

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 April 29, 2023  
or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-08897

**BIG LOTS, INC.**

(Exact name of registrant as specified in its charter)

Ohio 06-1119097  
(State or Other Jurisdiction of Incorporation or Organization) (I.R.S. Employer Identification No.)

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

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

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

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

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes☒ No☐

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

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☐ Emerging growth company ☐

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

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

The number of the registrant’s common shares, \$0.01 par value, outstanding as of June 2, 2023, was 29,177,478.

**BIG LOTS, INC.**  
**FORM 10-Q**  
**FOR THE FISCAL QUARTER ENDED APRIL 29, 2023**

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## Part I. Financial Information

### Item 1. Financial Statements

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

	Thirteen Weeks Ended	
	April 29, 2023	April 30, 2022
Net sales	\$ 1,123,577	\$ 1,374,714
Cost of sales (exclusive of depreciation expense shown separately below)	731,108	870,120
Gross margin	392,469	504,594
Selling and administrative expenses	617,066	480,779
Depreciation expense	36,582	37,356
Operating loss	(261,179)	(13,541)
Interest expense	(9,149)	(2,750)
Other income (expense)	5	1,040
Loss before income taxes	(270,323)	(15,251)
Income tax benefit	(64,250)	(4,169)
Net loss and comprehensive loss	\$ (206,073)	\$ (11,082)
Earnings (loss) per common share		
Basic	\$ (7.10)	\$ (0.39)
Diluted	\$ (7.10)	\$ (0.39)
Weighted-average common shares outstanding		
Basic	29,018	28,621
Dilutive effect of share-based awards	—	—
Diluted	29,018	28,621
Cash dividends declared per common share		
	\$ 0.30	\$ 0.30

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

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

	April 29, 2023	January 28, 2023
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 51,320	\$ 44,730
Inventories	1,087,656	1,147,949
Other current assets	88,887	92,635
Total current assets	1,227,863	1,285,314
Operating lease right-of-use assets	1,522,917	1,619,756
Property and equipment - net	745,232	691,111
Deferred income taxes	121,926	56,301
Other assets	39,797	38,449
Total assets	\$ 3,657,735	\$ 3,690,931
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 316,900	\$ 421,680
Current operating lease liabilities	250,204	252,320
Property, payroll, and other taxes	72,805	71,274
Accrued operating expenses	133,750	111,752
Insurance reserves	35,321	35,871
Accrued salaries and wages	26,100	26,112
Income taxes payable	918	845
Total current liabilities	835,998	919,854
Long-term debt	501,600	301,400
Noncurrent operating lease liabilities	1,483,394	1,514,009
Insurance reserves	58,224	58,613
Unrecognized tax benefits	8,372	8,091
Other liabilities	218,788	125,057
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 29,139 shares and 28,959, respectively	1,175	1,175
Treasury shares - 88,356 shares and 88,536 shares, respectively, at cost	(3,095,791)	(3,105,175)
Additional paid-in capital	620,971	627,714
Retained earnings	3,025,004	3,240,193
Total shareholders' equity	551,359	763,907
Total liabilities and shareholders' equity	\$ 3,657,735	\$ 3,690,931

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

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

	Common		Treasury		Additional Paid-In Capital	Retained Earnings	Total
	Shares	Amount	Shares	Amount			
Thirteen Weeks Ended April 30, 2022							
Balance - January 29, 2022	28,476	\$ 1,175	89,019	\$ (3,121,602)	\$ 640,522	\$ 3,487,268	\$ 1,007,363
Comprehensive loss	—	—	—	—	—	(11,082)	(11,082)
Dividends declared (\$0.30 per share)	—	—	—	—	—	(8,981)	(8,981)
Purchases of common shares	(280)	—	281	(10,639)	—	—	(10,639)
Restricted shares vested	356	—	(356)	12,483	(12,483)	—	—
Performance shares vested	341	—	(342)	11,952	(11,952)	—	—
Share-based employee compensation expense	—	—	—	—	3,667	—	3,667
Balance - April 30, 2022	28,893	\$ 1,175	88,602	\$ (3,107,806)	\$ 619,754	\$ 3,467,205	\$ 980,328
Thirteen Weeks Ended April 29, 2023							
Balance - January 28, 2023	28,959	1,175	88,536	(3,105,175)	627,714	3,240,193	763,907
Comprehensive loss	—	—	—	—	—	(206,073)	(206,073)
Dividends declared (\$0.30 per share)	—	—	—	—	—	(9,116)	(9,116)
Purchases of common shares	(128)	—	128	(1,417)	—	—	(1,417)
Restricted shares vested	308	—	(308)	10,801	(10,801)	—	—
Performance shares vested	—	—	—	—	—	—	—
Share-based employee compensation expense	—	—	—	—	4,058	—	4,058
Balance - April 29, 2023	29,139	1,175	88,356	(3,095,791)	620,971	3,025,004	551,359

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)**

	Thirteen Weeks Ended	
	April 29, 2023	April 30, 2022
Operating activities:		
Net loss	\$ (206,073)	\$ (11,082)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	37,196	37,631
Non-cash lease expense	118,921	68,473
Deferred income taxes	(65,624)	2,215
Non-cash impairment charge	84,449	222
Gain on disposition of property and equipment	(3,419)	(1,568)
Non-cash share-based compensation expense	4,058	3,667
Unrealized gain on fuel derivatives	—	(699)
Change in assets and liabilities:		
Inventories	60,294	(100,940)
Accounts payable	(104,780)	(98,972)
Operating lease liabilities	(117,874)	(66,127)
Current income taxes	7,050	(8,856)
Other current assets	(3,985)	3,908
Other current liabilities	23,262	(20,432)
Other assets	(1,583)	107
Other liabilities	(830)	(3,780)
Net cash used in operating activities	(168,938)	(196,233)
Investing activities:		
Capital expenditures	(16,861)	(43,741)
Cash proceeds from sale of property and equipment	4,386	2,505
Other	(6)	(5)
Net cash used in investing activities	(12,481)	(41,241)
Financing activities:		
Net proceeds from long-term debt	200,200	267,300
Net repayments of sale and leaseback financing	(743)	—
Payment of finance lease obligations	(444)	(497)
Dividends paid	(9,587)	(10,705)
Payment for treasury shares acquired	(1,417)	(10,639)
Net cash provided by financing activities	188,009	245,459
Increase in cash and cash equivalents	6,590	7,985
Cash and cash equivalents:		
Beginning of period	44,730	53,722
End of period	\$ 51,320	\$ 61,707

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

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

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

All references in this report to “we,” “us,” or “our” are to Big Lots, Inc. and its subsidiaries. We are a home discount retailer in the United States (“U.S.”). At April 29, 2023, we operated 1,427 stores in 48 states and an e-commerce platform. We make available, free of charge, through the “Investor Relations” section of our website ([www.biglots.com](http://www.biglots.com)) under the “SEC Filings” caption, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), as soon as reasonably practicable after we file such material with, or furnish it to, the Securities and Exchange Commission (“SEC”). The contents of our websites are not part of this report.

The accompanying consolidated financial statements and these notes have been prepared in accordance with the rules and regulations of the SEC for interim financial information. The consolidated financial statements reflect all normal recurring adjustments which management believes are necessary to present fairly our financial condition, results of operations, and cash flows for all periods presented. The consolidated financial statements, however, do not include all information necessary for a complete presentation of financial condition, results of operations, and cash flows in conformity with accounting principles generally accepted in the United States of America (“GAAP”). Interim results may not necessarily be indicative of results that may be expected for, or actually result during, any other interim period or for the year as a whole. We have historically experienced seasonal fluctuations, with a larger percentage of our net sales and operating profit realized in our fourth fiscal quarter. The accompanying consolidated financial statements and these notes should be read in conjunction with the audited consolidated financial statements and notes included in our Annual Report on Form 10-K for the fiscal year ended January 28, 2023 (“2022 Form 10-K”).

**Fiscal Periods**

Our fiscal year ends on the Saturday nearest to January 31, which results in fiscal years consisting of 52 or 53 weeks. Unless otherwise stated, references to years in this report relate to fiscal years rather than calendar years. Fiscal year 2023 (“2023”) is comprised of the 53 weeks that began on January 29, 2023 and will end on February 3, 2024. Fiscal year 2022 (“2022”) was comprised of the 52 weeks that began on January 30, 2022 and ended on January 28, 2023. The fiscal quarters ended April 29, 2023 (“first quarter of 2023”) and April 30, 2022 (“first quarter of 2022”) were both comprised of 13 weeks.

**Long-Lived Assets**

As a result of the significant decline in net sales and an increase in operating loss during the first quarter of 2023, we performed impairment analyses at the store level. Our long-lived assets primarily consist of property and equipment - net and operating lease right-of-use assets. If the net book value of a store’s long-lived assets is not recoverable by the expected undiscounted future cash flows of the store, we estimate the fair value of the store’s assets and recognize an impairment charge for the excess net book value of the store’s long-lived assets over its fair value (categorized as Level 3 under the fair value hierarchy). Fair value at the store level is typically based on projected discounted cash flows over the remaining lease term.

During the first quarter of 2023, the Company recorded aggregate asset impairment charges of \$83.8 million related to 237 underperforming store locations, which were comprised of \$62.1 million of operating lease right-of-use assets, \$22.4 million of property and equipment - net, and partially offset by a gain on extinguishment of a lease liability resulting from a lease cancellation from a previous impaired store of \$0.7 million. The impairment charges were recorded in selling and administrative expenses in our accompanying consolidated statements of operations and comprehensive loss.

In the first quarter of 2023, the Company completed the sale of one owned store location that was held for sale at the end of fiscal 2022 with an aggregate net book value of \$0.7 million. The net cash proceeds on the sale of real estate were \$4.4 million and resulted in a gain after related expenses of \$3.8 million.

**Selling and Administrative Expenses**

Selling and administrative expenses include impairment charges, store expenses (such as payroll and occupancy costs) and costs related to warehousing, distribution, outbound transportation to our stores, advertising, purchasing, insurance, non-income taxes, accepting credit/debit cards, and overhead. Our selling and administrative expense rates may not be comparable to those of other retailers that include warehousing, distribution, and outbound transportation costs to stores in cost of sales. Distribution and outbound transportation costs included in selling and administrative expenses were \$140.2 million and \$82.0 million for the first quarter of 2023 and the first quarter of 2022, respectively. Included in our distribution and outbound transportation costs for the first quarter of 2023 were \$8.6 million of closing costs associated with the planned closure of our forward distribution

centers (“FDCs”), which we expect to fully wind down by the end of the second quarter of 2023, and \$53.6 million of expense associated with the exit of the former synthetic lease on our Apple Valley, CA distribution center that was refinanced in the first quarter of 2023.

### Advertising Expense

Advertising costs, which are expensed as incurred, consist primarily of television and print advertising, digital, social media, internet and e-mail marketing and advertising, payment card-linked marketing and in-store point-of-purchase signage and presentations. Advertising expenses are included in selling and administrative expenses. Advertising expenses were \$24.8 million and \$21.4 million for the first quarter of 2023 and the first quarter of 2022, respectively.

### Supplemental Cash Flow Disclosures

The following table provides supplemental cash flow information for the first quarter of 2023 and the first quarter of 2022:

(In thousands)	Thirteen Weeks Ended	
	April 29, 2023	April 30, 2022
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest	\$ 7,945	\$ 3,326
Cash paid for income taxes, excluding impact of refunds	267	2,933
Gross proceeds from long-term debt	533,100	648,200
Gross payments of long-term debt	332,900	380,900
Cash paid for operating lease liabilities	149,007	90,725
<b>Non-cash activity:</b>		
Assets acquired under finance leases	38	1,377
Accrued property and equipment	9,919	26,073
Deemed acquisition in “failed sale-leaseback transaction”	100,000	—
Operating lease right-of-use assets obtained in exchange for operating lease liabilities	85,933	65,753

### Reclassifications

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

### Recent Accounting Pronouncements

In September 2022, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2022-04, Enhanced Disclosures about the Supplier Finance Programs. ASU 2022-04 requires buyers in supplier finance programs to disclose qualitative and quantitative information about their supplier finance programs. Interim and annual requirements include disclosure of outstanding amounts under the obligations as of the end of the reporting period, and annual requirements include a rollforward of those obligations for the annual reporting period, as well as a description of payment and other key terms of the programs. The Company adopted this ASU in fiscal year 2023, except for the disclosure of rollforward activity, which is effective on a prospective basis beginning in fiscal year 2024. See [Note 9, Supplier Financing](#) for disclosure related to the Company’s supplier financing program obligations.

There are currently no additional new accounting pronouncements with a future effective date that are of significance, or potential significance, to us.

## NOTE 2 – DEBT

### Bank Credit Facility

On September 21, 2022, we entered into a five-year asset-based revolving credit facility (“2022 Credit Agreement”) in an aggregate committed amount of up to \$900 million (the “Commitments”) that expires on September 21, 2027. In connection with our entry into the 2022 Credit Agreement, we paid bank fees and other expenses in the aggregate amount of \$3.4 million, which are being amortized over the term of the 2022 Credit Agreement.



Revolving loans under the 2022 Credit Agreement are available in an aggregate amount equal to the lesser of (1) the aggregate Commitments and (2) a borrowing base consisting of eligible credit card receivables and eligible inventory (including in-transit inventory), subject to customary exceptions and reserves. Under the 2022 Credit Agreement, we may obtain additional Commitments on no more than five occasions in an aggregate amount of up to \$300 million, subject to agreement by the lenders to increase their respective Commitments and certain other conditions. The 2022 Credit Agreement includes a swing loan sublimit of 10% of the then applicable aggregate Commitments and a \$90 million letter of credit sublimit. Loans made under the 2022 Credit Agreement may be prepaid without penalty. Borrowings under the 2022 Credit Agreement are available for general corporate purposes, working capital and to repay certain of our indebtedness. Our obligations under the 2022 Credit Agreement are secured by our working capital assets (including inventory, credit card receivables and other accounts receivable, deposit accounts, and cash), subject to customary exceptions. The pricing and certain fees under the 2022 Credit Agreement fluctuate based on our availability under the 2022 Credit Agreement. The 2022 Credit Agreement allows us to select our interest rate for each borrowing from multiple interest rate options. The interest rate options are generally derived from the prime rate or one, three or six month adjusted Term SOFR. We will also pay an unused commitment fee of 0.20% per annum on the unused Commitments. The 2022 Credit Agreement contains an environmental, social and governance (“ESG”) provision, which may provide favorable pricing and fee adjustments if we meet ESG performance criteria to be established by a future amendment to the 2022 Credit Agreement.

The 2022 Credit Agreement contains customary affirmative and negative covenants (including, where applicable, restrictions on our ability to, among other things, incur additional indebtedness, pay dividends, redeem or repurchase stock, prepay certain indebtedness, make certain loans and investments, dispose of assets, enter into restrictive agreements, engage in transactions with affiliates, modify organizational documents, incur liens and consummate mergers and other fundamental changes) and events of default. In addition, the 2022 Credit Agreement requires us to maintain a fixed charge coverage ratio of not less than 1.0 if (1) certain events of default occur and continue or (2) borrowing availability under the 2022 Credit Agreement is less than the greater of (a) 10% of the Maximum Credit Amount (as defined in the 2022 Credit Agreement) or (b) \$67.5 million. A violation of these covenants could result in a default under the 2022 Credit Agreement which could permit the lenders to restrict our ability to further access the 2022 Credit Agreement for loans and letters of credit and require the immediate repayment of any outstanding loans under the 2022 Credit Agreement.

As of April 29, 2023, we had a Borrowing Base (as defined under the 2022 Credit Agreement) of \$900.0 million under the 2022 Credit Agreement. At April 29, 2023, we had \$501.6 million in borrowings outstanding under the 2022 Credit Agreement and \$31.7 million committed to outstanding letters of credit, leaving \$366.7 million available under the 2022 Credit Agreement, subject to the borrowing base limitations as discussed above. At April 29, 2023, we had \$276.7 million available under the 2022 Credit Agreement, net of the borrowing base limitations discussed above.

The fair values of our long-term obligations under the 2022 Credit Agreement are estimated based on quoted market prices for the same or similar issues and the current interest rates offered for similar instruments. These fair value measurements are classified as Level 2 within the fair value hierarchy. The carrying value of our debt is a reasonable estimate for fair value.

### **NOTE 3 – SYNTHETIC LEASE**

#### ***Synthetic Lease***

On March 15, 2023, the Company, Bankers Commercial Corporation (“Lessor”), the rent assignees parties thereto (“Rent Assignees” and, together with Lessor, “Participants”), MUFG Bank, Ltd., as collateral agent for the Rent Assignees (in such capacity, “Collateral Agent”), and MUFG Bank, Ltd., as administrative agent for the Participants, entered into a Participation Agreement (the “Participation Agreement”), pursuant to which the Participants funded \$100 million to Wachovia Service Corporation (“Prior Lessor”) to finance Lessor’s purchase of the land and building related to our Apple Valley, CA distribution center (“Leased Property”) from the Prior Lessor.

Also on March 15, 2023, we entered into a Lease Agreement and supplement to the Lease Agreement (collectively, the “Lease” and together with the Participation Agreement and related agreements, the “2023 Synthetic Lease”) pursuant to which the Lessor will lease the Leased Property to the Company for an initial term of 60 months. The Lease may be extended for up to an additional five years, in one-year or longer annual periods, with each renewal subject to approval by the Participants. The 2023 Synthetic Lease requires the Company to pay basic rent on the scheduled payment dates in arrears in an amount equal to (a) a per annum rate equal to Term SOFR for the applicable payment period plus a 10 basis point spread adjustment plus an applicable margin equal to 250 basis points multiplied by (b) the portion of the lease balance not constituting the investment by Lessor in the Leased Property. In addition to basic rent, the Company must pay all costs and expenses associated with the use or occupancy of the Leased Property, including without limitation, maintenance, insurance and certain indemnity payments. GAAP treatment of the synthetic lease refinancing transaction requires us to treat the assignment of the purchase option from Prior Lessor to Lessor as a deemed acquisition of the Leased Property due to the Company’s control of the Leased Property.

under GAAP at the time the assigned purchase option was exercised. Accordingly, the Company applied sale and leaseback accounting to the transfer of the property from the Prior Lessor to the Lessor. The transaction met the criteria of a “failed sale-leaseback” under GAAP, which required us to record an asset for the deemed acquisition and an equivalent financing liability that represents the cost to acquire the Leased Property. The asset of \$100.0 million was recorded in property and equipment – net in the consolidated balance sheets. The financing liability of \$100.0 million was recorded in accrued operating expenses (current) and other liabilities (noncurrent) in the consolidated balance sheets.

Concurrently with Lessor’s purchase of the Leased Property from Prior Lessor, the participation agreement and lease agreement associated with our former synthetic lease arrangement, in each case entered into on November 30, 2017 and most recently amended on September 21, 2022 (the “Prior Synthetic Lease”), were terminated effective on March 15, 2023. In connection with the termination of the Prior Synthetic Lease, the Company paid a termination fee of approximately \$53.4 million to Prior Lessor using borrowings under the 2022 Credit Agreement. As a result of the termination of the Prior Synthetic Lease, the borrowing base under the 2022 Credit Agreement is no longer subject to a reserve for the outstanding balance under the Prior Synthetic Lease.

The Company, together with all of its direct and indirect subsidiaries that serve as guarantors under the 2022 Credit Agreement guarantee the payment and performance obligations under the 2023 Synthetic Lease. The obligations under the 2023 Synthetic Lease are also secured by a pledge of the Company’s interest in the Leased Property. In addition, the Company, no less frequently than annually, will be subject to a test (the “LTV Test”) that requires the ratio of (a) the adjusted lease balance minus any Lessee Letter of Credit (as defined below) to (b) the Leased Property’s fair market value to not be greater than 60 percent. If the Company does not comply with the LTV Test, the Company must deliver or adjust a letter of credit in favor of the Collateral Agent (“Lessee Letter of Credit”) in an amount necessary to comply with the LTV Test. The 2023 Synthetic Lease also contains customary representations and warranties, covenants and events of default.

The Participation Agreement also requires us to maintain a fixed charge coverage ratio of not less than 1.0 if (1) certain events of default occur and continue or (2) borrowing availability under the 2022 Credit Agreement is less than the greater of (a) 10% of the Maximum Credit Amount (as defined in the 2022 Credit Agreement) or (b) \$67.5 million, which is consistent with the terms of the 2022 Credit Agreement.

If an event of default occurs under the Lease, Lessor generally has the right to recover the adjusted lease balance and certain other costs and amounts payable under the 2023 Synthetic Lease and, following such payment, the Company would be entitled to receive ownership in the Leased Property from Lessor.

## **NOTE 4 – SHAREHOLDERS’ EQUITY**

### **Earnings per Share**

There were no adjustments required to be made to the weighted-average common shares outstanding for purposes of computing basic and diluted earnings per share for all periods presented. At April 29, 2023, performance share units that vest based on relative total shareholder return (“TSR PSUs” - see [Note 5](#) for a more detailed description of these awards) and shareholder value creation awards (“SVCA PSUs” - see [Note 5](#) for a more detailed description of these awards) were excluded from our computation of earnings (loss) per share because the minimum applicable performance conditions had not been attained. At April 30, 2022, TSR PSUs were excluded from our computation of earnings (loss) per share because the minimum applicable performance conditions had not been attained. Antidilutive restricted stock units (“RSUs”), performance share units (“PSUs”), TSR PSUs, and SVCA PSUs are excluded from the calculation because they decrease the number of diluted shares outstanding under the treasury stock method. The RSUs, PSUs, TSR PSUs, and SVCA PSUs that were antidilutive, as determined under the treasury stock method, were 0.9 million for the first quarter of 2023 and 0.4 million for the first quarter of 2022. Due to the net loss in both the first quarter of 2022 and the first quarter of 2023, any potentially dilutive shares were excluded from the denominator in computing diluted earnings (loss) per common share for the first quarter of 2023 and the first quarter of 2022.

### **Share Repurchase Programs**

On December 1, 2021, our Board of Directors authorized the repurchase of up to \$250 million of our common shares (“2021 Repurchase Authorization”). Pursuant to the 2021 Repurchase Authorization, we may repurchase shares in the open market and/or in privately negotiated transactions at our discretion, subject to market conditions and other factors. The 2021 Repurchase Authorization has no scheduled termination date. In the first quarter of 2023, no shares were repurchased under the 2021 Repurchase Authorization. As of April 29, 2023, we had \$159.4 million available for future repurchases under the 2021 Repurchase Authorization.

Purchases of common shares reported in the consolidated statements of shareholders’ equity are comprised of shares acquired to satisfy income tax withholdings associated with the vesting of share-based awards.

## Dividends

We declared and paid cash dividends per common share during the first quarter of 2023 as follows:

	Dividends Per Share	Amount Declared	Amount Paid
<b>2023:</b>		<i>(In thousands)</i>	<i>(In thousands)</i>
First quarter	\$ 0.30	\$ 9,116	\$ 9,587
<b>Total</b>	<b>\$ 0.30</b>	<b>\$ 9,116</b>	<b>\$ 9,587</b>

The amount of dividends declared may vary from the amount of dividends paid in a period due to the vesting of share-based awards. On May 23, 2023, our Board of Directors suspended the Company's quarterly cash dividend. The payment of any future dividends will be at the discretion of our Board of Directors and will depend on our financial condition, results of operations, capital requirements, compliance with applicable laws and agreements and any other factors deemed relevant by our Board of Directors.

## NOTE 5 – SHARE-BASED PLANS

We have issued RSUs, PSUs, SVCA PSUs, and TSR PSUs under our shareholder-approved equity compensation plans. We recognized share-based compensation expense of \$4.1 million and \$3.7 million in the first quarter of 2023 and the first quarter of 2022, respectively.

### Non-vested Restricted Stock Units

The following table summarizes the non-vested RSU activity for the first quarter of 2023:

	Number of Shares	Weighted Average Grant-Date Fair Value Per Share
Outstanding non-vested RSUs at January 28, 2023	875,503	\$ 34.75
Granted	1,354,505	13.40
Vested	(308,051)	29.28
Forfeited	(45,949)	29.99
Outstanding non-vested RSUs at April 29, 2023	1,876,008	\$ 20.35

The non-vested RSUs granted in the first quarter of 2023 generally vest, and are expensed, on a ratable basis over three years from the grant date of the award, if the grantee remains employed by us through the vesting dates. The RSUs granted in 2023 have no required financial performance objectives.

### Performance Share Units

In the first quarter of 2023, we issued PSUs to certain members of management, which will vest if certain minimum financial performance objectives are achieved over a three-year performance period and the grantee remains employed by us during the performance period. The minimum financial performance objectives will be established for each fiscal year within the three-year performance period and are generally approved by the Human Capital and Compensation Committee of our Board of Directors during the first quarter of the respective fiscal year. Based on the uncertain macroeconomic environment and a wide range of potential outcomes, the Committee chose to defer establishment of the financial performance objectives for 2023 to later in the fiscal year.

The 2023 PSU awards were issued with three distinct annual minimum financial performance objectives. The annual 2023 minimum financial performance objective is expected to be established in July 2023. The annual minimum financial performance objectives for the fiscal years 2024 and 2025 are expected to be set at the beginning of each of the respective fiscal years. As a result of the process used to establish the minimum financial performance objectives, we may meet the requirements for establishing a grant date for the 2023 PSUs when we communicate the financial performance objectives for 2023 to the award recipients, which will then trigger the service inception date, the fair value of the awards, and the associated expense recognition period. If we meet the applicable minimum threshold financial performance objectives in any of three performance period and the grantee remains employed by us through the end of the performance period, the PSUs will vest on the first trading day after we file our Annual Report on Form 10-K for the last fiscal year in the performance period.

In 2021 and 2022, we issued PSUs to certain members of management, which will vest if certain financial performance objectives are achieved over a three-year performance period and the grantee remains employed by us during the performance period. The financial performance objectives for each fiscal year within the three-year performance period are generally approved by the Human Capital and Compensation Committee of our Board of Directors during the first quarter of the respective fiscal year. Based on the uncertain macroeconomic environment and a wide range of potential outcomes, the Committee chose to defer establishment of the 2023 financial performance objectives to later in the fiscal year.

As a result of the process used to establish the financial performance objectives, we will only meet the requirements for establishing a grant date for PSUs issued in 2021 and 2022 when we communicate the financial performance objectives for the third fiscal year of the award to the award recipients, which will then trigger the service inception date, the fair value of the awards, and the associated expense recognition period. If we meet the applicable threshold financial performance objectives over the three-year performance period and the grantee remains employed by us through the end of the performance period, the PSUs will vest on the first trading day after we file our Annual Report on Form 10-K for the last fiscal year in the performance period.

The number of shares distributed upon vesting of the 2021 and 2022 PSUs depends on the average performance attained during the three-year performance period compared to the performance targets established by the Human Capital and Compensation Committee, and may result in the distribution of an amount of shares that is greater or less than the number of 2021 and 2022 PSUs granted, as defined in the award agreement.

In 2022 and the first quarter of 2023, we also awarded TSR PSUs to certain members of management, which vest based on the achievement of total shareholder return (“TSR”) targets relative to a peer group over a three-year performance period and require the grantee to remain employed by us through the end of the performance period. If we meet the applicable performance thresholds over the three-year performance period and the grantee remains employed by us through the end of the performance period, the TSR PSUs will vest on the first trading day after we file our Annual Report on Form 10-K for the last fiscal year in the performance period. We use a Monte Carlo simulation to estimate the fair value of the TSR PSUs on the grant date and recognize expense over the service period. The TSR PSUs have a contractual period of three years.

The number of shares distributed upon vesting of the TSR PSUs depends on the average performance attained during the three-year performance period compared to the performance targets established by the Human Capital and Compensation Committee, and may result in the distribution of an amount of shares that is greater or less than the number of TSR PSUs granted, as defined in the award agreement.

In the first quarter 2023, we also awarded SVCA PSUs to certain members of management, which vest based on the achievement of multiple share price performance goals over a three-year contractual term and require the grantee to remain employed by us through the end of the contractual term. We use a Monte Carlo simulation to estimate the fair value of the SVCA PSUs on the grant date and recognize expense ratably over the service period. If we meet the applicable performance thresholds over the three-year performance period and the grantee remains employed by us through the end of the contractual term, the SVCA PSUs will vest at the end of the contractual term. If the share price performance goals applicable to the SVCA PSUs are not achieved prior to expiration, the unvested portion of the awards will be forfeited.

We have begun or expect to begin recognizing expense related to PSUs, TSR PSUs, and SVCA PSUs as follows:

Issue Year	PSU Category	Outstanding Units at April 29, 2023	Actual Grant Date	Expected Valuation (Grant) Date	Actual or Expected Expense Period
2021	PSU	130,902		July 2023	Fiscal 2023
2022	TSR PSU	58,778	Fiscal 2022		Fiscal 2022 - 2024
2022	PSU	235,151		March 2024	Fiscal 2024
2023	PSU	508,089		July 2023	Fiscal 2023 - 2025
2023	TSR PSU	127,016	March 2023		Fiscal 2023 - 2025
2023	SVCA PSU	581,673	March 2023		Fiscal 2023 - 2025
Total		1,641,609			

During the first quarters of 2023 and 2022, we recognized \$0.4 million and \$0.1 million, respectively, in share-based compensation expense related to PSUs, TSR PSUs and SVCA PSUs. As of April 29, 2023, financial performance objectives have not been set for the 2021 PSUs, 2022 PSUs, and the 2023 PSUs, as a result, there were no PSUs outstanding at April 29, 2023.

The following table summarizes the activity related to TSR PSUs and SVCA PSUs for the first quarter of 2023:

	Number of Units	Weighted Average Grant-Date Fair Value Per Share
Outstanding TSR PSUs and SVCA PSUs at January 28, 2023	60,924	\$ 55.76
Granted	712,293	4.82
Vested	—	—
Forfeited	(5,750)	24.36
Outstanding TSR PSUs and SVCA PSUs at April 29, 2023	767,467	\$ 8.90

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

	First Quarter	
(In thousands)	2023	2022
Total fair value of restricted stock vested	\$ 3,410	\$ 12,631
Total fair value of performance shares vested	\$ —	\$ 13,753

The total unearned compensation expense related to all share-based awards outstanding, excluding PSUs issued in 2021, 2022 and 2023, at April 29, 2023 was approximately \$35.3 million. We expect to recognize this compensation cost through March 2026 based on existing vesting terms with the weighted-average remaining expense recognition period being approximately 2.4 years from April 29, 2023.

## NOTE 6 – INCOME TAXES

For the first quarter of 2023, the Company based the income tax benefit on the estimated annual effective tax rate, adjusted to reflect the effect of discrete items.

We have estimated the reasonably possible expected net change in unrecognized tax benefits through May 4, 2024, based on (1) expected cash and noncash settlements or payments of uncertain tax positions, and (2) lapses of the applicable statutes of limitations for unrecognized tax benefits. The estimated net decrease in unrecognized tax benefits for the next 12 months is approximately \$2.0 million. Actual results may differ materially from this estimate.

We regularly evaluate the realizability of our net deferred tax assets based on both positive and negative evidence available. As of April 29, 2023, we have an established valuation allowance on certain state and local deferred tax assets. There is a reasonable possibility that further valuation allowances on our federal, state and local net deferred tax assets may be required in future quarters. If insufficient positive evidence exists in future quarters and if financial conditions do not improve, it could be appropriate to record an increase in non-cash, discrete income tax expense related to changes in the valuation allowance in future quarters.

## NOTE 7 – CONTINGENCIES

### Legal Proceedings

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

## NOTE 8 – BUSINESS SEGMENT DATA

We use the following seven merchandise categories, which are consistent with our internal management and reporting of merchandise net sales: Food; Consumables; Soft Home; Hard Home; Furniture; Seasonal; and Apparel, Electronics, & Other. The Food category includes our beverage & grocery; specialty foods; and pet departments. The Consumables category includes our health, beauty and cosmetics; plastics; paper; and chemical departments. The Soft Home category includes our home organization; fashion bedding; utility bedding; bath; window; decorative textile; and area rugs departments. The Hard Home category includes our small appliances; table top; food preparation; home maintenance; and toys departments. The Furniture category includes our upholstery; mattress; ready-to-assemble; case goods; and home décor departments. The Seasonal category includes our lawn & garden; summer; Christmas; and other holiday departments. The Apparel, Electronics, & Other department includes our apparel; electronics; jewelry; hosiery; and candy & snacks departments, as well as the assortments for The Lot, our cross-category presentation solution, the Queue Line, our streamlined checkout experience, and our “Bargains, Treasures, and Essentials” closeout offerings.

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

The following table presents net sales data by merchandise category:

	<b>First Quarter</b>	
<i>(In thousands)</i>	<b>2023</b>	<b>2022</b>
Furniture	\$ 312,144	\$ 423,259
Seasonal	177,008	234,171
Food	164,820	176,620
Soft Home	141,880	169,666
Consumables	135,768	157,234
Apparel, Electronics, & Other	115,695	123,035
Hard Home	76,262	90,729
Net sales	\$ 1,123,577	\$ 1,374,714

## NOTE 9 – SUPPLIER FINANCE PROGRAM

We facilitate a voluntary supply chain finance (“SCF”) program through a participating financial institution. This SCF program enables our suppliers to sell their receivables due from the Company to a participating financial institution at their discretion. As of April 29, 2023, the SCF program had a \$55.0 million revolving capacity. We are not a party to the agreements between the participating financial institution and the suppliers in connection with the SCF program. The range of payment terms we negotiate with our suppliers is consistent, irrespective of whether a supplier participates in the SCF program. No guarantees are provided by the Company or any of our subsidiaries under the SCF program.

The amounts payable to the participating financial institution for suppliers who voluntarily participate in the SCF program are included within the accounts payable on our consolidated balance sheets. Amounts under the SCF program included within accounts payable were \$13.3 million and \$35.4 million as of April 29, 2023 and January 28, 2023, respectively. Payments made under the SCF program to the financial institution, like payments of other accounts payable, are a reduction to our operating cash flow.

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

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

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

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

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

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

## OVERVIEW

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

The following are the results from the first quarter of 2023 that we believe are key indicators of our operating performance when compared to our operating performance from the first quarter of 2022:

- Net sales decreased \$251.1 million, or 18.3%.
- Comparable sales for stores open at least fifteen months, plus our e-commerce operations, decreased \$238.5 million, or 18.2%.
- Gross margin dollars decreased \$112.1 million, while gross margin rate decreased 180 basis points to 34.9% of sales.
- Selling and administrative expenses increased \$136.3 million. As a percentage of net sales, selling and administrative expenses increased to 54.9% of net sales.
- Included within our selling and administrative expenses were non-cash store asset impairment charges and a gain on extinguishment of a lease liability resulting from a lease cancellation related to a previous impaired store of \$83.8 million, which increased loss per share by approximately \$2.18 per diluted share.
- Also included within our selling and administrative expenses were lease exit costs associated with our prior synthetic lease of \$53.6 million and contract termination costs associated with closure of our forward distribution centers of \$8.6 million, which increased loss per diluted share in the first quarter of 2023 by approximately \$1.37 and \$0.25, respectively.
- Also included within our selling and administrative expenses was a gain on sale of real estate and related expenses of \$3.8 million, which decreased loss per diluted share by approximately \$0.10.
- Operating loss rate increased 2,220 basis points to (23.2)%.
- Diluted loss per share increased to \$(7.10) per share from \$(0.39) per share.
- Cash and cash equivalents decreased \$10.4 million, from \$61.7 million at the end of the first quarter of 2022 to \$51.3 million at the end of the first quarter of 2023.
- Inventory decreased 18.8% or \$251.0 million, from \$1,338.7 million at the end of the first quarter 2022 to \$1,087.7 million at the end of the first quarter 2023, primarily as a result of a 12% decrease in units on hand and a decrease in-transit inventory, partially offset by a 3% increase in average unit cost of on hand inventory.
- We declared and paid a quarterly cash dividend in the amount of \$0.30 per common share in the first quarter of 2023, which was consistent with the quarterly cash dividend of \$0.30 per common share we paid in the first quarter of 2022.

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

## STORES

The following table presents stores opened and closed during the first quarter of 2023 and the first quarter of 2022:

	2023	2022
Stores open at the beginning of the fiscal year	1,425	1,431
Stores opened during the period	3	7
Stores closed during the period	(1)	(4)
Stores open at the end of the period	1,427	1,434

We expect our store count at the end of 2023 to decrease compared to our store count at the end of 2022.



## RESULTS OF OPERATIONS

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

	First Quarter	
	2023	2022
Net sales	100.0 %	100.0 %
Cost of sales (exclusive of depreciation expense shown separately below)	65.1	63.3
Gross margin	34.9	36.7
Selling and administrative expenses	54.9	35.0
Depreciation expense	3.3	2.7
Operating loss	(23.2)	(1.0)
Interest expense	(0.8)	(0.2)
Other income (expense)	0.0	0.1
Loss before income taxes	(24.1)	(1.1)
Income tax benefit	(5.7)	(0.3)
Net loss and comprehensive loss	(18.3)%	(0.8)%

## FIRST QUARTER OF 2023 COMPARED TO FIRST QUARTER OF 2022

### Net Sales

Net sales by merchandise category (in dollars and as a percentage of total net sales), net sales change (in dollars and percentage), and comparable sales (“comp” or “comps”) in the first quarter of 2023 compared to the first quarter of 2022 were as follows:

(\$ in thousands)	First Quarter							
	2023		2022		Change		Comps	
Furniture	\$	312,144	27.8 %	\$	423,259	30.8 %	\$	(111,115) (26.3)% (27.2)%
Seasonal		177,008	15.8		234,171	17.0		(57,163) (24.4) (24.6)
Food		164,820	14.6		176,620	12.8		(11,800) (6.7) (4.8)
Soft Home		141,880	12.6		169,666	12.4		(27,786) (16.4) (16.5)
Consumables		135,768	12.1		157,234	11.5		(21,466) (13.7) (10.9)
Apparel, Electronics, & Other		115,695	10.3		123,035	8.9		(7,340) (6.0) (6.8)
Hard Home		76,262	6.8		90,729	6.6		(14,467) (15.9) (15.4)
Net sales	\$	1,123,577	100.0 %	\$	1,374,714	100.0 %	\$	(251,137) (18.3)% (18.2)%

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

Net sales decreased \$251.1 million, or 18.3%, to \$1,123.6 million in the first quarter of 2023, compared to \$1,374.7 million in the first quarter of 2022. The decrease in net sales was primarily driven by an 18.2% decrease in our comps, which decreased net sales by \$238.5 million and our non-comparable sales, which decreased net sales by \$12.6 million, driven by the net decrease of 7 stores since the first quarter of 2022. Our comps are calculated based on the results of all stores that were open at least fifteen months plus the results of our e-commerce net sales.

Our decreased net sales and comps in the first quarter of 2023 were significantly impacted by macro economic pressures on our customers, which has negatively impacted the discretionary spending of our customers, particularly with respect to large-ticket Furniture and Seasonal products.

In the first quarter of 2023, we experienced decreased comps and net sales in all of our merchandise categories. Our home products categories - Furniture, Seasonal, Soft Home, and Hard Home - were most impacted, as purchases from these categories are generally more discretionary. In the first quarter of 2023, the lack of our Broyhill® branded product had negative impact on comps and sales for our home product categories, particularly Furniture. In November 2022, our largest Broyhill® furniture supplier, United Furniture, Inc., abruptly closed, which resulted in an immediate shortage in Broyhill® inventory available for us to purchase. To mitigate the shortage while we sought new suppliers for Broyhill® furniture, we purchased replacement product from other suppliers, which has not performed as well as our Broyhill® branded product performed in the first quarter of 2022. As discussed above, we believe that macro economic pressures significantly reduced our customer's discretionary spending, which has led to the decreased net sales and comps in all our home products categories. We believe our Seasonal net sales and comps in the first quarter of 2023, particularly our lawn & garden and Summer departments, were also adversely impacted by later-arriving warm weather in many parts of the U.S. versus the first quarter of 2022.

While our Food and Consumables categories experienced decreased comps and net sales in the first quarter of 2023, these categories performed relatively better than our home products categories in the first quarter of 2023 as they are less sensitive to changes in discretionary spending.

Our Apparel, Electronics, & Other category experienced a decrease in comps as a result of the decreased discretionary spending in the first quarter of 2023 discussed above. We believe that the net sales of our Apparel, Electronics, & Other category benefited from our “Bargains, Treasures, and Essentials” merchandising strategy as we began to implement lower entry-level price points with name brand closeout offerings in the first quarter of 2023.

### **Gross Margin**

Gross margin dollars decreased \$112.1 million, or 22.2%, to \$392.5 million for the first quarter of 2023, compared to \$504.6 million for the first quarter of 2022. The decrease in gross margin dollars was primarily due to a decrease in net sales and gross margin rate. Gross margin as a percentage of net sales decreased 180 basis points to 34.9% in the first quarter of 2023 compared to 36.7% in the first quarter of 2022. The gross margin rate decrease was primarily due to a higher markdown rate, and a higher shrink rate, partially offset by lower inbound freight costs. The higher markdown rate was a result of the decline in sales in the first quarter of 2023 compared to the first quarter of 2022, as our markdown volume in the first quarter of 2023 was similar to the first quarter of 2022. The higher shrink rate was primarily driven by sales deleverage as our unit loss and dollar loss in our 2023 physical inventory counts have both improved versus the prior year. The higher shrink rate was also driven by a cumulative adverse adjustment to our shrink accrual rate in the first quarter of 2023 as we projected better results for our 2023 physical inventory count results at the end of 2022 versus the actualized results in the first quarter of 2022. Inbound freight costs declined due to lower ocean carriage rates, lower fuel costs, and decreased inbound volume versus the first quarter of 2022.

### **Selling and Administrative Expenses**

Selling and administrative expenses were \$617.1 million for the first quarter of 2023, compared to \$480.8 million for the first quarter of 2022. The increase of \$136.3 million in selling and administrative expenses was driven by store asset impairment charges (see [Note 1](#) to the accompanying consolidated financial statements) resulting from a review of underperforming stores and partially offset by a gain on extinguishment of a lease liability resulting from a lease cancellation related to a previous impaired store of \$83.8 million, a lease payment related to the exit of our Prior Synthetic Lease of \$53.6 million, termination costs and related expenses, related to the exit of our FDCs of \$8.6 million, and an increase in advertising expense of \$3.4 million, partially offset by a decrease in store payroll of \$12.3 million and a gain on sale of real estate and related expenses of \$3.8 million. The increase in advertising expense was related to a shift from a broad or mass distribution in the first quarter of 2022 to a more targeted approach in the first quarter of 2023. The more targeted approach includes specific customer, product and regional focused advertising. The decrease in store payroll was driven by a lower store count compared to the first quarter of 2022 and an overall reduction in store headcount and payroll hours.

As a percentage of net sales, selling and administrative expenses increased 1,990 basis points to 54.9% for the first quarter of 2023 compared to 35.0% for the first quarter of 2022.

### **Depreciation Expense**

Depreciation expense decreased \$0.8 million to \$36.6 million in the first quarter of 2023, compared to \$37.4 million in the first quarter of 2022. Depreciation expense as a percentage of sales increased 60 basis points compared to the first quarter of 2022. The decrease was primarily driven by impairment charges taken in the last twelve months and decreased capital spend in the last twelve months, partially offset by accelerated depreciation costs related to the anticipated exit from our FDCs.

### **Interest Expense**

Interest expense was \$9.1 million in the first quarter of 2023, compared to \$2.8 million in the first quarter of 2022. The increase in interest expense was driven by an increase in total average borrowings (including finance leases and the sale and leaseback financing liability) and an increase in the average interest rate. We had total average borrowings of \$574.5 million in the first quarter of 2023 compared to total average borrowings of \$301.1 million in the first quarter of 2022. The increase in total average borrowings was driven by our borrowings under the 2022 Credit Agreement throughout the first quarter of 2023 compared to the first quarter of 2022.

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

Other income (expense) was \$0.0 million in the first quarter of 2023 and \$1.0 million in the first quarter of 2022.

### **Income Taxes**

The effective income tax rate for the first quarter of 2023 and the first quarter of 2022 was 23.8% and 27.3%, respectively. The decrease in the effective income tax rate was primarily attributable to absence of audit settlements and a net deficiency associated with vesting of share-based payment awards from 2022 compared to a net benefit in the first quarter of 2023. Additionally, the decrease in the effective income tax rate was impacted by the increase in loss before income taxes in the first quarter of 2023 compared to the loss before income taxes in the first quarter of 2022.

### **Known Trends and 2023 Guidance**

In fiscal 2023, the U.S. economy has continued to face macro-economic challenges including high inflation, which has adversely impacted the buying power of our customers. We expect the inflationary environment will continue to negatively impact costs within our business and discretionary spending specifically high ticket products by our customers through at least the second quarter of 2023. At this time, the Company does not believe it has sufficient visibility to provide full year guidance for 2023.

Given a wider-than-usual range of potential outcomes, we are not currently providing earnings per share guidance for the second quarter of 2023. However, we do anticipate a loss in the second quarter of 2023. As of May 26, 2023, we expect the following in the second quarter of 2023:

- A comparable sales decrease in the high-teens range compared to the second quarter of 2022;
- Gross margin rate slightly above the second quarter of 2022, in the low 30s, driven by significant markdowns on slow-moving Seasonal inventory; and
- Selling and administrative expenses slightly down compared to the second quarter of 2022.

