provisions in Sections 6.04(b)(v) and (vii), once distributions of the Deferred Bonus Account begin, if the amount remaining in a Participant's Deferred Bonus Account at any time is less than \$5,000, the Committee shall pay the balance in the Participant's Deferred Bonus Account in a lump sum; within thirty (30) days; provided, however, that the payment results in the termination and liquidation of the Participant's interest under the Plan and all other plans or arrangements that, along with the Plan, would be treated as a single nonqualified deferred compensation plan under IRC section 409A.
- (ix) Beneficiary Designation.
- (1) A Participant may designate a Beneficiary who is to receive, upon his/her death, the distributions that otherwise would have been paid to him/her. All designations shall be in writing and shall be effective only if and when delivered to the Secretary of the Company during the lifetime of the Participant. If a Participant designates a Beneficiary without providing in the designation that the Beneficiary must be living at the time of each distribution, the designation shall vest in the Beneficiary all of the distribution whether payable before or after the Beneficiary's death, and any distributions remaining upon the Beneficiary's death shall be made to the Beneficiary's estate.
- (2) A Participant may from time to time during his lifetime change his Beneficiary by a written instrument delivered to the Secretary of the Company. In the event a Participant shall not designate a Beneficiary as aforesaid, or if for any reasons such designation shall be ineffective, in whole or in part, the distribution that otherwise would have been paid to such Participant shall be paid to his estate and in such event the term "Beneficiary" shall include his estate.
- (x) Corporate Changes.
- (1) Dissolution or Liquidation of Company. The Company shall cause the dollar balance of a Deferred Bonus Account (adjusted to the end of the month immediately preceding the date of dissolution or liquidation) to be paid out in cash in a lump sum to the Participants, or their Beneficiaries as the case may be, 60 days following the date of a corporate dissolution of the Company taxed under IRC section 331 in accordance with Treasury Regulation §1.409A-3(j)(4)(ix)(A); provided that the amounts in the Deferred Bonus Accounts are included in the Participants' gross incomes in accordance with Treasury Regulation §1.409A-3(j)(4)(ix)(A).

- (2) Change of Control of Company. In the event of a Change of Control of the Company, the Company may, within thirty days preceding or twelve months following the Change of Control event, irrevocably elect to terminate the Plan and to distribute all Deferred Bonus Accounts under the Plan in accordance with Treasury Regulation §1.409A-3(j)(4)(ix)(B); provided that all agreements, methods, programs and other arrangements sponsored by the Company and all Affiliates immediately after the time of a Change of Control with respect to which deferrals of compensation are treated as having been deferred under a single plan under Treasury Regulation §1.409A-1(c) (2) are terminated and distributed with respect to each Participant that experienced the Change of Control, so that under the terms of the termination and distribution, all such Participants are required to receive all amounts of compensation deferred under the terminated arrangements within twelve months of the date the Company irrevocably takes all necessary action to terminate and distribute amounts under such arrangements.

## **7. RIGHTS OF PARTICIPANTS**

- 7.01. No Participant or Beneficiary shall have any interest in any fund or in any specific asset or assets of the Company or an Affiliate by reason of any account under the Plan. It is intended that the Company has merely a contractual obligation to make payments when due hereunder and it is not intended that the Company hold any funds in reserve or trust to secure payments hereunder. No Participant may assign, pledge, or encumber his/her interest under the Plan, or any part thereof, except that a Participant may designate a Beneficiary as provided herein.
- 7.02. Nothing contained in this Plan shall be construed to give any associate or Participant any right to receive any Bonus other than in the sole discretion of the Committee or any rights whatsoever with respect to the Common Shares of the Company.

## **8. NO EMPLOYEE RIGHTS**

- 8.01. Nothing in the Plan or participation in the Plan shall confer upon any Participant the right to be employed by the Company or an Affiliate or to continue in the employ of the Company or an Affiliate, nor shall anything in the Plan, or participation in the Plan amend, alter or otherwise affect any rights or terms of employment or other benefits arising from that employment.

**9. ADMINISTRATION**

- 9.01. Administration. The Committee shall have complete authority to administer the Plan, interpret the terms of the Plan, determine eligibility of associates to participate in the Plan, and make all other determinations and take all other actions in accordance with the terms of the Plan and any trust agreement established under Section 6.04(b)(iv). Any determination or decision by the Committee shall be conclusive and binding on all persons who at any time have or claim to have any interest whatever under this Plan.
- 9.02. Liability of Committee, Indemnification. To the extent permitted by law, the Committee shall not be liable to any person for any action taken or omitted in connection with the interpretation and administration of this Plan unless attributable to his or her own bad faith or willful misconduct.
- 9.03. Expenses. The costs of the establishment, the adoption, and the administration of the Plan, including but not limited to legal and accounting fees, shall be borne by the Company. The expenses of establishing and administering any trust under Section 6.04(b)(iv) shall be borne by the trust; provided, however, that the Company shall bear, and shall not be reimbursed by, the trust for any tax liability of the Company associated with the investment of assets by the trust.
- 9.04. Choice of Law. The validity and effect of this Plan and the rights and obligations of all persons affected hereby shall be construed and determined in accordance with the laws of the State of Ohio, unless superseded by federal law, which shall govern correspondingly.

**10. AMENDMENT OR TERMINATION**

- 10.01. The Committee may modify or amend, in whole or in part, any or all of the provisions of the Plan, except as to those terms or provisions that are required by IRC section 162(m) to be approved by the shareholders, or suspend or terminate the Plan entirely; provided, however, that no such modifications, amendment, suspension or termination may, without the consent of the Participant, or his Beneficiary in the case of his/her death, reduce the right of a Participant, or his/her Beneficiary, as the case may be, to any payment due under the Plan. For the avoidance of doubt, the Committee may amend the Plan as necessary to conform the Plan to the requirements of IRC section 409A. Distributions of Deferred Bonus Accounts on termination of the Plan shall occur only under the circumstances specified in Section 6.04(b)(x) above.

## **11. TAX WITHHOLDING**

- 11.01. The Company or the employing Affiliate shall have the right to deduct from all cash payments any federal, state, or local taxes or other withholding amounts required by law or valid court order to be withheld with respect to such cash payments. Amounts deferred will be taken into account for purposes of any tax or withholding obligation under the Federal Insurance Contribution Act and Federal Unemployment Tax Act, not in the year distributed, but at the later of the year the services are performed or the year in which the rights to the amounts are no longer subject to a substantial risk of forfeiture, as required by IRC sections 3121(v) and 3306(r) and the regulations thereunder. Amounts required to be withheld pursuant to IRC sections 3121(v) and 3306(r) shall be withheld out of other current wages paid to the Participant by the Company or the employing Affiliate, or, if such current wages are insufficient, the Participant shall remit to the Company an amount equal to the applicable tax withholding. The determination of the Company or the employing Affiliate regarding applicable income and employment tax withholding requirements shall be final and binding on the Participant.

## **12. CLAIMS PROCEDURE**

- 12.01. Any Participant (the “claimant”) who believes that he or she is entitled to a benefit under the Plan or that wishes to resolve a dispute or disagreement which arises under, or in any way relates to, the interpretation or construction of the Plan may file a claim with the Committee.
- 12.02. If the claim is wholly or partially denied, the Committee will within ninety (90) days of the receipt of such claim provide the claimant with written notice of the denial setting forth in a manner calculated to be understood by the claimant:
- (a) The specific reason or reasons for which the claim was denied;
  - (b) Specific reference to pertinent Plan provisions, rules, procedures or protocols upon which the Committee relied to deny the claim;
  - (c) A description of any additional material or information that the claimant may file to perfect the claim and an explanation of why this material or information is necessary; and
  - (d) An explanation of the Plan’s claims review procedure and the time limits applicable to such procedure and a statement of the claimant’s right to bring a civil action under §502(a) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), following an adverse determination upon review.

If special circumstances require the extension of the ninety (90) day period described above, the claimant will be notified before the end of the initial period of the circumstances requiring the extension and the date by which the Committee expects to reach a decision. Any extension for deciding a claim will not be for more than an additional ninety (90) day period.