For 2023, we expect capital expenditures of approximately \$80 million.

## Capital Resources and Liquidity

On September 21, 2022, we entered into a five-year asset-based revolving credit facility (“2022 Credit Agreement”) in an aggregate committed amount of up to \$900 million (the “Commitments”) that expires on September 21, 2027. In connection with our entry into the 2022 Credit Agreement, we paid bank fees and other expenses in the aggregate amount of \$3.4 million, which are being amortized over the term of the 2022 Credit Agreement.

Revolving loans under the 2022 Credit Agreement are available in an aggregate amount equal to the lesser of (1) the aggregate Commitments and (2) a borrowing base consisting of eligible credit card receivables and eligible inventory (including in-transit inventory), subject to customary exceptions and reserves. Under the 2022 Credit Agreement, we may obtain additional Commitments on no more than five occasions in an aggregate amount of up to \$300 million, subject to agreement by the lenders to increase their respective Commitments and certain other conditions. The 2022 Credit Agreement includes a swing loan sublimit of 10% of the then applicable aggregate Commitments and a \$90 million letter of credit sublimit. Loans made under the 2022 Credit Agreement may be prepaid without penalty. Borrowings under the 2022 Credit Agreement are available for general corporate purposes, working capital and to repay certain of our indebtedness. Our obligations under the 2022 Credit Agreement are secured by our working capital assets (including inventory, credit card receivables and other accounts receivable, deposit accounts, and cash), subject to customary exceptions. The pricing and certain fees under the 2022 Credit Agreement fluctuate based on our availability under the 2022 Credit Agreement. The 2022 Credit Agreement allows us to select our interest rate for each borrowing from multiple interest rate options. The interest rate options are generally derived from the prime rate or one, three or six month adjusted Term SOFR. We will also pay an unused commitment fee of 0.20% per annum on the unused Commitments. The 2022 Credit Agreement contains an environmental, social and governance (“ESG”) provision, which may provide favorable pricing and fee adjustments if we meet ESG performance criteria to be established by a future amendment to the 2022 Credit Agreement.

The 2022 Credit Agreement contains customary affirmative and negative covenants (including, where applicable, restrictions on our ability to, among other things, incur additional indebtedness, pay dividends, redeem or repurchase stock, prepay certain indebtedness, make certain loans and investments, dispose of assets, enter into restrictive agreements, engage in transactions with affiliates, modify organizational documents, incur liens and consummate mergers and other fundamental changes) and events of default. In addition, the 2022 Credit Agreement requires us to maintain a fixed charge coverage ratio of not less than 1.0 if (1) certain events of default occur and continue or (2) borrowing availability under the 2022 Credit Agreement is less than the greater of (a) 10% of the Maximum Credit Amount (as defined in the 2022 Credit Agreement) or (b) \$67.5 million. Additionally, we are subject to cross-default provisions associated with the 2023 Synthetic Lease. A violation of these covenants could result in a default under the 2022 Credit Agreement which could permit the lenders to restrict our ability to further access the 2022 Credit Agreement for loans and letters of credit and require the immediate repayment of any outstanding loans under the 2022 Credit Agreement. At April 29, 2023, we were in compliance with the covenants of the 2022 Credit Agreement.

On March 15, 2023, the Company, Bankers Commercial Corporation (“Lessor”), the rent assignees parties thereto (“Rent Assignees” and, together with Lessor, “Participants”), MUFG Bank, Ltd., as collateral agent for the Rent Assignees (in such capacity, “Collateral Agent”), and MUFG Bank, Ltd., as administrative agent for the Participants, entered into a Participation Agreement (the “Participation Agreement”), pursuant to which the Participants funded \$100 million to Wachovia Service Corporation (“Prior Lessor”) to finance Lessor’s purchase of the land and building related to our Apple Valley, CA distribution center (“Leased Property”) from the Prior Lessor.

Also on March 15, 2023, we entered into a Lease Agreement and supplement to the Lease Agreement (collectively, the “Lease” and together with the Participation Agreement and related agreements, the “2023 Synthetic Lease”) pursuant to which the Lessor will lease the Leased Property to the Company for an initial term of 60 months. The Lease may be extended for up to an additional five years, in one-year or longer annual periods, with each renewal subject to approval by the Participants. The 2023 Synthetic Lease requires the Company to pay basic rent on the scheduled payment dates in arrears in an amount equal to (a) a per annum rate equal to Term SOFR for the applicable payment period plus a 10 basis point spread adjustment plus an applicable margin equal to 250 basis points multiplied by (b) the portion of the lease balance not constituting the investment by Lessor in the Leased Property. In addition to basic rent, the Company must pay all costs and expenses associated with the use or occupancy of the Leased Property, including without limitation, maintenance, insurance and certain indemnity payments. The Company will also be responsible for break-funding costs, annual lease administration fees and increased costs. GAAP treatment of the synthetic lease refinancing transaction requires us to treat the assignment of the purchase option from Prior Lessor to Lessor as a deemed acquisition of the Leased Property due to the Company’s control of the Leased Property under GAAP at the time the assigned purchase option was exercised. Accordingly, the Company applied sale and leaseback accounting to the transfer of the property from the Prior Lessor to the Lessor. The transaction met the criteria of a “failed sale-leaseback” under GAAP, which required us to record an asset for the deemed acquisition and an equivalent financing liability that represents the cost to acquire the Leased Property. The asset of \$100.0 million was recorded in property and equipment –

net in the consolidated balance sheets. The financing liability of \$100.0 million was recorded in accrued operating expenses (current) and other liabilities (noncurrent) in the consolidated balance sheets.

Concurrently with Lessor's purchase of the Leased Property from Prior Lessor, the participation agreement and lease agreement associated with our former synthetic lease arrangement, in each case entered into on November 30, 2017 and most recently amended on September 21, 2022 (the "Prior Synthetic Lease"), were terminated effective on March 15, 2023. In connection with the termination of the Prior Synthetic Lease, the Company paid a termination fee of approximately \$53.4 million to Prior Lessor using borrowings under the 2022 Credit Agreement. As a result of the termination of the Prior Synthetic Lease, the borrowing base under the 2022 Credit Agreement is no longer subject to a reserve for the outstanding balance under the Prior Synthetic Lease.

The Company, together with all of its direct and indirect subsidiaries that serve as guarantors under the 2022 Credit Agreement guarantee the payment and performance obligations under the 2023 Synthetic Lease. The obligations under the 2023 Synthetic Lease are also secured by a pledge of the Company's interest in the Leased Property. In addition, the Company, no less frequently than annually, will be subject to a test (the "LTV Test") that requires the ratio of (a) the adjusted lease balance minus any Lessee Letter of Credit (as defined below) to (b) the Leased Property's fair market value to not be greater than 60 percent. If the Company does not comply with the LTV Test, the Company must deliver or adjust a letter of credit in favor of the Collateral Agent ("Lessee Letter of Credit") in an amount necessary to comply with the LTV Test. The 2023 Synthetic Lease also contains customary representations and warranties, covenants and events of default.

The Participation Agreement also requires us to maintain a fixed charge coverage ratio of not less than 1.0 if (1) certain events of default occur and continue or (2) borrowing availability under the 2022 Credit Agreement is less than the greater of (a) 10% of the Maximum Credit Amount (as defined in the 2022 Credit Agreement) or (b) \$67.5 million, which is consistent with the terms of the 2022 Credit Agreement.

If an event of default occurs under the Lease, Lessor generally has the right to recover the adjusted lease balance and certain other costs and amounts payable under the 2023 Synthetic Lease and, following such payment, the Company would be entitled to receive ownership in the Leased Property from Lessor.

As of April 29, 2023, we had a Borrowing Base (as defined under the 2022 Credit Agreement) of \$900.0 million under the 2022 Credit Agreement. At April 29, 2023, we had \$501.6 million in borrowings outstanding under the 2022 Credit Agreement and \$31.7 million committed to outstanding letters of credit, leaving \$366.7 million available under the 2022 Credit Agreement, subject to the borrowing base limitations as discussed above. At April 29, 2023, we had \$276.7 million available under the 2022 Credit Agreement, net of the borrowing base limitations discussed above.

The primary source of our liquidity is cash flows from operations and borrowings under our credit facility as necessary. Our net loss and, consequently, our cash used in operations are impacted by net sales volume, seasonal sales patterns, and operating profit margins. Historically, our cash provided by operations typically peaks in the fourth quarter of each fiscal year due to net sales generated during the holiday selling season. Generally, our working capital requirements peak late in our third fiscal quarter or early in our fourth fiscal quarter as we build our inventory levels prior to the holiday selling season. We have historically funded those requirements with cash provided by operations and borrowings under our credit facility. Cash requirements include, among other things, capital expenditures, working capital needs, interest payments, and other contractual commitments. Given our anticipated cash needs, we expect to utilize borrowings under the 2022 Credit Agreement throughout the remainder of 2023 to fund our cash requirements. To generate additional liquidity, the Company has also engaged external partners to monetize assets, primarily consisting of its remaining owned real estate properties, and to identify savings opportunities of up to \$200 million which are expected to be realized within cost of goods sold, advertising expense and other selling and administrative expenses.

Based on historical and expected financial results, we believe that we have or have the ability to obtain adequate resources to fund our cash requirements for the foreseeable future, including ongoing and seasonal working capital requirements, proposed capital expenditures, new projects, and currently maturing obligations.

On December 1, 2021, our Board of Directors authorized the repurchase of up to \$250 million of our common shares under the 2021 Repurchase Authorization. Pursuant to the 2021 Repurchase Authorization, we may repurchase shares in the open market and/or in privately negotiated transactions at our discretion, subject to market conditions and other factors. The 2021 Repurchase Authorization has no scheduled termination date. In the first quarter of 2023, we did not repurchase shares under the 2021 Repurchase Authorization. As of April 29, 2023, we had \$159.4 million available for future repurchases under the 2021 Repurchase Authorization.

In March 2023, our Board of Directors declared a quarterly cash dividend of \$0.30 per common share payable on March 31, 2023 to shareholders of record as of the close of business on March 17, 2023. The cash dividend of \$0.30 per common share is consistent with our quarterly dividends declared in 2022. In the first quarter of 2023, we paid approximately \$9.6 million in dividends, compared to the dividends paid of \$10.7 million in the first quarter of 2022.

On May 23, 2023, our Board of Directors suspended the Company's quarterly cash dividend. The declaration of any future dividends will be at the discretion of our Board of Directors and will depend on our financial condition, results of operations, capital requirements, compliance with applicable laws and agreements and any other factors deemed relevant by our Board of Directors.

The following table compares the primary components of our cash flows from the first quarter 2023 compared to the first quarter 2022:

<i>(In thousands)</i>	2023	2022	Change
Net cash used in operating activities	\$ (168,938)	\$ (196,233)	\$ 27,295
Net cash used in investing activities	(12,481)	(41,241)	28,760
Net cash provided by financing activities	\$ 188,009	\$ 245,459	\$ (57,450)

Cash used in operating activities decreased by \$27.3 million to \$168.9 million in the first quarter of 2023 compared to \$196.2 million in the first quarter of 2022. The decrease was primarily due to a decrease in net loss after adjusting for non-cash activities such as a non-cash impairment charge and a non-cash lease expense, and a decrease from inventories, which was driven by decreased inventory purchases at the end of the first quarter of 2023. Partially offsetting this decrease were increases in the change in deferred income tax benefit, which was driven by the increased loss before income taxes, and operating lease liabilities related to the refinance of the Apple Valley, CA distribution center, and the gain on disposition of equipment and property related to the sale of an owned store location in the first quarter of 2023.

Cash used in investing activities decreased by \$28.8 million to \$12.5 million in the first quarter of 2023 compared to \$41.2 million in the first quarter of 2022. The decrease was principally driven by a decrease in capital expenditures, which was primarily due to fewer investments in new stores.

Cash provided by financing activities decreased by \$57.5 million to \$188.0 million in the first quarter of 2023 compared to \$245.5 million in the first quarter of 2022. The decrease was driven by lower net proceeds from long-term debt, partially offset by a decrease in payment for treasury shares acquired. The decrease in payment for treasury shares acquired was due to a decrease in shares withheld for income taxes.

#### CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The preparation of financial statements in conformity with GAAP requires management to make estimates, judgments, and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period, as well as the related disclosure of contingent assets and liabilities at the date of the financial statements. On an ongoing basis, management evaluates its estimates, judgments, and assumptions, and bases its estimates, judgments, and assumptions on historical experience, current trends, and various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates. See [Note 1](#) to our consolidated financial statements included in our 2022 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 2022 Form 10-K. Had we used estimates, judgments, and assumptions different from any of those discussed in our 2022 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 borrowings under the 2022 Credit Agreement. We had \$501.6 million in borrowings under the 2022 Credit Agreement at April 29, 2023. An increase of 1% in our variable interest rate on our expected future borrowings could affect our financial condition, results of operations, or liquidity through higher interest expense by approximately \$5.0 million.

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

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

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

#### **Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting (as that term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **Part II. Other Information**

### **Item 1. Legal Proceedings**

For information regarding certain legal proceedings to which we have been named a party or are subject, see [Note 7](#) to the accompanying consolidated financial statements.

### **Item 1A. Risk Factors**

During the first quarter of 2023, there were no material changes to the risk factors previously disclosed in our 2022 Form 10-K.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**
*(In thousands, except price per share data)*

Period	(a) Total Number of Shares Purchased <sup>(1)(2)</sup>	(b) Average Price Paid per Share <sup>(1)(2)</sup>	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	(d) Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
January 29, 2023 - February 25, 2023	2	\$ 16.55	—	\$ 159,425
February 26, 2023 - March 25, 2023	46	11.33	—	159,425
March 26, 2023 - April 29, 2023	80	10.80	—	159,425
Total	128	\$ 11.06	—	\$ 159,425

- (1) In February, March, and April 2023, in connection with the vesting of certain outstanding RSUs and PSUs, we acquired 1,586, 45,997 and 80,528 of our common shares, respectively, which were withheld to satisfy income tax withholdings.
- (2) The 2021 Repurchase Authorization is comprised of a December 1, 2021 authorization by our Board of Directors for the repurchase of up to \$250.0 million of our common shares. During the first quarter of 2023, we had no repurchases under the 2021 Repurchase Authorization. At April 29, 2023, the 2021 Repurchase Authorization has \$159.4 million of remaining authorization. The 2021 Repurchase Authorization has no scheduled termination date.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

None.

**Item 5. Other Information**

None.



## Item 6. Exhibits

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

Exhibit No.	Document
<a href="#"><u>10.1*</u></a>	Participation Agreement, dated March 15, 2023, by and among AVDC, LLC, the Lessee, and the Banks named therein.
<a href="#"><u>10.2*</u></a>	Lease Agreement, dated March 15, 2023, by and among AVDC, LLC, the Lessee, and the Banks named therein.
<a href="#"><u>10.3</u></a>	Form of Big Lots 2020 Long-Term Incentive Plan Performance Share Units Award Agreement (incorporated herein by reference to Exhibit 10.3 to our Form 8-K dated March 16, 2023).
<a href="#"><u>10.4</u></a>	Form of Big Lots 2020 Long-Term Incentive Plan Performance Share Units Award Agreement (incorporated herein by reference to Exhibit 10.4 to our Form 8-K dated March 16, 2023).
<a href="#"><u>31.1*</u></a>	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<a href="#"><u>31.2*</u></a>	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<a href="#"><u>32.1*</u></a>	Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
<a href="#"><u>32.2*</u></a>	Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
<a href="#"><u>101.Def*</u></a>	XBRL Taxonomy Definition Linkbase Document
<a href="#"><u>101.Pre*</u></a>	XBRL Taxonomy Presentation Linkbase Document
<a href="#"><u>101.Lab*</u></a>	XBRL Taxonomy Labels Linkbase Document
<a href="#"><u>101.Cal*</u></a>	XBRL Taxonomy Calculation Linkbase Document
101.Sch	XBRL Taxonomy Schema Linkbase Document
101.Ins	XBRL Taxonomy Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

## Signature

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

Dated: June 7, 2023

**BIG LOTS, INC.**

By: /s/ Jonathan E. Ramsden

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

**PARTICIPATION AGREEMENT**

DATED AS OF MARCH 15, 2023

AMONG

**AVDC, LLC,**  
AS THE LESSEE

**BANKERS COMMERCIAL CORPORATION,**  
AS THE LESSOR,

**THE GUARANTORS PARTY**  
**HERETO FROM TIME TO TIME,**  
AS THE GUARANTORS,

**MUFG BANK, LTD.,**  
AS THE COLLATERAL AGENT,

**MUFG BANK, LTD.,**  
AS THE ADMINISTRATIVE AGENT,

AND

**THE RENT ASSIGNEES SET FORTH ON**  
**SCHEDULE I-A FROM TIME TO TIME,**  
AS THE RENT ASSIGNEES

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## PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT, dated as of March 15, 2023 (this “**Agreement**”), is made among AVDC, LLC, an Ohio limited liability company, as Lessee (the “**Lessee**”), BANKERS COMMERCIAL CORPORATION, a California corporation, as the Lessor (in such capacity, the “**Lessor**”), the Guarantor(s) party hereto from time to time, each as a Guarantor (in such capacity, each a “**Guarantor**” and, collectively, the “**Guarantors**”), MUFG BANK, LTD., as Collateral Agent for the Rent Assignees (together with its successors and permitted assigns, the “**Collateral Agent**”), MUFG BANK, LTD., as Administrative Agent for the Participants (in such capacity, the “**Administrative Agent**”) and the Rent Assignee(s) named on Schedule I-A hereto from time to time (the “**Rent Assignees**”).

## PRELIMINARY STATEMENT

A. Subject to the terms and conditions of this Agreement and the other Operative Documents, as of the Closing Date, among other things:

(i) the Lessee, as Purchasing Agent, will cause the Seller to sell the Site and the Improvements to the Lessor;

(ii) the Lessor will acquire fee title to the Site and the Improvements;

(iii) the Lessor and the Lessee will enter into the Lease Agreement and a Lease Supplement pursuant to which the Lessor will lease its interest in the Leased Property to the Lessee;

(iv) the Lessee and the Lessor will enter into a Memorandum of Lease for the Leased Property pursuant to which (i) the Lessee will grant the Lessor a Lien on and a security interest in the interests of the Lessee in the Leased Property and in all rights and interests of the Lessee in the other related Lessee Collateral, in each case, in order to secure the obligations of the Lessee to the Lessor under the Lease and of the Lessee under the other Operative Documents, (ii) notice of the leasing of the Leased Property will be publicized, and (iii) the Lessor will grant the Lessee a Lien on and security interest in the interests of the Lessor in the Leased Property to secure its obligations in the event a Purchase Option has been validly exercised by the Lessee;

(v) each Guarantor will issue its Lease Guaranty with respect to the payment and performance obligations of the Lessee under the Operative Documents related to the Leased Property; and

(vi) the Lessor and each Rent Assignee will enter into Rent Assignment Agreements pursuant to which, *inter alia*, each Rent Assignee shall, subject to the terms and conditions hereof and thereof, acquire the Rent Assignment Interests from the Lessor to enable the Lessor, together with its Lessor Investment and Lessor Retained Interest, to acquire the Leased Property on the Closing Date and to provide for the payment of Transaction Costs; and

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

## **ARTICLE I DEFINITIONS; INTERPRETATION**

Unless the context shall otherwise require, capitalized terms used and not defined herein shall have the meanings assigned thereto in Appendix I hereto for all purposes hereof and the rules of interpretation set forth in Appendix I hereto shall apply to this Agreement. In addition, references herein to the Lease shall be interpreted to mean the Lease Agreement as incorporated into the Lease Supplement.

## **ARTICLE II EFFECTIVENESS; GENERAL PROVISION**

### **SECTION 2.1.      *Effectiveness of Agreement.***

The obligations of the Lessor to (a) acquire the Site and the Improvements pursuant to the Bill of Sale and Deed, and (b) lease the Leased Property to the Lessee and of the Participants to finance the acquisition of the Leased Property and the effectiveness of this Agreement (collectively, the “**Closing**”) shall occur upon the satisfaction of each of the following conditions and of the conditions set forth in Section 3.1 hereof (all such conditions to be satisfied to the satisfaction of the Lessor in its reasonable discretion):

(a)      *Authorization, Execution and Delivery of Documents; No Default.* The Operative Documents shall have been duly authorized, executed and delivered by each of the parties thereto, shall be in form and substance reasonably satisfactory to the Lessee, each Participant, and the Agents, and an executed counterpart of each thereof shall have been received by such parties. Each of the Operative Documents shall be in full force and effect as to all parties.

(b)      *Legal Opinions.* The Agents and each of the Participants shall have received favorable opinions of Morgan, Lewis & Bockius, special New York counsel to the Lessee with respect to New York enforceability and other matters, of Vorys, Sater, Seymour and Pease LLP, special counsel to the Lessee and the Guarantors and as Ohio, Pennsylvania and Delaware local counsel, Morgan, Lewis & Bockius, special counsel to the Lessee and as California local counsel, Holland & Hart, special counsel to the Lessee and as Nevada local counsel and Bradley, Arant, Boult, Cummings, special counsel to the Lessee and as Alabama local counsel. Each of the foregoing opinions shall be dated the Closing Date and in form and substance reasonably satisfactory to the recipients thereof.



(c) *Insurance.* The Agents and each Participant shall have received the insurance certificates required by Section 11.2 of the Lease.

(d) *Governmental and Third Party Approvals.* All necessary or advisable Governmental Actions, and all consents, approvals and authorizations of Persons other than Authorities required in connection with the Overall Transaction, shall have been obtained or made and be in full force and effect and not be subject to any pending procedures or appeals, whether administrative, judicial or otherwise, except for any Governmental Action, consent, approval or authorization the failure to obtain which, or the appeal of or further procedures with respect to which, would not reasonably be expected to have a Material Adverse Effect.

(e) *Corporate Status and Proceedings.* The Agents and each of the Participants shall have received:

(i) certificates of full force and effect or good standing with respect to (1) the Lessee from the State of Ohio and the State of California and (2) each Guarantor from its relevant state of formation, organization or incorporation, each dated no earlier than the thirtieth (30<sup>th</sup>) day prior to the Closing Date;

(ii) a certificate of the Secretary or Assistant Secretary (or other Responsible Officer) of each Guarantor, in form and substance reasonably satisfactory to the Agents and each of the Participants and attaching and certifying as to (A) resolutions in respect of the execution, delivery and performance by such Guarantor of each Operative Document to which it is or will be a party, (B) its organizational documents, and (C) the incumbency and signatures of persons authorized to execute and deliver the Operative Documents on behalf of such Guarantor; and

(iii) a certificate of the Secretary or Assistant Secretary (or other Responsible Officer) of the Lessee, in form and substance reasonably satisfactory to the Agents and each of the Participants and attaching and certifying as to (A) resolutions in respect of the execution, delivery and performance by the Lessee of each Operative Document to which it is or will be a party, (B) its certificate of organization and operating agreement, and (C) the incumbency and signatures of persons authorized to execute and deliver the Operative Documents on behalf of the Lessee.

(f) *The Lessor Documents.* Each of the Rent Assignees, the Agents and the Lessee shall have received:

(i) a certificate of good standing with respect to the Lessor from the State of California, dated no earlier than the thirtieth (30<sup>th</sup>) day prior to the Closing Date; and

(ii) a certificate of the Secretary or Assistant Secretary (or other Responsible Officer) of the Lessor, in form and substance reasonably satisfactory to the

Lessee and attaching and certifying as to (A) the directors' resolutions in respect of the execution, delivery and performance by the Lessor of each Operative Document to which it is or will be a party, (B) its Restated Articles of Incorporation and by-laws and (C) the incumbency and signatures of persons authorized to execute and deliver the Operative Documents on behalf of the Lessor.

(g) *Representations and Warranties; Absence of Defaults; Etc.* Each representation and warranty of the Lessee, the Guarantors and the Participants contained herein or in any other Operative Document shall be true and correct in all material respects. After giving effect to the Operative Documents, no Default or Event of Default shall have occurred and be continuing on and as of the Closing Date.

(h) *Appraisal; Survey.* The Agents and each of the Participants shall have received an Appraisal from the Appraiser which shall establish (by the use of appraisal methods satisfactory to the Participants) values and other information as required by the Participants, in their reasonable discretion, including without limitation, as to the economic useful life of the Leased Property as of the Closing Date and as of the Maturity Date. The Appraisal shall comply with all of the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, the rules and regulations adopted pursuant thereto, and all other Applicable Laws. The Lessee shall have delivered, or shall have caused to be delivered, to the Participants, at the Lessee's expense, sufficient copies of an accurate "As-Built" survey of the Leased Property (the "**Survey**") prepared in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys certified to the Agents and each of the Participants and showing no state of facts reasonably unsatisfactory to each of the Participants and prepared within thirty (30) days of the Closing Date by a Person reasonably satisfactory to each of the Participants. The Survey shall (1) be acceptable to the Title Insurance Company, (2) show no encroachments on the Site by structures owned by others, and no encroachments from any part of the Leased Property onto any land owned by others, and (3) disclose no state of facts objectionable to any of the Participants, in their reasonable discretion, or the Title Insurance Company and be acceptable to each such Participants, in their reasonable discretion.

(i) *Environmental Report and Related Reliance Letter.* The Agents and each of the Participants shall have received a copy of the "Phase I" environmental assessment report (or its equivalent) of the Site in form and substance reasonably satisfactory to each of the Participants by the Environmental Expert, and, if such assessment indicates any exceptions reasonably requiring remedy or further investigation, a further environmental assessment of the Site by such environmental engineer satisfactory to each of the Participants; and the Environmental Expert shall have delivered to each of the Participants a letter in form and substance satisfactory to each of the Participants stating that each such Person may rely upon the Environmental Expert's assessment of the Site.

(j) *No Material Adverse Effect.* Except as disclosed in filings with the Securities and Exchange Commission, since July 30, 2022, there has been no material adverse effect with respect to the Site or in the financial position or operations of the Lessee.

(k) *Fees and Transaction Costs.* (i) The Agents, the Arranger and each of the Participants shall have received payment of all Fees agreed to by the Lessee in writing and due and payable to them on the Closing Date and (ii) the Lessee shall have paid all other Transaction Costs due and payable on or prior to the Closing Date that have been set forth in detailed invoices delivered to the Lessee prior to the Closing Date. Provisions for the payment of all Taxes and filing fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Documents and the Overall Transaction shall have been made by the Lessee to the reasonable satisfaction of the Administrative Agent and each of the Participants.

(l) *Title and Title Insurance.* On the Closing Date, fee simple title to the Leased Property will be assigned and conveyed by the Seller to the Lessor by the Deed and thereafter owned by the Lessor. The Title Insurance Company shall deliver to the Lessor an Owner's Policy of Title Insurance and an alternative Mortgagee Policy of Title Insurance (insuring the lien of the mortgage contained in the Memorandum of Lease) issued to the Lessor and its successors and assigns including the Administrative Agent, in each case, reasonably acceptable in form and substance to the Administrative Agent and each of the Participants (collectively, the "**Title Policy**"). The Title Policy shall be dated as of the Closing Date, shall include coverage over the general exceptions to such policy and shall contain such affirmative endorsements, if applicable, as to mechanic's liens, easements and rights of way, encroachments, the non-violation of covenants and restrictions, zoning, survey matters, an alternative policy endorsement and other matters as the Lessor or the Lessee shall reasonably request, in each case to the extent customarily available and obtained in California.

(m) *Lien Searches, Financing Statements.* Uniform Commercial Code lien searches shall have been performed and sufficient copies thereof delivered to the Lessor and the Administrative Agent, which shall indicate to each such party's reasonable satisfaction that there are no Liens other than Liens released concurrently with the effectiveness of this Agreement on the Closing Date (regardless of whether senior, pari passu or junior), and other than Permitted Liens, and UCC-1 financing statements covering Lessee Collateral shall have been prepared by the parties thereto and copies thereof delivered to the Lessor and the Administrative Agent, all of which shall be in form and substance reasonably acceptable to the Lessor and the Administrative Agent.

(n) *Filings, Recordings and Other Actions.* The Lessee shall have caused the Deed and Bill of Sale to be executed and delivered in favor of the Lessor. The Lessee and the Lessor shall have executed and delivered all instruments and documents necessary for (i) the Lessor to obtain a Lien on the Lessee Collateral and (ii) any of the Operative Documents to become effective or enforceable, in each case in accordance with Applicable Laws. The Lessee and the Lessor shall cause all such instruments and documents to be filed and recorded in the Recorder's Office or such governmental offices as is necessary to perfect or publish notice of such Liens in favor of the Lessor. The Lessor and the Administrative Agent shall have received satisfactory evidence of the payment of all recording and filing fees and taxes with respect to any recordings or filings made of the Deed, the Memorandum of Lease and any UCC financing statements to be

filed with the Secretary of State of the State of Ohio and the Recorder's Office (or other appropriate filing office).

(o) *Flood Hazard Certification.* The Administrative Agent and the Lessor shall have obtained the necessary documents regarding flood hazard certification for the Leased Property, which shall be prepared at the Lessee's expense.

(p) *Assignments and Liens.* The Lessor shall have a security interest in the interests of the Lessee in the Lessee Collateral.

(q) *No Event of Loss, Taking, Force Majeure Event.* No Event of Loss, Event of Taking, Force Majeure Event or other event or circumstance that, with the giving of notice or lapse of time or both, would constitute an Event of Loss, Event of Taking or Force Majeure Event shall have occurred with respect to the Leased Property.

(r) *Rent Assignment Interests, Lessor Retained Interest and Lessor Investment Permitted by Applicable Law, etc.* The acquisition of the Rent Assignment Interests by the Rent Assignees and the making of the Lessor Retained Interest and Lessor Investment by the Lessor shall be permitted by Applicable Laws (including, without limitation, Regulations T, U and X of the F.R.S. Board) and shall not subject any Participant to any Tax, penalty, liability or other onerous condition under or pursuant to any Applicable Laws. If requested any Participant, such Participant shall have received an Officer's Certificate from a Responsible Officer by the Lessee certifying as to such matters of fact as it may reasonably specify to enable it to determine whether such acquisition of the Rent Assignment Interests or the making of the Lessor Retained Interest or the Lessor Investment, as applicable, is so permitted.

(s) *The Lessor Confirmation Letter.* The Lessee shall have received the Lessor Confirmation Letter.

(t) *KYC, FIN Cen Information.* The Lessee shall have provided to the Participants the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the USA PATRIOT Act, as defined below, in each case at least five (5) days prior to the Funding Date (or such later date at the Agents may reasonably agree).

(u) The Lessee shall have caused the Termination Value (as defined under that certain Real Property Lease Agreement, dated as of November 30, 2017, by and between Wachovia Service Corporation, as lessor, and AVDC, Inc., as lessee) to be less than or equal to \$100,000,000 prior to entering into this Agreement.

All documents and instruments required to be delivered on the Closing Date pursuant to the Operative Documents shall be delivered to the offices of Dechert LLP or at such other location as the Lessor, the Agents and the Lessee may agree. The release by any party of its counterpart to

this Agreement shall constitute conclusive evidence of its satisfaction with the form and substance of each of the items so delivered under this Section 2.1.

**SECTION 2.2.           Commitments.**

(a)     *Rent Assignment Commitments.*

(i)     Subject to the terms and conditions hereof and of the Rent Assignment Agreement and after receipt of the Funding Request in accordance with Section 2.5 hereof, each Rent Assignee severally agrees to acquire the Rent Assignment Interests from the Lessor for the purpose of enabling the Lessor to make the Funding to the Escrow Agent for the benefit of the Lessee on the Closing Date in the amounts required under Section 2.11(a) hereof and Section 1.02(b) of the respective Rent Assignment Agreement.

(ii)    Each Rent Assignee's Commitment and Commitment Percentage are as specified on Schedule I-A, as amended from time to time pursuant to Section 6.3, or as specified in the applicable Assignment Agreement pursuant to which such Rent Assignee became a party to the Rent Assignment Agreement. Nothing in this Section 2.2(a) shall operate to relieve the Lessee from its obligations under the Operative Documents or to waive any of the Rent Assignees' rights against the Lessee.

(b)     *Lessor Commitment.*

(i)     Subject to the terms and conditions hereof and after receipt of the Funding Request in accordance with Section 2.5 hereof, the Lessor agrees to make an investment on the Closing Date to the Escrow Agent in accordance with Section 2.3 in an amount equal to its Lessor Retained Interest.

(ii)    Subject to the terms and conditions hereof and after receipt of the Funding Request in accordance with Section 2.5 hereof, the Lessor agrees to make an investment on the Closing Date to the Escrow Agent in accordance with Section 2.3 in an amount equal to its Lessor Investment.

(iii)   The Lessor's Commitment and Commitment Percentage with respect to the Lessor Retained Interest and the Lessor Investment are as specified on Schedule I-B or as specified in the applicable Assignment Agreement pursuant to which the Lessor became a party hereto. Nothing in this Section 2.2(b) shall operate to relieve the Rent Assignees or the Lessee from their respective obligations under the Operative Documents or to waive any of the Lessor's rights against the Rent Assignees or the Lessee.

(c)     *Lease Balance.* The Lease Balance shall be set forth in the Lease Supplement.

(d) *Termination of Commitment.* Notwithstanding anything contained herein to the contrary, any undrawn Rent Assignee's Commitment or the Lessor's Commitment shall automatically terminate on the Closing Date upon the transfer to the Administrative Agent of the Rent Assignment Advances, Lessor Retained Interest and Lessor Investment, respectively, by the respective Participants with respect thereto in accordance with this Section 2.2.

### **SECTION 2.3.      *Funding.***

(a) *Closing Date.* The only Funding Date shall be the Closing Date. On the Funding Date, subject to the terms and conditions set forth in this Agreement, the Rent Assignment Agreement and the Escrow Agreement and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto, the Participants, (i) in accordance with their respective Commitments, shall provide immediately available funds to the Escrow Agent, and (ii) together with the Administrative Agent and pursuant to the Escrow Agreement shall instruct the Escrow Agent to disburse an amount necessary to enable (x) the Lessee to pay for the Transaction Costs and, subject to the final sentence of this Section 2.3(a), Fees to be paid on the Closing Date pursuant to Section 2.13, (y) the Lessor to pay the purchase price for the Leased Property and acquire the Leased Property, and (z) the other disbursements set forth in the Escrow Agreement to be paid. Such amounts transferred or applied by the Escrow Agent shall constitute the Funding. Transfers of such funds by the Participants shall be made in immediately available funds by wire transfers to the Escrow Agent in accordance with the instructions set forth in the Escrow Agreement for deposit not later than 10:00 a.m., New York time, on the Funding Date. The parties intend that funds from the Participants shall be transferred to the Escrow Agent and applied in accordance with the Escrow Agreement for same day value provided, that, if the terms and conditions for the Funding set forth herein or for the release thereof by the Escrow Agent have not been satisfied by 3:00 p.m. New York time on the Funding Date, then, subject to the indemnification set forth in the Funding Notice, the Lessee may elect in writing to extend such time for satisfaction, to occur no later than 3:00 p.m. New York time on the following Business Day. The Administrative Agent is authorized to instruct Participants to retain any Fees or Transaction Costs payable by such parties.

(b) *No Reborrowing.* No amounts paid or prepaid with respect to the Lessor Investment, the Lessor Retained Interest or the Rent Assignment Interest may be reborrowed.

### **SECTION 2.4.      *Obligations Several.***

The obligations of the Participants hereunder or elsewhere in the Operative Documents shall be several and not joint and the Participants shall not be liable or responsible for the acts or defaults of any other Participant hereunder or under any other Operative Document, nor shall the failure of any Participant to perform its obligations in and of itself relieve any other Participant from its obligations hereunder.

**SECTION 2.5.        *Funding Request.***

At or before 3:00 p.m. New York time on the third (3rd) Business Day prior to the proposed Funding Date or such other day as the Participants may agree, the Lessee shall deliver to the Administrative Agent an irrevocable written notice substantially in the form of Exhibit A (a “***Funding Request***”), together with the Funding Certificate, setting forth:

- (i) the proposed Funding Date; and
- (ii) a statement of the amount of the requested Funding in Dollars (including a separate statement of the amount thereof, if any, that constitutes Fees and Transaction Costs).

Promptly upon receipt, the Administrative Agent shall confirm the amounts set forth in the Funding Request and the Administrative Agent shall forward the Funding Request to each Participant with instructions to each recipient to the extent any Fees or other amounts should be retained from their respective Fundings.

On the scheduled Funding Date, and subject to the satisfaction of the conditions set forth in this Section 2.5 and in Section 3.1, the Participants shall fund their respective portion of the Funding in Dollars by wire transfer to the Escrow Agent in the manner described in Section 2.3(a).

**SECTION 2.6.        *Funding Notations.***

Each Participant is hereby authorized to record the date and amount of the Funding, each payment or repayment of principal with respect to its Rent Assignment Interests, Lessor Retained Interest or Lessor Investment, as applicable, and the length of each Payment Period with respect thereto in any manner consistent with its ordinary business practices, and any such recordation shall constitute prima facie evidence of the accuracy of the information so recorded; provided, that the failure to make any such recordation or any errors in such recordation shall not affect the obligation of the Lessor under such instrument or the corresponding obligation of the Lessee to pay Rent (including any Adjusted Lease Balance).

**SECTION 2.7.        *Payments to Participants.***

The parties to this Agreement hereby agree that any payment required to be made to (a) the Lessor or (b) the Rent Assignees by the Lessor pursuant to the Rent Assignment Agreements from payments to be made by the Lessee shall be made to the Administrative Agent. Such payment by the Lessee to the Administrative Agent for the benefit of the Participants, shall be deemed to constitute (i) the required payment from the Lessee to the Lessor and (ii) the corresponding payment by the Lessor to the Rent Assignees. However, this Section 2.7 shall not relieve the Administrative Agent of its obligation to make such payments to the Lessor and to the Rent Assignees under the terms of the Operative Documents.

**SECTION 2.8. Computations.**

For all purposes under the Operative Documents, all computations of Yield and other accrued amounts (including, without limitation, the Overdue Rate) shall be made on the basis of a 360-day year and the actual days elapsed (including the first day but excluding the last day) provided, that all computations of Yield utilizing the Alternate Base Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed.

**SECTION 2.9. Determination of Yield Rate and Payment Periods.**

(a) *Determination of Yield Rate.* The Guaranteed Lease Balance outstanding from time to time shall accrue Yield at the rate per annum equal to the Yield Rate. The Administrative Agent shall as soon as practicable after receipt of the Funding Request, but in no event later than 11:00 a.m., New York time, two (2) Business Days prior to the effectiveness of each Benchmark, notify the Lessee, the Lessor and each other Participant of such Benchmark and the corresponding Yield Rate but failure to so notify shall not affect the obligations of the parties hereunder or under the other Operative Documents. Accrued Yield shall be due and payable on each applicable Payment Date and on the Maturity Date. If all or any portion of the principal of the Lease Balance, any accrued Yield payable on the Guaranteed Lease Balance or any other amount payable hereunder shall not be paid when due (whether at stated maturity, acceleration or otherwise but subject to any applicable grace periods), such overdue amount shall bear interest at a rate per annum which is equal to the Overdue Rate and shall be payable from time to time on demand as Supplemental Rent.

(b) *Rate Determinations.* Each determination of a Yield Rate pursuant to any provision of this Agreement or any other Operative Document shall be conclusive and binding on the Lessee and the Participants in the absence of manifest error.

(c) *Payment Periods.* Each Payment Period shall end on a Payment Date and shall be a period of one month, in each case, after the end of the preceding Payment Period except the first Payment Period shall commence on the Funding Date and last until the first Payment Date.

(d) *Alternate Base Rate Payment Periods.* Each Payment Period applicable to the Funding bearing yield at the Alternate Base Rate shall be a period of one month commencing on the first Payment Date applicable to such Alternate Base Rate and ending on but excluding the next Payment Date or, regarding the Funding Date, ending on but excluding the date occurring one month after the Funding Date.

(e) *Illegality, Unascertainable; Increased Costs; Deposits Not Available.* If:

(i) at any time the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that



(1) (x) the Term SOFR Rate or Daily Simple SOFR, as applicable to the Guaranteed Lease Balance, cannot be determined pursuant to the definition thereof including, without limitation, because such rate is not available or published on a current basis or (y) a fundamental change has occurred in the interbank markets or with respect to such rate (including, without limitation, changes in national or international financial, political or economic conditions), or

(2) the Term SOFR Rate or Daily Simple SOFR cannot be determined pursuant to the definition thereof, or

(3) on or prior to the first day of a Payment Period, any Participant determines that for any reason that (A) deposits in U.S. Dollars are not available to any Participant, or are not being offered to banks in the market for U.S. Dollars with the amount and Payment Period of such Guaranteed Lease Balance, or (B) the Term SOFR Rate or Daily Simple SOFR, as applicable, for the applicable Payment Period does not adequately and fairly reflect the cost to such Participant of maintaining its pro rata portion of the Guaranteed Lease Balance and, in each case, such Participant has provided notice of such determination to the Administrative Agent, then

(ii) the Administrative Agent or any Participant shall determine (which determination shall be conclusive and binding on the Lessee absent manifest error), or any Relevant Governmental Body shall have asserted, that the making, maintenance or funding of a Rent Assignment Advance, Lessor Retained Interest or Lessor Investment, or the determination or charging of Yield has been made impracticable or unlawful, by compliance by such Participant in good faith with any Applicable Law or any interpretation or application thereof by any Relevant Governmental Body or with any request or directive of any such Relevant Governmental Body (whether or not having the force of Applicable Law), or any Relevant Governmental Body has imposed material restrictions on the authority of such Participant to purchase, sell, or take deposits of U.S. Dollars in the interbank market for U.S. Dollars,

then the Administrative Agent shall have the rights specified in Section 2.9(f).

(f) *Benchmark Replacement Setting.*

(i) *Benchmark Replacement.* Notwithstanding anything to the contrary herein or in any other Operative Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark for U.S. Dollars, then (A) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Operative Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Operative

Document and (B) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Operative Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Participants without any amendment to, or further action or consent of any other party to, this Agreement or any other Operative Document so long as the Administrative Agent has not received, by such time, written notice from Participants comprising the Required Participants of objection to (i) with respect to a Benchmark Replacement determined in accordance with clause (2) of the definition of “Benchmark Replacement”, the related Benchmark Replacement Adjustment and (ii) with respect to a Benchmark Replacement determined in accordance with clause (4) of the definition of “Benchmark Replacement”, such Benchmark Replacement.

(ii) *Benchmark Replacement Conforming Changes.* In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent may make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Operative Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Operative Document.

(iii) *Notices; Standards for Decisions and Determinations.* The Administrative Agent will promptly notify the Lessee and the Participants of (A) the implementation of any Benchmark Replacement, and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption, or implementation of a Benchmark Replacement. The Administrative Agent will notify the Lessee of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to paragraph (iv) below and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Participant (or group of Participants) pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or nonoccurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Operative Document except, in each case, as expressly required pursuant to this Section.

(iv) *Unavailability of Tenor of Benchmark.* Notwithstanding anything to the contrary herein or in any other Operative Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate and either (I) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected

by the Administrative Agent in its reasonable discretion or (II) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of "Payment Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor; and (B) if a tenor that was removed pursuant to clause (A) above either (I) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (II) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Payment Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) This Section 2.9(f) provides a mechanism for determining an alternative rate of interest in the event that the Term SOFR Rate or Daily Simple SOFR is no longer available or in certain other circumstances. The Administrative Agent does not warrant or accept any responsibility for and shall not have any liability with respect to, the administration, submission or any other matter related to the Term SOFR Rate or Daily Simple SOFR or with respect to any alternative or successor rate thereto, or Benchmark Replacement therefor.

#### **SECTION 2.10. Lessor Investment.**

(a) *Procedure for Investment.* Upon receipt of the Funding Request, and subject to the terms and conditions of this Agreement, the Lessor agrees that it shall wire transfer its portion of the requested Funding equal to its Lessor Investment Commitment Amount as set forth on Schedule I-B hereto in immediately available funds to the Administrative Agent for further funding to the Escrow Agent and applied in accordance with the Escrow Agreement, all in accordance with Section 2.3.

(b) *Return of Investment.* The Lessor shall be entitled to a return of its Lessor Investment, in full, together with (1) Lessor's Gain with respect to such payment to the date of such return, other than in connection with the Return Date in the case of clause (ii) below (in which case, Lessor's Gain shall be payable from Sale Proceeds in accordance with Section 10.3 hereof), and (2) all other amounts then due and payable by the Lessee hereunder or under the other Operative Documents to the Lessor with respect to the Lessor Investment (but, in the case of clause (ii) below, without duplication of the amounts payable by the Lessee under Section 22.3 of the Lease), upon the first to occur of:

(i) the purchase by the Lessee during the Base Term of the Leased Property pursuant to Article XIII, Article XX or Article XXI of the Lease, such return to be due on the date specified in such provisions for payment with respect to such purchase;

(ii) the Return Date; and

(iii) following an Event of Default and the exercise of remedies under the Lease.

(c) *Scheduled Return of Lessor Investment.* Except in the case of a required return described in Section 2.10(b) above, no return in respect of the principal of the Lessor Investment or Lessor's Gain shall be due prior to the Maturity Date. On the Maturity Date and subject to the rights of the Rent Assignees under Article X hereof and the Rent Assignment Agreements and of the Lessor with respect to the Lessor Retained Interest, the Lessor shall be entitled to the aggregate unpaid Lessor Investment and Lessor's Gain shall be due as of such date to the Lessor.

(d) *Yield.*

(i) The Lessor Investment outstanding shall not earn a Yield on the unpaid amount thereof.

(ii) If all or a portion of the Lessor Investment or Lessor's Gain is not paid when due (on the Maturity Date, by acceleration or otherwise and subject to any applicable grace periods), such overdue amount shall, without limiting the rights of the Lessor under any Operative Document, bear interest at the Overdue Rate, in each case from the date of nonpayment until paid (after as well as before judgment).

(e) *Lessor's Gain.*

(i) The Lessor's Gain, as of the date of determination, shall be equal to an amount set forth on Schedule B to the Lease Supplement corresponding to such date, as interpolated between the nearest two dates in the case such date of determination is not set forth thereon.

(ii) The Lessor's Gain shall not earn a Yield prior to the Maturity Date, and, if applicable, thereafter shall bear interest at the Overdue Rate from the Maturity Date until paid pursuant to Section 22.4 of the Lease.

#### **SECTION 2.11. Rent Assignment Interests.**

(a) *Procedure for Acquiring Rent Assignment Interests.* Upon receipt of the Funding Request and subject to the terms and conditions of this Agreement, each Rent Assignee agrees that it shall wire transfer its portion of the Funding equal to its Rent Assignee Commitment Amount as set forth on Schedule I-A hereto in immediately available funds to the Administrative Agent for further funding to the Escrow Agent, all in accordance with Section 2.3.

(b) *Payments with respect to Rent Assignment Interests.* Payments with respect to the Rent Assignment Interests shall be made by the Administrative Agent with funds received from the Lessee pursuant to the Operative Documents to the Rent Assignees together with all

accrued and unpaid Yield thereon, at the times and in the manner set forth in the Rent Assignment Agreements and this Agreement. Each Rent Assignee shall be entitled to payments with respect to its outstanding Rent Assignment Advances, in full, together with (1) Yield accrued thereon to the date of repayment and (2) all other amounts then due and payable by the Lessor under the related Rent Assignment Agreement to such Rent Assignee, upon the first to occur of:

(i) the purchase by the Lessee during the Base Term of the Leased Property pursuant to Article XIII, Article XX or Article XXI of the Lease, such payment to be made on the date specified in such provisions for payment with respect to such purchase;

(ii) the Return Date; and

(iii) following an Event of Default and the exercise of remedies under the Lease.

(c) *Scheduled Return of Rent Assignment Advances.* Except in the case of a required repayment described in Section 2.11(b) above, there shall be no payments with respect to the principal of the Rent Assignment Advances prior to the Maturity Date. On the Maturity Date, the Rent Assignees shall be entitled to payments to be applied to the aggregate unpaid principal amount of the Rent Assignment Advance as of such date.

(d) *Yield.*

(i) Pursuant to Section 2.01 of each Rent Assignment Agreement, Yield shall be payable with respect to the outstanding Rent Assignment Advance at an effective rate per annum thereon equal to the Yield Rate.

(ii) If all or a portion of the Rent Assignment Advance or Yield is not paid when due (on the Maturity Date, by acceleration or otherwise and subject to any applicable grace periods) under the Rent Assignment Agreements or under Article X hereof, such overdue amount shall, without limiting the rights of the Rent Assignees under any Operative Document, bear interest at the Overdue Rate, in each case from the date of nonpayment until paid (after as well as before judgment).

(iii) Payments of Yield with respect to Rent Assignment Advances shall be payable in arrears on each Payment Date.

(e) *Computation of Yield.* Yield in respect of the Rent Assignment Interests shall be calculated as provided in Section 2.8.

#### **SECTION 2.12. Lessor Retained Interest.**

(a) *Procedure for Retaining Lessor Retained Interest.* Upon receipt of the Funding Request and subject to the terms and conditions of this Agreement, the Lessor agrees that,

in addition to the Lessor Investment, it shall retain for its own account and exclude from the Rent Assignment Interests, the Lessor Retained Interests, and shall wire transfer its portion of the Funding equal to its Lessor Retained Interest Commitment Amount as set forth on Schedule I-B hereto in immediately available funds to the Administrative Agent for further funding to the Escrow Agent, all in accordance with Section 2.3.

(b) *Payments with respect to Lessor Retained Interest.* Payments with respect to the Lessor Retained Interest shall be made by the Administrative Agent with funds received from the Lessee pursuant to the Operative Documents to the Lessor at the times and in the manner set forth in this Agreement. The Lessor shall be entitled to be paid its outstanding Lessor Retained Interest, in full, together with (1) Yield accrued thereon to the date of repayment and (2) all other amounts then due and payable to the Lessor with respect to the Lessor Retained Interest, upon the first to occur of:

(i) the purchase by the Lessee during the Base Term of the Leased Property pursuant to Article XIII, Article XX or Article XXI of the Lease, such payment to be made on the date specified in such provisions for payment with respect to such purchase;

(ii) the Return Date; and

(iii) following an Event of Default and the exercise of remedies under the Lease.

(c) *Scheduled Return of Lessor Retained Interest.* Except in the case of a required repayment described in Section 2.12(b) above, there shall be no payments with respect to the principal of the Lessor Retained Interest prior to the Maturity Date. On the Maturity Date, the Lessor shall be entitled to payments to be applied to the aggregate unpaid principal amount of the Lessor Retained Interest as of such date.

(d) *Yield.*

(i) Yield shall be payable with respect to the outstanding amount of the Lessor Retained Interest at an effective rate per annum thereon equal to the Yield Rate.

(ii) If all or a portion of the Lessor Retained Interest or Yield is not paid when due (on the Maturity Date, by acceleration or otherwise and subject to any applicable grace periods) under Article X hereof, such overdue amount shall, without limiting the rights of the Lessor under any Operative Document, bear interest at the Overdue Rate, in each case from the date of nonpayment until paid (after as well as before judgment).

(iii) Payments of Yield with respect to the Lessor Retained Interest shall be payable in arrears on each Payment Date.

(e) *Computation of Yield.* Yield in respect of the Lessor Retained Interest shall be calculated as provided in Section 2.8.

**SECTION 2.13. Fees and Other Transaction Costs.**

The Lessee shall authorize and request a portion of the Funding shall be used to pay any and all Transaction Costs and any and all fees described in the succeeding provisions of this Section 2.13 (collectively, “**Fees**”):

(a) *Arrangement Fee.* The Lessee shall pay to the Arranger on the Closing Date an arrangement and structuring fee as set forth in the Fee Letter (the “**Arrangement Fee**”);

(b) *Upfront Fee.* The Lessee shall pay to each Rent Assignee and to the Lessor on the Closing Date an upfront fee (the “**Upfront Fee**”) in the amount set forth in the Fee Letter in the Fee Letter;

(c) *Agent Fees.* The Lessee shall pay to the Administrative Agent (for the benefit of the Agents) in advance on the Closing Date and on each anniversary of the Closing Date (excluding the Maturity Date), an annual agency fee in the amount set forth in the Fee Letter; and

(d) The Lessee shall pay all outstanding and invoiced Transaction Costs on the Closing Date and thereafter shall promptly pay all Transaction Costs after receiving invoices therefor.

**SECTION 2.14. Nature of Overall Transaction.**

It is the intention of the parties that:

(a) the Overall Transaction constitutes an operating lease for purposes of the Lessee’s financial reporting under GAAP provisions relating to leases including without limitation the Accounting Standards Codification (“**ASC**”) 842; and

(b) for United States federal, state and local income tax, property tax, transfer tax, sales tax, franchise tax, general corporation tax and other similar taxes that may be imposed upon net or gross income, bankruptcy (including the substantive law upon which bankruptcy proceedings are based) and real estate and commercial law purposes:

(i) the Overall Transaction constitutes (x) a financing by the Lessor to the Lessee, the obligations of the Lessee to the Lessor are for borrowed money secured by a Lien on the Leased Property and the Lessee shall continue to be treated as the legal and beneficial owner of the Leased Property during the Lease Term (including any extension thereof), the Lessee will continue to be entitled to all benefits of ownership of the Leased Property, including, without limitation, depreciation and other tax benefits ordinarily available to owners of property similar to the Leased Property, and the obligations of the Lessee to pay Basic Rent shall be treated as payments of interest to the Lessor and the

payment by the Lessee of any amounts in respect of the Lease Balance shall be treated as payments of principal to the Lessor, and (y) a sale of receivables and other rights under the Operative Documents as set forth in the Rent Assignment Agreements from the Lessor to the Rent Assignees; and

(ii) The Lessee will not be entitled to, and shall not avail itself of, any of the rights or benefits accorded to a lessee under Applicable Laws except as expressly permitted under the Lease and the Lessor will be deemed and will have the rights of a lender making secured loans to the Lessee secured by, among other things, the Lessee Collateral, a portion of which rights will be deemed sold by the Lessor to the Rent Assignees upon payment for their respective Rent Assignment Interests.

The Lessee acknowledges and agrees that none of the Agents, the Arranger or any of the Participants has made, in any capacity, any representations or warranties concerning the tax, accounting or legal consequences or characteristics of the Operative Documents or any aspect of the Overall Transaction and that the Lessee has obtained and relied upon such tax, accounting and legal advice concerning the Operative Documents and the Overall Transaction as it deems appropriate, provided, that the Lessee may rely on the representations and warranties contained in the Operative Documents and the legal opinions issued to it in connection therewith and to which it is an addressee. Each Participant acknowledges and agrees that the Lessee has not made any representations or warranties concerning the tax, accounting or legal consequences or characteristics of the Operative Documents or any aspect of the Overall Transaction and that such Person has obtained and relied upon such tax, accounting and legal advice concerning the Operative Documents and the Overall Transaction as it deems appropriate, provided, that each Participant may rely on the representations and warranties contained in the Operative Documents and the legal opinions issued in connection therewith.

#### ***SECTION 2.15. Amounts Due.***

(a) It is the intention of the Lessee and the Participants that (i) the amount and timing of installments of Basic Rent due and payable from time to time from the Lessee under the Lease shall be equal to the aggregate payments due and payable in respect of Yield accrued on and payable with respect to the Rent Assignment Advances under each Rent Assignment Agreement due on each Payment Date and Yield accrued on and payable with respect to the Lessor Retained Interest due on each Payment Date; (ii) if the Lessee elects the Early Termination Option or elects or is deemed to have elected the Purchase Option, the outstanding principal of the Rent Assignment Advances, Lessor Retained Interest and the Lessor Investment, all Yield on the Guaranteed Lease Balance, all Lessor's Gain, any Break Amount, all Fees and Transaction Costs and all other obligations of the Lessee owing to the Agents and the Participants shall be paid in full by the Lessee in accordance with Article XX or Article XXI of the Lease, as applicable; (iii) upon a proper election of the Return Option in accordance with Article XXII of the Lease, in the absence of a Default or Event of Default, the Lessee shall be required to pay the Sale Proceeds of the sale of the Leased Property (in an amount not to exceed the Adjusted Lease Balance, any excess being payable to the Lessee, except in the case of application of Section 22.4 of the Lease), and if the



Sale Proceeds are less than the Adjusted Lease Balance, the lesser of (x) the amount of such difference and (y) the Recourse Deficiency Amount, all in accordance with Article XXII of the Lease, and any amounts due pursuant to Article VII hereof and Section 22.3(a) of the Lease; and (iv) upon a Default or an Event of Default, the amounts then due and payable by the Lessee under the Lease shall include all amounts necessary to pay in full the outstanding principal with respect to the Rent Assignment Advances, the Lessor Retained Interest and the Lessor Investment and all accrued Yield on the Guaranteed Lease Balance, plus Lessor's Gain, plus all other amounts then payable by the Lessee to the Agents and the Participants under the Operative Documents.

(b) The Lessee shall pay or repay the Funding at such times and in such amounts as the Lease Balance or the Adjusted Lease Balance, as applicable, becomes due and payable, which payment obligations shall be satisfied by and to the extent of any payment made by or on behalf of the Lessee pursuant to the Operative Documents of Rent, the Adjusted Lease Balance, the Purchase Amount, the Sale Proceeds, Deficiency payments or the Recourse Deficiency Amount, as the case may be.

**SECTION 2.16.      *Extension of Lease Expiration Date and Final Maturity Date***

(a) The Lessee may request in writing (an "**Extension Option Request**") to the Administrative Agent, the Collateral Agent and each of the Participants that each agree that the Lessee be granted the right (an "**Extension Option**") pursuant to the Lease to extend the Lease Term (a "**Lease Extension**") for up to an additional five (5) years in one-year or longer annual periods commencing on the day following the last day of the then current Lease Term, as applicable (each, a "**Lease Extension Term**") and that the Maturity Date be correspondingly extended to the extended Lease Expiration Date. Any such Extension Option Request must be delivered in writing to the Administrative Agent, the Collateral Agent and each Participant not later than one hundred eighty (180) days prior to the expiration of the then current Lease Term and no Extension Option Request may be elected to the extent the Lessee has elected the Return Option pursuant to Section 21.1(b) of the Lease, and, for the avoidance of doubt, if the Lessee delivers an Extension Option Request and consent thereto is not granted as provided below by the Participants by the date that is one hundred eighty (180) days prior to the expiration of the then current Lease Term, the Lessee shall be deemed to have elected the Purchase Option pursuant to Section 21.2 of the Lease. Subject to the foregoing limitations, the Lessee may deliver up to five (5) Extension Option Requests. For each Extension Option Request, each Participant will notify the Lessor, the Administrative Agent, the Collateral Agent and the Lessee in writing of whether or not it has consented, in its sole and absolute discretion, to such Extension Option Request not later than forty-five (45) days after receipt of the Extension Option Request (the "**Extension Option Response Date**"). Each Participant, upon consent to such Extension Option Request, shall be deemed to have extended its Rent Assignment Interest, Lessor Retained Interest or Lessor Investment, as applicable, accordingly. Any such Person who does not so notify the Lessor, the Administrative Agent, the Collateral Agent and the Lessee by the Extension Option Response Date will be deemed to be, and any such Person that has notified the Lessor that it has not consented to

an Extension Option Request will be, a Non-Consenting Participant. Each such Person's determination with respect to an Extension Option Request shall be a new credit determination and within such Person's sole and absolute discretion and may be conditioned upon such terms and conditions as deemed appropriate by the consenting Persons, including the modification of the Recourse Deficiency Amount, receipt of such financial information, documentation or other information or conditions as may be requested by such Participants and the receipt of a satisfactory appraisal of the Leased Property.

The Extension Option shall become effective only as of the first date (the "**Extension Effective Date**") on or after the Extension Option Response Date on which each of the Participants, other than Non-Consenting Participants who have been replaced by Replacement Participants in accordance with Section 2.16(b), and such Replacement Participants shall have consented to such Lease Extension; provided, that on both the date of the Extension Option Request and the Extension Effective Date: (w) each of the representations and warranties made by the Lessor and the Lessee in or pursuant to the Operative Documents shall be true and correct in all material respects as if made on and as of each such date (except to the extent any such representation or warranty specifically relates to an earlier date in which case such representations and warranties shall have been true and correct as of such earlier date), (x) the Lessee shall not have elected the Purchase Option or the Return Option, (y) no Default or Event of Default shall have occurred and be continuing, and (z) on each of such dates, the Lessor shall have received a certificate of the Lessee as to the matters set forth in clauses (w) and (y) above; and provided further that in no event shall the Extension Effective Date occur unless each Participant, other than Non-Consenting Participants who have been replaced in accordance with Section 2.16(b), and such Replacement Participants shall have consented to the Extension Option Request on or before the expiration of the then current Lease Term such that all Lessor Investment and Lessor Retained Interest, as applicable, in existence prior to such Lease Extension have been extended and all Rent Assignment Interests related to the Lease Extension have been conveyed by the Lessor to the Rent Assignees other than the Non-Consenting Participants.

(b) At any time after the Extension Option Response Date but prior to the Maturity Date, the Lessee shall be permitted to replace any Non-Consenting Participant with a replacement bank or other financial institution (a "**Replacement Participant**"), and such Non-Consenting Participant shall sell and/or transfer (without recourse) to the Replacement Participant all Rent Assignment Interests, Lessor Retained Interests or Lessor Investment, as applicable, of such Non-Consenting Participant for an amount equal to the aggregate outstanding principal amount of such Rent Assignment Advances, Lessor Retained Interest or Lessor Investment, as applicable, plus accrued Yield or Lessor's Gain Yield, as applicable, to (but not including) the date of sale (the "**Non-Consenting Replacement Price**"), provided that: (i) such replacement does not conflict with any Applicable Laws, (ii) the Lessee shall pay to such Non-Consenting Participant any amounts arising under Section 7.5 if any Rent Assignment Interest, Lessor Retained Interest or Lessor Investment owing to such Non-Consenting Participant shall be purchased other than on the last day of the Payment Period relating thereto, together with all fees or other amounts then due to such Non-Consenting Participant under the Operative Documents, (iii) such replacement

shall be made in accordance with, and subject to the fulfillment of the requirements of, Section 6.3 hereof (provided that the relevant Replacement Participant or Lessee shall be obligated to pay the transaction costs arising in connection therewith), if any, (iv) the Replacement Participant shall have agreed to be subject to all of the terms and conditions of the relevant Operative Documents, (v) such replacement must be consummated no later than thirty (30) days prior to the expiration of the Base Term, (vi) such Non-Consenting Participant shall have received its full Non-Consenting Replacement Price in immediately available funds on or before the date of such sale and (vii) if such Non-Consenting Participant is MUFG Bank, LTD., prior to its replacement, each of the Lessor, the Collateral Agent and the Administrative Agent shall be permitted to assign their respective interests in the Operative Documents in accordance with Section 6.3(b) and the Operative Documents without the consent of the Lessee. Upon replacement of a Non-Consenting Participant in accordance with this subsection (b), the Replacement Participant shall be a party hereto and the other Operative Documents to which the Non-Consenting Participant was a party and shall have the rights and obligations of such Participant, as the case may be, hereunder and under such other Operative Documents, and the Non-Consenting Participant shall relinquish its rights and be released from its obligations hereunder and under such other Operative Documents; provided, that a Non-Consenting Participant's rights under the indemnification provisions of the Operative Documents shall survive any sale and/or transfer of its Rent Assignment Interests, Lessor Retained Interests or Lessor Investment, as applicable, to a Replacement Participant.

### ARTICLE III

#### CONDITIONS TO FUNDING

##### ***SECTION 3.1. Conditions to the Funding.***

The obligation of each Participant to perform its obligations on the Closing Date shall be subject to Section 2.2 and to the satisfaction of, or the waiver in writing by such Participant of, the conditions precedent set forth in this Section 3.1 on or prior to the Closing Date (all such conditions precedent to be satisfied to the satisfaction of such Participant in its reasonable discretion, except that the obligation of any party hereto shall not be subject to such party's own performance or compliance):

(a) *Funding Request.* The Lessee shall have delivered a Funding Request conforming to the requirements of Section 2.5.

(b) *Performance.* The Lessee and the Purchasing Agent shall have performed and complied in all material respects with all agreements and conditions contained herein and in any other Operative Document to which such Person is a party that are required to be performed or complied with by such party on or prior to the Closing Date.

(c) *Consents and Approvals.* All necessary or advisable Governmental Actions, and all consents, approvals and authorizations of Persons, required in connection with the Overall Transaction, shall have been obtained or made and be in full force and effect and not be subject to

any pending procedures or appeals, whether administrative, judicial or otherwise, except for any other Governmental Action, consent, approval or authorization the failure to obtain which, or the appeal of or further procedures with respect to which, would not reasonably be expected to have a Material Adverse Effect.

(d) *Representations and Warranties True; Absence of Defaults.* Each representation and warranty of the Lessee contained herein or in any other Operative Document or in any certificate delivered in connection therewith shall be true and correct in all material respects as though made on and as of the Funding Date. After giving effect to the Operative Documents, no Default for which the cure period, if any, has commenced, Default for which there is no notice and cure period, or Event of Default shall have occurred and be continuing.

(e) *Certificates.* The Agents and the Participants shall have received a certificate (a “**Funding Certificate**”) from a Responsible Officer of the Lessee certifying to the effect that (i) all necessary or advisable Governmental Actions, and all consents, approvals and authorizations of Persons, required in connection with the Overall Transaction, shall have been obtained or made and be in full force and effect and not be subject to any pending procedures or appeals, whether administrative, judicial or otherwise, except for any Governmental Action, consent, approval or authorization the failure to obtain which, or the appeal of or further procedures with respect to which, would not reasonably be expected to have a Material Adverse Effect; and, (ii) the proceeds of the Funding will be used solely for the Lessor to acquire the Leased Properties or pay Transaction Costs and Fees on behalf of the Lessee, (iii) the costs being funded with the Funding are as set forth in a schedule attached to such certificate, and (iv) all conditions precedent to the Funding have been satisfied (unless waived in writing by the Administrative Agent). The foregoing certifications may be included in the Funding Request.

(f) *Collateral Assignments and Liens.* The Lessor shall have a security interest in all Lessee Collateral and the Lessee shall have, subject to the prior security interest therein in favor of the Lessor, a security interest in the Lessor’s rights and interests as set forth in the Memorandum of Lease.

(g) *No Event of Loss, Event of Taking.* No Event of Loss, Event of Taking, Condemnation, Casualty or other event or circumstance that, with the giving of notice or lapse of time or both, would constitute an Event of Loss or Event of Taking shall have occurred and be continuing.

(h) *Mechanics Liens, Etc.* No mechanic’s (unless bonded over) liens exist and one or more waivers, as needed, as evidence of the same are delivered in form and substance satisfactory to the Title Insurance Company in order for it to issue the Title Policy insuring the continuing first priority of the interests described therein.

(i) *Transaction Costs.* All Transaction Costs shall have been paid, or will be paid with the proceeds of the Funding, to the parties to whom such Transaction Costs were owed.

**ARTICLE IV**  
**REPRESENTATIONS AND WARRANTIES**

***SECTION 4.1. Representations and Warranties of the Lessee and the Guarantors.***

As of the Closing Date, each of the Lessee Parties makes the representations and warranties set forth in this Section 4.1 to each of the other parties hereto:

(a) *Organization; Power; Qualification.* Each Lessee Party and each Restricted Subsidiary of each Lessee Party (i) is a corporation, partnership, limited liability company or unlimited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) has the lawful power to own or lease its respective properties, including, with respect to the Lessee, the Leased Property, and to engage in the business it presently conducts or proposes to conduct, (iii) is duly licensed or qualified and in good standing in each jurisdiction where the property owned or leased by it, including, with respect to the Lessee, the Leased Property, or the nature of the business transacted by it or both makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in good standing would not constitute a Material Adverse Effect, (iv) has full power to enter into, execute, deliver and carry out this Agreement and the other Operative Documents to which it is a party, to incur the Indebtedness contemplated by the Operative Documents and to perform its Obligations under the Operative Documents to which it is a party, and all such actions have been duly authorized by all necessary proceedings on its part, and (v) is in compliance with all Applicable Law (other than Environmental Laws which are specifically addressed in Section 4.1(l) and Anti-Terrorism Laws which are specifically addressed in Section 4.1(o)) in all jurisdictions in which any Lessee Party or any Restricted Subsidiary of any Lessee Party is presently or will be doing business except where the failure to do so would not constitute a Material Adverse Effect. No Event of Default or Default exists or is continuing. No Lessee Party is a Covered Entity.

(b) *Capitalization; Subsidiaries and Joint Ventures; Investment Companies.* Schedule 3.02 of the Credit Agreement states (i) the name of each of BLI's Subsidiaries, its jurisdiction of organization and the amount, percentage and type of equity interests in such Subsidiary (the "***Subsidiary Equity Interests***"), (ii) all Joint Ventures in which BLI or any Restricted Subsidiary owns any Equity Interests (the "***Joint Venture Equity Interests***") and (iii) any options, warrants or other rights outstanding to purchase any such Subsidiary Equity Interests or Joint Venture Equity Interests. BLI and each Restricted Subsidiary of BLI has good and marketable title to all of the Subsidiary Equity Interests and Joint Venture Equity Interests it purports to own, free and clear in each case of any ABL Lien (other than ABL Permitted Liens) and all such Subsidiary Equity Interests and Joint Venture Equity Interests have been validly issued and fully paid and are nonassessable (if applicable). None of the Lessee Parties or Subsidiaries of any Lessee Party is an "investment company" registered or required to be registered under the Investment Company Act of 1940 or under the "control" of an "investment company" as such

terms are defined in the Investment Company Act of 1940 and shall not become such an “investment company” or under such “control.” The Lessee is a Restricted Subsidiary of BLI.

(c) *Validity and Binding Effect.* This Agreement and each of the other Operative Documents (i) has been duly and validly executed and delivered by each Lessee Party that is a party thereto and (ii) constitutes, or will constitute, legal, valid and binding obligations of each Lessee Party that is a party thereto, enforceable against such Lessee Party in accordance with its terms, except to the extent that enforceability of this Agreement or any other Operative Document may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of creditors’ rights generally or limiting the right of specific performance or by general principles of equity.

(d) *No Conflicts; Material Agreements, Consents.* Neither the execution and delivery of this Agreement or the other Operative Documents by any Lessee Party nor the consummation of the Overall Transaction or compliance with the terms and provisions hereof or thereof by any of them will conflict with, constitute a default under or result in any breach of (i) the terms and conditions of the articles or certificate of incorporation, code of regulations, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, operating agreement, limited liability company agreement or other organizational documents of any Lessee Party, (ii) any Applicable Law or any agreement or instrument or order, writ, judgment, injunction or decree to which any Lessee Party or any of its Restricted Subsidiaries is a party or by which it or any of its Restricted Subsidiaries is bound or to which it is subject, in each case under clause (ii), except as would not result in a Material Adverse Effect, or (iii) result in the creation or enforcement of any ABL Lien, charge or encumbrance whatsoever upon any property (now or hereafter acquired) of any Lessee Party or any of its Restricted Subsidiaries (except Liens created pursuant to the Operative Documents). None of the Lessee Parties or their Restricted Subsidiaries is bound by any contractual obligation, or subject to any restriction in any organization document, or any Applicable Law which results in a Material Adverse Effect. No consent, approval, exemption, order or authorization of, or a registration or filing with, any Authority or any other Person is required by any Applicable Law or any agreement in connection with the execution, delivery and carrying out of this Agreement and the other Operative Documents other than those which have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Operative Documents.

(e) *Litigation.* There are no actions, suits, proceedings or investigations pending or, to the knowledge of any Lessee Party, threatened against such Lessee Party or any Restricted Subsidiary of such Lessee Party at law or in equity before any arbitrator or any Authority which (i) involve any Operative Document or the Overall Transaction or (ii) individually or in the aggregate would reasonably be expected to result in a Material Adverse Effect. None of the Lessee Parties or any Restricted Subsidiaries of any Lessee Party is in violation of any order, writ, injunction or any decree of any Authority which constitutes a Material Adverse Effect.

(f) *Financial Statements; No Material Adverse Effect; Beneficial Ownership Certification.*

(i) *Historical Statements.* The Lessee Parties have delivered or caused to be delivered to the Administrative Agent copies of the (1) audited consolidated year-end financial statements of BLI and its Subsidiaries for and as of the end of the fiscal year ended January 29, 2022 and (2) unaudited consolidated interim financial statements of BLI and its Subsidiaries for and as of the fiscal quarter ended on October 29, 2022 (such annual and interim statements being collectively referred to as the “*Statements*”). The Statements were compiled from the books and records maintained by the Lessee Parties’ management, are correct and complete in all material respects and fairly represent in all material respects the consolidated financial condition of BLI and its Subsidiaries as of the respective dates thereof and the results of operations for the fiscal periods then ended and have been prepared in accordance with GAAP consistently applied, subject (in the case of the interim statements) to normal year-end audit adjustments.

(ii) *Accuracy of Financial Statements; No Material Adverse Effect.* As of the respective dates of the Statements, no Lessee Party nor any Subsidiary thereof has any liabilities, contingent or otherwise, or forward or long-term commitments that are not disclosed in the Statements or in the notes thereto, and except as disclosed therein there are no unrealized or anticipated losses from any commitments of any Lessee Party or any Subsidiary thereof and, in each case, which constitutes a Material Adverse Effect. Since July 30, 2022, no Material Adverse Effect has occurred.

(iii) *Beneficial Ownership.* As of the date hereof, the information included in the Beneficial Ownership Certification is true and correct in all material respects.

(g) *Margin Stock.* None of the Lessee Parties or any Subsidiaries of any Lessee Party engages or intends to engage principally, or as one of its important activities, in the business of extending credit for the purpose, immediately, incidentally or ultimately, of purchasing or carrying margin stock (within the meaning of Regulation U, T or X as promulgated by the F.R.S. Board). No part of the proceeds of the Funding has been or will be used, immediately, incidentally or ultimately, to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or which is inconsistent with the provisions of the regulations of the F.R.S. Board. None of the Lessee Parties or any Subsidiary of any Lessee Party holds or intends to hold or, after giving effect to the use of proceeds of the Funding, will hold, margin stock in such amounts that more than twenty-five (25%) of the reasonable value of the assets of any Lessee Party or Subsidiary of any Lessee Party are or will be represented by margin stock. As of the Closing Date, none of the Lessee Parties holds any margin stock.

(h) *Full Disclosure.* Neither this Agreement nor any other Operative Document, nor any certificate, statement, agreement or other documents furnished to the Administrative Agent or any Participant in connection herewith or therewith, taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which they were made, not misleading. There is no fact known to any Lessee Party which would

reasonably be expected to constitute a Material Adverse Effect which has not been set forth in this Agreement or in the certificates, statements, agreements or other documents furnished in writing to the Administrative Agent and the Participants prior to or at the date hereof in connection with the Overall Transaction.

(i) *Taxes.* All federal and other material Tax returns required to have been filed with respect to each Lessee Party and each Restricted Subsidiary of each Lessee Party have been filed, and payment or adequate provision has been made for the payment of all Taxes, fees, assessments and other governmental charges which have or may become due pursuant to said returns or to assessments received, except to the extent that (a) the amount thereof is not individually or in the aggregate material or (b) such Taxes, fees, assessments and other charges are being contested in good faith by appropriate proceedings diligently conducted and for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made. Each Lessee Party and each of its respective Restricted Subsidiaries has withheld all employee withholdings and has made all employer contributions to be withheld and made by it pursuant to applicable law on account of employment insurance and employee income Taxes, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(j) *The Leased Property and the Site.*

(i) As of the Closing, to the Lessee's Actual Knowledge, the Lessor holds legal title to the Site (as is described on Schedule III hereto and in the Lease Supplement) and the Improvements, free and clear of all Liens, other than Permitted Liens, after giving effect to the Overall Transaction on the Closing Date; and the Lessee is not a party to any other contract or agreement to sell, transfer or encumber any interest in the Leased Property in which it has an interest or any part thereof other than pursuant to the Operative Documents;

(ii) the Site is located on the parcel of land described on Schedule A to the Lease Supplement; such parcel constitutes all of the land subject to the Lease; the Survey furnished pursuant to Section 2.1(h) is complete and true and correct in all material respects and contains a flood hazard certification; no portion of the Site is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable Authority; and the Improvements are located entirely on the Site. The Leased Property and any present use and presently anticipated future use thereof by the Lessee and its agents, assignees, employees, invitees, lessees, licensees and tenants comply with all Applicable Laws (including planning, zoning and land use laws and Environmental Laws) and Insurance Requirements, except for such instances of non-compliance that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No notices, complaints or orders of violation or non-compliance or liability have been issued or, to the Lessee's Actual Knowledge, threatened by any Authority with respect to the Leased Property or the present or intended future use of the Leased Property except for such violations and instances of non-compliance as would not



reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and the Lessee is not aware of any circumstances which could give rise to the issuance of any such notices, complaints or orders;

(iii) the Improvements are serviced by all utilities necessary or useful for the use and operation of the Improvements (including without limitation, electric, gas, connectivity service, water and sewer service) and transmission pipes and other connections into the Improvements and out of the Improvements necessary for the contemplated use and operation thereof, all of which are located on the Site and permanent access to the Improvements exists from a public road or way or through one or more beneficial easements;

(iv) the Lessor or the Collateral Agent as agent for the Lessor has, in accordance with the Operative Documents, or will have, upon execution of the Memorandum of Lease and the filing of any documents required in respect thereof, a valid Lien on the Lessee Collateral, and such Lien has or will have, upon proper filing of any documents required in connection with such agreements, priority over any other Lien on the Lessee Collateral, except for Permitted Liens, and provided that any Lien in favor of the Lessee pursuant to the Memorandum of Lease shall be subject and subordinate to the Liens in favor of the Collateral Agent pursuant to the Operative Documents;

(v) the structures constructed as part of the Leased Property are in such condition that such structures at all times meet the standards which, in the given circumstances, each of them may be expected to meet so as not to constitute a danger for persons or things;

(vi) the rights granted or made available to the Lessor pursuant to the Operative Documents, assuming due performance by the parties thereto, are sufficient in all material respects to enable the Lessor or its assigns or any designee thereof to maintain, use and operate the Improvements from and after the date of possession of the Leased Property by the Lessor; and

(vii) the description of the Lessee Collateral accurately and completely identifies such property.

(k) *ERISA Compliance.*

(i) Each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other federal or state law, except where the failure to comply does not result in a Material Adverse Effect. Each Plan that is intended to qualify under Section 401(a) of the Code has received from the IRS a favorable determination or opinion letter, which has not by its terms expired, that such Plan is so qualified, or such Plan is entitled to rely on an IRS advisory or opinion letter with respect to an IRS-approved master and prototype or volume submitter plan, or a timely application for such a

determination or opinion letter is currently being processed by the IRS with respect thereto; and, to the best knowledge of BLI, nothing has occurred which would prevent, or cause the loss of, such qualification. Except as would not result in a Material Adverse Effect, (a) BLI and each ERISA Affiliate have made all required contributions to each Plan subject to Sections 412 or 430 of the Code, and (b) no application for a funding waiver or an extension of any amortization period pursuant to Sections 412 or 430 of the Code has been made with respect to any Plan.

(ii) Except as would not, either individually or in the aggregate, result in a Material Adverse Effect, (a) no ERISA Event has occurred or is reasonably expected to occur; (b) no Plan has any unfunded pension liability (i.e., excess of benefit liabilities over the current value of that Plan's assets, determined pursuant to the assumptions used for funding the Plan for the applicable plan year in accordance with Section 430 of the Code); (c) neither BLI nor any of its ERISA Affiliates has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (d) neither BLI nor any of its ERISA Affiliates has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 of ERISA, with respect to a Multiemployer Plan; (e) neither BLI nor any of its ERISA Affiliates has received notice that a Multiemployer Plan is insolvent or in critical or endangered status and that additional contributions are due to the Multiemployer Plan; and (f) neither BLI nor any of its ERISA Affiliates has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

(l) *Environmental Matters.* Each Lessee Party and each Restricted Subsidiary of each Lessee Party is and has been in compliance with applicable Environmental Laws except to the extent that any non-compliance would not in the aggregate constitute a Material Adverse Effect. No Lessee Party or any Restricted Subsidiary (x) has incurred an Environmental Liability, (y) has received notice of any claim with respect to any Environmental Liability or (z) has knowledge of any Environmental Liability except, in any case of (x), (y) or (z), where such failure or liability, as the case may be, would not reasonably be expected to result in a Material Adverse Effect. Except as could not reasonably be expected to have a Material Adverse Effect:

(i) the Site (including soils, surface waters and ground waters on, at or under the Site or such structures) does not contain and is not otherwise adversely affected by, and to the Lessee's knowledge has not previously contained or been adversely affected by, any Hazardous Materials in amounts or concentrations which (A) constitute or constituted a violation of applicable Environmental Laws or (B) could give rise to any liability or obligation under applicable Environmental Laws;

(ii) the Site and all operations conducted in connection therewith are in compliance, and during the Lessee's operation of the Site have been in compliance, with all applicable Environmental Laws, and there are no Hazardous Materials at, under or about

the Site and there was and is no Release of Hazardous Materials from, to, at, under or about the Site or from such operations, which are in violation of any applicable Environmental Laws or could reasonably be expected to interfere with the continued operation of the Improvements;

(iii) the Lessee has obtained, is in compliance with, and has made all appropriate filings for issuance or renewal of, all Environmental Permits required for the then current status of the Site and the Improvements, and all such Environmental Permits are in full force and effect;

(iv) the Lessee has not received any written notice of violation, alleged violation, noncompliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with respect to the Site, nor does the Lessee have Actual Knowledge that any such notice will be received or is being threatened;

(v) no judicial proceeding or governmental or administrative action is pending, or, to the Actual Knowledge of the Lessee threatened, under any Environmental Law to which the Lessee has been or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Site or operations of the Lessee with respect thereto; and

(vi) in the ordinary course of its business, the Lessee conducts an ongoing review of the effect of Environmental Laws on the business, operations and properties of the Lessee and its Subsidiaries, in the course of which it identifies and evaluates associated liabilities and costs (including, without limitation, any capital or operating expenditures required for clean-up or closure of properties presently or previously owned, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat, any costs or liabilities in connection with off-site disposal of wastes or hazardous substances, and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of this review, the Lessee has concluded that such associated liabilities and costs, including the costs of compliance with Environmental Laws, would not reasonably be expected to have a Material Adverse Effect.

Each Lessee Party and each Restricted Subsidiary of each Lessee Party is and has been in compliance with applicable Environmental Laws except to the extent that any non-compliance would not in the aggregate constitute a Material Adverse Effect. No Lessee Party or any Restricted Subsidiary (i) has incurred an Environmental Claim, (ii) has received notice of any Environmental Claim or (iii) has knowledge of any Environmental Claim except, in any case of (i), (ii) or (iii),

where such failure or liability, as the case may be, would not reasonably be expected to result in a Material Adverse Effect.

(m) *Labor Matters.* Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) there are no strikes, lockouts, slowdowns or any other labor disputes against BLI or any Restricted Subsidiary pending or, to the knowledge of BLI, threatened, (ii) the hours worked by and payments made to employees of BLI and the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act of 1938 or any other applicable federal, state, provincial, territorial, local or foreign law dealing with such matters and (iii) all payments due from BLI or any Restricted Subsidiary, or for which any claim may be made against BLI or any Restricted Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of BLI or such Restricted Subsidiary to the extent required by GAAP. The consummation of the Overall Transaction does not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which BLI or any Restricted Subsidiary is bound.

(n) *Solvency.* Before and after giving effect to the Overall Transaction, including all Indebtedness incurred thereby and the payment of all fees related thereto, the Lessee Parties, taken as a whole are Solvent.

(o) *Anti-Terrorism Laws and Sanctions.* Each Lessee Party has implemented and maintains in effect policies and procedures designed to ensure compliance by such Lessee Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws and applicable Sanctions, and such Lessee Party, its Subsidiaries and their respective officers and directors and, to the knowledge of such Lessee Party, its employees and agents, are in compliance with Anti-Terrorism Laws and applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in any Lessee Party being designated as a Sanctioned Person. None of (a) any Lessee Party, any Subsidiary or any of their respective directors, officers or, to the knowledge of any such Lessee Party or Subsidiary, employees, or (b) to the knowledge of any such Lessee Party or Subsidiary, any agent of such Lessee Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Funding, use of proceeds, or the Overall Transaction will violate Anti-Terrorism Laws or applicable Sanctions.

(p) *EEA Financial Institutions.* No Lessee Party is an EEA Financial Institution.

(q) *Plan Assets; Prohibited Transactions.* No Lessee Party or any of its Subsidiaries is an entity deemed to hold “plan assets” (within the meaning of the Plan Asset Regulations), and neither the execution, delivery or performance of the Overall Transaction, including the Funding hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

(r) *Absence of Defaults, Loss, etc.* After giving effect to the Operative Documents, no Default for which the cure period, if any, has commenced, Default for which there is no notice and cure period, Event of Default, Event of Loss, Event of Taking, Condemnation or Casualty has occurred and is continuing; there is no action pending or, to the Lessee's Actual Knowledge, threatened by an Authority to initiate a Condemnation or an Event of Taking.

(s) *Subjection to Government Regulation.* To the Lessee's Actual Knowledge, none of the Lessor, the Agents or any Participant shall be required to, solely by reason of entering into the Operative Documents or consummating any of the transactions contemplated thereby (other than upon the exercise by such Person of remedies under the Operative Documents), perform in its own capacity or on behalf of any other Person any obligations, instructions or other duties imposed by an Authority (except with respect to bank regulations or, if such Person shall have assumed operational control of the Leased Property, operating permit requirements for the Leased Property) as long as the Lessee is not in breach of any of the Operative Documents. The Lessee is not a "covered fund" under Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 1851).

(t) *Private Offering.* Excluding the effect of any violation by the Lessor or any Rent Assignee of Section 5 of the Securities Act or any state or foreign securities laws, and assuming that the representations and warranties contained in Sections 4.2 and 4.3 are correct, the issuance and delivery of the interests in the Operative Documents under the circumstances contemplated hereby do not require the registration or qualification of such interests under the Securities Act, any state securities laws or the Trust Indenture Act of 1939.

(u) *Dissolution or Winding Up.* The Lessee has not taken any action nor have any steps been taken or legal proceedings commenced or, to the Actual Knowledge of the Lessee, threatened, against the Lessee for its dissolution, winding-up, examination, administration, court protection or reorganization or for the appointment of a receiver, administrator, administrative receiver, examiner, trustee or similar official with respect to the Lessee or any substantial part of its assets or revenues.

(v) *Location of the Lessee.* The location of the Lessee, as defined by the Uniform Commercial Code, is the State of Ohio and the Lessee's address for purposes of preparing any UCC financing statement is at the following address:

4900 E. Dublin-Granville Road  
Columbus, OH 43081

The Lessee keeps or will keep its company records concerning the Improvements, the Site and the Operative Documents to which it is or will be a party at such address or at such other address of which the Lessee will provide the Lessor notice within forty-five (45) days after its company records have been relocated.

#### **SECTION 4.2. Representations and Warranties of the Lessor.**

As of the Closing Date, the Lessor represents and warrants to each of the other parties hereto as follows:

(a) *Due Organization, etc.* The Lessor is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation and has full power and authority to own its properties, to enter into and perform its obligations as the Lessor under each Operative Document to which it is or will be a party and each other agreement, instrument and document to be executed and delivered by it on or before the Closing Date in connection with or as contemplated by each such Operative Document to which it is or is to be a party, and to carry on its business as now being and hereafter proposed to be conducted.

(b) *ERISA.* It is making its Lessor Investment and Lessor Retained Interest with assets that are not “plan assets” within the meaning of 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA, of any Employee Benefit Plan.

(c) *Due Authorization; Enforceability, etc.* This Agreement and each other Operative Document to which the Lessor is or will be a party have been or will be (to the extent it is to be a party thereto) duly authorized, executed and delivered by or on behalf of the Lessor and are, or upon execution and delivery will be, legal, valid and binding obligations of the Lessor, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors’ rights generally and by general equitable principles.

(d) *No Conflict.* The execution and delivery by the Lessor of each Operative Document to which the Lessor is or will be a party, are not and will not be, and the performance by the Lessor of its obligations under each Operative Document (i) are not and will not be, inconsistent with the organizational documents of the Lessor; (ii) do not and will not contravene any Applicable Laws applicable to the Lessor and (iii) do not and will not conflict with result in a breach of, or a default under, the charter documents or resolutions of the Lessor or any indenture or other material agreement or instrument to which the Lessor is party, or any Applicable Law, except in any case, as could not reasonably be expected to have a material adverse effect on the ability of the Lessor to perform its obligations pursuant to the Operative Documents.

(e) *Lessor Liens.* The Leased Property is free and clear of all Lessor Liens attributable to the Lessor and no act or omission by it has occurred which would cause a Lessor Lien attributable to it.

(f) *Location of the Lessor.* The location of the Lessor, as defined by the Uniform Commercial Code, is the State of California and the Lessor’s address for purposes of preparing any UCC financing statement is at the following address:

Bankers Commercial Corporation  
445 South Figueroa, 13th Floor  
Los Angeles, California 90017

The Lessor keeps or will keep its company records concerning the Improvements, the Site and the Operative Documents to which it is or will be a party at such address or at such other address of which the Lessor will provide the Collateral Agent notice within forty-five (45) days after its company records have been relocated.

(g) *Not a Foreign Person.* The Lessor is not a “foreign person” within the meaning of Sections 1445 and 7701 of the Code.

(h) *Investment in Lessor Investment, Lessor Retained Interest.* It is acquiring the Lessor Investment and the Lessor Retained Interest for its own account for investment and not with a view to any distribution (as such term is used in Section 2(11) of the Securities Act). It is an “Accredited Investor” as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act, and if applicable, its officers, employees, directors or equity owners are Accredited Investors; and is aware that neither the Lessor Investment nor the Lessor Retained Interest has been registered under the Securities Act or qualified or registered under any state or other jurisdiction’s securities laws.

(i) *Proceeds of Funding.* Except as otherwise expressly contemplated by the Operative Documents, the proceeds of the Funding shall not be applied by the Lessor for any purpose other than the costs relating to the Lessor’s acquisition of the Site.