- 12.03. Review Procedure. If a claim has been wholly or partially denied, the affected claimant, or such claimant's authorized representative, may:
- (a) Request that the Committee reconsider its initial denial by filing a written appeal within sixty (60) days after receiving written notice that all or part of the initial claim was denied;
  - (b) Review pertinent documents and other material upon which the Committee relied when denying the initial claim; and
  - (c) Submit a written description of the reasons for which the claimant disagrees with the Committee's initial adverse decision.

An appeal of an initial denial of benefits and all supporting material must be made in writing within the time periods described above and directed to the Committee. The Committee is solely responsible for reviewing all benefit claims and appeals and taking all appropriate steps to implement its decision.

The Committee's decision on review will be sent to the claimant in writing and will include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent Plan provisions, rules, procedures or protocols upon which the Committee relied to deny the appeal. The Committee will consider all information submitted by the claimant, regardless of whether the information was part of the original claim. The decision will also include a statement of the claimant's right to bring an action under ERISA §502(a).

The Committee's decision on review will be made not later than sixty (60) days after his or her receipt of the request for review, unless special circumstances require an extension of time for processing, in which case a decision will be rendered as soon as possible, but not later than one-hundred-twenty (120) days after receipt of the request for review. This notice to the claimant will indicate the special circumstances requiring the extension and the date by which the Committee expects to render a decision and will be provided to the claimant prior to the expiration of the initial period.

To the extent permitted by law, the decision of the Committee will be final and binding on all parties. No legal action for benefits under the Plan will be brought unless and until the claimant has exhausted such claimant's remedies under this Section 12.01.

**13. SECTION 409A**

- 13.01. It is intended that the Plan comply with IRC section 409A and the Treasury Regulations promulgated thereunder, and the Plan will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to a Participant, and none of the Company, its Affiliates, the Board or the Committee shall have any liability with respect to any failure to comply with the requirements of IRC section 409A and the Treasury Regulations promulgated thereunder.
- 13.02. The Company may accelerate the time or schedule of a distribution to a Participant at any time the Plan fails to meet the requirements of IRC section 409A and the Treasury Regulations promulgated thereunder. Such distribution may not exceed the amount required to be included in income as a result of the failure to comply with IRC section 409A and the Treasury Regulations promulgated thereunder.

## APPENDIX A

### PERFORMANCE CRITERIA

Performance criteria imposed on Bonus opportunities will be derived using the accounting principles generally accepted in the United States of America and will be reported or appear in the Company's filings with the Securities Exchange Commission (including Forms 10-Q and 10-K) or the Company's annual report to shareholders and will be derived from one or more (or any combination of one or more) of the following:

- (a) Income (loss) per common share from continuing operations;
- (b) Income (loss) per common share;
- (c) Operating profit (loss), operating income (loss), or income (loss) from operations (as the case may be);
- (d) Income (loss) from continuing operations before unusual or infrequent items;
- (e) Income (loss) from continuing operations;
- (f) Income (loss) from continuing operations before income taxes;
- (g) Income (loss) from continuing operations before extraordinary item and/or cumulative effect of a change in accounting principle (as the case may be);
- (h) Income (loss) before extraordinary item and/or cumulative effect of a change in accounting principle (as the case may be);
- (i) Net income (loss);
- (j) Income (loss) before other comprehensive income (loss);
- (k) Comprehensive income (loss);
- (l) Income (loss) before interest and income taxes (sometimes referred to as "EBIT");
- (m) Income (loss) before interest, income taxes, depreciation and amortization (sometimes referred to as "EBITDA");
- (n) Any other objective and specific income (loss) category or non-GAAP financial measure that appears as a line item in the Company's periodic filings with the Securities and Exchange Commission or the annual report to shareholders;
- (o) Any of items (c) through (n) on a weighted average common shares outstanding basis;

- (p) Any of items (a) through (n) on a diluted basis as defined in the Financial Accounting Standards Board (“FASB”) Statement of Financial Accounting Standards (“SFAS”) No. 128 including authoritative interpretations or amendments thereof which may be issued from time to time as long as such interpretations or amendments are utilized on the consolidated statements of operations or statement of operations, as applicable, or in the notes to the consolidated financial statements;
- (q) Common share price;
- (r) Total shareholder return expressed on a dollar or percentage basis as is customarily disclosed in the proxy statement accompanying the notice of annual meetings of shareholders;
- (s) Percentage increase in comparable store sales;
- (t) Gross profit (loss) or gross margin (loss) (as the case may be);
- (u) Economic value added;
- (v) Any of items (a) through (u) with respect to any subsidiary, Affiliate, business unit, business group, business venture or legal entity, including any combination thereof, or controlled directly or indirectly by the Company whether or not such information is included in the Company’s annual report to shareholders, proxy statement or notice of annual meeting of shareholders;
- (w) Any of items (a) through (u) above may be determined before or after a minority interest’s share as designated by the Committee;
- (x) Any of items (a) through (u) above with respect to the period of service to which the performance goal relates whether or not such information is included in the Company’s periodic filings, annual report to shareholders, proxy statement or notice of annual meetings of shareholders;
- (y) Total shareholder return ranking position meaning the relative placement of the Company’s total shareholder return [as determined in (r) above] compared to those publicly held companies in the Company’s peer group as established by the Committee prior to the beginning of a vesting period or such later date as permitted under the Code. The peer group shall be comprised of not less than eight and not more than sixteen companies, including the Company; or
- (z) With respect to items (a), (b), (o) and (p) above, other terminology may be used for “income (loss) per common share” (such as “Basic EPS,” “earnings per common share,” “diluted EPS,” or “earnings per common share-assuming dilution”) as contemplated by SFAS No. 128, as amended, revised or superseded.



The Committee in its sole discretion, in setting the performance objectives in the time prescribed in Section 5, may provide for the making of equitable adjustments (including the income tax effects attributable thereto), singularly or in combination, to the performance criteria in A above of this Appendix in recognition of unusual or non-recurring events, transactions and accruals for the effect of the following qualifying objective items:

- (aa) Asset impairments as described in SFAS No. 144, as amended, revised or superseded;
- (bb) Costs associated with exit or disposal activities as described by SFAS No. 146, as amended, revised or superseded;
- (cc) Amortization costs associated with the acquisition of goodwill or other intangible assets, as described by SFAS No. 142, as amended, revised or superseded;
- (dd) Merger integration costs;
- (ee) Merger transaction costs;
- (ff) Any profit or loss attributable to the business operations of a reportable segment as described by SFAS No. 131 as amended, revised or superseded;
- (gg) Any profit or loss attributable to a reportable segment as described by SFAS No. 131, as amended, revised or superseded or an entity or entities acquired during the period of service to which the performance goal relates;
- (hh) Any specified Tax settlement(s) (or combination thereof) with a Tax authority;
- (ii) The relevant Tax effect of new Tax legislation enacted after the beginning of the Performance Period or other changes in Tax law;
- (jj) Any extraordinary item, event or transaction as described in Accounting Principles Board Opinion (“APB”) No. 30, as amended, revised or superseded;
- (kk) Any unusual in nature, or infrequent in occurrence items, events or transactions (that are not “extraordinary” items) as described in APB No. 30, as amended, revised or superseded;
- (ll) Any other non-recurring items or other non-GAAP financial measures (not otherwise listed);
- (mm) Any change in accounting as described in APB No. 20, as amended, revised or superseded;
- (nn) Unrealized gains or losses on investments in debt and equity securities as described in SFAS No. 115, as amended, revised or superseded;

- (oo) Any gain or loss recognized as a result of derivative instrument transactions or other hedging activities as described in SFAS No. 133, as amended, revised or superseded;
- (pp) Shares-based compensation charges as described in SFAS No. 123, as amended, revised or superseded;
- (qq) Any gain or loss as reported as a component of other comprehensive income as described in SFAS No. 130, as amended, revised or superseded;
- (rr) Any gain or loss as a result of a direct or indirect guarantee, as described in FASB Interpretations (“FIN”) No. 45, as amended, revised or superseded;
- (ss) Any gain or loss as the result of the consolidation of a variable interest entity as described in FIN No. 46, as amended, revised or superseded;
- (tt) Any gain or loss as a result of litigation, judgments or lawsuit settlement (including class action lawsuits); or
- (uu) Any charges associated with the early retirement of debt obligations.

**FIRST AMENDMENT TO  
BIG LOTS  
EXECUTIVE BENEFIT PLAN**

WHEREAS, Big Lots, Inc. (“Company”) maintains that certain Big Lots Executive Benefit Plan (“Plan”) pursuant to which Company agrees to reimburse certain medical, dental and vision expenses incurred and not reimbursed under the Big Lots Associate Benefit Plan by associates eligible to participate in the Plan and who become participants in the Plan, as described therein (“Participants”); and

WHEREAS, the Plan is a self-insured health plan subject to the rules of Section 105(h) of the Internal Revenue Code of 1986, as amended (“Code”); and

WHEREAS, Section 409A was added to the Code effective January 1, 2005 and final Treasury Regulations were issued under Section 409A of the Code effective January 1, 2009; and

WHEREAS, Section 409A applies to any plan providing for the deferral of compensation, including self-insured health plans such as the Plan; and

WHEREAS, the Company desires to amend the Plan to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder;

NOW THEREFORE, the Company hereby amends the Plan as follows:

1. The following paragraph is hereby inserted on page 15 at the end of the “Executive Benefit Plan” section of the Plan and prior to the “Definitions” section of the Plan:

Any eligible health care expenses being reimbursed or provided under this Plan must satisfy the following requirements: (a) the eligible health care expenses that may be reimbursed or provided during any taxable year of a Participant may not affect the costs eligible for reimbursement in any other taxable year, except to the extent that the amount of eligible health care expenses that may be reimbursed in any year is capped, as described in this Plan; (b) reimbursement of any eligible health care expenses incurred by Participant must be made on or before the last day of such Participant’s taxable year following the taxable year in which the eligible health care expense was incurred, and (c) the right to reimbursement or provision of eligible health care expenses may not be liquidated or exchanged for another benefit.

2. The following paragraph is hereby inserted on page 35 at the end of the Plan.
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## SECTION 409A OF THE INTERNAL REVENUE CODE

The Plan is subject to the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), and the Treasury Regulations promulgated thereunder, and the Plan shall be interpreted, administered and operated accordingly. Nothing in the Plan shall be construed as an entitlement to or guarantee of any particular tax treatment to a Participant and/or his or her dependent(s) and none of Big Lots, Inc., its affiliates or its Board of Directors shall have any liability with respect to any failure to comply with the requirements of Section 409A.

IN WITNESS WHEREOF, the Company has caused this First Amendment to be executed by a duly authorized officer effective as of November 25, 2008.

Big Lots, Inc.

By: /s/ Charles W. Haubiel II

Print Name: Charles W. Haubiel II

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## INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT ("AGREEMENT") is entered into by and between BIG LOTS, INC., an Ohio corporation (the "Company"), and \_\_\_\_\_ (the "Indemnitee"), and is effective as of December 5, 2008 ("Effective Date").

WHEREAS, it is essential to the Company to retain and attract as directors and officers the most capable persons available;

WHEREAS, the Indemnitee is a director or officer of the Company; and

WHEREAS, the Code of Regulations (the "Regulations") of the Company and the Ohio General Corporation Laws each provide that the indemnification provided therein shall not be exclusive.

NOW, THEREFORE, in consideration of the premises and intending to be legally bound hereby, the parties hereto agree as follows:

1. Indemnification. The Company shall indemnify the Indemnitee to the fullest extent permitted by applicable law, if or when he or she is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, any action threatened or instituted by or in the right of the Company), by reason of the fact that he or she is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, trustee, officer, employee, member, manager, agent or volunteer of another corporation (domestic or foreign, nonprofit or for profit), limited liability company, partnership, joint venture, trust or other enterprise, against expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if his or her act or omission giving rise to any claim for indemnification under this Section 1 was not occasioned by his or her intent to cause injury to the Company or by his or her reckless disregard for the best interests of the Company, and in respect of any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. It shall be presumed that no act or omission of the Indemnitee that gives rise to such claim under this Section 1 was occasioned by an intent to cause injury to the Company or by reckless disregard for the best interests of the Company and, in respect of any criminal matter, that the Indemnitee had no reasonable cause to believe his or her conduct was unlawful; the presumption recited in this Section 1 can be rebutted only by clear and convincing evidence, and the termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, rebut such presumption.

2. Court Approved Indemnification. Anything contained elsewhere in this Agreement to the contrary notwithstanding:

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(a) the Company shall not indemnify the Indemnitee if or when he or she is a party to any completed action or suit instituted by or in the right of the Company to procure a judgment in its favor by reason of the fact that he or she is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, trustee, officer, employee, member, manager, agent or volunteer of another corporation (domestic or foreign, nonprofit or for profit), limited liability company, partnership, joint venture, trust or other enterprise, in respect of any claim, issue or matter asserted in such action or suit as to which he or she shall have been adjudged to be liable for an act or omission occasioned by his or her deliberate intent to cause injury to the Company or by his or her reckless disregard for the best interests of the Company, unless and only to the extent that the Franklin County Court of Common Pleas, in Franklin County, Ohio ("Franklin County Court of Common Pleas") or the court in which such action or suit was brought shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances of the case, he or she is fairly and reasonably entitled to such indemnity as the Franklin County Court of Common Pleas or such other court shall deem proper; and

(b) the Company shall promptly make any such unpaid indemnification as is determined by a court to be proper as contemplated by this Section 2.

3. Indemnification for Expenses. Anything contained in this Agreement to the contrary notwithstanding, to the extent that the Indemnitee has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1, or in defense of any claim, issue or matter therein, he or she shall be promptly indemnified by the Company against expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs) actually and reasonably incurred by him or her in connection therewith.

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4.

**Determination Required.**

Any indemnification required under Section 1 and not precluded under Section 2 shall be made by the Company only upon a determination that such indemnification is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in Section 1. Such determination may be made only (A) by a majority vote of a quorum consisting of directors of the Company who were not and are not parties to, or threatened with, any such action, suit or proceeding, (B) if such a quorum is not obtainable or if a majority of a quorum of disinterested directors so directs, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with an attorney, who has been retained by or who has performed services for the Company, or the Indemnitee, within the past five years, (C) by the shareholders or (D) by the Franklin County Court of Common Pleas or (if the Company is a party thereto) the court in which such action, suit or proceeding was brought, if any; any such determination may be made by a court under clause (D) of this Section 4 at any time including, without limitation, any time before, during or after the time when any such determination may be requested of, be under consideration by or have been denied or disregarded by the disinterested directors under clause (A) or by independent legal counsel under clause (B) or by the shareholders under clause (C) of this Section 4; and no failure for any reason to make any such determination, and no decision for any reason to deny any such determination, by the disinterested directors under clause (A) or by independent legal counsel under clause (B) or by the shareholders under clause (C) of this Section 4 shall be evidence in rebuttal of the presumption recited in Section 1. If a Change of Control has occurred after the act or failure to act by the Indemnitee which is the subject of the determination and before such determination, such determination shall be made by independent legal counsel in the manner contemplated by clause (B) of this Section 4. A "Change of Control" will be deemed to occur upon the first of the following events; **[a]** the acquisition by any person (as defined under Section 409A of the Internal Revenue Code of 1986, as amended ("Code")), or more than one person acting as a group (as defined under Section 409A of the Code), of the stock of the Company that, together with the stock of the Company held by such person or group, constitutes more than fifty (50) percent of the total fair market value or total voting power of all of the stock of the Company; **[b]** the acquisition by any person, or more than one person acting as a group, within any 12-month period, of the stock of the Company possessing thirty (30) percent or more of the total voting power of all of the stock of the Company; **[c]** a majority of the members of the Board of Directors of the Company is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of the Company prior to the date of the appointment or election; or **[d]** the acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from the Company that have a total gross fair market value equal to or more than forty (40) percent of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. Any determination made by the disinterested directors under clause (A) or by independent legal counsel under clause (B) of this Section 4 to make indemnification in respect of any claim, issue or matter asserted in an action or suit threatened or brought by or in the right of the Company shall be promptly communicated to the person who threatened or brought such action or suit, and within ten days after receipt of such notification such person shall have the right to petition the Franklin County Court of Common Pleas or the court in which such action or suit was brought, if any, to review the reasonableness of such determination.