#### ***SECTION 4.3. Representations and Warranties of the Rent Assignees.***

As of the Closing Date, each Rent Assignee represents and warrants severally and only as to itself to each of the other parties hereto as follows:

(a) *Due Organization, etc.* It is duly organized and validly existing under the laws of the jurisdiction of its formation and has full power and authority to enter into and perform its obligations as a Rent Assignee under each Operative Document to which it is or is to be a party and each other agreement, instrument and document to be executed and delivered by it on or before the Closing Date in connection with or as contemplated by each such Operative Document to which it is or is to be a party.

(b) *ERISA.* It is acquiring the Rent Assignment Interests with assets that are not “plan assets”, within the meaning of 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA, of any Employee Benefit Plan.

(c) *Investment in Rent Assignment Interests.* It is acquiring its Rent Assignment Interests for its own account for investment and not with a view to any distribution (as such term is used in Section 2(11) of the Securities Act) thereof other than in accordance with the Operative

Documents and, if in the future it should decide to dispose of its Rent Assignment Interests, it understands that it may do so only in compliance with the Securities Act and the rules and regulations of the United States Securities and Exchange Commission thereunder, any applicable state securities laws and the applicable securities laws of any other jurisdiction. It is an “Accredited Investor” as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act, and if applicable, its officers, employees, directors or equity owners are Accredited Investors. It is an Eligible Assignee; and is aware that its Rent Assignment Interests has not been registered under the Securities Act or qualified or registered under any state or other jurisdiction’s securities laws. Neither it nor anyone authorized to act on its behalf has taken or will take any action which would subject the issuance or sale of its Rent Assignment Interests to the registration requirements of Section 5 of the Securities Act. No representation or warranty contained in this Section 4.3(c) shall include or cover any action or inaction of any Big Lots Person whether or not purportedly on behalf of Agents, the Participants or any of their Affiliates. Notwithstanding the foregoing, but subject to the provisions of Article VI hereof, it is understood among the parties that the disposition of its property shall be at all times within its control. It and its respective agents and representatives have such knowledge and experience in financial and business matters as to enable them to utilize the information made available to them in connection with the Overall Transaction, to evaluate the merits and risk of an investment in its Rent Assignment Interests and to make an informed decision with respect thereto and such an evaluation and informed decision have been made. The Rent Assignee understands that the Lessee will rely upon the completeness and accuracy of this Section 4.3(c) in establishing that the interests in the Operative Documents and the transactions contemplated thereby are exempt from registration under the Securities Act.

(d) *Lessor Liens.* The Leased Property is free and clear of all Lessor Liens attributable to such Rent Assignee and no act or omission by it has occurred which would cause a Lessor Lien attributable to such Rent Assignee.

(e) *Due Authorization; Enforceability, etc.* Each Operative Document to which such Rent Assignee is or will be a party have been or will be (to the extent it is to be a party thereto) duly authorized, executed and delivered by or on behalf of such Rent Assignee and are, or upon execution and delivery will be, legal, valid and binding obligations of such Rent Assignee, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors’ rights generally and by general equitable principles.

(f) *No Conflict.* The execution and delivery by such Rent Assignee of each Operative Document to which such Rent Assignee is or will be a party, are not and will not be, and the performance by such Rent Assignee of its obligations under each Operative Document to which such Rent Assignee is or will be a party (i) are not and will not be, inconsistent with the organizational documents of such Rent Assignee; (ii) do not and will not contravene any Applicable Laws applicable to such Rent Assignee and (iii) do not and will not conflict with result in a breach of, or a default under, the charter documents or resolutions of such Rent Assignee or any indenture or other material agreement or instrument to which such Rent Assignee is party, or



any Applicable Law, except in any case, as could not reasonably be expected to have a material adverse effect on the ability of such Rent Assignee to perform its obligations pursuant to the Operative Documents to which such Rent Assignee is or will be a party.

(g) *Not a Foreign Person.* Such Rent Assignee is not a “foreign person” within the meaning of Sections 1445 and 7701 of the Code.

***SECTION 4.4. Representations and Warranties of the Administrative Agent and the Collateral Agent.***

As of the Closing Date, each Agent hereby represents and warrants to each of the other parties hereto as follows:

(a) *Organization and Authority.* It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has the power and authority to enter into and perform its obligations under the Operative Documents.

(b) *Authorization; Binding Effect.* The Operative Documents to which it is or will be a party have been or will be, on the date required to be delivered hereby, duly authorized, executed and delivered by it and this Agreement is, and such other Operative Documents are, or, when so executed and delivered by it will be, valid, legal and binding agreements of such Agent, enforceable against it in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors’ rights generally and by general principles of equity.

(c) *Non-Contravention.* Neither the execution and delivery by it of the Operative Documents to which it is or will be a party, either in its individual capacity, as Agent or both, nor compliance with the terms and provisions thereof, conflicts with, results in a breach of, constitutes a default under (with or without the giving of notice or lapse of time or both), or violates any of the terms, conditions or provisions of: (i) its organizational documents; (ii) any bond, debenture, note, mortgage, indenture, agreement, lease or other instrument to which it, either in its individual capacity, as Agent, or both, is now a party or by which it or its property, either in its individual capacity, as Agent or both, is bound or affected, where such conflict, breach, default or violation would be reasonably likely to materially and adversely affect its ability, either in its individual capacity, as Agent or both, to perform its obligations under any Operative Document to which it is or will be a party, either in its individual capacity, as Agent or both; or (iii) any of the terms, conditions or provisions of any Applicable Laws governing its banking or trust powers, or any order, injunction or decree of any Authority applicable to it in its individual capacity, as Agent or both, where such conflict, breach, default or violation would be reasonably likely to materially and adversely affect its ability, either in its individual capacity, as the Agent or both, to perform its obligations under any Operative Document to which it is or will be a party.

(d) *Absence of Litigation, etc.* There is no litigation (including, without limitation, derivative actions), arbitration or governmental proceedings served and pending or, to

the best knowledge of such Agent, threatened against it which would be reasonably likely to adversely affect its ability to perform its obligations under the Operative Documents to which it is party.

(e) *Consents, etc.* No authorization, consent, approval, license or formal exemption from, nor any filing, declaration or registration with, any Authority governing its banking or trust powers, is or will be required in connection with its execution and delivery of the Operative Documents to which it is party or its performance by of its obligations under such Operative Documents.

(f) *Lessor Liens.* The Leased Property is free and clear of all Lessor Liens attributable to such Agent and no act or omission by it has occurred which would cause a Lessor Lien attributable to such Agent.

(g) *Due Authorization; Enforceability, etc.* Each Operative Document to which such Agent is or will be a party have been or will be (to the extent it is to be a party thereto) duly authorized, executed and delivered by or on behalf of such Agent and are, or upon execution and delivery will be, legal, valid and binding obligations of such Agent, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by general equitable principles.

(h) *No Conflict.* The execution and delivery by such Agent of each Operative Document to which such Agent is or will be a party, are not and will not be, and the performance by such Agent of its obligations under each Operative Document to which such Agent is or will be a party (i) are not and will not be, inconsistent with the organizational documents of such Agent; (ii) do not and will not contravene any Applicable Laws applicable to such Agent and (iii) do not and will not conflict with result in a breach of, or a default under, the charter documents or resolutions of such Agent or any indenture or other material agreement or instrument to which such Agent is party, or any Applicable Law, except in any case, as could not reasonably be expected to have a material adverse effect on the ability of such Agent to perform its obligations pursuant to the Operative Documents to which such Agent is or will be a party.

(i) *Not a Foreign Person.* Such Agent is not a "foreign person" within the meaning of Sections 1445 and 7701 of the Code.

## ARTICLE V

### COVENANTS

#### ***SECTION 5.1. Financial Reporting Covenants.***

BLI agrees to furnish or cause to be furnished each of the following to the Administrative Agent:

(a) Within ninety (90) calendar days after the end of each fiscal year, financial statements of BLI and its Subsidiaries consisting of an audited consolidated balance sheet as of the end of such fiscal year, and related consolidated statements of income, shareholders' equity and cash flows for the fiscal year then ended, all in reasonable detail and setting forth in comparative form the financial statements as of the end of and for the preceding fiscal year, and certified by independent certified public accountants of nationally recognized standing reasonably satisfactory to the Administrative Agent. The certificate or report of accountants shall be free of qualifications (other than any consistency qualification that may result from a change in the method used to prepare the financial statements as to which such accountants concur) and shall not indicate the occurrence or existence of any event, condition or contingency which would materially impair the prospect of payment or performance of any covenant, agreement or duty of any Lessee Party under any of the Operative Documents.

(b) For each of the first three fiscal quarters of each fiscal year of BLI, within forty-five (45) calendar days after the end of any such fiscal quarter, financial statements of BLI and its Subsidiaries, consisting of a consolidated balance sheet as of the end of such fiscal quarter and related consolidated statements of income, shareholders' equity and cash flows for the fiscal quarter then ended and the fiscal year through that date, all in reasonable detail and certified (subject to normal year-end audit adjustments and the absence of footnotes) by a Financial Officer of BLI as presenting fairly in all material respects the financial condition and results of operations of BLI and its Subsidiaries on a consolidated basis in accordance with GAAP, consistently applied, and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous fiscal year.

(c) Concurrently with any delivery of financial statements under clause (a) or (b) above, a Compliance Certificate, which shall (i) when delivered concurrently with the delivery of the financial statements delivered under clause (b), certify that such financial statements present fairly in all material respects the financial condition and results of operations of BLI and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certify as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) state whether any change in GAAP or in the application thereof has occurred since the date of the Statements referred to in Section 4.1(f) and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate, (iv) describe whether, since the later of the Closing Date and the date of the last Compliance Certificate, any Lessee Party shall have (A) changed its name as it appears in official filings in the state or province of incorporation or organization, (B) changed its chief executive office, (C) changed the type of entity that it is, (D) changed its organization identification number, if any, issued by its state or province of incorporation or other organization, or (E) changed its state of incorporation or organization, (v) certifying a list of names of all Immaterial Subsidiaries, that each Subsidiary set forth on such list individually qualifies as an Immaterial Subsidiary and that all such Subsidiaries in the aggregate do not exceed the limitation set forth in clause (b) of the definition of the term "Immaterial Subsidiary", and (vi) solely during

a Covenant Compliance Event, certify as to, and contain a calculation of, the Fixed Charge Coverage Ratio for the applicable measurement period required by Section 5.4(a). On each of (x) the six (6) month anniversary of the Closing Date, (y) each annual anniversary of the Closing Date (each, an “**Appraisal Delivery Date**”), the Administrative Agent shall have received (a) an updated Appraisal from an Appraiser which is satisfactory in form and substance to the Administrative Agent and the Participants and (b) a certification of the calculation of the LTV Ratio for the applicable LTV Test Date required by Section 5.4(b).

(d) Concurrent with delivery thereof to an Other Secured Debt Agent, any additional (or more frequent) information or reports provided to an Other Secured Debt Agent pursuant to an Other Secured Debt Loan Agreement (without duplication of reports delivered under this Agreement).

(e) BLI shall be deemed to have furnished to the Administrative Agent the financial statements and certificates required to be delivered pursuant to Sections 5.1(a) and (b) and the reports and other material required by Section 5.2(a)(xv) upon the filing of such financial statements or material by BLI through the SEC’s EDGAR system (or any successor electronic gathering system) or the publication by BLI of such financial statements on its website, so long as such system or website is publicly available; provided that, BLI shall, at the reasonable request of the Administrative Agent or any Participant, promptly deliver electronic or paper copies of such filings together all accompanying exhibits, attachments, calculations, or other supporting documentation included with such filing.

## ***SECTION 5.2. Affirmative Covenants of the Lessee Parties.***

Each Lessee Party covenants and agrees with the Lessor, the Agents and each of the Participants that it shall comply with the following provisions of this Section 5.2 and the covenants set forth in Sections 5.3 and 5.4, as applicable to it.

(a) *Notices of Material Events and Delivery of Other Reports.* BLI shall furnish to the Administrative Agent (for distribution to each Participant) prompt (but in any event within any time period after such Responsible Officer has such knowledge that may be specified below) written notice of the following:

(i) Promptly after any Responsible Officer of any Lessee Party has learned of the occurrence of an Event of Default or a Default (and in any event within five (5) Business Days after knowledge thereof), a certificate signed by a Responsible Officer setting forth the details of such Event of Default or Default and the action which such Lessee Party proposes to take with respect thereto.

(ii) Promptly after the commencement thereof (and in any event within five (5) Business Days after knowledge by a Responsible Officer of BLI thereof), notice of all actions, suits, proceedings or investigations before or by any Authority or any other Person against any Lessee Party or any Restricted Subsidiary which involve a claim or

series of claims that, individually or in the aggregate would reasonably be expected to have a Material Adverse Effect.

(iii) Promptly in the event that any Lessee Party or its accountants conclude or advise that any previously issued financial statement, audit report or interim review should no longer be relied upon or that disclosure should be made or action should be taken to prevent future reliance.

(iv) Promptly upon the occurrence of any ERISA Event.

(v) Promptly after any request therefor by the Administrative Agent or any Participant, copies of (i) any documents described in Section 101(k)(1) of ERISA that any Lessee Party or any ERISA Affiliate may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l)(1) of ERISA that any Lessee Party or any ERISA Affiliate may request with respect to any Multiemployer Plan; provided that if a Lessee Party or any ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan and is eligible to request such documents or notices, the applicable Lessee Party or the applicable ERISA Affiliate shall promptly make a request for such documents and notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof.

(vi) [Reserved.]

(vii) [Reserved.]

(viii) Within five (5) Business Days after knowledge by a Responsible Officer of BLI of any dispute, litigation, investigation, proceeding or suspension between any Lessee Party or any Restricted Subsidiary thereof and any Authority or the commencement of, or any material development in, any litigation or proceeding affecting any Lessee Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws, in any case, which would reasonably be expected to have a Material Adverse Effect or which materially and adversely affects the Leased Property;

(ix) Within five (5) Business Days after knowledge by a Responsible Officer of BLI of the occurrence of any default or event of default under the Credit Agreement or an Other Secured Debt Loan Agreement (if any), or receipt of any notice asserting a default or event of default thereunder (together with a copy of such notice), as well as copies of any amendments to the documents related to the Credit Agreement or such Other Secured Debt Loan Agreement, as applicable.

(x) Within five (5) Business Days after knowledge by a Responsible Officer of BLI of the filing of any ABL Lien against any Lessee Party with respect to any delinquent Taxes in excess of \$4,500,000.

(xi) Within five (5) Business Days after knowledge by a Responsible Officer of BLI of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of the beneficial owners identified in parts (c) or (d) of such certification.

(xii) Promptly after knowledge by a Responsible Officer of BLI of any other development that results, or would reasonably be expected to result in, a Material Adverse Effect.

(xiii) Promptly after knowledge by a Responsible Officer of a Lessee Party, report to Administrative Agent all matters materially affecting the value, enforceability or collectability of any portion of the Lessee Collateral, including any Lessee Parties' reclamation or repossession of, or the return to any Lessee Party of, a material amount of goods or claims or disputes asserted by any customer or other obligor.

(xiv) [Reserved.]

(xv) No later than sixty (60) days after the first day of each fiscal year, the annual budget and a copy of the plan and forecast (including monthly projected consolidated balance sheets, income statements and cash flow statements) of BLI and its Subsidiaries for each quarter of such fiscal year.

(xvi) Promptly upon their becoming available to the Lessee Parties:

(1) Any reports including management letters submitted to any Lessee Party by independent accountants in connection with any annual or interim audit of financial statements; and

(2) Reports, including Forms 10-K, 10-Q and 8-K, registration statements and prospectuses and other shareholder communications, filed by any Lessee Party with the SEC, or with any national securities exchange, or distributed by BLI to its shareholders generally, as the case may be.

(xvii) Promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Participant for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

(xviii) Promptly upon receipt thereof, the receipt of any notice from a supplier, seller, or agent pursuant to the Perishable Agriculture Commodities Act, 1930 and all regulations promulgated thereunder, as amended from time to time.

(xix) Promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of any Lessee Party or any Restricted Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Participant may reasonably request.

(xx) Promptly after knowledge by a Responsible Officer of a Lessee Party of the intent by an Authority to (i) take an action which would constitute a Condemnation or Event of Taking, (ii) investigate the Leased Property or other land on which any portion of the Leased Property has been or is being constructed for a material violation of any Applicable Laws (including any Environmental Law) on or in respect of the Improvements or any portion thereof which could result in liability in excess of \$1,000,000, or (iii) investigate the Leased Property or other land on which any portion of the Leased Property has been or is being constructed (other than routine fire, occupational health and safety and similar inspections) for any violation of Applicable Laws under which civil liability in excess of \$1,000,000 or any criminal liability may be incurred or imposed upon the Agents, the Participants or the Lessee.

(b) *Preservation of Existence, Etc.* Each Lessee Party shall, and shall cause each of its Restricted Subsidiaries to, maintain its legal existence as a corporation, limited partnership, limited liability company or unlimited liability company, as applicable, and its license or qualification and good standing (a) in its jurisdiction of incorporation or organization, and (b) in each jurisdiction in which its ownership or lease of property (including the Leased Property) or the nature of its business makes such license or qualification necessary, except with respect to clause (b), except where the failure to so maintain any license or qualification would not reasonably be expected to result in a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation, dissolution, disposition or other transaction permitted under Section 5.3(d) or Section 5.3(h).

(c) *Payment of Liabilities, Including Taxes, Etc.* Each Lessee Party shall, and shall cause each of its Restricted Subsidiaries to, duly pay and discharge all liabilities to which it is subject or which are asserted against it, promptly as and when the same shall become due and payable, including all Taxes and governmental charges upon it or any of its properties, assets, income or profits, prior to the date on which penalties attach thereto, unless such liabilities, including Taxes or similar charges, are being contested in good faith and by appropriate and lawful proceedings diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made, except to the extent that the failure to pay or discharge any such liabilities would not reasonably be expected to result in a Material Adverse Effect.

(d) *Inspection Rights; Appraisals.* Each Lessee Party shall, and shall cause each of its Restricted Subsidiaries to, permit any of the officers or authorized employees or representatives of the Administrative Agent (including any consultants, accountants, and agents retained by the Administrative Agent), as and when determined by the Administrative Agent in its Permitted Discretion, upon reasonable prior notice and during normal business hours of the Lessee

Parties, to visit and inspect its properties, to conduct at such Lessee Party's premises field examinations of such Lessee Party's assets, liabilities, books and records, including examining and making extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested. The field examinations contemplated by this Section 5.2(d) shall be limited to one per such twelve (12) month period (excluding any field examination conducted prior to the Closing Date) unless an Event of Default has occurred and is continuing (during which time there shall be no limit on the number of field examinations). For the avoidance of doubt, all such examinations and evaluations conducted during an Event of Default shall be at the expense of the Lessee Parties. Each Lessee Party acknowledges that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Participants certain reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the assets of the Lessee Parties from information furnished by or on behalf of the Lessee Parties for internal use by the Administrative Agent and the Participants.

(e) *Keeping of Records and Books of Account.* Each Lessee Party shall, and shall cause each Restricted Subsidiary of such Lessee Party to, maintain and keep proper books of record and account which enable such Lessee Party and its Restricted Subsidiaries to issue financial statements in accordance with GAAP and as otherwise required by Applicable Laws of any Authority having jurisdiction over such Lessee Party or any Restricted Subsidiary of such Lessee Party, and in which full, true and correct entries shall be made in all material respects of all its dealings and business and financial affairs.

(f) *Compliance with Laws and Material Contractual Obligations.* Each Lessee Party shall, and shall cause each of its Restricted Subsidiaries to, comply with all Applicable Laws, including all Environmental Laws, in all respects, except, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect (except in the case of Anti-Terrorism Laws and Sanctions, with respect to which compliance shall be governed by Section 5.2(h)). Each Lessee Party will, and will cause each Restricted Subsidiary to perform in all material respects its obligations under material agreements to which it is a party, except (i) where the validity or amount thereof is being contested in good faith by appropriate proceedings, or (ii) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. BLI will maintain in effect and enforce policies and procedures designed to ensure compliance by BLI, the Lessee, their Restricted Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws and applicable Sanctions.

(g) *Use of Proceeds.* The proceeds of the Funding will be used for the Lessor to acquire the Leased Property from the Seller and re-lease the Leased Property to the Lessee on the Closing Date and for the Lessee to pay fees and expenses incurred in connection with the Overall Transaction. No part of the proceeds of the Funding will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.



(h) *Anti-Terrorism Laws; International Trade Law Compliance.* (a) No Relevant Entity will become a Sanctioned Person, (b) no Relevant Entity, either in its own right or through any third party, will (i) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (ii) do business in or with, or directly derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (iii) engage in any dealings or transactions prohibited by any Anti-Terrorism Law; or (iv) use the Funding or any proceeds therefrom to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law or would otherwise result in any violation of any Anti-Terrorism Laws or Sanctions; (c) the funds used to repay the Obligations will not be derived from any unlawful activity or in any manner that would cause a party to this Agreement to be in breach of any Anti-Terrorism Laws or Sanctions, (d) each Relevant Entity shall comply with all Anti-Terrorism Laws, and (e) BLI shall promptly notify the Administrative Agent in writing upon the occurrence of a Reportable Compliance Event.

(i) *Environmental Laws.* Except where the failure to do so would not reasonably be expected to have Material Adverse Effect, BLI and each Restricted Subsidiary shall (i) conduct its operations and keep and maintain all of its real property in compliance with all Environmental Laws; (ii) obtain and renew all Environmental Permits necessary for its operations and properties; and (iii) implement any and all investigation, remediation, removal and response actions that are necessary to comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or Release of any Hazardous Materials into, on, at, under, above or from any of its ABL Real Estate, provided, however, that neither a Lessee Party nor any of its Restricted Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Lessee Parties with respect to such circumstances in accordance with GAAP.

### ***SECTION 5.3. Negative Covenants of the Lessee Parties.***

Until the Lease shall have expired or been terminated and the principal of and Yield on the Lease Balance and all fees, expenses and other amounts payable under any Operative Document or Secured Obligation (other than contingent or indemnity obligations for which no claim has been made by the Person entitled thereto) shall have been paid in full pursuant to the terms hereof, each Lessee Party executing this Agreement covenants and agrees, jointly and severally with all of the other Lessee Parties, with the Participants that:

(a) *Indebtedness.* No Lessee Party will, nor will it permit any Restricted Subsidiary to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock; and BLI shall not permit any of the Restricted Subsidiaries (other than any Lessee Party) to issue any shares of Preferred Stock, except:

(i) the Incurrence by the Lessee Parties or any Restricted Subsidiary of Indebtedness pursuant to any Operative Document;

(ii) the Incurrence by BLI or any Restricted Subsidiary of Indebtedness pursuant to any ABL Document (as such ABL Obligations may be amended, increased, otherwise modified, replaced or refinanced from time to time);

(iii) Other Secured Debt (as defined in the Credit Agreement) as permitted by Section 6.01(b) of the Credit Agreement;

(iv) Indebtedness, Preferred Stock and Disqualified Stock existing on September 21, 2022 (other than Indebtedness described in clauses (i) (ii), and (iii) above) and, if such Indebtedness is for borrowed money and is in excess of \$22,500,000, individually or in the aggregate, in such amounts outstanding on September 21, 2022 and set forth in Schedule 6.01 to the Credit Agreement;

(v) Indebtedness (including Finance Lease Obligations) Incurred by any Lessee Party or any Restricted Subsidiary, Disqualified Stock issued by any Lessee Party or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary to finance (whether prior to or within 180 days after) the acquisition, lease, construction, repair, replacement or improvement of property (real or personal) or equipment (whether through the direct purchase of assets or the Equity Interests of any Person owning such assets); provided that, (x) the principal amount of such Indebtedness does not exceed the cost of acquiring, constructing or improving such property (real or personal) or equipment and (y) the principal amount of such Indebtedness, Disqualified Stock and Preferred Stock, when aggregated with the principal amount or liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and Incurred or issued pursuant to this clause (v), together with any Refinancing Indebtedness in respect thereof Incurred pursuant to clause (xiv) below, does not exceed at any one time outstanding the greater of \$35,000,000 and 14% of Consolidated EBITDA, calculated on a pro forma basis giving effect to such Indebtedness, Disqualified Stock, or Preferred Stock, as applicable, and based on the most recently completed Test Period (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(vi) Indebtedness Incurred by any Lessee Party or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including, without limitation, letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance and letters of credit in connection with the maintenance of, or pursuant to the requirements of, Environmental Law, and other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims;

(vii) unsecured Indebtedness arising from agreements of a Lessee Party or any Restricted Subsidiary providing for indemnification, adjustment of acquisition or purchase price or similar obligations (including earn-outs), in each case, Incurred or assumed in connection with any Investments or any acquisition or disposition of any business, assets or a Subsidiary not prohibited by this Agreement, other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(viii) shares of Preferred Stock of a Restricted Subsidiary issued to BLI or another Restricted Subsidiary; provided that any subsequent issuance or transfer of any Equity Interests or any other event which results in any Restricted Subsidiary that holds such shares of Preferred Stock of another Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to BLI or another Restricted Subsidiary) shall be deemed, in each case, to be an issuance of shares of Preferred Stock not permitted by this clause (viii);

(ix) without in any way limiting the applicability of Section 5.3(b), Indebtedness of BLI or a Restricted Subsidiary to BLI or a Restricted Subsidiary; provided that if a Lessee Party incurs such Indebtedness to a Restricted Subsidiary that is not a Lessee Party (except in respect of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of BLI and its Subsidiaries), such Indebtedness is subordinated in right of payment to the Secured Obligations pursuant to the Intercompany Subordination Agreement (as defined in the Credit Agreement); provided, further, that any subsequent issuance or transfer of any Equity Interests or any other event which results in any Restricted Subsidiary holding such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to BLI or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien but not the transfer thereof upon foreclosure) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (ix);

(x) Swap Agreement Obligations that are not incurred for speculative purposes but (A) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Agreement to be outstanding; (B) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (C) for the purpose of fixing or hedging commodity price risk with respect to any commodity purchases or sales and, in each case, extensions or replacements thereof;

(xi) obligations (including reimbursement obligations with respect to letters of credit, bank guarantees, warehouse receipts and similar instruments) in respect of indemnities, warranties, statutory obligations, performance, bid, appeal and surety bonds, completion guarantees and similar obligations provided by a Lessee Party or any Restricted Subsidiary, in each case incurred in the ordinary course of business or consistent with past practice or industry practice;

(xii) Indebtedness or Disqualified Stock of BLI or Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and Incurred pursuant to this clause (xii), together with any Refinancing Indebtedness in respect thereof incurred pursuant to clause (xiv) below, does not exceed at any one time outstanding the greater of \$100,000,000 and 40% of Consolidated EBITDA, calculated on a pro forma basis giving effect to such Indebtedness, Disqualified Stock or Preferred Stock, as applicable, and based on the most recently completed Test Period (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(xiii) any guarantee by a Lessee Party or any Restricted Subsidiary of Indebtedness or other obligations of a Lessee Party or any Restricted Subsidiary so long as the Incurrence of such Indebtedness Incurred by such Lessee Party or such Restricted Subsidiary is not prohibited under the terms of this Agreement; provided that (A) if such Indebtedness is by its express terms subordinated in right of payment to the Secured Obligations by such Restricted Subsidiary, as applicable, any such guarantee with respect to such Indebtedness shall be subordinated in right of payment to the Secured Obligations, substantially to the same extent as such Indebtedness is subordinated to the Secured Obligations, and (B) the aggregate principal amount of Indebtedness or other obligations of a Restricted Subsidiary that is not a Lessee Party guaranteed by a Lessee Party in reliance on this clause (xiii) shall not exceed at any one time outstanding the greater of \$25,000,000 and 10% of Consolidated EBITDA, calculated on a pro forma basis giving effect to such Indebtedness and based on the most recently completed Test Period;

(xiv) the Incurrence by a Lessee Party or any Restricted Subsidiary of Indebtedness or Disqualified Stock, or by any Restricted Subsidiary of Preferred Stock, that serves to refund, refinance or defease any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued as permitted under clauses (iii), (iv), (v), (xii) and (xiv) of this Section 5.3(a) up to the outstanding principal amount (or, if applicable, the liquidation preference, face amount, or the like) or, if greater, committed amount (only to the extent the committed amount could have been Incurred on the date of initial Incurrence and was deemed Incurred at such time for the purposes of this Section 5.3(a)) of such Indebtedness, Disqualified Stock or Preferred Stock, in each case at the time such Indebtedness was Incurred or Disqualified Stock or Preferred Stock was issued pursuant to clauses (iii), (iv), (v), (xii) and (xiv) of this Section 5.3(a), or any Indebtedness, Disqualified Stock or Preferred Stock Incurred or issued to so refund or refinance such Indebtedness, Disqualified Stock or Preferred Stock plus any additional Indebtedness, Disqualified Stock or Preferred Stock Incurred or issued to pay premiums (including tender premiums), accrued and unpaid interest, expenses, defeasance costs and fees in connection therewith (subject to the following proviso, “**Refinancing Indebtedness**”) prior to its respective maturity; provided, however, that:

(1) such Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded, refinanced or defeased and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness, Disqualified Stock or Preferred Stock being refunded or refinanced that were due on or after the date that is one year following the ABL Maturity Date were instead due on such date;

(2) to the extent such Refinancing Indebtedness refinances (a) Indebtedness junior in right of payment to the Secured Obligations, such Refinancing Indebtedness is junior in right of payment to the Secured Obligations, (b) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness is Disqualified Stock or Preferred Stock, (c) Indebtedness secured by a Lien on the ABL Collateral that is pari passu with or junior to the Lien on the ABL Collateral securing the Secured Obligations, such Refinancing Indebtedness (if secured) is secured by a Lien on the ABL Collateral that is, as applicable, pari passu with or junior to the Lien on the ABL Collateral securing the Secured Obligations to the same extent as such Indebtedness being refinanced (or that is junior thereto), and a Senior Representative of such Refinancing Indebtedness acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of any ABL Intercreditor Agreement and/or a junior lien intercreditor agreement or collateral trust agreement reasonably satisfactory to the Administrative Agent and the Required Lenders (as defined in the Credit Agreement) reflecting the junior-lien status of the Liens securing such Indebtedness as it relates to ABL Collateral, or (d) obligations under an Other Secured Debt Loan Agreement (if any), the Lien on the ABL Collateral securing such Indebtedness shall have the priorities contemplated by, as applicable, any ABL Intercreditor Agreement (or priorities junior thereto), and a Senior Representative of such Refinancing Indebtedness acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of any ABL Intercreditor Agreement; and

(3) such Refinancing Indebtedness shall not include Indebtedness of a Restricted Subsidiary that is not a Lessee Party that refinances Indebtedness of BLI or another Lessee Party or (y) Indebtedness of BLI or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary;

(xv) unsecured Indebtedness of BLI that is equity-linked (including, without limitation, Indebtedness that is convertible into Equity Interests of BLI) and not guaranteed by any Subsidiary of BLI in an amount not to exceed \$225,000,000 at any time outstanding;

(xvi) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided that such Indebtedness is extinguished within five (5) Business Days of its Incurrence;

(xvii) Indebtedness of a Lessee Party or any Restricted Subsidiary supported by a Letter of Credit (as defined in the Credit Agreement), in a principal amount not in excess of the stated amount of such Letter of Credit (as defined in the Credit Agreement);

(xviii) Indebtedness of any Lessee Party or any Restricted Subsidiary consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xix) Indebtedness consisting of Indebtedness of BLI or a Restricted Subsidiary to current or former officers, directors and employees thereof or any direct or indirect parent thereof, their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of BLI or any direct or indirect parent of BLI to the extent described in Section 5.3(b)(ii)(4);

(xx) Indebtedness in respect of obligations of BLI or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money or any Swap Agreement Obligations;

(xxi) Indebtedness of any Person that becomes a Restricted Subsidiary after September 21, 2022; provided that such Indebtedness exists at the time such Person becomes a Restricted Subsidiary and is not created in contemplation of or in connection with such Person becoming a Restricted Subsidiary;

(xxii) Indebtedness in respect of the financing of insurance premiums in the ordinary course of business or consistent with past practice or industry practice;

(xxiii) Indebtedness to customs brokers, freight forwarders, common carriers, landlords and similar Persons, in each case incurred in the ordinary course of business or consistent with past practice;

(xxiv) Indebtedness owed on a short-term basis to banks and other financial institutions incurred in the ordinary course of business of BLI and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements, including cash management, cash pooling arrangements and related activities to manage cash balances of BLI and its Subsidiaries, including treasury, depository, overdraft, credit, purchasing or debit card, electronic funds transfer and other cash management arrangements and Indebtedness in respect of netting services, overdraft protection, credit card programs, automatic clearinghouse arrangements and similar arrangements.

For purposes of determining compliance with this Section 5.3(a), at the time of incurrence, BLI will be entitled to divide and classify an item of Indebtedness in more than one of the categories of Indebtedness described above (or any portion thereof) (other than clause (b) with respect to Other Secured Debt Obligations) without giving pro forma effect to the Indebtedness Incurred pursuant to any other clause or paragraph of this Section 5.3(a) (or any portion thereof) when calculating the amount of Indebtedness that may be Incurred pursuant to any such clause or paragraph (or any portion thereof).

Accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock, as applicable, amortization of original issue discount, the accretion of liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an Incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 5.3(a). In addition, Guaranties of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; provided that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 5.3(a).

For purposes of determining compliance with any U.S. Dollar-denominated restriction on the Incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the lower U.S. Dollar equivalent), in the case of revolving credit debt. However, if the Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and the refinancing would cause the applicable U.S. Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of the refinancing, the U.S. Dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of the refinancing Indebtedness does not exceed the principal amount of the Indebtedness being refinanced.

Notwithstanding any other provision of this Section 5.3(a), the maximum amount of Indebtedness that the Lessee Parties and Restricted Subsidiaries may Incur pursuant to this Section 5.3(a) shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which the respective Indebtedness is denominated that is in effect on the date of the refinancing.

(b) *Restricted Payments.*

(i) No Lessee Party shall, and no Lessee Party shall permit any of the Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any distribution on account of any Lessee Party's or any of the Restricted Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving BLI (other than (A) dividends or distributions payable solely in Equity Interests (other than Disqualified Stock) of BLI; or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary that is not a Wholly Owned Subsidiary, a Lessee Party or the Restricted Subsidiary which owns the equity interests of such non-Wholly Owned Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(2) purchase or otherwise acquire or retire for value any Equity Interests of BLI or any direct or indirect parent of BLI;

(3) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment or scheduled maturity, any Junior Indebtedness of BLI or any Lessee Party (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Junior Indebtedness in anticipation of satisfying a sinking fund obligation or principal installment to the extent not prohibited by the terms of any applicable subordination provisions and (B) Indebtedness permitted under clause (ix) of Section 5.3(a)) or (y) in the case of Junior Indebtedness of the type described in clause (c) of the definition of Junior Indebtedness, make any payment on such Indebtedness;

(4) make any payment on, or redeem, repurchase, defease or otherwise acquire or retire for value any Other Secured Debt Obligations; or

(5) make any Restricted Investment;

(all such payments and other actions set forth in subclauses (1) through (5) above being collectively referred to as "***Restricted Payments***").

(ii) The provisions of Section 5.3(b)(i) shall not prohibit:

(1) the payment of any dividend or distribution or the consummation of any irrevocable redemption within sixty (60) days after the date of declaration thereof, if at the date of declaration or the giving of notice of such irrevocable redemption, as applicable, such payment would have complied with the provisions of this Agreement; provided that if such dividend, distribution or redemption is being made pursuant to Section 5.3(b)(ii)(16), a Reserve (as defined in the Credit Agreement) shall be established by the ABL Agent in accordance with the Credit Agreement;



(2) (A) the redemption, repurchase, retirement or other acquisition of any Equity Interests (***“Retired Capital Stock”***), Other Secured Debt Obligations or Junior Indebtedness of BLI or any Lessee Party solely in exchange for, or solely out of the proceeds of, the substantially concurrent sale of, Equity Interests of BLI or contributions to the equity capital of BLI (other than any Disqualified Stock or any Equity Interests sold to a Subsidiary of BLI) (collectively, including any such contributions, ***“Refunding Capital Stock”***); and

(B) the declaration and payment of dividends on the Retired Capital Stock solely out of the proceeds of the substantially concurrent sale (other than to a Subsidiary of BLI) of Refunding Capital Stock;

(3) the redemption, repurchase, defeasance, or other acquisition or retirement of any Other Secured Debt Obligations or any Junior Indebtedness of any Lessee Party made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of a Lessee Party, which is Incurred in accordance with Section 5.3(a) so long as:

(A) the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the principal amount (or accreted value, if applicable), plus any accrued and unpaid interest, of any Other Secured Debt Obligations or Junior Indebtedness being so redeemed, repurchased, defeased, acquired or retired for value (plus the amount of any premium required to be paid under the terms of the instrument governing any Other Secured Debt Obligations or Junior Indebtedness being so redeemed, repurchased, acquired or retired, plus any tender premiums, plus any defeasance or other costs, fees and expenses incurred in connection therewith);

(B) such Indebtedness is subordinated as to right of payment and lien priority to the Secured Obligations or the related Guarantee of such Lessee Party, as the case may be, at least to the same extent as the applicable Other Secured Debt Obligations or Junior Indebtedness so purchased, exchanged, redeemed, repurchased, defeased, acquired or retired for value (it being understood that if the Junior Indebtedness so purchased, exchanged, redeemed, repurchased, defeased, acquired or retired for value is unsecured, such Indebtedness shall be unsecured);

(C) such Indebtedness has a final scheduled maturity date equal to or later than the earlier of (x) the final scheduled maturity date of the applicable Other Secured Debt Obligations or Junior Indebtedness being so redeemed, repurchased, acquired or retired and (y) ninety-one (91) days following the ABL Maturity Date; and

(D) such Indebtedness has a Weighted Average Life to Maturity at the time Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the applicable Other Secured Debt Obligations or Junior Indebtedness being so redeemed, repurchased, defeased, acquired or retired

and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the applicable Other Secured Debt Obligations or Junior Indebtedness being redeemed, repurchased, defeased, acquired or retired that were due on or after the date that is one year following the ABL Maturity Date;

(4) so long as no Event of Default is continuing immediately before or after the making of such Restricted Payment, a Restricted Payment to pay for the repurchase, retirement or other acquisition for value of Equity Interests of BLI or any direct or indirect parent of BLI held by any future, present or former employee, director, officer or consultant of BLI or any Restricted Subsidiary of BLI or any direct or indirect parent of BLI pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; provided, however, that the aggregate Restricted Payments made under this clause (4) do not exceed in any calendar year an amount equal to (x) \$11,250,000 plus (y) the value of any shares surrendered by any such employee, director, officer or consultant, or otherwise withheld by BLI, in connection with any tax obligation of such employee, director, officer or consultant (or the payment thereof by BLI or any Restricted Subsidiary) in an amount not to exceed \$4,500,000, with unused amounts in any calendar year being permitted to be carried over to the next succeeding calendar year; provided further, however, that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds received by BLI or any of the Restricted Subsidiaries from the sale of Equity Interests (other than Disqualified Stock) of BLI or any direct or indirect parent of BLI (to the extent contributed to BLI) to employees, directors, officers or consultants of BLI and the Restricted Subsidiaries or any direct or indirect parent of BLI that occurs after September 21, 2022 and during such calendar year; plus

(B) the cash proceeds of key man life insurance policies received by BLI or any direct or indirect parent of BLI (to the extent contributed to BLI) or the Restricted Subsidiaries after September 21, 2022 and during such calendar year;

(5) other Restricted Payments that, when taken together with all other Restricted Payments made pursuant to this clause (5), would not exceed \$30,000,000 after September 21, 2022; provided, that no Event of Default exists, in each case, after giving pro forma effect to such Restricted Payment;

(6) the distribution, as a dividend or otherwise, of shares of Equity Interests of Unrestricted Subsidiaries;

(7) with respect to any Other Secured Debt Obligations (if any):

(A) the making of regularly scheduled payments of interest in accordance with the terms of the applicable Other Secured Debt Loan Agreement at a rate not prohibited by the terms of the applicable ABL Intercreditor Agreement;

(B) the making of regularly scheduled amortization payments, mandatory prepayments and other mandatory payments in accordance with the terms of the applicable Other Secured Debt Loan Agreement to the extent not prohibited by the terms of the applicable ABL Intercreditor Agreement; or

(C) the making of voluntary prepayments or voluntary redemptions of Indebtedness under the applicable Other Secured Debt Loan Agreement (including, without limitation, pursuant to any loan buyback or repurchase mechanisms) so long as no Default or Event of Default then exists or would arise as a result of such prepayment or redemption;

(8) payment of Indebtedness created under the ABL Documents (as such ABL Obligations may be amended, increased, otherwise modified, replaced or refinanced from time to time) or the payment of Indebtedness created under or the Operative Documents;

(9) payment of regularly scheduled interest and principal payments or reimbursement obligations under letters of credit, in each case, as and when due in respect of any Indebtedness permitted by this Agreement, other than payments in respect of the Subordinated Indebtedness (as defined in the Credit Agreement) prohibited by the subordination provisions thereof;

(10) payments constituting the refinancings of Indebtedness to the extent such refinanced Indebtedness is permitted by Section 5.3(a);

(11) payment of secured Indebtedness (other than Other Secured Debt Obligations) that becomes due as a result of (A) any voluntary sale or transfer of any assets securing such Indebtedness or (B) any casualty or condemnation proceeding (including a disposition in lieu thereof) of any assets securing such Indebtedness;

(12) subject to the terms of the Intercompany Subordination Agreement (as defined in the Credit Agreement), payments of intercompany Indebtedness permitted under Section 5.3(a) and owed to any Lessee Party;

(13) repurchases of Equity Interests that occur or are deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(14) Restricted Payments by BLI or any Restricted Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Equity Interests of any such Person;

(15) payments or distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of BLI and the Restricted Subsidiaries,

taken as a whole, that complies with Section 5.3(h); provided that if such consolidation, amalgamation, merger or transfer of assets constitutes a Change in Control, all Obligations shall have been repaid in full (or the Event of Default specified in paragraph (g) of Article XVII of the Lease shall have been waived); and

(16) any Lessee Party or their Restricted Subsidiaries may make Restricted Payments so long as no Default or Event of Default then exists or would arise as a result of making such Restricted Payment.

(c) *Limitations on Restrictive Agreements.* No Lessee Party shall, or shall permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist any consensual encumbrance or consensual restriction which prohibits or limits the ability of:

(i) any Lessee Party or Restricted Subsidiary to pay dividends or make any other distributions to BLI or any Restricted Subsidiary (1) on its Equity Interests; or (2) with respect to any other interest or participation in, or measured by, its profits;

(ii) any Lessee Party or Restricted Subsidiary to make loans or advances to BLI or any Restricted Subsidiary that is a direct or indirect parent of such Subsidiary;

(iii) the Lessee to create, incur or permit to exist any Lien in favor of the Administrative Agent or the Collateral Agent upon the Lessee Collateral or the Leased Property;

*except* in each case for such encumbrances or restrictions existing under or by reason of:

(1) (A) contractual encumbrances or restrictions in effect on September 21, 2022 and, with respect to any such encumbrances in described in Section 5.3(c)(iii) which are in a Material Agreement, as set forth on Schedule 5.3(c) and (B) contractual encumbrances or restrictions pursuant to this Agreement, the other Operative Documents, and, in each case, similar contractual encumbrances effected by any amendments, modifications, restatements, renewals, supplements, refundings, replacements or refinancings of such agreements or instruments;

(2) (A) this Agreement, (B) the Credit Agreement (except in respect of Section 5.3(c)(iii) above, as amended, modified, supplemented, restated or refinanced from time to time), (C) if applicable, an Other Secured Debt Loan Agreement and the other relevant Other Secured Debt Documents, and (D) if applicable, any ABL Intercreditor Agreement;

(3) Applicable Law or any applicable rule, regulation or order;

(4) any agreement or other instrument of a Person acquired by a Lessee Party or any Restricted Subsidiary which was in existence at the time of such acquisition

(but not created in contemplation thereof or to provide all or any portion of the funds or credit support utilized to consummate such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;

(5) contracts or agreements for the sale of assets to the extent such sale is not prohibited pursuant to the terms hereof, including any restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Equity Interests or assets of such Restricted Subsidiary;

(6) (A) secured Indebtedness otherwise permitted to be Incurred pursuant to Section 5.3(a) and Section 5.3(g) that limits the right of the debtor to dispose of or grant Liens on the assets securing such Indebtedness and (B) contractual encumbrances or restrictions under any agreement governing any Indebtedness existing as of September 21, 2022;

(7) customary net worth provisions contained in real property leases entered into by any Lessee Party or Restricted Subsidiary, so long as BLI has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of BLI and its Restricted Subsidiaries to meet their ongoing obligations;

(8) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business and relating solely to the applicable Joint Venture;

(9) purchase money obligations to the extent not prohibited hereunder for property acquired and Finance Lease Obligations in the ordinary course of business;

(10) customary provisions contained in leases, licenses and other similar agreements entered into in the ordinary course of business;

(11) any encumbrance or restriction that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any such lease, license (including without limitation, licenses of intellectual property) or other contracts;

(12) other Indebtedness, Disqualified Stock or Preferred Stock of BLI or any Restricted Subsidiary, in each case, so long as such encumbrances and restrictions contained in any agreement or instrument will not materially affect any Lessee Party's ability to make anticipated principal or interest payments on the Lease Balance (as determined in good faith by BLI), provided that such Indebtedness, Disqualified Stock or Preferred Stock is permitted pursuant to Section 5.3(a);

(13) any Investment not prohibited by Section 5.3(b);

(14) customary restrictions and conditions contained in the document relating to any Lien, so long as (1) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien, and (2) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 5.3(c); and

(15) any encumbrances or restrictions of the type referred to in Section 5.3(c)(i), (ii), or (iii) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (14) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of BLI, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

For purposes of determining compliance with this Section 5.3(c), (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Equity Interests and (ii) the subordination of loans or advances made to BLI or a Restricted Subsidiary to other Indebtedness Incurred by BLI or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

(d) *Sale of Equity Interests and Assets.* BLI shall not, nor shall it permit any of its Restricted Subsidiaries to, sell, transfer, convey, assign or otherwise Dispose of any of its properties or other assets, including the Equity Interests of any of its Subsidiaries (whether in a public or a private offering or otherwise), other than as permitted pursuant to the Credit Agreement. Except as otherwise permitted by this Agreement or any other Operative Document, the Lessee shall not sell, transfer, convey, assign or otherwise Dispose of any of the Lessee Collateral or its right, title and interest in the Leased Property or the Operative Documents.