5.

**Advances for Expenses.**

Expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs) incurred in defending any action, suit or proceeding referred to in Section 1 shall be paid by the Company in advance of the final disposition of such action, suit or proceeding to or on behalf of the Indemnitee promptly as such expenses are incurred by him or her, but only if the Indemnitee shall first agree, in writing, to repay all amounts so paid in respect of any claim, issue or other matter asserted in such action, suit or proceeding in defense of which he or she shall not have been successful on the merits or otherwise if it is proved by clear and convincing evidence in a court of competent jurisdiction that, in respect of any such claim, issue or other matter, his or her relevant action or failure to act was occasioned by his or her deliberate intent to cause injury to the Company or his or her reckless disregard for the best interests of the Company, unless, and only to the extent that, the Franklin County Court of Common Pleas or the court in which such action or suit was brought shall determine upon application that, despite such determination, and in view of all of the circumstances, he or she is fairly and reasonably entitled to all or part of such indemnification.

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6. Non-Exclusivity. The indemnification provided by this Agreement shall not be exclusive of, and shall be in addition to, any other rights to which the Indemnitee may be entitled under the Amended Articles of Incorporation of the Company, the Regulations, any agreement, a vote of disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to the Indemnitee upon his or her ceasing to be an officer or director of the Company and shall inure to the benefit of the heirs, executors and administrators of the Indemnitee.

7. Liability Insurance. The rights of the Indemnitee hereunder shall be in addition to any other rights the Indemnitee may now or hereafter have under policies of insurance maintained by the Company or otherwise. To the extent the Company maintains an insurance policy or policies providing directors' and officers' liability insurance, the Indemnitee shall be covered by such policy or policies, in accordance with its or their terms, to the maximum extent of the coverage available for any Company director, officer or representative. The parties hereby acknowledge that the Company presently maintains directors' and officers' liability insurance under policies issued by the insurers with limits of liability listed in Schedule A hereto. The Company shall maintain such insurance coverage for so long as the Indemnitee's services are covered hereunder, provided that such insurance is available on a basis acceptable to the Company. In the event that such insurance becomes unavailable in the amount of the present policy limits or in the present scope of coverage at premium costs and on other terms acceptable to the Company, then the Company may forego maintenance of all or a portion of such insurance coverage. However, in the event of any reduction in (or cancellation of) such insurance coverage (whether voluntary or involuntary), the Company shall stand as a self-insurer with respect to the coverage, or portion thereof, not retained, and shall indemnify the Indemnitee against any loss arising out of the reduction in or cancellation of such insurance coverage.

8. Certain Definitions. For purposes of this Agreement, and as an example and not by way of limitation:

(a) the Indemnitee shall be deemed to have been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1, or in defense of any claim, issue or other matter therein, if such action, suit or proceeding shall be terminated as to the Indemnitee, with or without prejudice, without the entry of a judgment or order against him or her, without a conviction of him or her, without the imposition of a fine upon him or her and without his or her payment or agreement to pay any amount in settlement thereof (whether or not any such termination is based upon a judicial or other determination of the lack of merit of the claims made against him or her or otherwise results in a vindication of him or her); and

(b) references to an "other enterprise" shall include employee benefit plans; references to a "fine" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries.

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9. Amendments. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions thereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

10. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

11. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment in connection with any claim made against the Indemnitee to the extent the Indemnitee has otherwise actually received payment (under any insurance policy or otherwise) of the amounts otherwise indemnifiable hereunder.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns (including, without limitation, any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), spouses, heirs and personal and legal representatives. This Agreement shall continue in effect regardless of whether the Indemnitee continues to serve as a director or officer of the Company or as a representative of any other enterprise at the Company's request.

13. Termination. This Agreement may be terminated by either party upon not less than 60 days' prior written notice delivered to the other party, but such termination shall not in any way diminish the obligations hereunder with respect to the Indemnitee's service to the Company as a director or officer of the Company or as a representative of any other enterprise at the Company's request prior to the effective date of the termination, or the Company's obligations to provide insurance coverage pursuant to Section 7 in respect thereof. In the case of termination by the Company, such termination must be pursuant to a resolution adopted by a majority vote of the board of directors of the Company.

14. Severability. The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including, without limitation, any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

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15. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter hereof and mergers and supersedes all prior agreements, understandings, proposals and representations, if any.

16. Governing Law and Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Ohio applicable to contracts made and to be performed in such State without giving effect to the principles of conflicts of laws. Any action, suit or proceeding to determine a claim for, or for repayment to the Company of, indemnification under this Agreement may be maintained by the Indemnitee, or by the Company, in the Franklin County Court of Common Pleas. The Company and (by claiming or accepting such indemnification) the Indemnitee consent to the exercise of jurisdiction over its or his or her person by the Franklin County Court of Common Pleas in any such action, suit or proceeding.

BIG LOTS, INC.,

by

\_\_\_\_\_

INDEMNITEE,

by

\_\_\_\_\_

\_\_\_\_\_

## EXECUTIVE SEVERANCE AGREEMENT

This Executive Severance Agreement (this “Agreement”) is entered into and made effective as of the \_\_\_\_ day of \_\_\_, 20\_\_\_, by and among BIG LOTS STORES, INC., an Ohio corporation (“BLSI”), BIG LOTS, INC., an Ohio corporation and the ultimate parent company of BLSI (“BLI”), and \_\_\_\_, an individual residing in the State of \_\_\_\_ (“Executive”).

**WHEREAS**, the Board of Directors of BLSI (the “Board”) believes it is in the best interests of BLSI and its shareholders to assure the continued services of Executive, undiminished by any actual or perceived threat to continued employment that may arise from an actual or threatened Change in Control (as defined herein) of BLSI or BLI;

**WHEREAS**, should BLSI or BLI receive any proposal that may result in a Change in Control, the Board believes it imperative that BLSI and the Board be able to rely upon the Executive’s continued employment in the Executive’s then current position, and that BLSI be able to receive and rely upon Executive’s advice, if it requests it, as to the best interests of BLSI, BLI and their respective shareholders, without concern that Executive might be distracted by the personal uncertainties and risks created by such a proposal; and

**WHEREAS**, Executive wishes to continue to serve in Executive’s then current capacity, subject to assurance that in the event of a Change in Control, Executive will have a reasonable degree of financial security;

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, BLSI, BLI and Executive agree as follows:

1. If there is a Change in Control (as defined in Section 3 hereof) and Executive's employment is thereupon terminated or terminated within twenty four (24) months after the effective date thereof, Executive shall be entitled to the termination benefits set forth in Section 2 hereof. For purposes of this Agreement, Executive's employment shall be deemed to have been terminated only if BLSI terminates such employment other than for Cause or if a Constructive Termination occurs. "Cause" shall mean Executive's conviction of a felony, or an act or acts of personal dishonesty on Executive's part intended to result and resulting in material harm to BLSI, or any refusal by Executive to perform his assigned duties for a period exceeding ten (10) consecutive business days, other than any such refusal arising from a Constructive Termination or by reason of temporary physical or mental disability or illness. "Constructive Termination" shall mean a resignation by Executive because of any material adverse change or material diminution in Executive's reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by Executive in his/her good faith discretion); *provided, however*, that Executive shall notify BLSI in writing at least forty-five (45) days in advance of any election by Executive to terminate his or her employment hereunder, specifying the nature of the alleged adverse change or diminution, and BLSI or BLI, as the case may be, shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before Executive shall be entitled to exercise any such rights and remedies. Executive shall not be entitled to the benefits available hereunder unless such notice is timely given. For purposes of this Agreement, any reference to a "termination" (or any form thereof) shall mean a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h) by Executive from BLSI, BLI, and any other entity that, along with BLI, would be considered a single employer for purposes of Sections 414(b) and 414(c) of the Internal Revenue Code of 1986, as amended (the "Code").

2. The benefits payable to Executive pursuant to Section 1 hereof are as follows:

A. BLSI shall pay to Executive a lump sum cash payment, net of any applicable withholding taxes, in an amount equal to the annual salary paid or payable to Executive immediately prior to the effective date of such Change in Control (the "Lump Sum Payment"); *provided, however*, that if there are fewer than twelve (12) months remaining from the date of Executive's termination to Executive's normal retirement date under any retirement plan then in effect, BLSI shall instead pay Executive the amount obtained by multiplying the Lump Sum Payment by a fraction, the numerator of which is the number of months so remaining and the denominator of which is twelve (12). The applicable amount shall be paid on the next business day after the day of Executive's termination.

B. In addition to the payment described in Subsection 2.A. above, BLSI shall pay to Executive a lump sum cash payment, net of any applicable withholding taxes, in an amount equal to Executive's then current annual Stretch Bonus, as defined and determined annually by the Compensation Committee of the BLI Board of Directors (the "Lump Sum Bonus Payment"); *provided, however*, that (i) in the event Executive's then current Stretch Bonus is undefined or is not subject to a maximum payout, Executive's annual Stretch Bonus shall be deemed to be 200% of Executive's then current base salary and (ii) if there are fewer than twelve (12) months remaining from the date of Executive's termination to Executive's normal retirement date under any retirement plan then in effect, BLSI shall instead pay Executive the amount obtained by multiplying the Lump Sum Bonus Payment by a fraction, the numerator of which is the number of months so remaining and the denominator of which is twelve (12). Executive shall receive the Lump Sum Bonus Payment at the same time Executive receives the Lump Sum Payment described in Subsection 2.A. above.

C. For a period of one year after the date of Executive's termination, Executive (and his or her family, if their participation is permitted under the terms of the subject plan) shall be entitled to participate in any group life, hospitalization, or disability insurance plan, health program, or other executive benefit plan (other than bonus compensation or performance plans to the extent that such plans, in the case of Executive, are in lieu of the bonus plan set forth in Subsection 2.B. above) that is generally available to similarly titled executive officers of BLSI; provided, however, that Executive's participation in the plans referred to in this Subsection 2.C. shall be terminated (other than as provided by law) when and to the extent that Executive is entitled to receive the same from another employer during such period. Executive's participation in and benefits under any such plan shall be on the terms and subject to the conditions specified in the governing document of the particular plan. Notwithstanding the foregoing, with respect to any continued coverage provided pursuant to this Subsection 2.C., other than with respect to any continued coverage under a group health or hospitalization plan during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code: (i) the amount of benefits provided during any taxable year of Executive shall not affect the amount of benefits to be provided in any other taxable year of Executive, and (ii) the right to such benefits may not be subject to liquidation or exchange for another benefit.

D. If all or any portion of the amount payable to Executive under this Agreement, either alone or together with other amounts that Executive is entitled to receive in connection with a Change in Control, constitutes “excess parachute payments” within the meaning of Section 280G of the Code, or any successor provision, that is subject to the excise tax imposed by Section 4999 of the Code (or any similar tax or assessment), the amounts payable hereunder shall be increased to the extent necessary to place Executive in the same after-tax position as Executive would have been in had no such excise tax or assessment been imposed on any such payment paid or payable to Executive under this Agreement or any other payment that Executive may receive as a result of such Change in Control. The determination of the amount of any such tax or assessment and the resulting amount of incremental payment required hereby in connection therewith shall be made by the independent accounting firm employed by BLSI immediately prior to the applicable Change in Control, within thirty (30) calendar days after the payment of the amount payable pursuant to Subsections 2.A. and 2.B. hereof, and said incremental payment shall be made by the end of Executive’s taxable year next following the taxable year in which Executive remits payment of the tax or assessment being grossed-up pursuant to this Subsection.

E. If, after the date upon which any payment required under this Agreement has been made, it is determined (pursuant to final judgment of a court of competent jurisdiction or an agreed upon tax assessment) that the amount of excise or other similar taxes or assessments payable by Executive is greater than the amount initially so determined, then BLSI shall pay Executive an amount equal to the sum of (i) such additional excise or other similar taxes, plus (ii) any interest, fines and penalties resulting from such underpayment, plus (iii) an amount necessary to reimburse Executive for any income, excise or other tax or assessment payable by Executive with respect to the amounts specified in (i) and (ii) above, and the reimbursement provided by this clause (iii). Payment thereof shall be made by the end of Executive’s taxable year next following the taxable year in which Executive remits payment of the tax or assessment being reimbursed pursuant to this Subsection.

3. As used herein, “Change in Control” means the first to occur of any of the following events: (i) the acquisition by any person (as defined under Section 409A of the Code), or more than one person acting as a group (as defined in Section 409A of the Code), of the stock of BLI that, together with the stock of BLI held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of all of the stock of BLI, (ii) the acquisition by any persons, or more than one person acting as a group, within any 12-month period, of the stock of BLI possessing thirty percent (30%) or more of the total voting power of all of the stock of BLI, (iii) a majority of the members of the Board of Directors of BLI is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of BLI prior to the date of the appointment or election, or (iv) the acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from BLI that have a total gross fair market value equal to or more than forty percent (40%) of the total gross fair market value of all of the assets of BLI immediately prior to such acquisition or acquisitions. This definition of Change in Control under this Section 3 shall be interpreted in a manner that is consistent with the definition of “change in control event” under Section 409A of the Code and the Treasury Regulations promulgated thereunder. The effective date of any such Change in Control will be the date upon which the last event occurs of the last action is taken such that the definition of Change in Control (as set forth above) has been satisfied. For the purposes of this Agreement, the term “affiliate” means any person or entity that, along with BLI, constitutes a single employer under Sections 414(b) and 414(c) of the Code. Determination of affiliate will be tested as of the date immediately prior to any event constituting a Change in Control. Notwithstanding the other provisions in this Section 3, the term “Change in Control” will not mean any transaction, merger, consolidation or reorganization in which BLI exchanges or offers to exchange newly issued or treasury shares in an amount less than fifty percent (50%) of the then-outstanding equity securities of BLI entitled to vote for the election of directors, for fifty-one percent (51%) or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than BLI or an affiliate thereof (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.



4. If Executive hires legal counsel with respect to any alleged failure by BLSI or BLI to comply with any of the terms of this Agreement, or institutes any negotiation or institutes or responds to any legal action to assert or defend the validity of or to enforce Executive's rights under, or to recover damages for breach of, this Agreement, BLSI shall pay Executive's actual expenses for attorneys' fees and disbursements, together with such additional payments, if any, as may be necessary so that the net after-tax payments so made to Executive equal such fees and disbursements; *provided, however*, that Executive shall be responsible for his own fees and expenses with respect to any lawsuit between Executive and BLSI to enforce rights or obligations under this Agreement in which BLSI is the prevailing party. The fees and expenses incurred by Executive in instituting or responding to any such negotiation or legal action shall be paid by BLSI as they are incurred, in advance of the final disposition of the action or proceeding, upon receipt of an undertaking by Executive to repay such amounts if BLSI is ultimately determined to be the prevailing party. Notwithstanding the foregoing, (i) any costs must relate to a claim arising from the alleged breach of any obligation of BLSI under this Agreement during the lifetime of Executive, (ii) the amount of expenses eligible for reimbursement or payment, or benefits provided, in any taxable year of Executive may not affect the amount of expenses eligible for reimbursement or payment, or benefits that may be provided, in any other taxable year of Executive, (iii) any payment or reimbursement must be made on or before the last day of Executive's taxable year following the taxable year of Executive in which the expense being paid or reimbursed is incurred; and (iv) the right to payment or reimbursement or benefits may not be subject to liquidation or exchange for another benefit.