(e) *Affiliate Transactions.* No Lessee Party shall, and no Lessee Party shall permit any of the Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of BLI (each of the foregoing, an “**Affiliate Transaction**”) involving aggregate consideration in excess of \$11,250,000 or services and goods with a market value (as determined in good faith by BLI) in excess of \$11,250,000, provided that, the foregoing shall not apply to the following:

(i) Affiliate Transactions on terms that are not materially less favorable to the relevant Lessee Party or the Restricted Subsidiary than those that could have been obtained in a comparable transaction by the relevant Lessee Party or such Restricted Subsidiary with an unrelated Person;

(ii) transactions between or among BLI and/or any of the Restricted Subsidiaries (or any entity that becomes a Restricted Subsidiary as a result of such transaction);

(iii) Restricted Payments permitted by Section 5.3(b) and Permitted Investments;

(iv) the payment of reasonable and customary fees and reimbursement of out-of-pocket expenses paid to, and indemnity provided on behalf of, officers, directors, employees or consultants of BLI, any Restricted Subsidiary, or any direct or indirect parent of BLI;

(v) transactions in which BLI or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor (as defined in the Credit Agreement) stating that such transaction is fair to BLI or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (i) of this Section 5.3(e);

(vi) payments or loans (or cancellation of loans) to officers, directors, employees or consultants which are approved by a majority of the Board of Directors of BLI in good faith;

(vii) any agreements or transactions disclosed on Schedule 6.05 to the Credit Agreement and any amendment thereto (so long as any such agreement together with all amendments thereto, taken as a whole, is not more disadvantageous to the Participants in any material respect than the original agreement as in effect on September 21, 2022) or any transaction contemplated thereby as determined in good faith by BLI;

(viii) the issuance of Equity Interests (other than Disqualified Stock) of BLI to any Person;

(ix) (A) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement, which are fair to BLI and the Restricted Subsidiaries in the reasonable determination of the Board of Directors or the senior management of BLI, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party or (B) transactions with Joint Ventures or Unrestricted Subsidiaries entered into in the ordinary course of business and consistent with past practice; provided, however, with respect to any consideration made to a Lessee Party or its Restricted Subsidiaries by Joint Ventures, the applicable Lessee Party or Restricted Subsidiary shall receive at least Fair Market Value for the goods or services of such transaction;

(x) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, management equity plans, stock option and stock ownership plans or similar employee benefit plans approved by the Board of Directors of BLI, or the Board of Directors of a Restricted Subsidiary, as applicable, in good faith;

(xi) any contribution to the capital of BLI;

(xii) transactions permitted by, and complying with, Section 5.3(h);

(xiii) transactions between BLI or any Restricted Subsidiary and any Person, a director of which is also a director of BLI or any direct or indirect parent of BLI; provided, however, that such director abstains from voting as a director of BLI or such direct or indirect parent of BLI, as the case may be, on any matter involving such other Person;

(xiv) pledges of Equity Interests of Unrestricted Subsidiaries;

(xv) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business and not for the purpose of circumventing any covenant set forth in this Agreement;

(xvi) any employment agreements entered into by BLI or any Restricted Subsidiary and their respective officers and employees in the ordinary course of business;

(xvii) transactions undertaken in good faith (as certified by a responsible financial or accounting officer of BLI in an Officer's Certificate) for the purpose of improving the consolidated tax efficiency of BLI and its Subsidiaries and not for the purpose of circumventing any covenant set forth in this Agreement;

(xviii) non-exclusive licenses of Intellectual Property to or among BLI, its respective Subsidiaries and its Affiliates; and

(xix) advances for commissions, travel and similar purposes in the ordinary course of business to directors, officers and employees.

(f) *Amendments of Certain Documents; Line of Business.* No Lessee Party shall amend its charter, bylaws or other organizational documents in any manner materially adverse to the interest of the Participants or such Lessee Party's duty or ability to repay the Obligations. No Lessee Party shall amend the Credit Agreement, the ABL Documents or any Other Secured Debt Documents (if applicable) in a manner prohibited by the applicable ABL Intercreditor Agreement. No Lessee Party shall engage in any business other than the distribution of, and the wholesale and retail sale of, general merchandise and ancillary or value-added activities and functions in support



of or as an enhancement to the foregoing businesses, substantially as conducted and operated by such Lessee Party during the 2022 fiscal year (“**Similar Business**”).

(g) *Liens.* No Lessee Party shall, and no Lessee Party shall permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur or suffer to exist any ABL Lien securing Indebtedness of such Lessee Party or any Restricted Subsidiary, other than ABL Permitted Liens, on any asset or property of such Lessee Party or Restricted Subsidiary.

With respect to any ABL Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such ABL Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The “**Increased Amount**” of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or in the form of common stock of BLI, the payment of dividends on Preferred Stock in the form of additional shares of Preferred Stock of the same class, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness described in clause (3) of the definition of “Indebtedness.”

(h) *Mergers, Amalgamations, Fundamental Changes, Etc.*

(i) No Lessee Party shall, or shall permit any of its Restricted Subsidiaries to, directly or indirectly, by operation of law or otherwise, enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(1) any Lessee Party may consolidate, amalgamate or merge into (x) another Lessee Party (y) a Subsidiary that is not a Lessee Party, or (z) another Person pursuant to a Permitted Acquisition (as defined in the Credit Agreement); provided that, in the case of the foregoing clauses (y) and (z), no Event of Default has occurred or would result therefrom and such Subsidiary or other Person, as applicable, becomes a Lessee Party and provides the Administrative Agent and Participants with the applicable documentation described in Section 5.2(a)(xvii) (provided, however, with respect to any such consolidation, amalgamation or merger involving BLI or the Lessee, BLI or the Lessee, as applicable, shall be the surviving person);

(2) any Domestic Subsidiary (as defined in the Credit Agreement) may be merged, amalgamated or consolidated with or into the Lessee (provided that the Lessee shall be the continuing or surviving entity) or with or into BLI (provided that the Lessee or BLI shall be the continuing or surviving entity);

(3) any Subsidiary that is not a Lessee Party may be merged, amalgamated or consolidated with or into any other Subsidiary that is not a Lessee Party; provided

that if one Subsidiary to such merger, amalgamation or consolidation is a Wholly Owned Subsidiary, the Wholly Owned Subsidiary shall be the continuing or surviving entity;

(4) (x) any Lessee Party may Dispose of any or all of its assets to another Lessee Party, and (y) any Subsidiary which is not a Lessee Party may Dispose of any or all of its assets to, or enter into any merger, amalgamation or consolidation with, (1) the Lessee or BLI (upon voluntary liquidation or otherwise); provided in the case of a Disposition by a non-Lessee Party to a Lessee Party of assets that is not a part of a liquidation, such sale shall be for no more than Fair Market Value (as determined by BLI), or (2) a Subsidiary that is not a Guarantor if the Subsidiary making the Disposition is not a Guarantor; provided that any such Disposition by a Wholly Owned Subsidiary must be to a Wholly Owned Subsidiary;

(5) any Investment not prohibited by Section 5.3(b) may be structured as a merger, consolidation or amalgamation;

(6) any Subsidiary may be dissolved or liquidated so long the Dispositions of assets of such Person in connection with such liquidation or dissolution are to Persons entitled to receive such assets in accordance with Section 5.3(d);

(7) any Subsidiary may enter into any merger, amalgamation or consolidation in connection with, or to effectuate, a Disposition not otherwise prohibited by Section 5.3(d); and

(8) any Restricted Subsidiary may Dispose of any or all of its assets in connection with, or to effectuate, a Disposition not otherwise prohibited by Section 5.3(d).

(ii) No Lessee Party shall (a) change its name as it appears in official filings in the state or province of incorporation or organization, (b) change its chief executive office, (c) change the type of entity that it is, (d) change its organization identification number, if any, issued by its state or province of incorporation or other organization, or (e) change its state or province of incorporation or organization, in each case, unless the Administrative Agent shall have received written notice of such change within 10 days (or such longer period as the Administrative Agent may agree in its sole discretion) following such change and any reasonable action requested by the Administrative Agent in connection with such change to continue at all times following such change for the Administrative Agent to have a valid, legal and perfected security interest in all the Lessee Collateral in which a security interest may be perfected by a filing under the UCC (or its equivalent in any applicable jurisdiction), for the benefit of the Secured Parties have been made or will have been made within 10 days (or such longer period as the Administrative Agent may agree in its sole discretion) following such change.

(iii) No Lessee Party shall change its fiscal year from the basis in effect on the Closing Date without having first provided to the Administrative Agent and each Participant thirty (30) days' prior written notice thereof.

(iv) No Lessee Party will change the basis of accounting upon which its financial statements are prepared for purposes of this Agreement, other than changes to comply with changes in GAAP, without providing to the Administrative Agent and each Participant prompt notice thereof.

(i) *Sanctions; Anti-Terrorism Laws.* No Lessee Party shall, directly or indirectly, nor shall any Lessee Party permit any Subsidiary to directly or indirectly, use the Leased Property or the proceeds of any Funding, or lend, contribute or otherwise make available such proceeds to any Subsidiary, (i) to fund, finance or facilitate any activities of or business with any individual or entity, or in any Sanctioned Country, that, at the time of such funding, is the subject of Sanctions except (A) as otherwise permitted pursuant to a license granted by the Office of Foreign Assets Control of the U.S. Department of the Treasury or (B) otherwise to the extent permissible for a Person required to comply with Sanctions, or (ii) in any other manner that will result in a violation of Sanctions by any party hereto. No Lessee Party shall, directly or indirectly, nor shall any Lessee Party permit any Subsidiary to directly or indirectly, use the Leased Property or the proceeds of any Funding for any purpose which would breach any Anti-Terrorism Laws applicable to any Lessee Party or Subsidiary, including the United States Foreign Corrupt Practices Act of 1977, the Corruption of Foreign Public Officials Act (Canada), the UK Bribery Act 2010, and other similar anti-corruption legislation in any jurisdiction in which any Lessee Party or any of its Subsidiaries is located or is doing material business.

#### ***SECTION 5.4. Financial Covenants of the Guarantors and the Lessee.***

(a) *Fixed Charge Coverage Ratio.* At all times during a Covenant Compliance Event, BLI shall not permit the Fixed Charge Coverage Ratio, as of the end of any fiscal quarter, calculated on a trailing four (4) fiscal quarter basis, to be less than 1.0 to 1.0.

(b) *LTV Test.* As of the Closing Date and as of each Appraisal Delivery Date (each such date, a “**LTV Test Date**”), the Lessee shall not permit the LTV Ratio to be greater than sixty percent (60%) (the “**LTV Test**”); provided that, if the LTV Test would not be satisfied as of any LTV Test Date (other than the Closing Date), the Lessee shall have fifteen (15) days to deliver or adjust any Lessee Letter of Credit by the amount required to cause the LTV Test to be satisfied.

### **ARTICLE VI**

#### **OTHER COVENANTS AND AGREEMENTS**

##### ***SECTION 6.1. Cooperation with the Lessee.***

The Agents and each of the Participants shall, to the extent reasonably requested by the Lessee (but without assuming additional liability on account thereof), as a Transaction Cost and at the Lessee’s expense after the Closing Date, cooperate to allow the Lessee to further the Lessee’s requirements as lessee of the Leased Property including, without limitation, to file any statement

with respect to any tax abatements, tax value complaints, or other requirements; provided, none of the foregoing expose the Administrative Agent or any Participant to increased liability beyond that contemplated by the Operative Documents.

**SECTION 6.2. Covenants of the Agents and the Participants.**

(a) *Discharge of Liens.* Each Agent, in both its individual capacity and in its capacity as Agent, will not create or permit to exist at any time any Lessor Lien attributable to it, and will promptly take such action as may be necessary duly to discharge, or to cause to be discharged, all Lessor Liens attributable to it and will cause restitution to be made to the Lessor for the benefit of the Lessee and the Participants (as their interests may appear) in the amount of any diminution of the value of the Leased Property as a result of its failure to comply with its obligations under this Section 6.2(a). The Lessor will not create or permit to exist at any time any Lessor Lien attributable to it, and will promptly take such action as may be necessary duly to discharge, or to cause to be discharged, all Lessor Liens attributable to it and will cause restitution to be made to the Lessee and the Rent Assignees (as their interests may appear) in the amount of any diminution of the value of the Leased Property as a result of its failure to comply with its obligations under this Section 6.2(a). Each of the Rent Assignees covenants as to itself, and not jointly with any other Rent Assignee, that it will not create or permit to exist at any time, any Lessor Lien attributable to it and will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, or to cause to be discharged, all Lessor Liens attributable to it and will cause restitution to be made to the Lessor for the benefit of the Lessee and the other Participants (as their interests may appear) in the amount of any diminution of the value of the Leased Property or the Site as a result of its failure to discharge or cause to be discharged all Lessor Liens attributable to it pursuant to this Section 6.2(a). Notwithstanding the foregoing, none of the Participants and/or the Agents, as the case may be, shall be required to so discharge any such Lessor Lien while the same is being contested by a Permitted Contest in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not involve any meaningful danger of the sale, forfeiture, loss or diminution in value of, and shall not interfere with the use, operation or disposition of, any part of the Leased Property or the Site, the Lease or title thereto or any interest therein or the payment of Rent; provided, however, that each Participant and each Agent shall discharge any such Lessor Lien attributable to it, whether or not subject to contest as provided above, upon the purchase of the Leased Property by the Lessee pursuant to the Lease or a sale of the Leased Property pursuant to the Lease including pursuant to the Return Option.

(b) *Other Lessor Covenants.* The Lessor shall not subject any of the Leased Property to any mortgage, lien, security interest or other claim or encumbrance, other than in favor of the Collateral Agent, the Lessee and the Participants or transfer any interest in the Leased Property in each case other than as contemplated by, arising from or related to the Operative Documents.

(c) *Depreciation.* Prior to the termination of the Lease and the transfer of the Leased Property to any Person other than the Lessee or its Affiliate or its designee, none of the Participants shall claim any United States federal, state, or local tax attributes or benefits (including

depreciation) relating to the Leased Property unless required to do so by an appropriate taxing Authority or after a clearly applicable change in Applicable Laws; provided, however, that if an appropriate taxing Authority shall require such Participant to claim any such United States federal, state, or local tax attributes or benefits, or after a clearly applicable change in Applicable Laws, such Participant shall promptly notify the Lessee thereof and shall permit the Lessee to contest such requirement in a manner similar to the contest rights provided in, and subject to any applicable limitation to a contest contained in, Section 7.2(b) hereof. Nothing herein shall prevent a Participant from settling any proposed deficiency or adjustment by an appropriate taxing Authority, and no Participant will be required to litigate any proposed adjustment by any such Authority (subject to Section 7.2(b)). For the avoidance of doubt, no Participant (or any of its Affiliates) shall claim any United States federal, state, or local tax attributes or benefits (including depreciation) relating to the Leased Property as a defense or offset to any position taken by any Authority.

(d) *Quiet Possession.* If and so long as no Event of Default shall have occurred and be continuing, the Agents and each Participant, individually, and not severally, agrees that it shall not interfere with the Lessee's right to the use, possession and quiet enjoyment of the Leased Property and the Site according to the terms hereof and of the other Operative Documents.

(e) *Insurance Covenants.* The Agents and the Participants herewith accept all covenants between the Lessee and each insurer made in accordance with the terms of the Operative Documents for their respective benefit including but not limited to the naming of the Agents and the Participants as additional insureds or as loss payees, as the case may be.

(f) *ERISA.* No amount shall be funded or held by the Lessor or any Participant with "plan assets," as defined by 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA, of any Employee Benefit Plan.

(g) *Further Assurances.* Upon the written request of the Lessee delivered at least thirty (30) days prior to the date specified in such request for a restructuring of the Overall Transaction, as a result of a change or proposed change in the applicable accounting rules, the Participants agree to cooperate with the reasonable requests of the Lessee promptly and in good faith to negotiate with a view toward causing a restructuring of the obligations represented by the Lease and the other Operative Documents, provided the Lessee shall reimburse the Participants for their respective reasonable out-of-pocket expenses incurred in connection with any such written request or restructuring including the reasonable and documented out-of-pocket fees and expenses of its legal counsel. In the event any such restructuring involves a change in the nature and scope of the Lessor's obligations under the Operative Documents and does not involve a transfer by the Lessor of its interest in the Improvements and the Site, the Lessee and the Lessor shall agree upon a reasonable and appropriate amount to be paid to the Lessor as reimbursement for personnel expenses incurred by the Lessor in such restructuring. Notwithstanding any of the foregoing negotiations, the Lessor shall not be obligated to restructure the Overall Transaction.

(h) *Lessor Statements.* The Lessor shall, upon the reasonable request of the Lessee and, in any event, not more than on an annual basis, provide to the Lessee a letter substantially similar to the Lessor Confirmation Letter. In the event the Lessor is not able to provide the Lessor Confirmation Letter, then at the Lessee's option, the Lessor shall, at the Lessee's expense, assign its interest in this Agreement, the other Operative Documents and the Leased Property to a successor lessor designated by the Lessee in accordance with Section 6.3(b).

### **SECTION 6.3. Assignments.**

(a) *Rent Assignee Assignments.* The Rent Assignees shall not directly or indirectly, whether by operation of law or otherwise, assign, convey or otherwise transfer in whole or in part any of its right, title or interest in the all or a portion of its Rent Assignment Interest and/or its rights, obligations and interest in, to or under this Agreement, the Operative Documents and/or the Leased Property to any Person except upon compliance with the conditions set forth in this Section 6.3(a). Subject to the foregoing, any Rent Assignee may, with the prior written consent of the Lessee, which consent shall not be unreasonably withheld, conditioned or delayed at any time (it being agreed that it would be reasonable for the Lessee to withhold such consent if, among other things, payments to any such transferee would be subject to United States federal, state or local Withholding Tax, or would be subject to an indemnity obligation under Section 7.2(a)(ii) or related gross-up obligations which would not apply to the transferor), assign and delegate all or a portion of its Rent Assignment Interest and its rights, obligations and interest in, to or under this Agreement, the Operative Documents and the Leased Property to one or more Eligible Assignees, subject to the following conditions:

(i) each such assignment shall be of a constant, and not a varying, percentage of the assigning Rent Assignee's rights and obligations being assigned;

(ii) the aggregate principal amount of the Rent Assignment Advances assigned by any Rent Assignee shall be in a minimum amount equal to the least of (A) \$10,000,000 and integral multiples of \$5,000,000 in excess thereof or (B) any lower amount approved by the Lessee in its sole discretion;

(iii) after giving effect to any such assignment by a Rent Assignee, such Rent Assignee holds an aggregate outstanding principal amount of Rent Assignment Advances and Commitment equal to either zero or at least \$10,000,000 or any lower amount approved by the Lessee in its sole discretion; and

(iv) upon the consummation of such assignment, such Rent Assignee shall deliver an amended Schedule I-A to the Lessee and the Administrative Agent, which amended Schedule I-A shall amend and restate the prior Schedule I-A automatically, without any action required by any other party hereto. Any permitted successor Rent Assignee shall be bound by the same restrictions on transfer as provided herein.

(b) *Lessor Assignments.* Subject to Section 6.3(d), the Lessor shall not directly or indirectly, assign, convey or otherwise transfer in whole or in part any of its right, title or interest in the Leased Property, the Lessor Investment, the Lessor Retained Interest, this Agreement, the Lease or any other Operative Document to any Person except upon compliance with the conditions set forth in this Section 6.3(b) provided, that, without regard to any of the restrictions contained in this Section 6.3(b), the Lessor may, prior to the end of the Lease Term, agree to sell or otherwise dispose of its beneficial and legal interest in the Leased Property effective at or after the end of the Lease Term in accordance with the terms of this Agreement and the other Operative Documents. The Lessor shall not, without the prior written consent of the Lessee, which consent shall not be unreasonably withheld, conditioned or delayed, transfer such right, title or interests to any Person that would (i) be subject to United States federal, state or local Withholding Tax, if any (except to the extent that the transferor at the time of such transfer is subject to United States federal, state or local Withholding Tax subject to indemnification by the Lessee pursuant to Section 7.2(a)(iii)), or (ii) as reasonably determined by the Lessee and communicated in writing to the Lessor, result in consolidation of the transferee to the balance sheet of the Lessee pursuant to ASC 810, as defined by the Financial Accounting Standards Board; *provided, that*, such consent will not be required at any time that an Event of Default has occurred and is continuing. Subject to the foregoing, the Lessor may, with the prior written consent of the Lessee, which consent shall not be unreasonably withheld, conditioned or delayed, at any time and at the Lessor's sole expense, sell, assign or transfer in whole or in part such right, title and interest to a transferee satisfying the conditions set forth below (a "***Permitted Transferee***"), provided, that, the Lessor may assign and transfer its Lessor Retained Interest to a Rent Assignee separately from its Lessor Investment in accordance with the final paragraph of this Section 6.3(b) and, provided, further, that it shall also be a condition to any such sale, assignment or transfer that:

(i) such sale, assignment or transfer will not be in violation of the registration requirements of the Securities Act of 1933, as amended or violate the Patriot Act or otherwise cause the Lessee to violate Section 4.1(o);

(ii) the Permitted Transferee shall have the requisite power and authority to enter into and carry out the transactions of the Lessor or as a Rent Assignee, as applicable, as contemplated hereby and by the Operative Documents to which the Lessor or a Rent Assignee is then a party;

(iii) the Permitted Transferee shall execute an instrument, in form and substance reasonably satisfactory to the Lessee, the Administrative Agent, the Lessor and the other Participants, whereby such Permitted Transferee confirms for the benefit of the Lessee, the Administrative Agent, the Lessor and the other Participants, that it has the requisite power and authority to enter into and to carry out the provisions of this Agreement and the Operative Documents to which the Lessor or a Rent Assignee is then a party and agrees to be bound by all the terms of, and assumes all of the liabilities and obligations of the Lessor or a Rent Assignee, as applicable, contained in, this Agreement and each of such Operative Documents;

(iv) the Permitted Transferee shall be either (A) an Eligible Assignee, (B) a subsidiary of any Person described in clause (A) above, or (C) a corporation which is a member of the same consolidated group for Federal income tax purposes as the Lessor, or another corporation owned and controlled by, or under common control with, the Lessor, provided, that if the Permitted Transferee is (x) a Person described in clause (B) above and not described in clause (A) above, a Person described in clause (A) shall have executed and delivered a guaranty in form and substance reasonably satisfactory to the Lessee, the Administrative Agent and the other Participants, or (y) a Person described in clause (C) above and not described in clause (A) above, the Lessor shall continue to be liable with respect to the obligations of the Permitted Transferee and shall confirm such fact in writing to the Lessee, the Administrative Agent and the other Participants; and

(v) if the Lessor proposes to transfer its interest hereunder at any time pursuant to this Section 6.3(b), the Lessor shall give not less than fifteen (15) days' notice to the Lessee, the Administrative Agent and the other Participants specifying the name and address of the proposed Permitted Transferee and specifying the facts necessary to determine compliance with this Section 6.3 and, as may be required hereunder, requesting the Lessee's consent.

From and after any transfer effected in accordance with this Section 6.3(b), the Permitted Transferee shall be deemed the "Lessor" for all purposes of the Operative Documents and shall be deemed to have made the Lessor Investment in the Leased Property previously made by the Lessor; and each reference contained in the Operative Documents to the Lessor shall thereafter be deemed a reference to the Permitted Transferee, as the Lessor shall have no further liability hereunder or thereunder except (i) to the extent of claims relating to or arising out of the period prior to such transfer or (ii) as otherwise provided in this Section 6.3(b).

Solely with respect to all or a portion of its Lessor Retained Interest and the related rights, obligations and interests, the Lessor shall have the right at any time, to sell, assign or transfer in whole or in part its right, title and interest therein to an Eligible Assignee subject to the terms and conditions of Section 6.3(a) hereof as if such sale, assignment and transfer were by a Rent Assignee of its Rent Assignment Interest and related rights, obligations and interests. From and after any transfer of all or part of the Lessor Retained Interest effected in accordance with this Section 6.3(b), unless otherwise elected by the Lessor, the Permitted Transferee shall be deemed a "Rent Assignee" for all purposes of the Operative Documents and shall be deemed to have made a Rent Assignment Advance in the Leased Property in the amount of the assigned portion of the Lessor Retained Interest; and each reference contained in the Operative Documents to the Rent Assignees shall thereafter be deemed to include the Permitted Transferee, such Permitted Transferee shall be bound by the same restrictions on transfer as provided herein, and the transferring Lessor shall have no further liability hereunder or thereunder with respect to such assigned portion of the Lessor Retained Interest except with respect to such assigned portion of the Lessor Retained Interest (i) to the extent of claims relating to or arising out of the period prior to such transfer or (ii) as otherwise provided in this Section 6.3(b).



(c) *Required Deliveries.* The Lessee, the Agents and the other Participants may continue to deal solely and directly with the assignor Lessor in connection with any interest so assigned until (A) notice of such assignment shall have been given to the Lessee, the Agents and the other Participants by such Lessor or its assignee and, as may be required hereunder, the Lessee's consent thereto is granted; and (B) the assignor and assignee shall have executed and delivered to the Lessee, the Administrative Agent and the other Participants an instrument of assignment in the form attached hereto as Exhibit B. When the relevant Persons have received the items listed in clauses (A) and (B) of the preceding sentence, subject to subsection (a) or (b) above, as applicable, the assignee shall be a party hereto and the other Operative Documents to which the assignor was (or, in the case of a partial assignment, is) a party and, to the extent of the rights and obligations so assigned to it, shall have the rights and obligations of the Lessor hereunder and under such other Operative Documents, and the assignor shall, to the extent that rights and obligations hereunder and under such other Operative Documents have been assigned by it, relinquish its rights and be released from its obligations hereunder and under such other Operative Documents.

(d) *Exceptions to Restrictions.* Notwithstanding anything to the contrary contained in this Section 6.3, (i) when an Event of Default has occurred and is continuing, no consent of the Lessee shall be required in respect of an assignment by any Participant to any third party (whether or not an Eligible Assignee or a Permitted Transferee) of all or any part of its rights and obligations under or with respect to this Agreement and the other Operative Documents, (ii) without the consent of the Lessee, any Participant may assign and pledge all or any portion of its Rent Assignment Advance, Lessor Retained Interest or Lessor Investment, as applicable, owing to it to any Federal Reserve Bank, the European Central Bank and the central bank of any country which is a member of the Organization for Economic Cooperation and Development as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank or regulations of the European Central Bank or other central bank of any country which is a member of the Organization for Economic Cooperation and Development, as applicable, provided that no such assignment shall release the assigning Participant from its obligations under the Operative Documents, (iii) without the consent of the Lessee, any Participant may assign all or any portion of its Rent Assignment Advance, Lessor Retained Interest or Lessor Investment, as applicable, owing to it to any affiliate or subsidiary of such Participant, another Participant or any affiliate or subsidiary of such other Participant, provided that no such assignment shall cause payments to such transferee to be subject to United States federal, state or local Withholding Tax (except to the extent that the transferor at the time of such transfer is subject to United States federal, state or local Withholding Tax subject to indemnification by the Lessee pursuant to Section 7.2(a)(iii)) and, provided further that, for the avoidance of doubt, no change in the law, rules or regulations applicable to any Participant due solely to any such assignment shall be deemed a "Change in Law" or a change in any "regulatory requirement" as such terms are defined in Section 7.4 hereof, and (iv) no consent of the Lessee shall be required in respect to an assignment by any Participant to any third party (whether or not an Eligible Assignee or a Permitted Transferee) of all or any part of the rights and obligations

under or with respect to this Agreement and the other Operative Documents, if such assignment is required by Applicable Laws.

(e) *Register.* The Administrative Agent, acting solely for this purpose as an agent of the Lessee, shall maintain a book-entry register for the recordation of the names and addresses of the Participants that own Rent Assignment Interests, and the Commitments of, and Funding and any other amounts treated as principal or interest for United States Federal income tax purposes owing to, each Participant pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Lessee, the Agents and the Participant shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Participant hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Lessee and any Participant, at any reasonable time and from time to time upon reasonable prior notice. The Administrative Agent shall make payments only to persons named on the Register, and a Participant may only transfer its right to receive payments in respect of its Rent Assignment Interests or Lessor Retained Interests by having the transfer recorded on the Register.

#### **SECTION 6.4. Participations.**

Each of the Participants may sell, transfer or assign a participation in all or a portion of the interests represented by its Rent Assignment Interests or the interests represented by its Lessor Investment or Lessor Retained Interest, as applicable, or any right to payment thereunder (each such sale, transfer or assignment of a participation in such interests or rights, a “**Participation**”), to any Person (such Person, a “**Participation Holder**”) upon prior notice to the Lessee. In the event of any such sale, transfer or assignment by a Rent Assignee or the Lessor of a Participation to a Participation Holder, the rights and obligations of such Participant under this Agreement and under the other Operative Documents shall remain unchanged, such Participant shall remain solely responsible for the performance thereof, such Participant shall remain the holder of its Rent Assignment Interests, the Lessor Retained Interest or the Lessor Investment, as applicable, for all purposes under this Agreement and under the other Operative Documents, and the Agents, the Lessee and the other Participants shall continue to deal solely and directly with such Participant in connection with such Participation Holder’s rights and obligations under this Agreement and the other Operative Documents. Any agreement pursuant to which any Rent Assignee or the Lessor may grant such a Participation shall provide that such Participant shall retain the sole right and responsibility to enforce the obligations of the Lessee under the Operative Documents including, without limitation, the right to approve any amendment, modification or waiver of any provision of the Operative Documents; provided, that, such agreement may require such Participant to obtain the consent of the Participation Holder party thereto before such Participant enters into or approves any amendment, modification or waiver of any provision of any Operative Document that (i) extends any date upon which any payment of money is due to the Participants, (ii) reduces the Yield on the Guaranteed Lease Balance, any fee or any other payment obligation under the Operative Documents, (iii) releases any party from any payment obligations, or (iv) releases any interest of Participants in the Leased Property (except as otherwise expressly provided for in any

Operative Document). Any Participant that sells, transfers or assigns a Participation pursuant hereto hereby agrees to indemnify, protect, defend and hold harmless the Lessee, on a Grossed-Up Basis, against any United States federal, state or local Withholding Tax which may arise solely from its Participation, except to the extent the Lessee is responsible for such Withholding Tax pursuant to Section 7.2(a)(iii). Each Participant that sells a participation pursuant hereto, shall, acting solely for this purpose as a non-fiduciary agent of the Lessee, maintain a register on which it enters the name and address of each Participation Holder and information relating to the Rent Assignment Interests, the Lessor Retained Interest or the Lessor Investment, as applicable, held by such Participation Holder (including information relating to any amounts treated as principal or interest for United States Federal income tax purposes) (the “**Participant Register**”); provided that no Participant shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participation Holder or any information relating to a Participation Holder’s Rent Assignment Interests, the Lessor Retained Interest or the Lessor Investment, as applicable) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Participant shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. Each Participant subject to this Section 6.4 shall make payments only to persons named on the Participant Register, and any owner of a Participation may only transfer its right to receive payments in respect of its Participation in Rent Assignment Interests, Lessor Investment or Lessor Retained Interest, as applicable, by having the transfer recorded on the Participant Register.

## ARTICLE VII

### INDEMNIFICATION AND ADDITIONAL PAYMENTS

#### **SECTION 7.1. General Indemnification.**

(a) Subject to clause (b) below, the Lessee will indemnify, defend and hold each Indemnitee harmless, on a Grossed-Up Basis, from and against any and all Claims (which may include the outstanding Adjusted Lease Balance or any portion thereof subject to any limitations set forth in the Operative Documents including, without limitation, payments limited to the Recourse Deficiency Amount) that directly or indirectly relate to, result from or arise out of or are alleged by Persons other than any Indemnitee to relate to, result from or arise out of any of the following (whether or not any such Indemnitee is indemnified as to such matter by any other Person and whether or not such Claim is initiated after the Maturity Date or the Lease Expiration Date, so long as such Claim arises out of an act or omission which arose prior to the earlier of the Maturity Date and the Lease Expiration Date):

- (i) the Leased Property, the Site, the Lessee Collateral or, in each case, any part thereof;

(ii) any of the Operative Documents or any of the transactions contemplated thereby, or any investigation, litigation, enforcement or proceeding in connection therewith and any amendment, modification or waiver in respect thereof;

(iii) the regulation of the ownership, leasing, use or operation of the Leased Property, the Site or any part thereof, but only to the extent that the Indemnitee is subjected to such regulation as a result of its being a party to or beneficiary of the Operative Documents or its involvement in the transactions contemplated in the Operative Documents;

(iv) the offer, financing, refinancing, purchase, inspection, mortgaging, pledging, granting, of a security interest in, the design, manufacture, purchase, ownership, acquisition, acceptance, rejection, ownership, design, construction, refurbishment, development, delivery, nondelivery, redelivery, possession, transportation, lease, sublease, installation, condition, transfer of title or other ownership interest (including any broker's claims with respect thereto or marketing thereof), rental, leasing, subleasing, possession, use, occupancy, operation, storage, maintenance, repair, modification, alteration, repair, assembly, transportation, condition, sale, return, repossession, (whether by summary proceedings or otherwise), abandonment or other application or disposition of all or any part of the Leased Property or any product produced therewith, the Site or any interest therein or improvements thereto or the imposition of any Lien thereon, or the failure to perform or accomplish any of the foregoing in accordance with the requirements of the Operative Documents, other agreements governing such matters or Applicable Laws including, without limitation: Claims or penalties arising from any violation of law or in tort (strict liability or otherwise), latent or other defects, whether or not discoverable by an Indemnitee or the Lessee, any Claim based upon a violation or alleged violation of the terms of any restriction, easement, condition or covenant or other matter affecting title to the Leased Property, the making of any Alterations in violation of any standards imposed by any insurance policies required to be maintained by the Lessee pursuant to the Lease which policies are in effect at any time with respect to the Leased Property or any part thereof, any Claim for patent, trademark or copyright infringement, and Claims arising from any public improvements with respect to the Leased Property and the Site resulting in any change or special assessments being levied against the Leased Property or any plans to modify, widen or realign any street or highway adjacent to the Leased Property or any Claim for utility "tap-in" fees;

(v) a breach by the Lessee of any of its covenants under any Operative Document (including in its capacity as Purchasing Agent), or a misrepresentation by the Lessee (including any omission that makes any representation made by such party materially misleading) in any Operative Document or in any certificate or other document delivered by such party to the Agents or any Participant pursuant to any Operative Document, or the occurrence of any Default or Event of Default, or the material inaccuracy of any information provided by any such party to any third party in connection with the

preparation by such third party of a report or other document required to be delivered pursuant to any Operative Document;

(vi) other than the Lessor's Liens, Liens created pursuant to the Credit Agreement, Permitted Liens or ABL Permitted Liens, the existence of any Lien on or with respect to the Leased Property, the Site, title thereto, any interest therein or any Basic Rent or Supplemental Rent, including any Liens which arise out of the possession, use, occupancy, repair or rebuilding of the Leased Property or by reason of labor or materials furnished or claimed to have been furnished to the Lessee, or any of its contractors or agents or by reason of the financing of any personal property or equipment purchased or leased by the Lessee or Alterations constructed by the Lessee, except Liens in favor of the Lessee, the ABL Agent, any Agent or the Lessor;

(vii) any Environmental Claim, including, without limitation, those indemnified under Section 13.8 of the Lease;

(viii) the offer, issuance, sale, transfer or delivery of the Lessor Investments, the Lessor Retained Interest and the Rent Assignment Interests; and

(ix) any Claims arising as a result of a violation of or purported violation of (including any civil penalty or fine assessed by OFAC or any other Authority administering the following) any Anti-Money Laundering Law, Anti-Corruption Law, Sanctions or the Beneficial Ownership Regulations, and all reasonable costs and expenses (including reasonable documented legal fees and disbursements) incurred in connection with defense thereof by, any Indemnatee in connection with the Operative Documents as a result of any action of the Lessee or any of its respective Affiliates.

The Lessee shall be entitled to credit against any payments due to an Indemnatee under this Section 7.1 both (x) any insurance recoveries received by such Indemnatee in respect of the matters described herein under or from insurance paid for by any Person other than the Indemnatee or an Affiliate thereof or assigned to the Lessor by the Lessee and (y) any other indemnity amount received by such Indemnatee in respect of such matters from a Person (other than the Lessor) unrelated to such Indemnatee; provided, to the extent any such insurance amounts or indemnity amounts referenced in the foregoing subsections (x) or (y) are utilized for one purpose (for example, such as addressing a remediation expense in the context of an Event of Loss), then such insurance amount or indemnity amount shall not be available, or deemed available, for any other purpose (for example, such as rebuilding the Leased Property in the context of an Event of Loss).

(b) *Exclusions.* The provisions of Section 7.1(a) shall not apply to any Claim:

(i) with respect to any Indemnatee, to the extent attributable to the willful misconduct or gross negligence of, such Indemnatee, its officers, agents, employees and Affiliates, or negligence in the handling of funds by either Agent, or the breach in any

material respect of any representation, warranty or agreement made by such Indemnatee under the Operative Documents;

(ii) to the extent attributable to acts or events that occur after the commencement of day to day operation of the Improvements by the Lessor or any Person designated by the Lessor following an Event of Default or the return of the Leased Property pursuant to the Return Option (except (A) to the extent fairly attributable to circumstances existing or acts, events, liabilities or damages occurring or accruing prior to such day to day operation, or (B) to the extent relating to the acts or omissions of the Lessee or any other Big Lots Person in relation to, or liabilities arising out of, the location, structure, installation, putting into service, operation, repair, servicing, maintenance, replacement or dismantling of the Improvements or remaining on or the entering onto the Site or the Improvements by any such Person);

(iii) that does not directly or primarily involve an act or omission of the Lessee or any of its Affiliates and that is brought by an Indemnatee against any other Indemnatee; or

(iv) in respect of Taxes, which are governed by Section 7.2, other than a payment necessary to make payments under this Section 7.1 on a Grossed-Up Basis.

(c) *Contests.* In respect of the indemnification provided under Section 7.1(a), promptly after receipt by an Indemnatee of notice of any pending or threatened Claim, such Indemnatee shall, if a claim for indemnification in respect thereof is to be made against the Lessee, give written notice thereof to the Lessee. So long as no Event of Default has occurred and is continuing, the Lessee, at its own expense, may elect to assume the defense of any such Claim through its own counsel, which shall be subject to the reasonable approval of the Indemnatee, on behalf of the Indemnatee (with full right of subrogation to the Indemnatee's rights and defenses). The Lessee must indicate its election to assume such defense by written notice to the Indemnatee within thirty (30) days following receipt of Indemnatee's notice of the Claim, or in the case of a third-party claim which requires a shorter time for response then within such shorter period as specified in the Indemnatee's notice of Claim; provided that such Indemnatee has given the Lessee written notice thereof. If the Lessee denies liability or fails to respond to the notice within the time period set forth above, the Indemnatee may defend or compromise the Claim as it deems appropriate without prejudice to any of Indemnatee's rights hereunder. If the Lessee shall have elected to assume the defense of any such Claim, then upon the request of the Lessee, the Indemnatee requesting payment of indemnity under Section 7.1(a) shall promptly furnish the Lessee with copies of any records or documents pertaining to the matter to be indemnified and, to the extent known by such Indemnatee, a reasonably detailed explanation of the circumstances giving rise to the claim of indemnification and the determination of the amount of the requested indemnity payment. Upon payment in full to Indemnatee of any indemnity pursuant to Section 7.1(a), the Lessee shall be subrogated to any right of Indemnatee in respect of the matter against which such indemnity has been paid. If the Lessee shall have elected to assume the defense of any such Claim, upon the written request at any time and from time to time of the Lessee, Indemnatee

shall, at the expense of the Lessee, take such reasonable actions and execute such documents as are necessary or reasonably appropriate to assist the Lessee in the preservation and enforcement against third parties of the Lessee's right of subrogation hereunder. The Indemnatee may employ separate counsel in any such Claim and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnatee unless the Indemnatee and the Lessee shall have been advised by counsel that there exists a conflict of interest in such counsel's representation of the Indemnatee and the Lessee in which case the fees and expenses of such separate counsel shall be for the account of the Lessee. All fees and expenses shall be paid periodically as incurred. So long as no Default or Event of Default shall have occurred and be continuing, the Indemnatee shall not settle any such Claim (other than a Claim involving potential criminal liability or charges or involving reputational risk with respect to an Indemnatee) without the Lessee's prior written consent unless the Lessee shall have failed to assume the defense thereof and the Lessee shall not be liable for any settlement of any such Claim effected without its consent unless the Lessee shall fail to, or elect in writing not to, assume the defense thereof in which case the Indemnatee, without waiving any rights to indemnification hereunder, may defend such Claim and enter into any good faith settlement thereof without the prior written consent of the Lessee. The Lessee shall not, without the prior written consent (not to be unreasonably withheld) of the Indemnatee, effect any settlement of any such Claim unless such settlement includes an unconditional release of the Indemnatee from all civil and criminal liabilities that are the subject of such Claim. The parties agree to cooperate in any defense or settlement of any such Claim and to give each other reasonable access to all information relevant thereto subject to appropriate confidentiality agreements. The parties will similarly cooperate in the prosecution of any claim or lawsuit against any third party.

(d) *Subrogation.* Upon the indefeasible payment in full of any Claim pursuant to this Section 7.1, the Lessee, without any further action, shall be subrogated to any claims the Indemnatee may have relating thereto. The Indemnatee agrees, at the Lessee's expense, to give such further assurances or agreements and to cooperate with the Lessee to permit the Lessee to pursue such claims, if any, to the extent reasonably requested by the Lessee. If the Lessee shall have paid an amount to or for an Indemnatee pursuant to this Section 7.1 and such Indemnatee subsequently shall be reimbursed in respect of such indemnified amount from any other Person, such Indemnatee shall promptly pay the Lessee, but not before the Lessee shall have made all payments then due to such Indemnatee pursuant to this Section 7.1 and any other payments then due hereunder and under any other Operative Document, the amount of such reimbursement, including interest actually received attributable thereto, net of Taxes required to be paid by such Indemnatee as a result of any refund received, after giving effect to such payment to the Lessee.

(e) *Not Residual Guaranty.* Nothing in this Section 7.1 shall be construed as a guaranty of residual value of the Leased Property.