5. If any amount due Executive hereunder is not paid when due, then BLSI shall pay interest on said amount at an annual rate equal to the base lending rate of National City Bank, Cleveland, Ohio, or successor, as in effect from time to time, for the period between the date on which such payment is due and the date said amount is paid.

6. BLSI's obligation to pay Executive the compensation and to make the arrangements required hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any setoff, counterclaim, recoupment, defense or other right that BLSI may have against Executive or otherwise. All amounts payable by BLSI hereunder shall be paid without notice or demand. Subject to the proviso in Section 1 above, each and every payment made hereunder by BLSI shall be final and BLSI shall not seek to recover all or any part of such payment from Executive or from whosoever may be entitled thereto, for any reason whatsoever. Executive shall not be obligated to seek other employment or compensation or insurance in mitigation of any amount payable or arrangement made under any provision of this Agreement, and the obtaining of any such other employment or compensation or insurance, except as otherwise provided in this Agreement, shall in no event effect any reduction of BLSI's obligations to make the payments and arrangements required to be made under this Agreement.

7. From and after any termination of Executive's employment, Executive shall retain in confidence and not use for his own benefit or on behalf of any other person or entity any confidential information known to him concerning BLI, BLSI, their respective subsidiaries or their respective businesses so long as such information is not publicly disclosed by someone other than Executive.

8. In partial consideration of the benefits granted to Executive herein, Executive agrees that during the six-month period immediately following Executive's termination, if Executive shall have received benefits under Section 2 above, Executive shall not engage in any Competitive Activity. For purposes of this Agreement, "Competitive Activity" shall mean Executive's participation, without the approval of the Board or the written consent of the chief executive officer of BLSI, in the management of any business operation of any enterprise if such operation (a "Competitive Operation") engages in substantial and direct competition with BLSI's closeout business operation at the date of Executive's termination. For purposes of this Agreement, a closeout business operation shall be considered in substantial and direct competition with BLSI's closeout business operation if such business operation's sales of closeout merchandise amount to ten percent (10%) or more of such business operation's total sales. Competitive Activity shall not include (i) the mere ownership of securities in any enterprise or (ii) participation in the management of any enterprise or of any business operation thereof, other than in connection with a Competitive Operation of such enterprise.

9. Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating or affecting the remaining provision hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10. Except as specifically set forth herein, this Agreement supersedes and replaces any and all prior Senior Executive Severance Agreements or Executive Severance Agreements between the parties, but shall not be deemed to negate, supersede or alter any other agreement or arrangement between Executive and BLSI or BLI or any other rights to which Executive may be entitled, and shall be and remain in effect in addition to any such other agreement or rights, whether now existing or later created.

11. This Agreement shall be effective for a one year period beginning with the effective date hereof (the "Initial Term") and shall automatically be renewed for successive one year periods commencing on successive anniversaries of the date hereof (each, a "Renewal Term"), subject to the following conditions:

A. this Agreement shall be deemed terminated upon any termination or other cessation whatsoever of Executive's employment for any reason prior to a Change in Control;

B. this Agreement may be terminated by the mutual agreement of Executive and BLSI;

C. BLSI may terminate this Agreement at any time effective upon thirty (30) days prior written notice being given; provided, however, that such notice shall be ineffective if a Change in Control shall occur prior to the effective date of such termination.

Notwithstanding anything to the contrary herein, this Agreement shall not be terminated or deemed terminated except by mutual agreement of Executive and BLSI (i) during the first twenty four (24) months after the effective date of a Change in Control or (ii) during any period when BLSI or BLI has knowledge that any third person has taken steps reasonably calculated to effect a Change in Control, until such third person has abandoned or terminated his or its efforts in connection therewith. Upon any termination hereof, Executive shall have no further rights hereunder, except to the extent that rights to any benefit have accrued hereunder because of a Change in Control occurring prior to such termination.

12. In consideration of and as inducement to Executive to enter into this Agreement, BLI hereby absolutely and unconditionally guarantees to Executive the full, complete and timely payment and performance of all obligations of BLSI arising out of or in connection with this Agreement. This guaranty shall be enforceable against BLI without any suit or proceeding by Executive against BLSI and without any notice of nonpayment or nonperformance hereunder.

13. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and legal representatives. BLSI shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of BLSI, by agreement in form and substance satisfactory to Executive, expressly to assume and agree to perform and discharge all obligations of BLSI arising under this Agreement. All references herein to BLSI shall be deemed to include any such successor.

14. This Agreement shall in all respects be subject to, governed by and construed in accordance with the laws of the State of Ohio.

15. Notwithstanding the foregoing, if Executive is a “specified employee,” within the meaning of Treasury Regulation Section 1.409A-1(h) and as determined under BLI’s policy for determining specified employees, on Executive’s date of termination, and Executive is entitled to a payment and/or a benefit under this Agreement that is required to be delayed pursuant to Section 409A(a)(2) of the Code, then such payment or benefit shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following Executive’s date of termination (or, if earlier, Executive’s death). The first payment that can be made following such postponement period shall include the cumulative amount of any payments or benefits that could not be paid or provided during such postponement period due to the application of Section 409A(a)(2)(B)(i) of the Code.

16. This Agreement is intended to comply with, to the extent applicable, Section 409A of the Code and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to Executive and none of BLI, BLSI or their respective Board of Directors shall be liable to Executive for failure to comply with the requirements of Section 409A of the Code. Furthermore, BLSI may accelerate the time or schedule of a payment to Executive if at any time this Agreement fails to meet the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

ATTEST:

\_\_\_\_\_

BIG LOTS, INC.,  
an Ohio corporation

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

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

ATTEST:

\_\_\_\_\_

BIG LOTS STORES, INC., an Ohio corporation

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

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

EXECUTIVE:

\_\_\_\_\_

\_\_\_\_\_

## SENIOR EXECUTIVE SEVERANCE AGREEMENT

This Senior Executive Severance Agreement (this “Agreement”) is entered into and made effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and among BIG LOTS STORES, INC., an Ohio corporation (“BLSI”), BIG LOTS, INC., an Ohio corporation and the ultimate parent company of BLSI (“BLI”), and \_\_\_\_\_, an individual residing in the State of \_\_\_\_\_ ( “Executive”).

**WHEREAS**, the Board of Directors of BLSI (the “Board”) believes it is in the best interests of BLSI and its shareholders to assure the continued services of Executive, undiminished by any actual or perceived threat to continued employment that may arise from an actual or threatened Change in Control (as defined herein) of BLSI or BLI;

**WHEREAS**, should BLSI or BLI receive any proposal that may result in a Change in Control, the Board believes it imperative that BLSI and the Board be able to rely upon Executive’s continued employment in Executive’s then current position, and that BLSI be able to receive and rely upon Executive’s advice, if it requests it, as to the best interests of BLSI, BLI and their respective shareholders, without concern that Executive might be distracted by the personal uncertainties and risks created by such a proposal; and

**WHEREAS**, Executive wishes to continue to serve in Executive’s then current capacity, subject to assurance that in the event of a Change in Control, Executive will have a reasonable degree of financial security;

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, BLSI, BLI and Executive agree as follows:

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1. If there is a Change in Control (as defined in Section 3 hereof) and Executive's employment is thereupon terminated or terminated within twenty four (24) months after the effective date thereof, Executive shall be entitled to the termination benefits set forth in Section 2 hereof. For purposes of this Agreement, Executive's employment shall be deemed to have been terminated only if BLSI terminates such employment other than for Cause or if a Constructive Termination occurs. "Cause" shall mean Executive's conviction of a felony, or an act or acts of personal dishonesty on Executive's part intended to result and resulting in material harm to BLSI, or any refusal by Executive to perform his assigned duties for a period exceeding ten (10) consecutive business days, other than any such refusal arising from a Constructive Termination or by reason of temporary physical or mental disability or illness. "Constructive Termination" shall mean a resignation by Executive because of any material adverse change or material diminution in Executive's reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment (as reasonably determined by Executive in his/her good faith discretion); *provided, however*, that Executive shall notify BLSI in writing at least forty-five (45) days in advance of any election by Executive to terminate his or her employment hereunder, specifying the nature of the alleged adverse change or diminution, and BLSI or BLI, as the case may be, shall have a period of ten (10) business days after the receipt of such notice to cure such alleged adverse change or diminution before Executive shall be entitled to exercise any such rights and remedies. Executive shall not be entitled to the benefits available hereunder unless such notice is timely given. For purposes of this Agreement, any reference to a "termination" (or any form thereof) shall mean a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h) by Executive from BLSI, BLI, and any other entity that, along with BLI, would be considered a single employer for purposes of Sections 414(b) and 414(c) of the Internal Revenue Code of 1986, as amended (the "Code").

2. The benefits payable to Executive pursuant to Section 1 hereof are as follows:

A. BLSI shall pay to Executive a lump sum cash payment, net of any applicable withholding taxes, in an amount equal to two times the annual salary paid or payable to Executive immediately prior to the effective date of such Change in Control (the "Lump Sum Payment"); *provided, however*, that if there are fewer than twenty-four (24) months remaining from the date of Executive's termination to Executive's normal retirement date under any retirement plan then in effect, BLSI shall instead pay Executive the amount obtained by multiplying the Lump Sum Payment by a fraction, the numerator of which is the number of months so remaining and the denominator of which is twenty-four (24). The applicable amount shall be paid on the next business day after the day of Executive's termination.

B. In addition to the payment described in Subsection 2.A. above, BLSI shall pay to Executive a lump sum cash payment, net of any applicable withholding taxes, in an amount equal to two times Executive's then current annual Stretch Bonus, as defined and determined annually by the Compensation Committee of the BLI Board of Directors (the "Lump Sum Bonus Payment"); *provided, however*, that (i) in the event Executive's then current Stretch Bonus is undefined or is not subject to a maximum payout, Executive's annual Stretch Bonus shall be deemed to be 200% of Executive's then current base salary and (ii) if there are fewer than twenty-four (24) months remaining from the date of Executive's termination to Executive's normal retirement date under any retirement plan then in effect, BLSI shall instead pay Executive the amount obtained by multiplying the Lump Sum Bonus Payment by a fraction, the numerator of which is the number of months so remaining and the denominator of which is twenty-four (24). Executive shall receive the Lump Sum Bonus Payment at the same time Executive receives the Lump Sum Payment described in Subsection 2.A. above.

C. For a period of one year after the date of Executive's termination, Executive (and his or her family, if their participation is permitted under the terms of the subject plan) shall be entitled to participate in any group life, hospitalization, or disability insurance plan, health program, or other executive benefit plan (other than bonus compensation or performance plans to the extent that such plans, in the case of Executive, are in lieu of the bonus plan set forth in Subsection 2.B. above) that is generally available to similarly titled executive officers of BLSI; *provided, however*, that Executive's participation in the plans referred to in this Subsection 2.C. shall be terminated (other than as provided by law) when and to the extent that Executive is entitled to receive the same from another employer during such period. Executive's participation in and benefits under any such plan shall be on the terms and subject to the conditions specified in the governing document of the particular plan, including, but not limited to, reimbursement of one hundred percent (100%) of all medical and dental expenses incurred during the period of participation in the plans referred to above. Notwithstanding the foregoing, with respect to any continued coverage or reimbursement pursuant to this Subsection 2.C., other than with respect to any continued coverage under a group health or hospitalization plan during the applicable COBRA health insurance benefit continuation period described in Section 4980B of the Code: (i) the amount of expenses eligible for reimbursement or benefits provided during any taxable year of Executive shall not affect the amount of expenses eligible for reimbursement or benefits to be provided in any other taxable year of Executive, (ii) any such reimbursement shall be made on or before the last day of Executive's taxable year following the taxable year of Executive in which the expense was incurred, and (iii) the right to such reimbursement or benefits may not be subject to liquidation or exchange for another benefit.

D. If all or any portion of the amount payable to Executive under this Agreement, either alone or together with other amounts that Executive is entitled to receive in connection with a Change in Control, constitutes “excess parachute payments” within the meaning of Section 280G of the Code, or any successor provision, that is subject to the excise tax imposed by Section 4999 of the Code (or any similar tax or assessment), the amounts payable hereunder shall be increased to the extent necessary to place Executive in the same after-tax position as Executive would have been in had no such excise tax or assessment been imposed on any such payment paid or payable to Executive under this Agreement or any other payment that Executive may receive as a result of such Change in Control. The determination of the amount of any such tax or assessment and the resulting amount of incremental payment required hereby in connection therewith shall be made by the independent accounting firm employed by BLSI immediately prior to the applicable Change in Control, within thirty (30) calendar days after the payment of the amount payable pursuant to Subsections 2.A. and 2.B. hereof, and said incremental payment shall be made by the end of Executive’s taxable year next following the taxable year in which Executive remits payment of the tax or assessment being grossed-up pursuant to this Subsection.

E. If, after the date upon which any payment required under this Agreement has been made, it is determined (pursuant to final judgment of a court of competent jurisdiction or an agreed upon tax assessment) that the amount of excise or other similar taxes or assessments payable by Executive is greater than the amount initially so determined, then BLSI shall pay Executive an amount equal to the sum of (i) such additional excise or other similar taxes, plus (ii) any interest, fines and penalties resulting from such underpayment, plus (iii) an amount necessary to reimburse Executive for any income, excise or other tax or assessment payable by Executive with respect to the amounts specified in (i) and (ii) above, and the reimbursement provided by this clause (iii). Payment thereof shall be made by the end of Executive’s taxable year next following the taxable year in which Executive remits payment of the amounts being reimbursed pursuant to this Subsection.

3. As used herein, “Change in Control” means the first to occur of any of the following events: (i) the acquisition by any person (as defined under Section 409A of the Code), or more than one person acting as a group (as defined in Section 409A of the Code), of the stock of BLI that, together with the stock of BLI held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of all of the stock of BLI, (ii) the acquisition by any persons, or more than one person acting as a group, within any 12-month period, of the stock of BLI possessing thirty percent (30%) or more of the total voting power of all of the stock of BLI, (iii) a majority of the members of the Board of Directors of BLI is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of BLI prior to the date of the appointment or election, or (iv) the acquisition by any person, or more than one person acting as a group, within any 12-month period, of assets from BLI that have a total gross fair market value equal to or more than forty percent (40%) of the total gross fair market value of all of the assets of BLI immediately prior to such acquisition or acquisitions. This definition of Change in Control under this Section 3 shall be interpreted in a manner that is consistent with the definition of “change in control event” under Section 409A of the Code and the Treasury Regulations promulgated thereunder. The effective date of any such Change in Control will be the date upon which the last event occurs of the last action is taken such that the definition of Change in Control (as set forth above) has been satisfied. For the purposes of this Agreement, the term “affiliate” means any person or entity that, along with BLI, constitutes a single employer under Sections 414(b) and 414(c) of the Code. Determination of affiliate will be tested as of the date immediately prior to any event constituting a Change in Control. Notwithstanding the other provisions in this Section 3, the term “Change in Control” will not mean any transaction, merger, consolidation or reorganization in which BLI exchanges or offers to exchange newly issued or treasury shares in an amount less than fifty percent (50%) of the then-outstanding equity securities of BLI entitled to vote for the election of directors, for fifty-one percent (51%) or more of the outstanding equity securities entitled to vote for the election of at least the majority of the directors of a corporation other than BLI or an affiliate thereof (the “Acquired Corporation”), or for all or substantially all of the assets of the Acquired Corporation.