## **SECTION 7.2. General Tax Indemnity.**

(a) (i) *Tax Indemnity.* The Lessee shall pay on a Grossed-up Basis, and on written demand shall indemnify and hold each Indemnatee at all times harmless from and against,

any and all Taxes, howsoever imposed, on or with respect to any Indemnatee, the Leased Property or the Lessee or any sublessee or user of the Leased Property by any taxing Authority, in connection with or in any way relating to: (A) the acquisition, mortgaging, design, construction, preparation, installation, inspection, delivery, non-delivery, acceptance, rejection, purchase, ownership, possession, rental, lease, sublease, repossession, maintenance, repair, alteration, modification, addition, substitution, storage, transfer of title (including any brokers claims with respect thereto), redelivery, use, financing, refinancing, operation, condition, purchase, repurchase, sale, return or other application or disposition of all or any part of the Leased Property or the imposition of any Lien (or incurrence of any liability to refund or pay over any amount as a result of any Lien) thereon; (B) the payment of Basic Rent or Supplemental Rent or the receipts arising from or received with respect to the Leased Property or any part thereof, or any interest therein; (C) the payment of any other amount pursuant to the Rent Assignment Agreements or any other Operative Documents, or the property or the income or other proceeds with respect to the Improvements; (D) the Leased Property or any part thereof or any interest therein; (E) the execution, delivery, performance, filing, registration or recording of any of the Operative Documents, the Purchase and Sale Agreement, and any respective amendments and supplements thereto; and (F) otherwise with respect to or in connection with the transactions contemplated by the Operative Documents or the enforcement thereof in accordance with their respective terms; provided, however, that the indemnification obligation of this Section 7.2(a)(i) shall not apply to:

(1) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, value added, real estate transfer or property Taxes that are not substitutes for income taxes) based upon or measured by the Indemnatee's gross or net income, gross or net receipts or that are in the nature of, or are imposed with respect to, capital, capital stock, net worth, excess profits, accumulated earnings capital gains, franchise or conduct of business of such Indemnatee (however denominated and including branch profits Taxes, the Taxes franchise tax on taxable margin and minimum Taxes), except in the case of gross or net income Taxes, to the extent necessary so that payments under this Section 7.2 are made to an Indemnatee on a Grossed-Up Basis within the meaning of Section 7.6;

(2) Taxes that result from a transfer or other disposition by the Indemnatee or any of its Affiliates of all or any portion of its interest in the Leased Property, the Rent Assignment Agreements or the Operative Documents (other than a transfer or disposition that occurs while an Event of Default has occurred and is continuing and is related to such Event of Default or that results from (a) the Lessee's exercise of the Return Option, the Early Termination Option or Purchase Option under the Lease, (b) any transfer to the Lessee under the Operative Documents or which is contemplated by the Operative Documents or (c) any other transfer made at the request of the Lessee in an effort to maintain or enhance the accounting treatment of the Lessee with regard to the Overall Transaction);



(3) Taxes imposed with respect to any period or portion thereof after the expiration or earlier termination of the Lease (but not to the extent attributable to events occurring on or prior to such date) (other than any Tax that is attributable to (a) any Indemnatee exercising its remedies upon an Event of Default, (b) any payment to, by or on behalf of the Lessee after such termination, or (c) any party's compliance with any obligation under the Operative Documents that survives the termination of the Lease, except, in each case, to the extent such Tax would otherwise be an excludable tax but for this parenthetical);

(4) Taxes resulting from (a) the gross negligence, willful misconduct or fraud of the Indemnatee or any of its Affiliates, (b) any representation, warranty, certification or statement of the Indemnatee under the Operative Documents proving to have been incorrect in any material respect when made or deemed to have been made, or (c) the breach of any covenant of the Indemnatee under the Operative Documents;

(5) Taxes imposed on the Agents, the Lessee or the Lessor, in each case in their respective individual capacity, with respect to any fees received by it for services rendered;

(6) Withholding Taxes, indemnification for which shall be solely as provided in Section 7.2(a)(iii) hereof;

(7) Taxes while they are being contested in accordance with Section 7.2(b);

(8) Taxes imposed on, or, in the case of value added taxes, not refunded to, an Indemnatee that results from its failure to file tax returns properly or timely, to claim a deduction or credit to which it is entitled, or to comply with certification, reporting, or similar requirements of the jurisdiction imposing the Tax, except to the extent caused by a failure of the Lessee to comply with Section 7.2(d), provided that the foregoing exclusion shall apply only if such Indemnatee is eligible to comply with such requirement and such Indemnatee shall have been given timely written notice by the Lessee of such requirement;

(9) Taxes imposed on a transferee of any Participant's interest hereunder (other than a transferee who acquired such interest as a result of any transfer or assignment in connection with the occurrence of an Event of Default) to the extent of the excess of such Taxes over the total amount of the Taxes of the same or similar nature that would have been imposed had there not been a transfer by the initial Indemnatee of its interest after the Closing Date;

(10) Taxes in the nature of intangible taxes or similar taxes upon or with respect to the value of the interest of a Rent Assignee or the Lessor in any of the

Rent Assignment Interests, the Lessor Retained Interest or the Lessor Investment, as applicable;

(11) Taxes included in the cost of the Improvements and funded by the Funding; and

(12) Taxes imposed by a taxing Authority that is not the United States or any taxing Authority within the United States, except to the extent caused by the Lessee making a payment from such jurisdiction.

(ii) *Additional Tax Indemnity.* Notwithstanding any contrary provision in Section 7.2(a)(i), the Lessee shall indemnify and hold harmless each Participant Party for any Taxes that are described in Section 7.2(a)(i) without regard to exclusions and that are imposed upon any Participant Party by the United States or by any taxing Authority within the United States, but only to the extent that such Taxes would not have been imposed on such Participant Party if, for purposes of such Taxes, the Funding made on the Funding Date by a Participant Party had been in the form of a secured loan made directly to the Lessee, the obligation to pay a proportionate part of Basic Rent were the obligation to pay interest to such Participant Party, and the proportionate amount of the Lease Balance were the principal amount owed to such Participant Party; provided, however, that the indemnification obligation of this Section 7.2(a)(ii) shall not apply to: (1) Taxes resulting from (a) the gross negligence, willful misconduct, or fraud of the Lessor, such Participant Party (if different) or any of their respective Affiliates, (b) any representation, warranty, certification or statement of the Lessor or such Participant Party (if different) under the Operative Documents proving to have been incorrect in any material respect when made or deemed to have been made, or (c) the breach of any covenant of the Lessor or such Participant Party (if different) under the Operative Documents; (2) Withholding Taxes, indemnification for which shall be solely provided in Section 7.2(a)(iii); (3) Taxes while they are being contested in accordance with Section 7.2(b); (4) Taxes imposed on such Participant Party that result from its failure to file tax returns properly or timely, to claim a deduction or credit to which it is entitled, or to comply with certification, reporting or similar requirements of the jurisdiction imposing the Tax, in each case, in accordance with the intent specified in Section 2.7 or as otherwise required by Applicable Laws with respect to such Participant Party, except to the extent such failure by such Participant Party is caused by a failure of the Lessee to comply with Section 7.2(d), provided that the foregoing exclusion shall apply only if such Participant Party is eligible to comply with such requirement; (5) Taxes imposed on a transferee of any Participant's interest hereunder to the extent of the excess of such Taxes over the total amount of the Taxes of the same or similar nature that would have been imposed had there not been a transfer by the initial Participant of its interest after the Closing Date; (6) Taxes included in the cost of the Improvements and funded by the Funding; and (7) Taxes imposed upon the Leased Property and indemnifiable pursuant to Section 7.2(a)(i). In connection with the foregoing, the applicable Participant Party shall provide written notice to the Lessee of any claim for

indemnification under this Section 7.2(a)(ii). Any such claim shall be subject to the contest provisions of Section 7.2(b) and the verification procedure set forth in Section 7.2(a)(v).

(iii) *Withholding Tax Indemnity.* The Lessee shall not be required to make any additional payment to or on behalf of an Indemnitee with respect to any Withholding Tax, except that the Lessee agrees to indemnify, protect, defend and hold harmless the Indemnitees, on a Grossed-Up Basis, against Withholding Taxes described in paragraphs (A) and (B) of this Section 7.2(a)(iii). If any such withholding is so required, the Lessee shall make the withholding and pay the amount withheld to the appropriate taxing Authority before penalties attach thereto or interest accrues thereon. The Lessee shall forthwith pay the relevant Indemnitee an amount that, after making all required deductions (including deductions applicable to additional sums payable under this Section), equals the amount that would have been paid if such withholding had not been required. Withholding Taxes referred to in the first sentence of this Section 7.2(a)(iii) as indemnifiable are:

(A) Withholding Taxes imposed under the laws of any jurisdiction other than the United States and any taxing jurisdictions therein, if such Tax is imposed solely as a result of the Lessee making the payment from such jurisdiction;

(B) Withholding Taxes imposed under the laws of the United States, or any taxing jurisdiction therein, imposed solely as the result of a change in Tax laws, regulations, rulings, interpretations or treaties after the Closing Date (and, in the case of a Rent Assignee, after the date of the assignment pursuant to which such Rent Assignee acquired an interest hereunder).

Notwithstanding the foregoing, the Lessee shall not be required to make any additional payment to or on behalf of an Indemnitee on account of or with respect to:

(I) any Withholding Tax to the extent result from the failure of such Indemnitee to comply with Section 7.3;

(II) any Withholding Taxes imposed on a transferee to the extent of the excess of such Withholding Taxes over the total amount of the Withholding Taxes that would have been imposed had there not been a transfer by the initial Indemnitee of its interest after the Closing Date; and

(III) any Withholding Taxes imposed under FATCA.

If the Lessee pays any amount to an Indemnitee with respect to Withholding Taxes required to be withheld by law but not subject to indemnity pursuant to this Section 7.2, such Indemnitee shall reimburse the Lessee within fifteen (15) days of written demand therefor for the amount so paid by the Lessee provided that if such Indemnitee fails to reimburse the Lessee within such fifteen (15) days, such Indemnitee shall thereafter be obligated to

reimburse the Lessee for such amount together with interest on such amount at the Overdue Rate from the date such reimbursement was due until the date it is paid.

(iv) Nothing contained in Section 7.2(a) shall entitle an Indemnatee to indemnification of a Tax under more than one subsection of Section 7.2(a).

(v) At the Lessee's request, the amount of any indemnification payment by the Indemnatee pursuant to Section 7.2(a) shall be verified and certified by an independent public accounting firm mutually acceptable to the Lessee and the Indemnatee. The fees and expenses of such independent public accounting firm shall be paid by the Lessee.

(b) *Contests.* If any claim or claims is or are made against any Indemnatee for any Tax which is subject to indemnification as provided in Section 7.2(a), such Indemnatee shall as soon as practicable, but in no event more than thirty (30) days after receipt of formal written notice of the Tax or proposed Tax, notify the Lessee and shall not take action with respect to such Tax without the consent of the Lessee (such consent not to be unreasonably withheld, conditioned or delayed) for thirty (30) days after the receipt of such notice by the Lessee; provided, however, that in the case of any such Tax, if action shall be required by Applicable Law to be taken prior to the end of such period of thirty (30) days, such Indemnatee shall, in such notice to the Lessee, inform the Lessee of such shorter period, and no action shall be taken with respect to such Tax without the consent of the Lessee (such consent not to be unreasonably withheld, conditioned or delayed) before seven (7) days before the end of such shorter period. If, in the good faith opinion of the Lessee there exists a reasonable basis to contest such Tax (and if the provisos of the definition of "*Permitted Contest*" continue to be satisfied), the Lessee at its expense may, to the extent permitted by Applicable Laws and provided that it has acknowledged in writing its liability for the Tax at issue if the contest is not successful, contest such Tax, and subsequently may appeal any adverse determination (other than to the United States Supreme Court), in the appropriate administrative and legal forums; provided, that in all other circumstances, upon notice from the Lessee to such Indemnatee that there exists a reasonable basis to contest any such Tax or, in the case of an appeal of adverse judicial determination, the position asserted in such appeal will more likely than not prevail (in each case, as supported by an opinion of tax counsel to the Lessee reasonably acceptable to the Indemnatee), the Indemnatee, at the Lessee's expense, shall contest any such Tax (so long as the provisos of the definition of "*Permitted Contest*" continue to be satisfied and, in the case of a Tax on gross or net income, the aggregate amount of the Tax exceeds \$50,000, which amount shall be verified and certified by an independent public accounting firm mutually acceptable to the Lessee and the applicable Indemnatee in accordance with Section 7.2(a)(v)). The Lessee shall pay all out-of-pocket expenses incurred by the Indemnatee in contesting any such Tax (including, without limitation, all reasonable attorney's and accountants' fees and expenses), upon demand by the Indemnatee. The Lessee shall have the right to participate in the conduct of any proceedings controlled by the Indemnatee to the extent that such participation by the Lessee does not interfere with the Indemnatee's control of such contest and the Lessee shall in all events be kept informed, to the extent practicable, of material developments relative to such

proceedings. The Indemnatee shall have the right to participate in the conduct of any proceedings controlled by the Lessee to the extent that such participation by the Indemnatee does not interfere with the Lessee's control of such contest, and the Indemnatee shall in all events be kept informed, to the extent practicable, of material developments relative to such proceedings. The Indemnitees agree that a contested claim for which the Lessee would be required to make a reimbursement payment hereunder will not be settled or compromised without the Lessee's prior written consent or the Indemnatee waives its right to indemnification hereunder and repays the Taxes advanced by the Lessee as a non-interest bearing loan by the Lessee to such Indemnatee without interest. Indemnatee shall endeavor to settle or compromise any such contested claim in accordance with written instructions received from the Lessee; provided, that (i) the Lessee on or before the date the Indemnatee executes a settlement or compromise pays the contested Tax to the extent agreed upon or makes an indemnification payment to the Indemnatee in an amount acceptable to the Indemnatee; and (ii) the settlement or compromise does not, in the reasonable opinion of the Indemnatee materially adversely affect the right of the Lessor or such Indemnatee to receive Rent or the Adjusted Lease Balance or any other payment pursuant to the Operative Documents, or involve a material risk of sale, forfeiture or loss of the Leased Property or any interest therein or any matter described in the provisos to the definition of "*Permitted Contest*." The failure of an Indemnatee to (x) notify the Lessee of the existence of any claim against such Indemnatee of any Tax as required by the first sentence of this Section 7.2(b) or (y) contest timely a claim against it for any Tax which is subject to indemnification under Section 7.2(a) and for which it has an obligation to the Lessee to contest under this Section 7.2(b) in the manner required by Applicable Laws where the Lessee has timely requested (with regard to the time of the initial notification by Indemnatee) that such Indemnatee contest such claim, in each case shall relieve the Lessee of its obligations to such Indemnatee under Section 7.2(a) with respect to such claim only to the extent such failure results in the loss of an effective contest. If Applicable Laws require the payment of a contested Tax as a condition to, or regardless of, its being contested, and the Lessee chooses to contest such Tax or to direct the Indemnatee to contest such Tax in accordance with this Section, then the Lessee shall provide the Indemnatee with the funds to pay such Tax, such provision of funds to be deemed a non-interest bearing loan by the Lessee to the Indemnatee to be repaid by any recovery of such Tax (including the amount of any interest received by reason of payment or deposit of the Tax claimed with funds advanced by the Lessee to the Indemnatee with respect to such recovered Tax, payable on a net after-tax basis to the Indemnatee) from such contest and any remaining unpaid amount not recovered to offset the Lessee's obligation to indemnify the Indemnatee for such Tax. The Lessee shall indemnify the Indemnatee on a Grossed-Up Basis in accordance with Section 7.6 for and against any adverse consequences of any such interest-free loan.

(c) *Payments.* Any Tax indemnifiable under Section 7.2(a) shall be paid by the Lessee directly when due to the applicable taxing Authority if direct payment is practicable and permitted. If direct payment to the applicable taxing Authority is not permitted or is otherwise not made, any amount payable to an Indemnatee pursuant to Section 7.2(a) shall be paid within thirty (30) days after receipt of a written demand therefor from such Indemnatee accompanied by a written statement describing in reasonable detail the amount so payable, but not before the date

that the relevant Taxes are due or, in the case of taxes that are contested under Section 7.2(b), the contest is finally resolved. Any payments made pursuant to Section 7.2(a) directly to the Indemnatee entitled thereto or the Lessee, as the case may be, shall be made in immediately available funds at such bank or to such account as specified by the payee in written directions to the payor, or, if no such direction shall have been given, by check of the payor payable to the order of the payee by certified mail, postage prepaid at its address as set forth in this Agreement. Upon the request of any Indemnatee with respect to a Tax that the Lessee is required to pay, the Lessee shall furnish to such Indemnatee the original or a certified copy of a receipt for the Lessee's payment of such Tax or such other evidence of payment as is reasonably acceptable to such Indemnatee.

(d) *Calculation of Payments.* Any payment that the Lessee shall be required to make to or for the account of any Indemnatee with respect to any Tax that is subject to indemnification under this Section 7.2 shall be paid on a Grossed-Up Basis under Section 7.6 of this Agreement. If an Indemnatee or any Affiliate of such Indemnatee who files any tax return on a combined, consolidated, unitary or similar basis with such Indemnatee shall actually realize any saving of any Tax not indemnifiable by the Lessee pursuant to the Operative Documents (by way of credit (including any foreign tax credit), deduction, exclusion from income or otherwise) by reason of any amount with respect to which the Lessee has indemnified such Indemnatee pursuant to this Section 7.2, and such tax saving was not taken into account in determining the amount payable by the Lessee on account of such indemnification, such Indemnatee shall promptly pay to the Lessee the amount of such saving together with the amount of any tax saving resulting from any payment pursuant to this sentence (provided that such payments by such Indemnatee shall not exceed the amount of the payments made by the Lessee to or for such Indemnatee which gave rise to such savings and payment by such Indemnatee). Each Indemnatee agrees to make, at the Lessee's expense, good-faith efforts to claim any such tax saving that may reasonably be available and to provide promptly thereafter to the Lessee written notification of any action, proceeding or decision with respect to such claim.

(e) *Refund.* If an Indemnatee shall receive a refund of (or receive a credit against or any other current reduction in, any Tax not indemnified by the Lessee under this Section 7.2, in respect of) all or part of any Taxes which the Lessee shall have paid on behalf of such Indemnatee or for which the Lessee shall have reimbursed, advanced funds to or indemnified such Indemnatee, such Indemnatee shall promptly pay or repay to the Lessee an amount equal to the amount of such refund, plus any net tax benefit (taking into account any Taxes incurred by such Indemnatee by reason of the receipt of such refund, credit or reduction) realized by such Indemnatee as a result of any payment by such Indemnatee made pursuant to this sentence (provided that such payments by such Indemnatee shall not exceed the amount of the payments made by the Lessee to or for such Indemnatee which gave rise to such refund and payment by such Indemnatee). If, in addition to such refund, credit or reduction, as the case may be, such Indemnatee shall receive an amount representing interest on the amount of such refund, credit or reduction, as the case may be, such Indemnatee shall promptly pay to the Lessee that proportion of such interest that shall be fairly attributable to Taxes paid, reimbursed or advanced by the Lessee prior to the receipt of such refund.

If an Indemnatee loses the benefit of any refund for which it has made a payment pursuant to this Section 7.2(f), such loss shall be treated as a Tax indemnifiable hereunder without regard to exclusions. Each Indemnatee agrees to make, at the Lessee's expense, good-faith efforts to claim any such refund, credit or reduction that may reasonably be available and to provide promptly thereafter to the Lessee written notification of any action, proceeding or decision with respect to such claim.

(f) *Restructuring for Withholding Taxes.* Each party covered by this Section 7.2 agrees to use reasonable efforts to investigate alternatives for reducing any Withholding Taxes that are indemnified against hereunder or imposed on Rent, or Yield on the Guaranteed Lease Balance (whether or not indemnifiable hereunder) and to use reasonable efforts to reduce any Withholding Taxes that are indemnified against hereunder including, without limitation, negotiating in good faith to relocate or restructure the Funding (which relocation or restructuring shall be at the Lessee's expense in the case of indemnifiable Withholding Taxes), but no party shall be obligated to take any such action as such party determines will be adverse to its business or financial or commercial interests.

(g) *Tax Ownership.* Each Indemnatee represents and warrants that it will not, prior to the termination of the Lease and the transfer of the Leased Property to any Person other than the Lessee or its Affiliates, claim ownership of (or any tax benefits including depreciation, with respect to) the Leased Property for any income tax purposes (unless required to do so by a taxing Authority) with respect to the period prior to the termination of the Lease, it being understood that it is the intention of all parties to this transaction that the Lessee is and will remain the owner of the Leased Property for such income tax purposes until the termination of the Lease and such transfer, if any.

(h) *Preparation and Filing of Tax Returns.* The Lessee shall be responsible for preparing and filing on its behalf any real and personal property or ad valorem Tax returns in respect of the Leased Property applicable to the Lessee. In case any report or Tax return shall be required to be made with respect to any Tax indemnified by the Lessee under Section 7.2(a)(i), the Lessee, at its sole cost and expense, shall notify the relevant Indemnatee of such requirement and reasonably cooperate with such Indemnatee in the filing of such return.

### ***SECTION 7.3. Withholding Tax Documentation.***

(a) At least five (5) Business Days prior to the first payment date with respect to a payment under the Operative Documents that is subject to a Withholding Tax on interest or yield that is indemnifiable under Section 7.2(a)(iii) and that is imposed by a jurisdiction outside the United States, the Indemnatee shall have complied with certification, information, documentation, reporting, filing, or other similar requirements concerning the nationality, residence, identity, or connection with the jurisdiction imposing such Withholding Taxes or any other similar matters that are required by law as a condition to total exemption or total relief from such Withholding Taxes to the extent it is legally entitled to do so and shall have notified the Lessee in writing of such compliance. The Indemnatee shall further timely comply with all

requirements for keeping any such exemption in full force and effect, unless a change in treaty, law, or regulation has occurred that would prevent the Indemnatee from complying and the Indemnatee promptly advises the Lessee in writing that it is not capable of receiving payments without withholding. To the extent any Indemnatee is not a U.S. Person and is not claiming the benefits of an income tax treaty to which the United States is a party that provides a total exemption from Withholding Taxes (or has one or more beneficial owners that are not claiming such total exemption), such Indemnatee (on behalf of itself or its applicable beneficial owners) shall represent and warrant (on a form reasonably acceptable to Lessee delivered prior to the relevant payment date) that it qualifies for portfolio interest exemption contained in Section 871(h) or Section 881(c) of the Code. Each of the parties hereto agrees that on the Closing Date, no certification, documentation, reporting or similar confirmation is required of an Indemnatee to establish total exemption from Withholding Taxes on interest, yield or any other amounts relevant to this transaction in any applicable jurisdiction other than Internal Revenue Service Forms W-8BEN, W-8BEN-E, W-8ECI or W-8IMY and any required attachments (in the case of an Indemnatee that is not a U.S. Person) or Internal Revenue Service Form W-9 (in the case of an Indemnatee that is a U.S. Person), in each case as required by Section 7.3(b).

(b) At least five (5) Business Days prior to the first date on which any payment is due with respect to the Rent Assignment Agreement or Lessor Investment for the account of any Participant, such Participant shall have delivered to each of the Lessee, Lessor and the Administrative Agent, (i) in the case of a Participant that is a U.S. Person, two duly completed copies of United States Internal Revenue Service form W-9, certifying that such Participant is exempt from United States backup withholding tax, and (ii) in the case of a Participant that is not a U.S. Person, two duly completed copies of United States Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY and any required attachments, in any case with taxpayer identifying numbers, certifying that such Participant is entitled to receive payments of Yield on the Guaranteed Lease Balance, a return of principal of its Lease Balance and payment of Lessor's Gain, as applicable, under the Operative Documents without deduction or withholding of any United States federal income taxes. To the extent any Participant is not a U.S. Person and is not claiming the benefits of an income tax treaty to which the United States is a party that provides a total exemption from Withholding Taxes (or has one or more beneficial owners that are not claiming such total exemption), such Participant (on behalf of itself or its applicable beneficial owners) shall represent and warrant (on a form reasonably acceptable to Lessee delivered prior to the relevant payment date) that it qualifies for portfolio interest exemption contained in Section 871(h) or Section 881(c) of the Code. In delivering any such form or any successor or replacement form, a Participant shall be entitled to assume that the payor of such Yield or return of principal or Lessor's Gain is organized under the laws of the United States or any state thereof. Each Participant which so delivers Internal Revenue Service Form W-9 or Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY and any required attachments it shall further deliver to each of the Lessee and the Administrative Agent, two additional copies of such form (or a successor form) on or before the date that such form expires or becomes obsolete or within thirty (30) days after the occurrence of any event requiring a change in the most recent forms so delivered by it, and, as may be reasonably requested by the Lessee or the Administrative Agent such



amendments thereto or extensions or renewals thereof, in each case certifying that such Participant is entitled to receive payments under the Operative Documents without deduction or withholding of any United States federal income taxes, unless a change in treaty, law or regulation has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Participant from duly completing and delivering any such form with respect to it and such Participant promptly advises the Lessee and the Administrative Agent in writing that it is not capable of receiving payments without any withholding of United States Federal income tax.

(c) If any payment made to an Indemnitee hereunder would be subject to U.S. federal withholding Tax imposed by FATCA if such Indemnitee were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Indemnitee shall deliver to the Lessee, the Lessor and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lessee or the other Participants such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) as may be necessary for the Lessee, the Lessor and the Administrative Agent to comply with their respective obligations, if any, under FATCA and to determine that such Indemnitee has complied with such Indemnitee's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

#### ***SECTION 7.4. Increased Costs.***

(a) *Increased Costs.*

(i) If any Change in Law shall:

(1) impose, modify or deem applicable any reserve, special deposit, or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Participant;

(2) impose on any Participant any other condition, cost or expense (other than Taxes) affecting this Agreement or the Rent Assignment Advance, Lessor Retained Interest or Lessor Investment made by such Participant; or

(3) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Participant or such other Recipient of making, continuing, or maintaining any Rent Assignment

Advance, Lessor Retained Interest or Lessor Investment or to reduce the amount of any sum received or receivable by such Participant or such other Recipient hereunder (whether of principal, interest or otherwise), then, upon request of such Participant or such other Recipient, the Lessee will pay to such Participant or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Participant or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(ii) If any Participant determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Participant's capital or on the capital of such Participant's holding company, if any, as a consequence of this Agreement, or the Rent Assignment Advance, Lessor Retained Interest or Lessor Investment made by such Participant, to a level below that which such Participant or such Participant's holding company could have achieved but for such Change in Law (taking into consideration such Participant's policies and the policies of such Participant's holding company with respect to capital adequacy and liquidity), then from time to time the Lessee will pay to such Participant such additional amount or amounts as will compensate such Participant or such Participant's holding company for any such reduction suffered.

(iii) A certificate of a Participant setting forth the amount or amounts necessary to compensate such Participant or its holding company, as the case may be, as specified in paragraph (i) or (ii) of this Section shall be delivered to the Lessee accompanied by a certificate setting forth in reasonable detail any amount or amounts and upon such delivery of such items, shall be conclusive absent manifest error. The Lessee shall pay such Participant the amount shown as due on any such certificate within 10 days after receipt thereof.

(iv) Failure or delay on the part of any Participant to demand compensation pursuant to this Section shall not constitute a waiver of such Participant's right to demand such compensation; provided that the Lessee shall not be required to compensate a Participant pursuant to this Section for any increased costs or reductions incurred more than nine (9) months prior to the date that such Participant notifies the Lessee of the Change in Law giving rise to such increased costs or reductions and of such Participant's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 9-month period referred to above shall be extended to include the period of retroactive effect thereof.

#### ***SECTION 7.5. Funding Losses.***

The Lessee shall pay to the Lessor, as Supplemental Rent, such amounts as may be necessary to reimburse any Participant for any loss or expense incurred (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Participant to make, continue or maintain any portion of its Rent Assignment Advance, Lessor Retained Interest or Lessor Investment on a Benchmark basis but excluding any loss of

margin included therein) as a result of any payment of all or any portion of the Adjusted Lease Balance for any reason on a date other than a Payment Date, including, without limitation, by reason of acceleration (the amount of such loss or expense, the **“Break Amount”**). Any Participant shall promptly notify the Lessee, the Lessor and the Administrative Agent in writing of the amount of any claim under this Section 7.5, the reason or reasons therefor and the additional amount required fully to compensate such Participant for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Lessee.

#### **SECTION 7.6. Gross Up.**

If an Indemnatee shall not be entitled to a corresponding and equal deduction with respect to any payment or Tax which the Lessee is required to pay or reimburse under any other provision of this Article VII (each such payment or reimbursement under this Article VII, an “original payment”) and which original payment constitutes income to such Indemnatee when accrued or received, then the Lessee shall pay to such Indemnatee on demand the amount of such original payment on a grossed-up basis such that, after subtracting all Taxes imposed on such Indemnatee with respect to such grossed-up payment by the Lessee (including any Taxes otherwise excluded by Section 7.2(a)(i) and assuming for this purpose that such Indemnatee was subject to taxation at the highest United States federal, state and local marginal rates applicable to corporations and, in the case of Withholding Taxes subject to indemnification pursuant to Section 7.2(a)(iii), the marginal rates actually applicable to the Indemnatee for the year in which such income is taxable), such amount (*i.e.*, the grossed-up payment minus the taxes thereon) shall be equal to the original payment to be received or reimbursed (net of any credits, deductions or other tax benefits then actually recognized that arise from the payment by such Indemnatee of any amount, including taxes, for which the payment to be received is made) (**“Grossed-Up Basis”**). At the Lessee’s request, the amount of any indemnification payment by the Lessee required to be made on such **“Grossed-Up Basis”** shall be verified and certified by an independent public accounting firm mutually acceptable to the Lessee and the applicable Indemnatee. The fees and expenses of such independent public accounting firm shall be paid by the Lessee.

#### **SECTION 7.7. Leased Property Indemnity.**

In the event that (a) the Leased Property is subject to the Return Option and (b) after paying to the Lessor, for the benefit of the Participants, any amounts due under Article XXII of the Lease, the Adjusted Lease Balance shall not have been reduced to zero, then, except to the extent such amounts represent amounts due in respect of a Default or Event of Default and except to the extent attributable to the willful misconduct or gross negligence of the Lessor, any Agent, or any of their respective officers, agents, employees and Affiliates, the Lessee shall promptly pay over to the Lessor on the Return Date, in addition to the Recourse Deficiency Amount, the shortfall between the Fair Market Value of the Leased Property as of the Return Date, and an amount up to but not to exceed the outstanding Adjusted Lease Balance (the **“Shortfall Amount”** provided that, for the avoidance of doubt, in no case shall an amount equal to the Recourse Deficiency Amount and the Shortfall Amount paid to the Lessor under this Section 7.7 exceed the Adjusted Lease Balance),

unless an appraisal conducted by an independent and capable third-party appraiser engaged by the Lessor and reasonably acceptable to the Lessee establishing the Fair Market Value of the Leased Property as of the Return Date confirms that the reason such Fair Market Value is less than the outstanding Adjusted Lease Balance is not due to any of the following events, circumstances or conditions, whether or not permitted under the Lease: (i) the failure to maintain the Leased Property as required by the Lease and the other Operative Documents in any material respect, and in at least as good a condition in all material respects as it was in on the Closing Date, ordinary wear and tear excepted; (ii) the carrying out of or the failure to complete any modifications, improvements or Alterations; (iii) the existence of any environmental condition at or affecting the Leased Property that did not exist on the Closing Date; (iv) any material defect, exception, easement, restriction or other encumbrance on or title to the Leased Property not existing on the Closing Date and not consented to by the Lessor; or (v) any other cause or condition within the power of the Lessee to control or affect (other than ordinary wear and tear) that did not exist on the Closing Date.

## ARTICLE VIII

### AGENCY

#### ***SECTION 8.1. Appointment of the Administrative Agent and the Collateral Agent; Powers and Authorization to Take Certain Actions.***

(a) Each of the Participants irrevocably appoints and authorizes MUFG Bank, Ltd. to act as its Administrative Agent and Collateral Agent (and MUFG Bank, Ltd. hereby consents to such appointment and authorization), in each case hereunder and under the other Operative Documents, with such powers as are specifically delegated to the Administrative Agent or the Collateral Agent by the terms hereof and thereof, together with such other powers as are reasonably incidental thereto; provided, however, in respect of the Collateral Agent's duties with respect to the Assignment of Lease, the Collateral Agent is hereby appointed as agent for the Rent Assignees (which appointment is hereby accepted) and shall act solely for the benefit of the Rent Assignees. Each Participant authorizes and directs the Administrative Agent or the Collateral Agent, as the case may be, to, and each of the Agents agrees for the benefit of the Participants and the Lessor and, as the case may be, that, on the Closing Date it will accept the documents described or referred to in Section 2.1 of this Agreement. Each of the Agents accepts the agency hereby created applicable to it and agrees to receive all applicable payments and proceeds pursuant to the Operative Documents and disburse such payments or proceeds in accordance with the Operative Documents to which it is a party.

(b) With respect to certain of the Lessor's rights under the Memorandum of Lease, the Lessor has conveyed and assigned such rights to the Rent Assignees pursuant to each of the Rent Assignment Agreements, subject to the Excepted Rights as set forth therein. In connection therewith, the Lessor and the Rent Assignees hereby delegate to the Agents such assigned rights which delegation is accepted by the Agents. The parties agree that the Agents shall

take instructions from the Participants with respect to such delegated rights in accordance with Section 8.3 hereof.

(c) Neither the Administrative Agent nor the Collateral Agent shall have any duties or responsibilities except those expressly set forth in the Operative Documents. Neither the Administrative Agent nor the Collateral Agent shall be responsible to any Participant (or to any other Person): (i) for any recitals, statements, representations or warranties of any party contained in any Operative Document or in any certificate or other document referred to or provided for in, or received by it under, the Operative Documents, other than the representations and warranties made by each of the Agents in Section 4.4, (ii) for the value, validity, effectiveness, genuineness, enforceability or sufficiency of the Leased Property, the Site or the title thereto or (iii) for any failure by the Lessee, the Lessor, or any other Person (other than each of the Agents, as applicable) to perform any of its obligations under any Operative Document. Each of the Agents may, in fulfilling its obligations, employ agents, trustees or attorneys-in-fact, may vest any of them with any property, title, right or power deemed necessary for the purposes of such appointment and shall not be responsible for the negligence or misconduct of any of them selected by it with reasonable care.

(d) Neither the Administrative Agent nor the Collateral Agent shall have any duty or obligation to manage, control, use, operate, store, lease, sell, dispose of or otherwise deal with the fee simple interest held by the Lessor and, with respect to the Collateral Agent, any other easement granted to it pursuant to the Operative Documents, the Leased Property, or to otherwise take or refrain from taking any action with respect thereto, except as expressly provided by the terms of the Operative Documents, and no implied duties of any kind shall be read into any Operative Document against each of the Agents. The permissive right of each of the Agents to take actions enumerated in this Agreement or any other Operative Document shall never be construed as a duty, unless it is instructed or directed to exercise, perform or enforce one or more rights by the Required Participants (provided that each of the Agents has received indemnification reasonably satisfactory to it). Subject to Section 8.1(e) below, no provision of the Operative Documents shall require the Administrative Agent or the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its obligations under the Operative Documents, or in the exercise of any of its rights or powers thereunder. It is understood and agreed that the duties of each of the Agents are ministerial in nature.

(e) Except as specifically provided herein, each of the Agents is acting hereunder solely as agent and, except as specifically provided herein, is not responsible to any party hereto in its individual capacity, except with respect to any claim arising from its own gross negligence or willful misconduct, or its negligence in the handling of funds or any breach of a representation or covenant made in its individual capacity.

(f) Each of the Agents may accept deposits from, lend money to and otherwise deal with the Lessee or any of its Affiliates with the same rights as it would have if it were not the named the Administrative Agent or the Collateral Agent hereunder.

### ***SECTION 8.2. Reliance.***

Each of the Agents may rely upon, and shall not be bound or obligated to make any investigation into the facts or matters stated in, any certificate, notice or other communication (including any communication by telephone or email) reasonably believed by it to be genuine and correct and to have been made, signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by each of the Agents with due care (including any expert selected by each of the Agents to aid it in any calculations, if any, required in connection with its duties under the Operative Documents).

### ***SECTION 8.3. Action Upon Instructions Generally.***

(a) Subject to Sections 8.4 and 8.6, upon written instructions of the Required Participants or all Participants if so required hereunder or pursuant to any other Operative Document, each of the Agents shall, solely in the furtherance of its duties as Administrative Agent or the Collateral Agent, as applicable, on behalf of the Participants or the Lessor, as the case may be, give such notice, consent, approval or direction, exercise such right, remedy or power hereunder or under the other Operative Documents or in respect of the Leased Property, and enter into such amendment to any document to which it is a party as the Administrative Agent or the Collateral Agent, as applicable, as may be specified in such instructions. Each Agent shall deliver to each Participant a copy of each notice, demand, report and certificate received by it pursuant to the Operative Documents. Neither the Administrative Agent nor the Collateral Agent shall have any obligation to investigate or determine whether there has been an Event of Default or Default. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have any notice or knowledge of an Event of Default or Default unless a Responsible Officer of it is notified pursuant to Section 9.3 of such Event of Default or Default; provided that the Administrative Agent shall be deemed to have been notified in writing of any failure of the Lessee to pay Rent in the amounts and at the times set forth in Article IV of the Lease. If the Administrative Agent receives notice of an Event of Default, it shall give prompt notice thereof, at the Lessee's expense, to each Participant, and if the Administrative Agent receives notice of a payment failure as described in the Assignment of Lease, it shall give prompt notice thereof, at the Lessor's expense, to each Rent Assignee.

(b) Subject to Sections 8.4, 8.6 and 9.5, each of the Agents shall take action or refrain from taking action with respect to an Event of Default as directed by the Required Participants (or by the Required Rent Assignees with respect to a default by Lessor in the performance of its Obligations under the Assignment of Lease); provided that, unless and until it receives such directions, each of the Agents may refrain from taking any action with respect to such Event of Default; provided, further, that the Agents, in their individual capacity or any other capacity, covenants for the benefit of the Lessor and the Rent Assignees only, that it shall not exercise, or attempt to exercise, any right of setoff, banker's lien or the like against any deposit account or property of the Lessee or any of its Affiliates held or maintained by any Agent without the prior written consent of the Participants. Prior to the date the Adjusted Lease Balance shall have become due and payable by acceleration pursuant to Section 18.1 of the Lease, the Required

Participants may deliver written instructions to the Administrative Agent (and, with respect to the Assignment of Lease, the Required Rent Assignees may deliver written instructions to the Collateral Agent with respect to a default by Lessor in the performance of its Obligations under the Assignment of Lease) to waive, and each of the Agents, respectively, shall waive pursuant thereto, any Event of Default and its consequences; provided that in the absence of written instructions from all of the Participants (or the Required Rent Assignees with respect to the Assignment of Lease), neither the Administrative Agent nor the Collateral Agent shall waive any payment default; provided, further, that in the absence of written instructions from the Required Participants, the Required Rent Assignees or all of the Participants, as applicable, neither the Administrative Agent nor the Collateral Agent shall waive any covenant or provision which, under Section 9.5, cannot be modified or amended without the consent of such Participants. As to any actions, inactions, consents, approvals and other matters to be taken under the Operative Documents including those rights assigned by the Lessor under the Assignment of Lease the instructions for which are not expressly provided for by this Agreement, each of the Agents shall in all cases take instructions from the Required Participants (or instructions from the Required Rent Assignees with respect to a default by Lessor in the performance of its obligations under the Assignment of Lease) and shall be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by the Required Participants (or such instructions from the Required Rent Assignees, as applicable) and such instructions of the Required Participants (or such Rent Assignees, as applicable) and any action taken or failure to act pursuant thereto shall be binding on each Participant or such Rent Assignees, respectively.

#### ***SECTION 8.4. Indemnification.***

Each Rent Assignee and the Lessor shall reimburse and hold each of the Agents harmless, ratably in accordance with its Commitment Percentage at the time the indemnification is required to be given (but only to the extent that any such indemnified amounts have not in fact been paid to each of the Agents by, or on behalf of, the Lessee in accordance with Section 7.1), from any and all claims, losses, damages, obligations, penalties, liabilities, demands, suits, judgments, or causes of action, and all legal proceedings, and any reasonable costs or expenses in connection therewith, including allocated charges, costs and expenses of internal counsel of each of the Agents and all other reasonable attorneys' fees and expenses incurred by each of the Agents, in any way relating to or arising in any manner out of (i) any Operative Document, the enforcement thereof or the consummation of the transactions contemplated thereby, (ii) instructions from the Required Participants (in the case of the Administrative Agent) or the Required Rent Assignees (in the case of the Collateral Agent with respect to the Assignment of Lease) or all Participants, all Rent Assignees or the Lessor, as the case may be, if so required hereunder or pursuant to any other Operative Document (including, without limitation, the costs and expenses that the Lessee is obligated to and does not pay hereunder, but excluding normal administrative costs and expenses incident to the performance by each of the Agents of its agency duties hereunder other than materially increased administrative costs and expenses incurred as a result of an Event of Default); provided that no Rent Assignee shall be liable for any of the foregoing to the extent they arise from (a) the gross negligence or willful misconduct of either of the Administrative Agent or the

Collateral Agent, (b) the inaccuracy of any representation or warranty or breach of any covenant given by the Administrative Agent or the Collateral Agent in Section 4.4 or in its Rent Assignment Agreement, (c) in the case of the Administrative Agent's handling of funds, the failure to act with the same care as the Administrative Agent uses in handling its own funds, or (d) any taxes, fees or other charges payable by each of the Agents based on or measured by any fees, commissions or compensation received by it for acting as the Administrative Agent or the Collateral Agent, as applicable, in connection with the Overall Transaction.

#### ***SECTION 8.5. Independent Credit Investigation.***

Each Participant, by entering into this Agreement agrees that it has, independently and without reliance on each of the Agents, the Arranger or any other Participant and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Lessee and its own decision to enter into this Agreement and each of the other Operative Documents to which it is a party and that it will, independently and without reliance upon the Administrative Agent or the Collateral Agent, the Arranger or any other Participant and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking action under this Agreement and any related documents to which it is a party. Neither the Administrative Agent nor the Collateral Agent shall be required to keep itself informed as to the performance or observance by the Lessee of any other document referred to (directly or indirectly) or provided for herein or to inspect the properties or books of the Lessee. Except for notices or statements which the Administrative Agent or the Collateral Agent is expressly required to give under this Agreement and for notices, reports and other documents and information expressly required to be furnished to the Administrative Agent or the Collateral Agent alone (and not also to each Participant, it being understood that each of the Agents shall forward copies of same to each of the other Participants or the Rent Assignees, as the case may be) hereunder or under any other Operative Document, neither the Administrative Agent nor the Collateral Agent shall have any duty or responsibility to provide any Participant with copies of notices or with any credit or other information concerning the affairs, financial condition or business of the Lessee (or any of its Affiliates) that may come into the possession of the Administrative Agent or the Collateral Agent or any of their respective Affiliates. Notices, reports and other documents and information expressly required to be furnished to the Collateral Agent are being provided to the Collateral Agent for file-keeping purposes only and unless otherwise expressly provided herein, the Collateral Agent shall have no obligation to review or be familiar with the contents thereof or provide copies to any other person.

#### ***SECTION 8.6. Refusal to Act.***

Except for notices and actions expressly required of each of the Agents hereunder and except for the performance of expressed obligations under the Operative Documents by the Administrative Agent or the Collateral Agent, each of the Agents shall in all cases be fully justified in failing or refusing to act unless (a) it is indemnified to its reasonable satisfaction by the Participants or the Rent Assignees, as applicable, against any and all liability and reasonable expense which may be incurred by it by reason of taking or continuing to take any such action



(provided that such indemnity shall be subject to each of the limitations set forth in Section 8.4, including clauses (a) through (d) of Section 8.4, it being understood that no action taken by the Administrative Agent or the Collateral Agent in accordance with the instructions of the Required Participants (in the case of the Administrative Agent) or of the Required Rent Assignees (in the case of the Collateral Agent with respect to the Assignment of Lease) shall be deemed to constitute any such matter) and (b) it is reasonably satisfied that such action is not contrary to any Operative Document or to any Applicable Laws.

***SECTION 8.7. Resignation or Removal of the Administrative Agent, the Collateral Agent; Appointment of Successor.***

Subject to the appointment and acceptance of a successor Administrative Agent or Collateral Agent as provided below, each of the Administrative Agent and Collateral Agent may resign at any time by giving notice thereof to the other and to each Participant and the Lessee, and may be removed from such position at any time by written notice from the Required Participants. Upon any such resignation or removal of the Administrative Agent or the Collateral Agent, the Required Participants at the time of the resignation or removal shall have the right to appoint a successor Administrative Agent or Collateral Agent, as applicable, which shall be a financial institution having (i) a long-term credit rating no lower than investment grade as rated by Moody's and S&P and (ii) a combined capital and surplus of not less than \$100,000,000. If, within thirty (30) days after the retiring Administrative Agent's or Collateral Agent's giving of notice of resignation or receipt of a written notice of removal, a successor Administrative Agent or Collateral Agent is not so appointed and does not accept such appointment, then the retiring or removed Administrative Agent or Collateral Agent may appoint a successor to itself meeting the requirements in the prior sentence and transfer to such successor all of its rights and obligations. Upon the acceptance of any appointment as the Administrative Agent or the Collateral Agent hereunder, such successor Administrative Agent or Collateral Agent, as applicable, shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent and Collateral Agent, respectively, and the retiring or removed Administrative Agent or Collateral Agent, as applicable, shall be discharged from duties and obligations as the Administrative Agent and the Collateral Agent, respectively, thereafter arising hereunder and under any related document, provided, that the retiring or removed Administrative Agent or Collateral Agent, as applicable, shall not be discharged from such duties and obligations, respectively, until its successor has accepted such appointment. If the retiring Administrative Agent or Collateral Agent does not appoint a successor, any Participant shall be entitled to apply to a court of competent jurisdiction for such appointment, and such court may thereupon appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided.