4. If Executive hires legal counsel with respect to any alleged failure by BLSI or BLI to comply with any of the terms of this Agreement, or institutes any negotiation or institutes or responds to any legal action to assert or defend the validity of or to enforce Executive's rights under, or to recover damages for breach of, this Agreement, BLSI shall pay Executive's actual expenses for attorneys' fees and disbursements, together with such additional payments, if any, as may be necessary so that the net after-tax payments so made to Executive equal such fees and disbursements; *provided, however*, that Executive shall be responsible for his own fees and expenses with respect to any lawsuit between Executive and BLSI to enforce rights or obligations under this Agreement in which BLSI is the prevailing party. The fees and expenses incurred by Executive in instituting or responding to any such negotiation or legal action shall be paid by BLSI as they are incurred, in advance of the final disposition of the action or proceeding, upon receipt of an undertaking by Executive to repay such amounts if BLSI is ultimately determined to be the prevailing party. Notwithstanding the foregoing, (i) any costs must relate to a claim arising from the alleged breach of any obligation of BLSI under this Agreement [during the lifetime] of Executive, (ii) the amount of expenses eligible for reimbursement or payment, or benefits provided, in any taxable year of Executive may not affect the amount of expenses eligible for reimbursement or payment, or benefits that may be provided, in any other taxable year of Executive, (iii) any payment or reimbursement must be made on or before the last day of Executive's taxable year following the taxable year of Executive in which the expense being paid or reimbursed is incurred; and (iv) the right to payment or reimbursement or benefits may not be subject to liquidation or exchange for another benefit.

5. If any amount due Executive hereunder is not paid when due, then BLSI shall pay interest on said amount at an annual rate equal to the base lending rate of National City Bank, Cleveland, Ohio, or successor, as in effect from time to time, for the period between the date on which such payment is due and the date said amount is paid.

6. BLSI's obligation to pay Executive the compensation and to make the arrangements required hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any setoff, counterclaim, recoupment, defense or other right that BLSI may have against Executive or otherwise. All amounts payable by BLSI hereunder shall be paid without notice or demand. Subject to the proviso in Section 1 above, each and every payment made hereunder by BLSI shall be final and BLSI shall not seek to recover all or any part of such payment from Executive or from whosoever may be entitled thereto, for any reason whatsoever. Executive shall not be obligated to seek other employment or compensation or insurance in mitigation of any amount payable or arrangement made under any provision of this Agreement, and the obtaining of any such other employment or compensation or insurance, except as otherwise provided in this Agreement, shall in no event effect any reduction of BLSI's obligations to make the payments and arrangements required to be made under this Agreement.

7. From and after any termination of Executive's employment, Executive shall retain in confidence and not use for his own benefit or on behalf of any other person or entity any confidential information known to him concerning BLI, BLSI, their respective subsidiaries or their respective businesses so long as such information is not publicly disclosed by someone other than Executive.

8. In partial consideration of the benefits granted to Executive herein, Executive agrees that during the six-month period immediately following Executive's termination, if Executive shall have received benefits under Section 2 above, Executive shall not engage in any Competitive Activity. For purposes of this Agreement, "Competitive Activity" shall mean Executive's participation, without the approval of the Board or the written consent of the chief executive officer of BLSI, in the management of any business operation of any enterprise if such operation (a "Competitive Operation") engages in substantial and direct competition with BLSI's closeout business operation at the date of Executive's termination. For purposes of this Agreement, a closeout business operation shall be considered in substantial and direct competition with BLSI's closeout business operation if such business operation's sales of closeout merchandise amount to ten percent (10%) or more of such business operation's total sales. Competitive Activity shall not include (i) the mere ownership of securities in any enterprise or (ii) participation in the management of any enterprise or of any business operation thereof, other than in connection with a Competitive Operation of such enterprise.

9. Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating or affecting the remaining provision hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.



10. Except as specifically set forth herein, this Agreement supersedes and replaces any and all prior Senior Executive Severance Agreements or Executive Severance Agreements between the parties, but shall not be deemed to negate, supersede or alter any other agreement or arrangement between Executive and BLSI or BLI or any other rights to which Executive may be entitled, and shall be and remain in effect in addition to any such other agreement or rights, whether now existing or later created.

11. This Agreement shall be effective for a one year period beginning with the effective date hereof (the "Initial Term") and shall automatically be renewed for successive one year periods commencing on successive anniversaries of the date hereof (each, a "Renewal Term"), subject to the following conditions:

A. this Agreement shall be deemed terminated upon any termination or other cessation whatsoever of Executive's employment for any reason prior to a Change in Control;

B. this Agreement may be terminated by the mutual agreement of Executive and BLSI;

C. BLSI may terminate this Agreement at any time effective upon thirty (30) days prior written notice being given; provided, however, that such notice shall be ineffective if a Change in Control shall occur prior to the effective date of such termination.

Notwithstanding anything to the contrary herein, this Agreement shall not be terminated or deemed terminated except by mutual agreement of Executive and BLSI (i) during the first twenty four (24) months after the effective date of a Change in Control or (ii) during any period when BLSI or BLI has knowledge that any third person has taken steps reasonably calculated to effect a Change in Control, until such third person has abandoned or terminated his or its efforts in connection therewith. Upon any termination hereof, Executive shall have no further rights hereunder, except to the extent that rights to any benefit have accrued hereunder because of a Change in Control occurring prior to such termination.

12. In consideration of and as inducement to Executive to enter into this Agreement, BLI hereby absolutely and unconditionally guarantees to Executive the full, complete and timely payment and performance of all obligations of BLSI arising out of or in connection with this Agreement. This guaranty shall be enforceable against BLI without any suit or proceeding by Executive against BLSI and without any notice of nonpayment or nonperformance hereunder.

13. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and legal representatives. BLSI shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of BLSI, by agreement in form and substance satisfactory to Executive, expressly to assume and agree to perform and discharge all obligations of BLSI arising under this Agreement. All references herein to BLSI shall be deemed to include any such successor.

14. This Agreement shall in all respects be subject to, governed by and construed in accordance with the laws of the State of Ohio.

15. Notwithstanding the foregoing, if Executive is a “specified employee,” within the meaning of Treasury Regulation Section 1.409A-1(h) and as determined under BLI’s policy for determining specified employees, on Executive’s date of termination, and Executive is entitled to a payment and/or benefit under this Agreement that is required to be delayed pursuant to Section 409A(a)(2) of the Code, then such payment or benefit shall not be paid or provided (or begin to be paid or provided) until the first business day of the seventh month following Executive’s date of termination (or, if earlier, Executive’s death). The first payment that can be made following such postponement period shall include the cumulative amount of any payments or benefits that could not be paid or provided during such postponement period due to the application of Section 409A(a)(2)(B)(i) of the Code.

16. This Agreement is intended to comply with, to the extent applicable, Section 409A of the Code and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted, administered and operated accordingly. Nothing herein shall be construed as an entitlement to or guarantee of any particular tax treatment to Executive and none of BLI, BLSI or their respective Board of Directors shall be liable to Executive for failure to comply with the requirements of Section 409A of the Code. Furthermore, BLSI may accelerate the time or schedule of a payment to Executive if at any time this Agreement fails to meet the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder.

**IN WITNESS WHEREOF**, this Agreement has been executed as of the day and year first above written.

ATTEST:

\_\_\_\_\_

BIG LOTS, INC.,

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

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

ATTEST:

\_\_\_\_\_

BIG LOTS, STORES, INC., an Ohio corporation

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

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

EXECUTIVE:

\_\_\_\_\_

\_\_\_\_\_

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

I, Steven S. Fishman, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Big Lots, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: December 9, 2008

By: /s/ Steven S. Fishman  
Steven S. Fishman  
*Chairman of the Board, Chief Executive Officer and  
President*

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

I, Joe R. Cooper, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Big Lots, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: December 9, 2008

By: /s/ Joe R. Cooper  
Joe R. Cooper  
Senior Vice President and  
Chief Financial Officer

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**CERTIFICATION OF CHIEF 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 1, 2008, of Big Lots, Inc. (the "Company"). I, Steven S. Fishman, Chairman of the Board, Chief Executive Officer and President of the Company, certify that:

- (i) the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: December 9, 2008

By: /s/ Steven S. Fishman  
Steven S. Fishman  
*Chairman of the Board, Chief Executive Officer and  
President*

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**CERTIFICATION OF CHIEF 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 1, 2008, of Big Lots, Inc. (the "Company"). I, Joe R. Cooper, Senior Vice President 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 9, 2008

By: /s/ Joe R. Cooper  
Joe R. Cooper  
Senior Vice President and  
Chief Financial Officer

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