***SECTION 8.8. Separate Agent.***

Subject to any Applicable Laws, the Required Participants may, and if they fail to do so at any time when they are so required, each of the Agents may, for the purpose of meeting any legal requirements of any jurisdiction in which the Leased Property may be located, appoint one or more

Persons either to act as co-agent jointly with the Administrative Agent or the Collateral Agent, as applicable, or to act as separate agent of all or any part of the Leased Property and vest in such individuals or corporations, in such capacity, such rights to such Leased Property or any part thereof, and such other rights or duties as each of the Agents may consider necessary or desirable. Each of the Agents shall execute, acknowledge and deliver all such instruments as may be required by any such co-agent or separate agent more fully confirming such title, rights or duties to such co-agent or separate agent. Upon the acceptance in writing of such appointment by any such co-agent or separate agent, it shall be vested with such interest in the Leased Property or any part thereof, and with such rights and duties, not inconsistent with the provisions of the Operative Documents, as shall be specified in the instrument of appointment, jointly with each of the Agents (except insofar as local law makes it necessary for any such co-agent or separate agent to act alone), subject to all terms of the Operative Documents. Any co-agent or separate agent, to the fullest extent permitted by legal requirements of the relevant jurisdiction, at any time, by an instrument in writing, shall constitute the Administrative Agent or the Collateral Agent, as applicable, pursuant to its appointment, its attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise reasonable judgment on its behalf and in its name. If any co-agent or separate agent shall become incapable of acting, resign or be removed, the interest in the Leased Property and all rights and duties of such co-agent or separate agent shall, so far as permitted by law, vest in and be exercised by the Administrative Agent or the Collateral Agent, respectively, without the appointment of a successor to such co-agent or separate agent.

***SECTION 8.9. Termination of Agency.***

The agency created hereby shall terminate upon the final disposition by each of the Agents of all Leased Property and each of the Administrative Agent's and the Collateral Agent's interest in the Site and the final distribution by each of the Agents of all monies or other property or proceeds received pursuant to the Operative Documents in accordance with their terms; provided, that at such time the Lessee shall have complied fully with all the terms hereof.

***SECTION 8.10. Compensation of the Administrative Agent and the Collateral Agent.***

The Lessee shall pay each of the Agents the annual fee as set forth in Section 2.13(c) hereof and including after an Event of Default, any other fees, costs and expenses for the performance by each of the Administrative Agent and Collateral Agent of its respective obligations hereunder (including the reasonable fees and expenses of its counsel) (collectively, "***Agency Fees***").

***SECTION 8.11. Limitations.***

It is expressly understood and agreed by and among the parties hereto that, except as otherwise provided herein or in the other Operative Documents: (a) to the extent each of the Agents is entering into such documents and agreements as the Administrative Agent or the Collateral Agent, this Agreement and the other Operative Documents to which each of the Agents is a party are executed by each of the Administrative Agent or the Collateral Agent in its capacity as

Administrative Agent or Collateral Agent, as applicable, under the Operative Documents in the exercise of the power and authority conferred and vested in it as such Administrative Agent or Collateral Agent; (b) each of the undertakings and agreements herein made on the part of each of the Agents are each and every one of them made and intended not as personal undertakings and agreements by each of the Agents, or for the purpose or with the intention of binding each of the Agents personally, but are made and intended for the purpose of binding only the Leased Property unless expressly provided otherwise; (c) actions to be taken by each of the Agents pursuant to its obligations under the Operative Documents may, in certain circumstances, be taken by each of the Agents only upon specific authority of the Participants or the Rent Assignees, as further set forth herein and in the other Operative Documents; (d) nothing contained in the Operative Documents shall be construed as creating any liability on either of the Agents, individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director, employee or agent of, each of the Agents to perform any covenants either express or implied contained herein, all such liability, if any, being expressly waived by the other parties hereto and by any Person claiming by, through or under them; and (e) so far as each of the Agents, individually or personally, is concerned, the other parties hereto and any Person claiming by, through or under them shall look solely to the Leased Property and the Lessee for the performance of any obligation under any of the instruments referred to herein, provided, however, that nothing in this Section 8.11 shall be construed to limit in scope or substance the general corporate liability of each of the Agents in respect of its gross negligence or willful misconduct, negligence in the handling of funds or for those representations, warranties and covenants of each of the Agents, as applicable, in its individual capacity set forth herein, in the other Operative Documents or in any of the other agreements contemplated hereby or thereby.

**SECTION 8.12. [Reserved].**

**SECTION 8.13. Erroneous Payments.**

(a) If the Administrative Agent notifies a Participant, or any Person who has received funds on behalf of a Participant (any such Participant or other recipient, a “**Payment Recipient**”) that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Participant or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**”) and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Participant shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to

which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Overnight Bank Funding Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Participant, or any Person who has received funds on behalf of a Participant, such Participant, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Participant, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) in the case of immediately preceding clauses (b) (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (b) (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Participant shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 8.13(b).

(c) Each Participant hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Participant under any Operative Document, or otherwise payable or distributable by the Administrative Agent to such Participant from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (a), from any Participant that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), upon the Administrative Agent’s notice to such

Participant at any time, (i) such Participants shall be deemed to have assigned its Rent Assignment Interests or Lessor Retained Interest with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Interest**”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Rent Assignment Interests or Lessor Retained Interest of the Erroneous Payment Impacted Interest, the “**Erroneous Payment Deficiency Assignment**”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Lessee) deemed to execute and deliver an assignment and assumption with respect to such Erroneous Payment Deficiency Assignment, (ii) the Administrative Agent as the assignee Participant shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Participant shall become a Participant hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Participant shall cease to be a Participant hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement which shall survive as to such assigning Participant and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Rent Assignment Interests or Lessor Retained Interest, as applicable, subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Rent Assignment Interests or Lessor Retained Interest acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Participant shall be reduced by the net proceeds of the sale of such Rent Assignment Interests or Lessor Retained Interest (or portion thereof), as applicable, and the Administrative Agent shall retain all other rights, remedies and claims against such Participant (and/or against any recipient that receives funds on its respective behalf). In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Rent Assignment Interests or Lessor Retained Interest (or portion thereof), as applicable, acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Participant under the Operative Documents with respect to each Erroneous Payment Return Deficiency (the “**Erroneous Payment Subrogation Rights**”).

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Lessee or any other Lessee Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Lessee or any other Lessee Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received,

including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this Section 8.13 shall survive the resignation or replacement of the Administrative Agent, and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Operative Document.

## **ARTICLE IX**

### **MISCELLANEOUS**

#### ***SECTION 9.1. Survival of Indemnities.***

The indemnities of the parties provided for in the Operative Documents shall survive the execution and delivery and the termination or expiration of this Agreement and any of the other Operative Documents, the transfer of the interest in the Leased Property as provided herein or in any other Operative Documents, any disposition of any interest of the Lessor or the Collateral Agent in the Leased Property, the purchase and sale of the Rent Assignment Interests, payment therefor and any disposition thereof and shall continue in effect notwithstanding that any party hereto may waive compliance with any of the other terms, provisions or conditions of any of the Operative Documents.

#### ***SECTION 9.2. No Broker, etc.***

Except for the Lessee’s dealings with the Arranger (for which the Lessee shall be responsible), each of the parties hereto represents to the others that it has not retained or employed any arranger, broker, finder or financial advisor to act on its behalf in connection with this Agreement, nor has it authorized any arranger, broker, finder or financial adviser retained or employed by any other Person so to act, nor has it incurred any fees or commissions to which the Agents or any Participant might be subjected by virtue of their entering into the transactions contemplated by this Agreement. Any party who is in breach of this representation shall indemnify and hold the other parties harmless from and against any liability arising out of such breach of this representation.

#### ***SECTION 9.3. Notices.***

Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto in connection with the Operative Documents shall be in writing (including bank wire, transmission, electronic mail or similar writing) and shall be effective given to such party: (i) if given by electronic mail transmission, when transmitted to the e-mail address specified on Schedule II during the recipient’s normal business hours and confirmation of receipt is received or (ii) if given by any other means, when delivered during the

recipient's normal business hours at the address specified on Schedule II; provided that notices under Article II or Sections 7.4, 7.5 or 7.6 hereof shall not be effective until received.

#### ***SECTION 9.4. Counterparts.***

This Agreement and each of the other Operative Documents may be executed by the parties hereto and thereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same agreement. Delivery of an executed counterpart of a signature page of any Operative Document by electronic means (e.g. ".pdf" or ".tif") shall be effective as delivery of a manually executed counterpart of such Operative Document. The words "executed," "signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this transaction shall include, in addition to manually executed signatures, images of manually executed signatures transmitted by electronic format (including, without limitation, "pdf" and DocuSign) and other electronic signatures (including, without limitation, any electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a Person with the intent to sign the record). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

#### ***SECTION 9.5. Amendments.***

No Operative Document nor any of the terms thereof may be terminated, amended, supplemented, waived or modified without the written agreement or consent of the Lessor, the Administrative Agent (as directed by the Required Participants), the Lessee, the Collateral Agent (as directed by the Required Rent Assignees solely with respect to the Assignment of Lease and, otherwise, by the Required Participants) and the Required Participants; provided, however, that Section 9.15 hereof and the other Sections referenced therein may not be terminated, amended, supplemented, waived or modified without the written consent of the Arranger; provided, further, that such termination, amendment, supplement, waiver or modification of any Operative Document shall require the written agreement or consent of each Participant if such termination, amendment, supplement, waiver or modification would:

(a) modify any of the provisions of this Section 9.5, change the definition of "Required Participants", or modify or waive any provision of any Operative Document requiring action by the Required Participants or all of the Participants such that such provision no longer requires such action, or release any collateral (except in connection with a transaction permitted by the Operative Documents);

(b) reduce the amount or change the time of payment of any amount of principal owing or payable with respect to any Rent Assignment Advances, Lessor Retained Interest or Lessor Investment, or Yield owing or payable with respect to the Guaranteed Lease Balance or Fees or reduce the amount owing and payable with respect to the Lessor's Gain, or modify any of the provisions of Article X or Sections 2.10 or 2.11 hereof, or modify the definition of "Yield Rate" or the other defined terms contained in such definitions;

(c) reduce, modify, amend or waive any Excluded Amounts or any Excepted Rights in favor of any Participant;

(d) reduce the amount or change the time of payment of any Rent, the Lease Balance, Lessor's Gain, Purchase Amount, Sale Proceeds, Deficiency payments or the Recourse Deficiency Amount;

(e) modify any provision of any Operative Document that expressly requires the unanimous consent of the Participants;

(f) consent to releasing the Lessee from its obligations to pay any Rent, the Lease Balance, Lessor's Gain, Purchase Amount, Sale Proceeds, Deficiency payments or the Recourse Deficiency Amount or changing the absolute and unconditional character of such obligations;

(g) permit the creation of any Lien on the Leased Property, the Site, the Lessee Collateral or any part thereof, except as permitted by the Operative Documents;

(h) modify the definition of "Maturity Date" or "Lease Expiration Date" or otherwise extend either such date other than as permitted by Section 2.16 provided, however, for purposes of clarity, that any extension of either such date permitted under Section 2.16 shall require the unanimous vote of each Participant (including any Replacement Participant which replace the non-consenting Participants in accordance with the terms thereof);

(i) waive, amend or otherwise modify any of the provisions contained in Section 2.2(d) or Section 2.16; and

(j) consent to releasing any Guarantor from its obligations under the Lease Guaranty or changing the character of such obligations.

#### ***SECTION 9.6. Headings, etc.***

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



**SECTION 9.7. *Parties in Interest.***

Except as expressly provided herein, none of the provisions of this Agreement is intended for the benefit of any Person except the parties hereto and their respective successors and permitted assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

**SECTION 9.8. *Governing Law.***

THIS AGREEMENT HAS BEEN DELIVERED IN, AND SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF, THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES OF SUCH STATE (EXCEPT SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW) EXCEPT TO THE EXTENT THAT THE LAWS OF THE STATE WHERE THE SITE IS LOCATED ARE REQUIRED TO APPLY.

**SECTION 9.9. *Payment of Transaction Costs and Other Costs.***

(a) *Transaction Costs and Fees.* As and when any portion of Transaction Costs, including, without limitation, any Fees becomes due and payable, such Transaction Costs, including, without limitation, any Fees shall be paid by the Lessee as Supplemental Rent; provided, that with respect to Transaction Costs, the Lessee's obligation to pay such Transaction Costs including, without limitation, any Fees is subject to the provisions of Section 2.13.

(b) *Continuing Expenses.* The continuing fees, expenses and disbursements (including reasonable counsel fees) of (i) the Lessor set forth by the Lessor and agreed in writing by the Lessee, (ii) the Administrative Agent and the Collateral Agent, as set forth in Section 2.13, and (iii) the Participants, in each case as set forth in Section 2.13, shall be paid directly by the Lessee as Supplemental Rent.

(c) *Amendments, Supplements, etc.* Without limitation of the foregoing, the Lessee agrees to pay to the Agents and the Participants (i) all reasonable and documented out-of-pocket costs and expenses (including reasonable legal fees and expenses of counsel to the Agents and the Participants) incurred by any of them in connection with: (A) the considering, evaluating, investigating, negotiating and entering into or giving or withholding of any amendments or supplements or waivers or consents with respect to any Operative Document requested by the Lessee; or (B) the negotiation and documentation of any restructuring or "workout," whether or not consummated, of any Operative Document; and (ii) all reasonable and documented out-of-pocket costs and expenses (including reasonable legal fees and expenses of counsel to the Agents and the Participants) incurred by any of them in connection with: (A) the enforcement of the rights or remedies under the Operative Documents; or (B) any sale, assignment or transfer by a Participant of any interest in the Operative Documents during the continuance of an Event of Default.

#### **SECTION 9.10. Severability.**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall not have any duties or obligations, except those expressly set forth herein or in another Operative Document, and no implied duties or obligations shall be read into this Agreement.

#### **SECTION 9.11. Limited Liability of the Lessor.**

The parties hereto agree that except as specifically set forth herein or in any Operative Document, no Representatives (other than Affiliates of the Lessor to the extent that funds are received by the Lessor and not applied in accordance with the terms of the Operating Documents) of the Lessor shall have personal liability whatsoever to the Lessee or its successors and assigns for any claim or obligation based on or in respect of this Agreement or any of the other Operative Documents, except to the extent attributable to fraud or the willful misconduct or gross negligence of, or negligence in the handling of funds by, the Lessor, its officers, agents, employees and Affiliates or the breach in any material respect of any representation or warranty made by the Lessor under the Operative Documents or a breach or violation of the terms and conditions of this Agreement or any Operative Document. Anything in this Agreement or the other Operative Documents to the contrary notwithstanding, none of the Lessee, any Agent, any Rent Assignee and any other holder of Rent Assignment Interests (and the successors or assigns of any of said Persons) shall have any claim, remedy or right to proceed against the Lessor or any past, present or future stockholder, subscriber of capital stock, officer, director, incorporator or partner of the Lessor, whether by virtue of any statute or rule of law or by enforcement of any penalty or assessment or otherwise, for the payment of any amount owing under this Agreement or any other Operative Documents or any deficiency or any other sum owing on account of the Rent Assignment Interests or for the payment of any other unpaid Obligations or any liability resulting from the breach of any representation, agreement or warranty of any nature whatsoever in this Agreement or any other Operative Document; and the parties hereto, by their execution and delivery of this Agreement, waive and release any liability of the Lessor or any past, present or future stockholder, subscriber of capital stock, officer, director, incorporator or partner of the Lessor for and on account of such amounts, deficiencies, sums, payments or such liability; provided, however, that nothing herein contained shall limit, restrict or impair the rights of a party hereto to bring suit and obtain a judgment against the Lessor under this Agreement or any other Operative Documents or to exercise all rights and remedies provided under the Lease.

#### **SECTION 9.12. Liabilities of the Participants.**

No Participant shall have any obligation to the Agents or any other Participant or to the Lessee with respect to the Overall Transaction except those obligations of such Participant expressly set forth in the Operative Documents or except as set forth in the instruments delivered

in connection therewith and no Participant shall be liable for performance by any other party hereto of such other party's obligations under the Operative Documents except as otherwise so set forth.

**SECTION 9.13. Submission to Jurisdiction; Waivers.**

(a) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY:

(i) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER OPERATIVE DOCUMENT, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE SOLE, EXCLUSIVE GENERAL JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR OF ANY NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, AND APPELLATE COURTS FROM ANY THEREOF;

(ii) CONSENTS THAT ANY SUCH ACTION OR PROCEEDINGS MAY BE BROUGHT TO SUCH COURTS, AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(iii) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS SET FORTH ON SCHEDULE II OR AT SUCH OTHER ADDRESS OF WHICH THE OTHER PARTIES HERETO SHALL HAVE BEEN NOTIFIED PURSUANT TO SECTION 9.3; AND

(iv) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THE OPERATIVE DOCUMENTS AND FOR ANY COUNTERCLAIM THEREIN.

#### **SECTION 9.14. *Reproduction of Documents.***

Subject to Section 9.19, this Agreement, all documents constituting an Appendix, Schedule or Exhibit hereto, and all documents relating hereto received by a party hereto, including, without limitation: (a) consents, waivers and modifications that may hereafter be executed; (b) documents received by the Agents or any Participant in connection with the receipt and/or acquisition of the Leased Property; and (c) financial statements, certificates and other information previously or hereafter furnished to the Agents or any Participant may be reproduced by the party receiving the same by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process. Each of the parties hereto agrees and stipulates that, to the extent permitted by law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such party in the regular course of business) and that, to the extent permitted by law, any enlargement, electronic copy, or further reproduction of such reproduction shall likewise be admissible in evidence.

#### **SECTION 9.15. *Role of Arranger.***

Each party hereto acknowledges hereby that it is aware of the fact that the Arranger has acted as an “arranger” with respect to the transactions contemplated by the Operative Documents. The parties hereto acknowledge and agree that the Arranger and its Affiliates have not made any representations or warranties concerning, and that they have not relied upon the Arranger as to, the tax, accounting or legal characterization or validity of (i) the Operative Documents or (ii) any aspect of the Overall Transaction. The parties hereto acknowledge and agree that the Arranger has no duties, express or implied, under the Operative Documents in its capacity as the Arranger. The parties hereto further agree that Section 2.1(k), Section 2.13(a), Section 2.15, Section 8.5, Section 9.2, Section 9.5, Section 9.9(a) and this Section 9.15 are for the express benefit of the Arranger, in such capacity, and the Arranger shall be entitled to rely thereon as if it were a party hereto.

#### **SECTION 9.16. *Rights Related to Rent Assignment Agreement.***

The Lessee acknowledges the sales and assignments by the Lessor under the Rent Assignment Agreement and the Assignment of Lease, expressly consents to the sales and assignments thereunder regarding the sale of Lessor’s rights to certain payments of Rent and rights related to such payments, and agrees to pay and deliver to the Administrative Agent for application hereunder the sums set forth therein or, upon written request therefor pursuant to the Assignment of Lease, to the Rent Assignees.

#### **SECTION 9.17. *Payments in Dollars.***

All payments to be made by the Lessee hereunder shall be made in Dollars in immediately available and freely transferable funds at the place of payment, all such payments to be paid without setoff, counterclaim or reduction.

### **SECTION 9.18. Confidentiality.**

In connection with the Overall Transaction and the Lessee's compliance with the Operative Documents, the Agents and the Participants may be receiving certain information (whether in written or electronic form, or if oral, confirmed in writing as confidential information) which is non-public, confidential or proprietary in nature. Such information and any other non-public, confidential or proprietary information concerning the Improvements, the Lessee, the Guarantors and/or their respective Subsidiaries (the Lessee, the Guarantors and/or their Subsidiaries being collectively referred to as the "**Big Lots Companies**") furnished by or on behalf of the Big Lots Companies to the Agents or the Participants in connection with the Overall Transaction (at any time on, before or after the Closing Date), together with any other documents prepared by the Big Lots Companies or by any of their respective agents, Affiliates, representatives (including attorneys, accountants and financial advisors) or employees which contain or otherwise reflect such information is hereinafter referred to as the "**Information**".

The Agents and each of the Participants hereby severally agrees, as to itself only, subject to the exclusions set forth elsewhere in this Section 9.18, that the Information shall be kept confidential and shall not, without the prior written consent of relevant Big Lots Company, be disclosed by such Person or by any of its Affiliates, directors, officers, employees, attorneys and agents ("**Representatives**") in any manner whatsoever, in whole or in part, and shall not be used by such Person or its Representatives other than in connection with monitoring the compliance by the Big Lots Companies with the terms of the Operative Documents, provided, however, that such Person may reveal the Information (i) to its Representatives solely for the purpose of evaluating or managing such Person's investment in the Overall Transaction if the recipients of the Information are informed by such Person of the confidentiality obligations with respect to the Information and such recipients agree to be bound by the terms and conditions of this Section or are otherwise bound by an obligation of confidentiality with respect thereto or (ii) to the extent requested by any applicable regulatory Authorities having jurisdiction.

The provisions of this Section shall be inoperative as to such portions of the Information that (i) are or become generally available to the public on a non-confidential basis through no fault of or action or omission by the Agents or the Participants or by any of their respective Representatives, (ii) become available to the Agents or any of the Participants on a non-confidential basis from a source other than the Big Lots Companies or their representatives or agents and not in violation of this Agreement, so long as the Person to whom such portions of Information have been made available has no knowledge that the source of such Information is prohibited from disclosing such portions by a contractual, legal or fiduciary obligation to the Big Lots Companies, or (iii) are provided to any court or tribunal in connection with the exercise or enforcement of any rights under this Agreement or other Operative Document; provided, however, that such Person shall endeavor (if not otherwise prohibited by Applicable Law) to notify the Lessee prior to any disclosure made pursuant to this clause (iii). In addition, the Agents and the Participants may disclose such Information to potential transferees of its interest permitted

hereunder, provided such potential transferee has entered into a confidentiality agreement containing provisions substantially similar to the provisions of this Section.

In the event that the Agents or any of the Participants or anyone to whom any such Person transmits the Information pursuant to this Section 9.18, becomes required by Applicable Laws or Governmental Action to disclose any of the Information, the Person so required (if a party to this Agreement) or the Person that transmitted the Information to the Person so required (if the Person so required is not a party to this Agreement) if legally permitted shall provide the Lessee with notice of such event promptly upon obtaining knowledge thereof so that the Lessee or the applicable Big Lots Company may seek a protective order or other appropriate remedy against such disclosure. In the event that no protective order or other remedy is obtained, the Person so required to disclose such Information (if a party to this Agreement) or the Person that transmitted the Information to the Person so required to disclose such Information (if the Person so required is not a party to this Agreement) shall have the right to disclose such information to the appropriate Authority. Notwithstanding such right, such Person shall, at the Lessee's expense, cooperate to the extent reasonable with the Lessee's or such Big Lots Company's instructions to disclose, only that portion of the Information that is required to be disclosed in accordance with Applicable Laws and shall do so in a manner reasonably designed to preserve the Information's confidential nature. Notwithstanding anything to the contrary in this Section 9.18, the Agents and each of the Participants may disclose the Information as requested by any Authority to whose jurisdiction such Person is subject or in connection with an examination of such Person by regulatory examiners or independent auditors. In addition, to the extent not contrary to the foregoing, the Lessor shall use reasonable efforts to comply with written instruction from the Lessee to such Person or, at the Lessee's expense, return confidential information to the Lessee; provided, however, that the Lessor may retain one (1) file copy of such Information, documents, memoranda, notes and other writings for regulatory and audit purposes and for the purposes of defending or maintaining any proceedings relating to this Agreement, and any such materials so retained shall remain subject to the provisions of this Section 9.18.

The agreements of the Agents and each of the Participants in this Section shall survive the termination of any of the Operative Documents to which any such Person is a party and the payment of all or any part of the Adjusted Lease Balance or the Purchase Amount and the repayment of all or any part of the Funding made by the Agents or any of the Participants in respect thereof.

#### ***SECTION 9.19. Entire Agreement.***

This Agreement (together with the other Operative Documents) constitutes the entire agreement between the parties hereto with respect to the matters covered hereby and supersedes all prior agreements and understandings, written or oral, with respect to such matters between the parties. The parties hereto shall not have any duties or obligations, except those expressly set forth herein, and no implied duties or obligations shall be read into this Agreement.

***SECTION 9.20. UCC Filings and Other Matters.***

The Lessee hereby grants to the Collateral Agent (or the Lessor or its counsel on its behalf) the permission and right to file, without the signature of the Lessee, any financing statements, amendment statements and continuation statements under the Uniform Commercial Code necessary to perfect the Collateral Agent's security interest in the Lessee Collateral under the Memorandum of Lease. The Lessee shall attend to the filing of any necessary UCC amendment statements and continuation statements in order to maintain the perfection of its security interest as set forth in the Memorandum of Lease perfected by the UCC Financing Statements filed on or about the Closing Date and referencing the Lessee or the Collateral Agent, as applicable, as the secured party. The Collateral Agent shall have no duty to file any financing statements or continuation statements, or monitor the financing statement records with respect to the Lessee.

***SECTION 9.21. Existence and Continuation of an Event of Default.***

Notwithstanding any other provision of any Operative Document to the contrary, if an Event of Default shall have occurred then following the giving of any required notice and the expiration of any applicable cure period, such Event of Default shall continue in existence unless and until such time that such Event of Default is expressly and specifically waived in writing by the Administrative Agent or the Participants, as applicable, in accordance with the requirements of the Operative Documents.

***SECTION 9.22. Substitution of a Participant; Change in Lending Office.***

(a) If (i) any Indemnitee has demanded indemnification under Sections 7.4 or 7.6 hereof, or (ii) any Participant fails to consent to any amendment, extension or waiver requested by the Lessee which requires unanimous consent of the Participants, then, if no Default or Event of Default has occurred and is continuing, the Lessee shall have the right, with or without the assistance of the Administrative Agent, but subject to Section 6.3 hereof and the provisos below, to seek a substitute financial institution or institutions to purchase the Rent Assignment Advances or Lessor Investment, as applicable, from such Participant making such demand and to instruct such Participant to, and such Participant shall, promptly upon the identification by the Lessee of such substitute financial institution or financial institutions, assign its Rent Assignment Interests or Lessor Investment, as applicable, and all of its rights and obligations under the Operative Documents to such substitute financial institution or financial institutions, subject to Section 6.3 hereof, provided, that such Participant and any other related Indemnitee shall have been paid in full in immediately available funds for all amounts due hereunder or under any other Operative Document. The Lessee shall exercise its rights under this Section 9.22 if at all, within ten (10) days of receipt of (a) any claim by an Indemnitee under Section 7.4 or 7.6 hereof or (b) any notice by a Participant or the Administrative Agent that such Participant will not provide the requested consent under Section 9.5, as applicable, and, provided further that such substitute institution or institutions will not make any similar demand.

(b) The Lessee hereby agrees to pay all documented and reasonable out-of-pocket costs and expenses incurred by any Participant in connection with any such designation or assignment.

**SECTION 9.23. USA PATRIOT Act Notice.**

The Lessee acknowledges that the Administrative Agent and the Participants may be required, pursuant to the USA PATRIOT Act, to obtain, verify, record and disclose to law enforcement authorities information that identifies the Lessee, including the name and address of the Lessee. Consistent with Section 5.2(h) hereof, the Lessee will provide to the Administrative Agent and the Participants any such information they may request pursuant to the USA PATRIOT Act, and the Lessee agrees that the Administrative Agent and the Participants may disclose such information to law enforcement authorities if the authorities make a request or demand for disclosure pursuant to the USA PATRIOT Act. The Lessee also acknowledges that, in such event the Administrative Agent and the Participants may not be required or even permitted by the USA PATRIOT Act to notify the Lessee of the request or demand for disclosure.

**SECTION 9.24. Acknowledgement and Consent to Bail-In of Affected Financial Institutions.**

Notwithstanding anything to the contrary in this Participation Agreement, any Operative Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Operative Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Participation Agreement or any other Operative Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.



As used in this Participation Agreement:

**“Affected Financial Institution”** means (a) any EEA Financial Institution or (b) any UK Financial Institution.

**“Bail-In Action”** means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

**“Bail-In Legislation”** means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

**“EEA Financial Institution”** means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**“EEA Member Country”** means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**“EEA Resolution Authority”** means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

**“EU Bail-In Legislation Schedule”** means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

**“Resolution Authority”** mean an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**“UK Bail-In Legislation”** means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**“UK Financial Institution”** means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment first, and certain affiliates of such credit institutions or investment firms.

**“UK Resolution Authority”** means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**“Write-Down and Conversion Powers”** means, (a) with respect to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule, (b) in relation to any other applicable Bail-In Legislation (x) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and (y) any similar or analogous powers under that Bail-In Legislation; and (c) with respect to the any UK Bail-In Legislation, (x) any powers of the UK Bail-In Legislation to cancel, transfer or dilute shares issued by a Person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a Person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers and (y) any similar or analogous powers under that UK Bail-In Legislation.

#### **SECTION 9.25. The Collateral Agent Statements**

To the extent amounts are held and/or invested by the Collateral Agent under the Operative Documents including, without limitation, under Section 23.13 of the Lease, the Collateral Agent shall furnish the Lessee periodic cash transaction statements which shall include detail for all investment transactions effected by the Collateral Agent. Upon the Lessee’s election, such statements will be delivered via the Collateral Agent providing the Lessee with online access to the Collateral Agent’s system with respect to this Participation Agreement and upon electing such service, paper statements will be provided only upon request. The Lessee waives the right to receive brokerage confirmations of security transactions effected by the Collateral Agent as they occur, to the extent permitted by law. The Lessee further understands that trade confirmations for

securities transactions effected by the Collateral Agent will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

#### **SECTION 9.26. *Rights Under Assignment of Lease***

The Lessee acknowledges the assignments to be made by the Lessor under the Assignment of Lease and expressly consents to the assignments thereof regarding the Lease and the property of the Lessor with respect to which a lien is purported to be granted pursuant to the Assignment of Lease.

#### **SECTION 9.27. *Credit Agreement.***

(a) *Voting Regarding Covenants, Representations and Warranties and Waivers.* Except to the extent a provision subject to such vote relates specifically to the Leased Property or Permitted Liens, to the extent the Lessor or any Participant Party is a Credit Agreement Lender at such time that a Credit Agreement Amendment is effected, then the Lessor or such Participant Party agrees to vote in the same manner regarding a proposed amendment, or waiver with respect thereto, of Section 4.1 or Article V of this Agreement and/or of any related definitions contained in this Agreement or any materiality levels in respect of any Event of Default under any Operative Agreement, as applicable, as the Lessor or such Participant Party voted with regard to such Credit Agreement Amendment except as otherwise consented to by the Lessee; provided, however, that in the event any Credit Agreement Lender shall receive, obtain or enjoy any benefit (including other beneficial terms and conditions and/or modifications to existing terms and conditions in the Credit Agreement), consideration or compensation for their agreement to such amendment or modification, whether as amendments or modifications to the Credit Agreement or as conditions to such consummation, which may include but are not limited to terms and conditions related to interest rates, spreads, fees or other remuneration, financial covenants, tenor, collateral, indemnities or other credit support, the provisions of this Section 9.27(a) shall not apply unless the Participants shall be accorded and/or paid at least as favorable (on a proportionate basis to the magnitude of the indebtedness under the Credit Agreement to the Lease Balance) benefits, consideration and/or compensation hereunder and with respect to the Overall Transaction.

(b) *Acknowledgement regarding Credit Agreement.* The Lessor, the Agents and each Lease Participant each acknowledge and agree that the Obligations are not secured by the ABL Collateral and that any such party, in its capacity as a Credit Agreement Lender, is not entitled to any Reserve (as defined in the Credit Agreement) in respect of the Obligations owing hereunder.

## ARTICLE X

### RECEIPT, DISTRIBUTION AND APPLICATION OF RECEIPTS

#### **SECTION 10.1. Receipt, Distribution and Application of Receipts; Rent Distribution.**

The parties hereto agree that the payments specified in this Article X will be distributed pursuant to the applicable subsections of this Article X and, with respect to payments required in this Article X below to be made to the Rent Assignees, in accordance with the Rent Assignment Agreement.

(a) Except as otherwise provided in Section 10.1(b) and Section 10.4, each payment of Basic Rent under the Lease as well as any payment of interest on overdue installments of Basic Rent under the Lease, and any other monies paid over by the Lessee to the Administrative Agent in respect thereof which shall be remitted to the Administrative Agent on behalf of the Lessor, shall be distributed by the Administrative Agent as promptly as possible (it being understood that any payments of Basic Rent received by the Administrative Agent under the Lease on a timely basis and in accordance with the provisions of the Lease shall be distributed by the Administrative Agent on the date received in the funds so received) to the Rent Assignees and the Lessor (with respect to the Lessor Retained Interest), *pro rata*, without priority of one such Person over the other, with such Participants to be paid in accordance with their Guaranteed Commitment Percentage; provided, however, that such payment of interest on overdue installments of Basic Rent shall be paid to the Rent Assignees and the Lessor, without priority of one such Person over the other, in accordance with the ratio of the portion of such installment due to such Person over the total amount of such installment.

(b) Except as otherwise provided in Section 10.4, if any payment of Basic Rent shall be insufficient to pay in full the amounts set forth in Section 10.1(a), then such payment of Basic Rent as well as any payment in respect of interest on such payment of Basic Rent and any other monies paid over by the Lessee to the Lessor or any party hereto in respect thereof, shall be remitted to the Administrative Agent and distributed as promptly as possible (it being understood that any payments of Basic Rent received by the Administrative Agent under the Lease on a timely basis and in accordance with the provisions of the Lease shall be distributed by the Administrative Agent on the date received in the funds so received) to the Rent Assignees (with respect to the Rent Assignment Interests) and to the Lessor (with respect to the Lessor Retained Interest), *pro rata*, without priority of one such Person over the other, with such Participants to be paid in accordance with their Guaranteed Commitment Percentage. Any payment of interest at the Overdue Rate shall be paid to the Participants still due their full payment of Yield, without priority of one such Person over the other, in such proportions as such amount due and unpaid to such Participant bears to the total amount of Basic Rent remaining unpaid.

**SECTION 10.2. Distribution of Certain Other Payments.** (a) Except as otherwise provided in Sections 10.4 and 10.6, the amount of any payment of Purchase Amount,

Adjusted Lease Balance and any other amounts received as a result of the termination of the Lease due to a purchase of the Leased Property by the Lessee, or an Event of Loss or an Event of Taking (including, without limitation, any insurance proceeds, condemnation awards or payments by any Authority) under the Lease (other than payments of Deficiency, Recourse Deficiency Amount, Sale Proceeds or Excluded Amounts (which Excluded Amounts will be applied from such payments and amounts in accordance with Section 10.6 hereof prior to their application below)), in each case, with respect to which the Lessor, Agents or Rent Assignee shall have the right to receive and apply such amounts, shall, in each case be distributed and/or paid by the Administrative Agent, in the following order of priority:

(i) first, so much of such payments, proceeds and/or amounts as shall be required to reimburse the Agents for services in their capacities as such as provided in the Operative Documents for any Tax or other Claim incurred by such Persons (to the extent not previously reimbursed and to the extent incurred in connection with their administrative duties under the Operative Documents duties as Agents) and any such unpaid ongoing administrative fees owing to such Persons shall be retained by the Person due such amounts;

(ii) second, the balance of such Supplemental Rent shall be distributed to the Rent Assignees and the Lessor, *pro rata*, without priority of one such Person over the other, with such Participants to be paid in accordance with their Guaranteed Commitment Percentage of all accrued and unpaid Yield due on the outstanding Rent Assignment Advances and on the outstanding Lessor Retained Interest, as applicable, until payment in full;

(iii) third, the balance of such Supplemental Rents shall be distributed to the Rent Assignees and the Lessor, *pro rata*, without priority of one such Person over the other, with such Participants to be paid in accordance with their Commitment Percentage until payment in full (x) to the Rent Assignees, of the outstanding Rent Assignment Advances, and (y) to the Lessor, of the outstanding Lessor Retained Interest, Lessor Investment and Lessor's Gain;

(iv) fourth, the balance of such Supplemental Rent shall be distributed to the Rent Assignees and the Lessor, *pro rata*, without priority of one such Person over the other, with respect to all other amounts payable to the Rent Assignees and the Lessor under the Operative Documents;

(v) fifth, the balance thereof shall be distributed to any other Indemnitee, *pro rata*, without priority of one such Person over the other, with respect to all other amounts payable to such Person under the Operative Documents; and

(vi) sixth, the balance, if any, shall be paid to the Lessee or such other Person as the Lessee may designate in writing.

(b) Any payment received as a result of a Casualty or Condemnation that does not result in the termination of the Lease (including, without limitation, any insurance proceeds, condemnation awards or payments by any Authority), shall be paid to the Lessee in accordance with the Lease, if the Lessee is entitled thereto pursuant to the terms of the Operative Documents and, if the Lessee is not entitled thereto, such payment shall be remitted to the Administrative Agent and distributed and paid in accordance with Section 10.4.

**SECTION 10.3. *Distribution of Payments Related to the Return Option.***

Except as otherwise provided in Sections 10.4 and 10.6, the amount of any payment of Deficiency, Recourse Deficiency Amount, Sale Proceeds, Basic Rent received during any Extended Remarketing Period and any other amounts received as a result of the termination of the Lease due to an election to return the Leased Property pursuant to Section 21.1(b) of the Lease, with respect to which the Lessor, Agents or Rent Assignee shall have the right to receive and apply such amounts, shall, in each case be distributed and/or paid by the Administrative Agent, in the following order of priority:

(i) first, so much of such payments, proceeds and/or amounts as shall be required to reimburse the Agents for services in their capacities as such as provided in the Operative Documents for any Tax or other Claim incurred by such Persons (to the extent not previously reimbursed and to the extent incurred in connection with their administrative duties under the Operative Documents as Agents) and any such unpaid ongoing administrative fees owing to such Persons shall be retained by the Person due such amounts;

(ii) second, the balance of such payments, proceeds and/or amounts shall be distributed to the Rent Assignees and the Lessor, *pro rata*, without priority of one such Person over the other, with such Participants to be paid in accordance with their Guaranteed Commitment Percentage of all accrued and unpaid Yield due on the outstanding Rent Assignment Advances and on the outstanding Lessor Retained Interest, as applicable, until payment in full;

(iii) third, the balance of such payments, proceeds and/or amounts shall be distributed to the Rent Assignees and the Lessor solely with respect to the Lessor Retained Interest, *pro rata*, without priority of one such Person over the other, with such Participants to be paid in accordance with their Guaranteed Commitment Percentage until payment in full of the outstanding Rent Assignment Advances and the Lessor Retained Interest, respectively;

(iv) fourth, the balance of such payments, proceeds and/or amounts shall be distributed to the Lessor until payment in full of the outstanding Lessor Investment with respect to the Lessor Investment together with payment in full of all Lessor's Gain with respect thereto;

(v) fifth, the balance thereof shall be distributed to the Rent Assignees and the Lessor, *pro rata*, without priority of one such Person over the other, with respect to all other amounts payable to the Rent Assignees and the Lessor under the Operative Documents, including, without limitation, Supplemental Rent; and

(vi) sixth, the balance, if any, shall be paid to the Lessee except for such proceeds to be paid to the Lessor or such other Person as the Lessor may designate in writing pursuant to Section 22.4(b) of the Lease.

**SECTION 10.4. Distribution of Payments After Event of Default.**

(a) All payments, proceeds and amounts received and/or realized by the Lessor and the Agents after the Lease shall have been declared in default in accordance with Article XVII of the Lease following and during the continuance of an Event of Default, as well as all payments or amounts then held or thereafter received (other than Excluded Amounts (with the exception of Lessor's Gain, which will be applied from such payment and amounts in accordance with Section 10.6 hereof prior to their application below)) by the Lessor and the Agents while such Event of Default shall be continuing, shall be remitted to the Administrative Agent, and forthwith distributed, in each case, with respect to which the Lessor, the Agents or the Rent Assignees shall have the right to receive and apply such amounts, in the following order of priority:

(i) first, so much of such payments, proceeds or amounts as shall be required to reimburse the Agents for services in their capacities as such as provided in the Operative Documents for any Tax or other Claim incurred by such Persons (to the extent not previously reimbursed and to the extent incurred in connection with their administrative duties under the Operative Documents duties as Agents) and any such unpaid ongoing administrative fees owing to such Persons shall be retained by the Person due such amounts;

(ii) second, so much of such payments, proceeds or amounts as shall be required to reimburse the then existing or prior Rent Assignees or the Lessor for payments made by them pursuant to this Agreement or other Operative Documents in connection with such Event of Default (to the extent not previously reimbursed), excluding payments in respect of Yield or Lease Balance and any such unpaid payments or amounts owing to such Rent Assignees or the Lessor shall be distributed to each such Rent Assignee or the Lessor, *pro rata*, without priority of one over the other, in proportion to the amount of such payment or payments payable to each such Rent Assignee and the Lessor;

(iii) third, the balance of such payments, proceeds and/or amounts shall be distributed to the Rent Assignees and the Lessor solely with respect to the Lessor Retained Interest, *pro rata*, without priority of one such Person over the other, with such Participants to be paid in accordance with their Guaranteed Commitment Percentage of all accrued and unpaid Yield due on the outstanding Rent Assignment Advances and on the outstanding Lessor Retained Interest, as applicable, until payment in full;

(iv) fourth, the balance of such payments, proceeds and/or amounts shall be distributed to the Rent Assignees and the Lessor, *pro rata*, without priority of one such Person over the other, with such Participants to be paid in accordance with their Commitment Percentage until payment in full (x) to the Rent Assignees, of the outstanding Rent Assignment Advances, and (y) to the Lessor, of the outstanding Lessor Retained Interest, Lessor Investment and Lessor's Gain;

(v) fifth, the balance thereof shall be distributed to the Rent Assignees and the Lessor, *pro rata*, without priority of one such Person over the other, with respect to all other amounts payable to the Rent Assignees and the Lessor under the Operative Documents;

(vi) sixth, the balance thereof shall be distributed to any other Indemnitee, *pro rata*, without priority of one such Person over the other, with respect to all other amounts payable to such Person under the Operative Documents; and

(vii) seventh, the balance, if any, shall be paid to the Lessee or such other Person as the Lessee may designate in writing.

**SECTION 10.5. Other Payments.** (a) Except as otherwise provided in Sections 10.1, 10.2, 10.3, 10.4 and 10.6 and paragraph (b) below:

(i) any payments received by the Lessor (or the Administrative Agent or the Collateral Agent) no provision for the application of which is made in the Operative Documents or elsewhere in this Article X, and

(ii) all payments received and amounts realized by the Lessor (or the Administrative Agent or the Collateral Agent) under the Lease or otherwise with respect to the Leased Property to the extent received or realized at any time after payment in full of the outstanding Lease Balance with respect to the Rent Assignment Advances, the Lessor Retained Interest and the Lessor Investment together with all accrued and unpaid Yield on the Guaranteed Lease Balance, the Lessor's Gain with respect to the Lessor Investment and all other amounts payable to the Rent Assignees and the Lessor under the Operative Documents,

in either case of (i) or (ii), shall be remitted to the Administrative Agent and distributed forthwith in the order of priority set forth in Section 10.2, if the Lease shall not have been declared in default in accordance with Article XVII of the Lease, and Section 10.4, if the Lease shall have been declared in default in accordance with Article XVII of the Lease during the continuance of an Event of Default.

(b) Any payment received by the Lessor (or the Administrative Agent or the Collateral Agent) provision for the application of which is made in an Operative Document but not elsewhere in this Article X shall be remitted to the Administrative Agent and distributed



forthwith to the Person for the purpose for which such payment was made in accordance with the terms of such Operative Document.

***SECTION 10.6. Distribution of Excluded Amounts and Supplemental Rent.***

All amounts constituting Excluded Amounts or Supplemental Rent received by the Lessor (or the Administrative Agent) shall be remitted to the Administrative Agent and paid to or upon the order of the Person entitled thereto pursuant to the Operative Documents.

[Signature Pages Follow]

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

**AVDC, LLC,**  
AS THE LESSEE

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

[Signature Page to Participation Agreement]

**BANKERS COMMERCIAL CORPORATION,**  
AS THE LESSOR

By: /s/ Benjamin Clark  
Name: Benjamin Clark  
Title: Vice President

[Signature Page to Participation Agreement]

**BIG LOTS, INC.,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**BIG LOTS STORES, LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**CONSOLIDATED PROPERTY HOLDINGS,  
INC.,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: President

**BROYHILL, LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**BIG LOTS MANAGEMENT, LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**BIG LOTS STORES – PNS, LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**BIG LOTS STORES – CSR, LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**CSC DISTRIBUTION LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**CLOSEOUT DISTRIBUTION, LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**DURANT DC, LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**GAFDC LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**PAFDC LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**INFDC, LLC,**  
AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**GREAT BASIN LLC,**  
AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer

**BIG LOTS ECOMMERCE LLC,**  
AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief Financial and  
Administrative Officer



**BIG LOTS F&S, LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden

Name: Jonathan E. Ramsden

Title: Executive Vice President, Chief Financial and  
Administrative Officer

**WAFDC LLC,**

AS THE GUARANTOR

By: /s/ Jonathan E. Ramsden

Name: Jonathan E. Ramsden

Title: Executive Vice President, Chief Financial and  
Administrative Officer

**MUFG BANK, LTD.,**  
AS THE COLLATERAL AGENT

By: /s/ Benjamin Clark  
Name: Benjamin Clark  
Title: Vice President

[Signature Page to Participation Agreement]

**MUFG BANK, LTD.,**  
AS THE ADMINISTRATIVE AGENT

By: /s/ Benjamin Clark  
Name: Benjamin Clark  
Title: Vice President

[Signature Page to Participation Agreement]

**MUFG BANK, LTD.,**  
AS THE RENT ASSIGNEE

By: /s/ Benjamin Clark

Name: Benjamin Clark

Title: Vice President

[Signature Page to Participation Agreement]

**HUNTINGTON NATIONAL BANK,**  
AS A RENT ASSIGNEE

By: /s/ Patricia Scudder

Name: Patricia Scudder

Title: ABL Relationship Manager/Vice President

[Signature Page to Participation Agreement]

**APPENDIX I**  
**TO**  
**PARTICIPATION AGREEMENT**

In the Participation Agreement and each other Operative Document, unless the context otherwise requires:

(a) any term defined below by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect;

(b) words importing the singular include the plural and vice versa;

(c) words importing a gender include any gender;

(d) a reference to a part, clause, section, article, exhibit or schedule is a reference to a part, clause, section and article of, and exhibit and schedule to, such Operative Document;

(e) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws amending, supplementing, supplanting, varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and ordinances issued or otherwise applicable under that statute;

(f) a reference to a document other than the Credit Agreement (except as expressly set forth herein) includes any amendment, modification or supplement to, or replacement, restatement or novation of, that document;

(g) a reference to a party to a document includes that party's successors and assigns;

(h) all accounting terms not specifically defined herein shall be construed in accordance with GAAP; and

(i) references to "including" shall mean including without limiting the generality of any description preceding such term and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement followed by or referable to an enumeration of specific matters to matters similar to those specifically mentioned.

Further, each of the parties to the Operative Documents and their counsel have reviewed and revised the Operative Documents, or requested revisions thereto, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in construing and interpreting the Operative Documents.

**"ABL Agent"** shall have the meaning specified for "Administrative Agent" in the Credit Agreement.

**“ABL Collateral”** shall have the meaning specified for “Collateral” in the Credit Agreement.

**“ABL Documents”** shall have the meaning specified for “Loan Documents” in the Credit Agreement.

**“ABL Intercreditor Agreement”** shall have the meaning specified in the Credit Agreement.

**“ABL Lien”** means, with respect to any asset, any mortgage, lien, pledge, hypothecation, charge, security interest or similar encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement or any lease in the nature thereof); provided that in no event shall an operating lease or an agreement to sell be deemed to constitute an ABL Lien.

**“ABL Maturity Date”** shall have the meaning specified for “Maturity Date” in the Credit Agreement.

**“ABL Obligations”** has the meaning specified for “Obligations” in the Credit Agreement.

**“ABL Permitted Liens”** has the meaning specified for “Permitted Liens” in the Credit Agreement.

**“ABL Real Estate”** shall mean all leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Lessee Party or any Restricted Subsidiary, as the context may require, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

**“Account”** means an “Account” as defined in Article 9 of the UCC.

**“Acquired Indebtedness”** means, with respect to any specified Person: (1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, and (2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person. Acquired Indebtedness will be deemed to have been Incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (2) of the preceding sentence, on the date of consummation of such acquisition of such assets.

**“Actual Knowledge”** shall mean, as to any matter with respect to any Person, the actual knowledge of such matter by a Responsible Officer of such Person.

**“Additional Costs”** shall mean the amounts payable by the Lessee pursuant to Sections 7.2(a)(iii), 7.4, and 7.7 of the Participation Agreement.

**“Additional Refinancing Amount”** means, in connection with the Incurrence of any Refinancing Indebtedness, the aggregate principal amount of additional Indebtedness, Disqualified Stock or Preferred Stock Incurred to pay accrued and unpaid interest, premiums (including tender premiums), expenses, defeasance costs and fees in respect thereof.

**“Adjusted Lease Balance”** shall mean, as of any date of determination, an amount equal to the sum of the Lease Balance and Lessor’s Gain as of such date of determination.

**“Administrative Agent”** shall have the meaning given in the introductory paragraph of the Participation Agreement.

**“Affected Financial Institution”** shall have the meaning provided in Section 9.24 of the Participation Agreement.

**“Affiliate”** shall mean, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the specified Person.

**“Agency Fees”** shall have the meaning provided in Section 8.10 of the Participation Agreement.

**“Agents”** shall mean the Administrative Agent and the Collateral Agent collectively.

**“Alterations”** shall have the meaning provided in Section 9.2(a) of the Lease.

**“Alternate Base Rate”** shall mean for any day, a rate per annum equal to the highest of (a) the MUFG Prime Rate for such day, (b) the Overnight Bank Funding Rate in effect on such day plus  $\frac{1}{2}$  of 1%, and (c) Daily Simple SOFR plus 1%. Any change in the Alternate Base Rate (or any component thereof) shall be effective as of the opening of business on the day such change occurs. Notwithstanding anything to the contrary contained herein, in the case of any event specified in Section 2.9 of the Participation Agreement, to the extent any such determination affects the calculation of Alternate Base Rate, the definition hereof shall be calculated without reference to clause (c) until the circumstances giving rise to such event no longer exist. If the Alternate Base Rate determined as above would be less than 0.00%, then such rate shall be deemed to be 0.00%.

**“A.M. Best’s”** shall mean A.M. Best Company or any successor thereto.

**“Anti-Corruption Laws”** shall mean the United States Foreign Corrupt Practices Act of 2010, and all similar laws, rules, and regulations of any jurisdiction, including the UK Bribery Act 2010, applicable to the Lessee, Guarantor or their respective Subsidiaries from time to time concerning or relating to bribery or corruption.

**“Anti-Money Laundering Laws”** means applicable laws or regulations in any jurisdiction in which any Lessee Party or any of its Subsidiaries or its Controlled Affiliates is located or is doing material business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

**“Anti-Terrorism Laws”** means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such laws, all as amended, supplemented or replaced from time to time (including, without limitation, any Anti-Money Laundering Laws),



in each case in any jurisdiction in which any Lessee Party or any of its Subsidiaries is located or is doing material business.

**“Applicable Alternate Base Rate Margin”** shall have the meaning provided in the Lease Supplement.

**“Applicable Laws”** shall mean with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject (including those pertaining to health, safety or the environment and those pertaining to the use, occupancy or subdivision of the Leased Property) and any restrictive covenant or deed restriction or easement of record affecting the Leased Property (including the Appurtenant Service Rights).

**“Applicable Margin”** shall have the meaning provided in the Lease Supplement.

**“Appraisal”** shall mean, (i) initially, the appraisal delivered pursuant to Section 2.1(h) of the Participation Agreement, and (ii) subsequently, the most recent appraisal of the Leased Property by the Appraiser commissioned by the Lessor at Lessee’s expense and delivered to the Administrative Agent an Appraisal Delivery Date pursuant to Section 5.1(c) of the Participation Agreement.

**“Appraisal Delivery Date”** shall have the meaning provided in Section 5.1(c) of the Participation Agreement

**“Appraiser”** shall mean CBRE Group, Inc., or such other appraiser or appraisal firm that is reasonably satisfactory to the Lessor.

**“Appurtenant Rights”** shall have the meaning provided in the Memorandum of Lease.

**“Appurtenant Service Rights”** shall mean all rights and easements appurtenant to the Site which are necessary to provide the Improvements with all utility services necessary for use of the Improvements (including without limitation, electric, gas, telephone, water and sewer service) to be transmitted into the Improvements and out of the Improvements.

**“Arrangement Fee”** shall have the meaning provided in Section 2.13(a) of the Participation Agreement.

**“Arranger”** shall mean MUFG Bank, Ltd.

**“ASC”** shall have the meaning provided in Section 2.14(a) of the Participation Agreement.

**“Assignment Agreement”** shall mean an Assignment Agreement substantially in the form of Exhibit B to the Participation Agreement.

**“Assignment of Lease”** shall mean the Assignment of Lease dated as of the Base Term Commencement Date from the Lessor to the Collateral Agent, as assignee, and the Administrative Agent, which document shall be separately recorded in the Recorder’s Office.

**“Authority”** shall mean any federal, state, county, municipal, provincial or other government or governmental, quasi-governmental or regulatory authority, agency, board, body, commission, instrumentality, court or tribunal, central bank or any political subdivision of any thereof, or arbitrator or panel of arbitrators, or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational body exercising such powers or functions, such as the European Union or the European Central Bank) of or within the United States or any other jurisdiction applicable to any Participant and having jurisdiction or authority over any Participant.

**“Available Tenor”** shall mean, as of any date of determination and with respect to the then- current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of a Payment Period pursuant to the Participation Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Payment Period” pursuant to Section 2.9 of the Participation Agreement.

**“Bail-In Action”** shall have the meaning provided in Section 9.24 of the Participation Agreement.

**“Bail-In Legislation”** shall have the meaning provided in Section 9.24 of the Participation Agreement.

**“Bankruptcy Code”** shall mean the United States Bankruptcy Code as set forth in Title 11 of the United States Code, as amended from time to time and any successor provision.

**“Base Term”** shall have the meaning provided in Section 2.2 of the Lease.

**“Base Term Commencement Date”** shall have the meaning provided in Section 2.2 of the Lease.

**“Basic Rent”** shall mean for each Payment Period, an amount equal to the Yield payable on the last day of such Period.

**“Benchmark”** shall mean, initially, the Term SOFR Rate; provided that if a Benchmark Transition Event has occurred with respect to the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.9(f) of the Participation Agreement.

**“Benchmark Replacement”** shall mean, with respect to any Benchmark Transition Event, the first applicable alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) Where the Benchmark is Term SOFR, the sum of: (A) Daily Simple SOFR and (B) the SOFR Adjustment for a 1-month Interest Period; and

(2) the sum of (A) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower, giving due consideration to (x) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (y) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for syndicated credit facilities denominated in U.S. Dollars at such time and (B) the related Benchmark Replacement Adjustment;

provided, that if the Benchmark Replacement as determined pursuant to clause (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of the Operative Documents; and provided further, that any Benchmark Replacement shall be administratively feasible as determined by the Administrative Agent in its sole discretion.

**“Benchmark Replacement Adjustment”** shall mean, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Lessee, giving due consideration to (A) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in U.S. Dollars at such time.

**“Benchmark Replacement Date”** shall mean a date and time determined by the Administrative Agent, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (A) the date of the public statement or publication of information referenced therein and (B) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date determined by the Administrative Agent, which date shall promptly follow the date of the public statement or publication of information referenced therein;

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Transition Event”** shall mean the occurrence of one or more of the following events, with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by an Authority having jurisdiction over the Administrative Agent, the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board, the Federal Reserve Bank of New York, the central bank for the Currency applicable to such Benchmark, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) or an Authority having jurisdiction over the Administrative Agent announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Unavailability Period”** shall mean the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes under any Operative Document in accordance with Section 2.9 of the Participation Agreement and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes under any Operative Document in accordance with Section 2.9 of the Participation Agreement.

**“Beneficial Ownership Certification”** shall mean a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”** shall mean 31 C.F.R. § 1010.230.

**“Big Lots Person”** shall mean (i) the Lessee in its capacity as the Lessee or the Purchasing Agent, (ii) the Guarantors, (iii) any other third party for which any Person identified in clause (i) or (ii) above has control or supervisory authority (by contract or otherwise), and (iv) their respective affiliates, employees, officers or agents.

**“Bill of Sale”** shall mean the Bill of Sale, dated on the Closing Date, from Seller, as grantor, to the Lessor, as grantee, with respect to any Personal Property.

**“BLI”** shall mean Big Lots, Inc., an Ohio corporation.

**“Board”** shall have the meaning provided in the Credit Agreement.

**“Break Amount”** shall have the meaning provided in Section 7.5 of the Participation Agreement.

**“Business Day”** shall mean any day other than Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by Applicable Law to be closed for business in New York, New York provided that for purposes of any direct or indirect calculation or determination of, or when used in connection with any interest rate settings, fundings, disbursements, settlements, payments, or other dealings, the term “Business Day” means any such day that is also a U.S. Government Securities Business Day.

**“California UCC”** shall have the meaning provided in the Memorandum of Lease.

**“Capital Expenditures”** means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements (or of any replacements or substitutions thereof or additions thereto) which have a useful life of more than one year and which, in accordance with GAAP, would be classified as capital expenditures.

**“Casualty”** shall mean an event of damage or casualty relating to any portion or all of the Leased Property which does not constitute an Event of Loss.

**“Change in Control”** means (i) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”)) shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC under the Exchange Act), directly or indirectly, of more than thirty-three percent (33%) of the voting Equity Interests of the Guarantor, (ii) the Guarantor ceases to own, directly or indirectly, one hundred percent (100%) of the fully diluted Equity Interests of any other Lessee Party except with respect to this clause (ii), in any transaction permitted hereunder, or (iii) a “Change in Control” (or words of similar import) shall have occurred under an Other Secured Debt Loan Agreement (if any).

**“Change in Law”** means the occurrence, after the Closing Date, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and

all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of law) and (y) all requests, rules, regulations, guidelines, interpretations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of law), in each case pursuant to Basel III, shall in each case be deemed to be a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

**“Claims”** shall mean liabilities, obligations, damages, losses, demands, penalties, fines, claims, actions, suits, judgments, settlements, charges, costs, fees, expenses and disbursements (including, without limitation, reasonable and out-of-pocket legal fees and expenses and costs of investigation) of any kind and nature whatsoever including (except where specifically noted otherwise) but not limited to the outstanding Adjusted Lease Balance or any part thereof.

**“Closing”** shall have the meaning provided in Section 2.1 of the Participation Agreement.

**“Closing Date”** shall mean March 15, 2023.

**“Code”** shall mean the Internal Revenue Code of 1986 and the rules and regulations thereunder, each as amended, supplemented or otherwise modified from time to time.

**“Collateral Agent”** shall have the meaning given in the introductory paragraph of the Participation Agreement.

**“Commitment”** shall mean (i) as to any Rent Assignee, its obligation to acquire Rent Assignment Interests from the Lessor which are to be sold by the Lessor under each Rent Assignment Agreement and to make its Rent Assignment Advance available to the Administrative Agent (for the account of the Lessor) in an aggregate amount not to exceed the Rent Assignee Commitment Amount set forth opposite such Rent Assignee’s name on Schedule I-A to the Participation Agreement, and (ii) as to the Lessor, its obligation to fund a portion of the Funding from (x) proceeds of its Lessor Retained Interest in an aggregate amount not to exceed the Lessor Retained Interest Amount set forth on Schedule I-B to the Participation Agreement, and (y) proceeds of its Lessor Investment not to exceed the Lessor Investment Commitment Amount set forth on Schedule I-B to the Participation Agreement.

**“Commitment Amount”** shall mean \$100,000,000.

**“Commitment Percentage”** shall mean as to any Participant, the percentage set forth opposite such Person’s name under the heading “Commitment Percentage” on Schedule I-A to the Participation Agreement with respect to the Rent Assignees or on Schedule I-B to the Participation Agreement with respect to the Lessor, as may be revised pursuant to Section 6.3 of the Participation Agreement, or, following any assignment of Rent Assignment Advances, Lessor Retained Interest or Lessor Investment, as applicable, the percentage obtained by dividing (x) the outstanding amount of the Rent Assignment Interests, Lessor Retained Interest and Lessor Investment, as applicable, assumed by such Participant pursuant to the Participation Agreement or the Assignment Agreement by (y) the Lease Balance.

**“Compliance Certificate”** means a certificate executed by a Financial Officer of the Guarantor in substantially the form of Exhibit C of the Participation Agreement.

**“Condemnation”** shall mean any condemnation, requisition, confiscation, seizure or other taking or sale of the use, occupancy or title to the Leased Property or the Site or any part thereof in, by or on account of any eminent domain proceeding or other action by any Authority or other Person under the power of eminent domain or otherwise or any transfer in lieu of or in anticipation thereof, which in any case (a) does not constitute an Event of Taking and (b) in any event, unlike an Event of Taking, does not result in the loss of use or possession of substantially all or a material portion of the Leased Property or the Site as reasonably determined in good faith by the Board of Directors of the Lessee, with any such determination of an Event of Taking to be made promptly after the occurrence of such event and to be evidenced by an Officer’s Certificate of the Lessee delivered promptly after the occurrence of such event to the Administrative Agent and each of the Participants. A Condemnation shall be deemed to have “occurred” on the earliest of the dates that use, occupancy or title is taken. For clarification, a Condemnation shall not constitute an Event of Taking.

**“Conforming Changes”** means, with respect to the Term SOFR Rate, Daily Simple SOFR or any Benchmark Replacement in relation thereto, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “Payment Period,” the definition of “U.S. Government Securities Business Day,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent reasonably decides may be appropriate to reflect the adoption and implementation of the Term SOFR Rate, Daily Simple SOFR or such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Term SOFR Rate or Daily Simple SOFR or the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of the Participation Agreement and the other Operative Documents).

**“Connection Income Taxes”** means Other Connection Taxes that are imposed on or measured by net income or capital (however denominated) or that are franchise Taxes or branch profits Taxes.

**“Consolidated Basis”** shall mean the consolidation of the Guarantor and its Restricted Subsidiaries in accordance with GAAP.

**“Consolidated EBITDA”** shall mean, for any period of determination, without duplication, consolidated net income of the Guarantor on a Consolidated Basis, plus (i) the following (to the extent deducted from such calculation of consolidated net income): (a) depreciation, (b) amortization, (c) non-cash expenses related to stock based compensation, (d) other non-cash charges, non-cash expenses, or non-cash losses to net income (provided, however that cash payments made in such period or in any future period in respect of such non-cash charges, expenses

or losses shall be subtracted from consolidated net income in calculating Consolidated EBITDA), (e) interest expense, (f) income tax expense, and (g) restructuring charges or expenses (including integration costs, restructuring costs and severance costs related to acquisitions and to closure or consolidation of plants, facilities or locations and any expense related to any reconstruction, recommissioning or reconfiguration of fixed assets for alternate use) incurred prior to the date hereof not to exceed \$50,000,000.00 in the aggregate, minus (ii) non-cash credits or non-cash gains (to the extent included in such calculation of consolidated net income), in each case determined and consolidated for the Guarantor and its Restricted Subsidiaries in accordance with GAAP; provided that the foregoing shall exclude the income (or deficit) of any Person (other than a Restricted Subsidiary) in which the Guarantor or any of its Restricted Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Guarantor or such Restricted Subsidiary in the form of dividends or similar distributions.

**“Contingent Obligations”** shall mean, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (**“primary obligations”**) of any other Person (the **“primary obligor”**) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent:

- (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,
- (2) to advance or supply funds:
  - (a) for the purchase or payment of any such primary obligation; or
  - (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
- (3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

**“Control”** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

**“Corresponding Tenor”** with respect to any Available Tenor shall mean, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

**“Covenant Compliance Event”** has the meaning given to such term in the Credit Agreement.

**“Covered Entity”** means any of the following:



- (1) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b);
- (2) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §47.3(b); or
- (3) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §382.2(b).

“**Credit Agreement**” shall mean that certain Credit Agreement, dated as of September 21, 2022, among the Guarantor, certain Affiliates thereof, PNC Bank, National Association, as the Administrative Agent (in such capacity, the “**Credit Agreement Administrative Agent**”), and certain financial institutions in their respective capacities as Lenders, Agents, Arrangers and Bookrunners thereunder.

“**Credit Agreement Amendment**” shall mean an amendment of the Credit Agreement or waiver with respect thereto (to the extent such amendment or waiver requires a vote of the Credit Agreement Lenders), with regard to (a) any of the covenants, representations and warranties or any materiality levels in respect of any Event of Default (as defined in the Credit Agreement) in the Credit Agreement which are identical to or substantially similar to the provisions of Section 4.1 or Article V of the Participation Agreement or Events of Default under any Operative Agreement and/or (b) any definitions in the Credit Agreement related to the matters described in the foregoing subsection (a).

“**Credit Agreement Lender**” shall mean the Lenders (as such term is defined in the Credit Agreement).

“**Credit Agreement Loan Documents**” shall mean the Loan Documents (as defined in the Credit Agreement).

“**Daily Simple SOFR**” shall mean, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “**Daily Simple SOFR**” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“**Deed**” shall mean the Deed dated on the Base Term Commencement Date from Seller, as grantor, to the Lessor, as grantee, pursuant to which the Lessor acquires fee simple title to the Leased Property.

“**Default**” shall mean any event, condition or failure which, with notice or lapse of time or both, would become an Event of Default.

“**Deficiency**” shall have the meaning provided in Section 22.3(a) of the Lease.

**“Disposition”** means with respect to any property, any sale, lease, sublease (as lessor or sublessor) license, sale and leaseback, assignment, conveyance, transfer, license or other disposition thereof (including by means of a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law). The terms **“Dispose”** and **“Disposed of”** shall have correlative meanings.

**“Disqualified Stock”** means any Equity Interests which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale), or is redeemable at the option of the holder thereof, in whole or in part (other than as a result of a change of control or asset sale), in each case at any time on or prior to the date that is 91 days after the Maturity Date (as defined in the Credit Agreement), or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) Indebtedness or (ii) any Equity Interests referred to in (a) above, in each case at any time prior to the date that is 91 days after the Maturity Date (as defined in the Credit Agreement); provided, however, that only the portion of such Equity Interests which so matures or is mandatorily redeemable, is so redeemable at the option of the holder or is so convertible or exchangeable thereof prior to such date shall be deemed to be Disqualified Stock; provided, further, however, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the Guarantor or their Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Stock solely because it may be required to be repurchased by such Person in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; provided, further, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Equity Interests that are not Disqualified Stock shall not be deemed to be Disqualified Stock.

**“Dollars”** or **“\$”** shall mean, unless otherwise qualified, dollars in lawful currency of the United States.

**“Early Termination Option”** shall have the meaning provided in Section 20.1 of the Lease.

**“EEA Financial Institution”** shall have the meaning provided in Section 9.24 of the Participation Agreement.

**“EEA Member Country”** shall have the meaning provided in Section 9.24 of the Participation Agreement.

**“EEA Resolution Authority”** shall have the meaning provided in Section 9.24 of the Participation Agreement.

**“Eligible Assignee”** shall mean (A) an entity that is either (i) a commercial bank organized under the laws of the United States, or any State thereof or the District of Columbia, and having a capital and surplus in excess of \$100,000,000; (ii) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development or has concluded special lending arrangements with the International Monetary Fund

associated with its General Arrangements to Borrow, or a political subdivision of any such country, and having a tangible net worth in excess of \$100,000,000; (iii) the central bank of any country which is a member of the Organization for Economic Cooperation and Development; or (iv) a finance company, insurance company or other financial institution (whether a corporation, partnership or other entity, but excluding any savings and loan association) which is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business, and having a tangible net worth in excess of \$100,000,000, (B) each of the Participants on the Closing Date, and (C) each other Person reasonably approved by the Lessee as an Eligible Assignee; provided that in no instance may an Eligible Assignee be a Sanctioned Person.

**“Employee Benefit Plan”** shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA which is subject to Title I of ERISA or a “plan” within the meaning of Section 4975(e)(I) of the Code.

**“Environment”** means any surface water, groundwater, drinking water supply, land surface or subsurface strata or ambient air.

**“Environmental Claim”** shall mean any accusation, allegation, notice of violation, Claim, demand, abatement order or other order (conditional or otherwise), or other mandatory communication by any Authority or any Person for any damage, including personal injury (including sickness, disease or death), tangible or intangible property damage, contribution, indemnity, any obligation or responsibility for damages, costs of environmental investigations or remediation, fines, or penalties, indirect or consequential damage, damage to the environment, violation of pollution standards, nuisance, pollution, contamination or other adverse effects on the environment, or for fines, penalties or restrictions, in each case resulting from or based upon (A) the existence of a Release (whether sudden or non-sudden or accidental or non-accidental), or exposure to, any Hazardous Material in, into or onto the environment at, in, by, from or related to the Leased Property or any part thereof and relating to, arising from or as a result of the Lessee’s or any of its Affiliate’s or any other sublessee’s use or operation thereof, or any architect, engineer, contractor or subcontractors in the construction, repair, renovation or alteration of the Improvements while any such entity is in possession or control of the Leased Property (each such Person, a **“Covered Contractor”**) use or operation thereof, (B) the generation, use, handling, transportation, storage, treatment or disposal of any such Hazardous Material in connection with the operation of the Leased Property or any part thereof and relating to, arising from or as a result of the Lessee’s or any of its Affiliate’s or any other sublessee’s or Covered Contractor’s use or operation thereof, or (C) the violation, or alleged violation of any Environmental Laws, any Environmental Permits, any contract, agreement or other consensual arrangement pursuant to which liability is assumed by or imposed upon any Lessee Party of any Restricted Subsidiary, or other Governmental Action in connection with the Leased Property or any part thereof or any contiguous, proximate or neighboring property irrespective of whether or not such property is owned or leased by the Lessee or the Lessor, and arising from, relating to or as a result of the Lessee’s or any of their respective Affiliate’s or any other sublessee’s or Covered Contractor’s use or operation of the Leased Property.

**“Environmental Expert”** shall mean AEI Consultants, or such other environmental services firm reasonably satisfactory to the Participants.

**“Environmental Laws”** shall mean any and all laws, rules, regulations, codes, ordinances, and all binding orders, decrees, judgments, injunctions, notices or agreements passed, adopted, issued, promulgated or entered into by any Authority, relating to protection of the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters to the extent related to exposure to Hazardous Materials released into the Environment, including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous substances or wastes or the clean up or other remediation thereof.

**“Environmental Liability”** shall have the meaning provided in the Credit Agreement.

**“Environmental Permits”** shall mean all permits, licenses, authorizations, registrations, certificates and approvals of Authorities required by Environmental Laws relating to the Leased Property or the Overall Transaction.

**“Environmental Violation”** shall mean an activity, occurrence or condition that violates or results in non-compliance with or liability under or arising as a result of Environmental Laws or Environmental Permits.

**“Equipment”** shall mean personal property of every kind and nature whatsoever purchased or otherwise paid for with the Funding or otherwise acquired by or on behalf of the Lessor and necessary for the legal use and operation of the Improvements or the Site including but without limiting the generality of the foregoing, all electrical and mechanical equipment, plumbing, ventilation, furnaces, air conditioning and air-cooling apparatus, escalators, generators, communications systems (including satellite dishes and antennae), sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, fittings and fixtures of every kind and description, and any substitutions or replacements thereof.

**“Equity Interests”** means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing (but excluding any debt security that is convertible into, or exchangeable for, Equity Interests).

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) that, together with a Lessee Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

**“ERISA Event”** means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant

to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Lessee Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination or partial termination of any Plan; (e) the receipt by any Lessee Party or any ERISA Affiliate from the PBGC of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by any Lessee Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of any Lessee Party or any ERISA Affiliate from any Multiemployer Plan; (g) the receipt by any Lessee Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Lessee Party or any ERISA Affiliate of any notice, concerning the imposition upon any Lessee Party or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent (within the meaning of Title IV of ERISA), in “at-risk” status (as defined in Section 303(i) of ERISA or Section 430(i) of the Code) or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (h) the failure to timely make a contribution required to be made with respect to any Plan or Multiemployer Plan; or (i) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Plan.

**“Erroneous Payment”** shall have the meaning provided in Section 8.13 of the Participation Agreement.

**“Erroneous Payment Deficiency Assignment”** shall have the meaning provided in Section 8.13 of the Participation Agreement.

**“Erroneous Payment Impacted Interest”** shall have the meaning provided in Section 8.13 of the Participation Agreement.

**“Erroneous Payment Return Deficiency”** shall have the meaning provided in Section 8.13 of the Participation Agreement.

**“Erroneous Payment Subrogation Rights”** shall have the meaning provided in Section 8.13 of the Participation Agreement.

**“Escrow Agent”** shall mean First American Title Insurance Company.

**“Escrow Agreement”** shall mean that certain Closing Escrow Instructions, dated as of March 15, 2023, to the Escrow Agent from Dechert LLP and Vorys, Sater, Seymour and Pease LLP.

**“EU Bail-In Legislation Schedule”** shall have the meaning provided in Section 9.24 of the Participation Agreement.

**“Event of Default”** shall have the meaning provided in Article XVII of the Lease.

**“Event of Loss”** shall mean: (w) the actual or constructive total or substantial loss of the Improvements or the Site or damage to the Improvements or the Site to an extent rendering repair impractical or uneconomical, in any case as reasonably determined in good faith by the Board of Directors of the Lessee, such determination to be made promptly after the occurrence of such event

and to be evidenced by an Officer's Certificate of the Lessee delivered to the Administrative Agent, (x) damage to the Improvements which results in an insurance settlement on the basis of a total loss or constructive total loss (including title insurance proceeds) in respect of a total loss of the Improvements or (y) an Environmental Violation with respect to which the Lessee, the Agents or any Participant could reasonably be expected to incur liability in excess of \$1,000,000. For clarification, no Casualty, Condemnation or Event of Taking shall constitute an Event of Loss.

**"Event of Taking"** shall mean: any condemnation, requisition, confiscation, seizure or other taking or sale of the use, occupancy or title to the Leased Property or the Site or any part thereof in, by or on account of any eminent domain proceeding or other action by any Authority or other Person under the power of eminent domain or otherwise or any transfer in lieu thereof (other than a requisition of temporary use) or requisition of use for a period scheduled to last beyond the Maturity Date or which in fact is continuing on the Maturity Date (even if not scheduled to last beyond the Maturity Date), in any case, resulting in the loss of use or possession of substantially all or a material portion of the Leased Property or the Site as reasonably determined in good faith by the Board of Directors of the Lessee, such determination to be made promptly after the occurrence of such event and to be evidenced by an Officer's Certificate of the Lessee delivered promptly after the occurrence of such event to the Administrative Agent. For clarification, no Casualty, Condemnation or Event of Loss shall constitute an Event of Taking.

**"Excepted Rights"** means:

- (a) rights to accept or reject any bid or bids for the Leased Property and exercise all other rights under Article XXII of the Lease in connection with a Return, which rights are expressly reserved to the Lessor;
- (b) the Lessor's rights to instruct the Agents pursuant to Article VIII of the Participation Agreement,
- (c) the right, independently, (i) to receive from the Lessee all notices, certificates, reports, filings, opinions of counsel, copies of documents and information which the Lessee is permitted or required to give or furnish to the Lessor pursuant to the Lease or any other Operative Document, (ii) to cause the Lessee to take any action and execute and deliver such documents and assurances as the Lessor may from time to time reasonably request pursuant to Section 23.11 of the Lease and (iii) to inspect the Leased Property and any related books and records of the Lessee pursuant to and in accordance with Article XV of the Lease;
- (d) the right to approve as satisfactory any accountants, engineers, or counsel to render services for or issue opinions to the Lessor pursuant to the express provisions of the Operative Documents and to make any determination of Fair Market Value pursuant to Section 7.7 of the Participation Agreement;
- (e) the right, to be exercised jointly with Rent Assignees, to exercise all rights, powers, and privileges of Lessor under the Lease including the right to give all authorizations, approvals, or consents, or the right to make elections or approve something as satisfactory to it and seek specific performance of any covenants of the Lessee under the Operative Documents relating to the protection, insurance, maintenance, possession and use of the Leased Property; and

(f) the right, to the exclusion of Rent Assignees, (i) to receive Excluded Amounts and to proceed by appropriate court action to enforce the same and (ii) to maintain separate insurance with respect to the Leased Property to the extent permitted in Article XI of the Lease.

**“Excluded Amounts”** shall mean:

- (a) indemnity payments, tax or general, Break Amounts, if any, and expenses to which the Agents or any Participant (or any of their respective Affiliates, successors, assigns, agents, officers, directors or employees) is entitled pursuant to the Operative Documents;
- (b) any amounts payable under any Operative Documents to reimburse the Agents or any Participant (including the reasonable expenses incurred in connection with any such payment) for performing or complying with any of the obligations of the Lessee under and as permitted by any Operative Document;
- (c) any insurance proceeds (or payments with respect to risks self-insured or policy deductibles) under liability policies payable to the Agents (in their respective individual capacities or as agents) or any Participant (or any of their respective successors, assigns, agents, officers, directors or employees);
- (d) any insurance proceeds under policies maintained by the Agents or any Participant and not required to be maintained by the Lessee under the Lease;
- (e) any amount payable to the Agents or the Participants pursuant to Section 2.1(k) of the Participation Agreement and any Lessor’s Gain payable to the Lessor under the Lease;
- (f) any payments of yield on payments referred to in clauses (a) through (e) above; and
- (g) all rights to receive and enforce payment of the foregoing.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income or capital (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Participant, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Participant, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Participant with respect to a Rent Assignment Interest, Lessor Retained Interest or Lessor Investment, as applicable, pursuant to a law in effect on the date on which (i) such Participant acquires such interest in the Rent Assignment Interest, Lessor Retained Interest or Lessor Investment, as applicable, or (ii) such Participant changes its lending office, except in each case to the extent that, pursuant to Section 7.3 of the Participation Agreement, amounts with respect to such Taxes were payable either to such Participant’s assignor immediately before such Participant became a party hereto or to such Participant immediately before it changed its lending office; (c) Taxes attributable to such Recipient’s failure to comply

with Section 7.3 of the Participation Agreement; and (d) any U.S. Federal withholding Taxes imposed under FATCA.

**“Extended Remarketing Period”** shall have the meaning provided in Section 22.4(b) of the Lease.

**“Extension Effective Date”** has the meaning set forth in Section 2.16(a) of the Participation Agreement.

**“Extension Option”** shall have the meaning set forth in Section 2.16(a) of the Participation Agreement.

**“Extension Option Request”** shall have the meaning set forth in Section 2.16(a) of the Participation Agreement.

**“Extension Option Response Date”** shall have the meaning set forth in Section 2.16(a) of the Participation Agreement.

**“Fair Market Value”** shall mean (i) with respect to the Leased Property or any portion thereof, as of the date of determination, the fair market value (which in any event shall not be less than zero), as mutually agreed to by the Lessor and the Lessee, and in the absence of such agreement, as determined by an independent appraiser chosen by the Lessor and reasonably acceptable to the Lessee, that would be obtained in an arm’s-length transaction settled in cash or comparable financial instruments between an informed and willing buyer (other than a buyer currently in possession) and an informed and willing seller, under no compulsion to buy or sell, and neither of which is related to the Lessor, the Agents or the Lessee or any of their respective Affiliates, for the purchase of the Leased Property or any portion thereof, as applicable. Such fair market value shall be determined assuming a reasonable amount of time is allowed for exposure in the open market, and the price shall represent the normal consideration for the property unaffected by any financing or sales concessions granted by anyone associated with the sale. Such fair market value shall be calculated as the value for the use of the Leased Property or any such portion, assuming, in the determination of such fair market value, that the Leased Property or any such portion is in the condition and repair required to be maintained by the terms of the Lease (unless such fair market value is being determined for purposes of the Appraisal to be delivered on or prior to the Closing Date or for evaluating the items described in Section 7.7 of the Participation Agreement, in which case this assumption shall not be made) or (ii) with respect to any other asset or property, the price which could be negotiated in an arm’s-length transaction, for cash, between a willing seller and a willing and able buyer, with neither party being compelled to buy or sell.

**“FATCA”** shall mean Sections 1471 through 1474 of the Code, any current or future regulations promulgated thereunder or official interpretations thereof, any applicable agreements entered into pursuant to Section 1471(b)(1) of the Code, any applicable intergovernmental agreements and implementing laws, regulations, rules or official guidance adopted by any non-bh U.S. jurisdiction with respect to the foregoing.

**“Fee Letter”** shall mean, individually and collectively, as the context may require, (i) that certain Fee Agreement Letter, dated as of the Closing Date, by the Lessor, the Administrative



Agent and the Collateral Agent, and accepted and agreed to by the Lessee and (ii) each fee letter entered into from time to time between the Administrative Agent, the Lessee and a Rent Assignee.

**“Fees”** shall have the meaning provided in Section 2.13 of the Participation Agreement.

**“Final Rent Payment Date”** shall have the meaning provided in Section 18.1(iii)(B)(1) of the Lease.

**“Finance Lease”** means, with respect to any Person, any lease of any real or personal property by such Person as lessee that, in conformity with GAAP, is accounted for as a finance lease on the balance sheet of such Person.

**“Finance Lease Obligations”** means, with respect to any Person and a Finance Lease, the amount of the obligation of such Person as the lessee under such Finance Lease which would, in accordance with GAAP, appear as a liability on a balance sheet of such Person.

**“Financial Officer”** means with respect to any Lessee Party, its President, Chief Executive Officer, Chief Financial Officer, Treasurer or Controller, or other duly elected or appointed officer of the Lessee Party reasonably acceptable to the Administrative Agent.

**“Fixed Charge Coverage Ratio”** means, for any period of determination with respect to the Guarantor on a Consolidated Basis, the ratio of (a) Consolidated EBITDA for such period minus the sum of (i) Unfinanced Capital Expenditures plus (ii) the portion of taxes based on income actually paid in cash and provisions for cash income taxes, to (b) Fixed Charges for such period.

**“Fixed Charges”** means, for any period of determination, the sum of (a) any scheduled amortization payments paid or payable during such period on all Indebtedness of the Guarantor and its Restricted Subsidiaries (including the principal component of all obligations in respect of all Finance Lease Obligations), plus (b) consolidated cash Interest Expense of the Guarantor and its Restricted Subsidiaries for such period.

**“Fixtures”** shall have the meaning provided in the Memorandum of Lease. **“Floor”** shall mean 0.00% per annum.

**“Force Majeure Event”** shall mean any act of God, unusually severe weather conditions (such as catastrophic storms or floods, tornadoes, hurricanes and cyclones), civil or enemy action, or any Governmental Action or inability to obtain or delay in obtaining labor or materials not arising from an act or omission of any Big Lots Person; provided, that any event, cause or condition that is within the control of any Big Lots Person shall not be a Force Majeure Event.

**“F.R.S. Board”** shall mean the Board of Governors of the Federal Reserve System or any successor thereto.

**“Funding”** shall mean a funding by the Lessor pursuant to Article II of the Participation Agreement which funding is comprised of Rent Assignment Advances made by the Rent

Assignees and an advance of the Lessor Retained Interest and the Lessor Investment made by the Lessor.

**“Funding Certificate”** shall have the meaning set forth in Section 3.1(e) of the Participation Agreement.

**“Funding Date”** shall mean the actual date on which the Funding occurs in accordance with the terms of Section 2.5 of the Participation Agreement, which shall be the Closing Date.

**“Funding Request”** shall have the meaning provided in Section 2.5 of the Participation Agreement.

**“GAAP”** shall mean accounting principles generally accepted in the U.S., consistently applied.

**“Governmental Action”** shall mean all applicable permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Authority, or required by any Applicable Laws, and shall include, without limitation, all citings, Environmental Permits, construction permits and operating permits and licenses that are required for the use, occupancy, zoning, construction and operation of the Leased Property.

**“Grossed-Up Basis”** shall have the meaning provided in Section 7.6 of the Participation Agreement.

**“Guarantee”** shall mean, of or by any Person (the “guarantor”) shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include (i) warranties or indemnities made in trade contracts, asset sale agreements, acquisition agreements, commitment letters, engagement letters and brokerage and deposit agreements in the ordinary course of business, and warranties and indemnities to lenders in any documents evidencing Indebtedness permitted pursuant to Section 5.3 of the Participation Agreement with respect to the guarantor, (ii) any indemnities made in connection with liability of a Person’s directors, officers and employees in their capacities as such as permitted by applicable law, (iii) any contingent liability arising from the endorsement of negotiable or other instruments for deposit or collection in the ordinary course of business, and (iv) any continuing liability of the Guarantor or its Subsidiaries as a lessee under a lease after such lease has been assigned or subleased by such Person.

**“Guaranteed Commitment Percentage”** shall mean, as to any Participant, the percentage obtained by dividing (x) the outstanding amount of the Rent Assignment Advances or Lessor Retained Interest, as applicable, owed to such Participant pursuant to the Participation Agreement or the Assignment Agreement by (y) the Guaranteed Lease Balance.

**“Guaranteed Lease Balance”** shall mean, as of any date of determination, an amount equal to the sum of the Lease Balance (Improvements) and the Lease Balance (Site) minus the Lessor Investment as of such date of determination.

**“Guarantors”** shall have the meaning given in the introductory paragraph of the Participation Agreement.

**“Hazardous Material”** shall mean any substance, waste or material which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous by listing characteristic or definition under any Environmental Law, including petroleum, crude oil or any fraction thereof, petroleum derivatives, by-products and other hydrocarbons and is or becomes regulated by any Environmental Law, including any agency, department, commission, board or instrumentality of the United States, the State in which the Leased Property is located or any political subdivision thereof and also including, but not limited to, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, ozone depleting substances, radon gas or a pesticide, herbicide or other substance regulated under any Environmental Law.

**“Immaterial Subsidiary”** shall have the meaning provided in the Credit Agreement.

**“Improvements”** shall mean the improvements acquired by the Lessor pursuant to the Bill of Sale and Deed and subjected to the Lease as more particularly described on the Lease Supplement including all buildings, structures, fixtures, Equipment, Personal Property and other improvements of every kind so acquired on the Base Term Commencement Date, together with all Alterations (except any Alteration which remains the property of the Lessee in accordance with the Operative Documents).

**“Incur”** means issue, assume, guarantee, incur or otherwise be or become liable for; provided, however, that any Indebtedness or Equity Interests of a Person existing at the time such person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary. **“Incurred”** and **“Incurrence”** shall have like meanings.

**“Indebtedness”** shall mean, with respect to any Person:

(1) the principal amount of any indebtedness of such Person, whether or not contingent, (a) in respect of borrowed money, (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit, bankers’ acceptances, or similar facilities (or, without duplication, reimbursement agreements in respect thereof), (c) representing the deferred and unpaid purchase price of any property (except any such balance that constitutes (i) a trade payable or similar obligation to a trade creditor Incurred in the ordinary course of business, (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP, (iii) obligations accounted for as an operating lease in conformity with

GAAP, and (iv) liabilities accrued in the ordinary course of business), (d) in respect of Finance Lease Obligations; and (e) all monetary obligations that qualify as indebtedness on the balance sheet of such Person in accordance with GAAP under any receivables factoring, receivable sales or similar transactions and all attributable indebtedness calculated in accordance with GAAP under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing;

(2) to the extent not otherwise included, any obligation of such Person to be liable for, or to pay, as obligor, guarantor or otherwise, the obligations referred to in clause (1) of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(3) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); provided, however, that the amount of such Indebtedness will be the lesser of: (a) the Fair Market Value (as determined in good faith by the Guarantor) of such asset at such date of determination, and (b) the amount of such Indebtedness of such other Person;

provided, however, that, notwithstanding the foregoing, Indebtedness shall be deemed not to include (1) Contingent Obligations incurred in the ordinary course of business and not in respect of borrowed money; (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) trade and other ordinary course payables and accrued expenses arising in the ordinary course of business; (5) in the case of the Guarantor and the Subsidiaries, (x) all intercompany Indebtedness solely among the Guarantor and the Restricted Subsidiaries made in the ordinary course of business and (y) intercompany liabilities in connection with cash management, tax and accounting operations of the Guarantor and the Subsidiaries; and (6) any Swap Agreement Obligations; provided that such agreements are entered into for bona fide hedging purposes of the Guarantor and the Subsidiaries (as determined in good faith by the board of directors or senior management of the Guarantor, whether or not accounted for as a hedge in accordance with GAAP) and, in the case of any foreign exchange contract, currency swap agreement, futures contract, option contract or other similar agreement, such agreements are related to business transactions of the Guarantor and the Subsidiaries entered into in the ordinary course of business and, in the case of any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement, such agreements substantially correspond in terms of notional amount, duration and interest rates, as applicable, to Indebtedness of the Guarantor or the Subsidiaries Incurred without violation of the Participation Agreement.

Notwithstanding anything in the Participation Agreement to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Financial Accounting Standards Board Accounting Standards Codification 815 (or any other Accounting Standards Codification or Financial Accounting Standards having a similar result or effect or any successor thereto) to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under the Participation Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would

have constituted Indebtedness under the Participation Agreement but for the application of this sentence shall not be deemed an Incurrence of Indebtedness under the Participation Agreement.

**“Indemnified Taxes”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of any Lessee Party under any Operative Document and (b) to the extent not otherwise described in subsection (a), Other Taxes.

**“Indemnatee”** shall mean the Lessor, the Rent Assignees, the Agents, any co-agent appointed in accordance with the terms of the Participation Agreement and their respective Affiliates, successors, permitted assigns, permitted transferees, employees, officers, directors, shareholders, partners, representatives, trustees and agents; provided, however, that in no event shall the Lessee or any its Affiliates be an indemnatee.

**“Information”** shall have the meaning provided in Section 9.18 of the Participation Agreement.

**“Insolvency Laws”** means each of the Bankruptcy Code, as amended, and any other applicable state, provincial, territorial or federal bankruptcy laws, each as now and hereafter in effect, any successors to such statutes and any other applicable insolvency or other similar law of any jurisdiction, including any corporate law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it and including any rules and regulations pursuant thereto.

**“Inspecting Parties”** shall have the meaning provided in Article XV of the Lease.

**“Insurance Requirements”** shall mean the terms of the insurance required to be maintained in accordance with the Lease.

**“Intellectual Property”** means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, customer lists, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

**“Interest Expense”** means, with respect to any Person for any fiscal period, interest expense of such Person determined in accordance with GAAP for the relevant period ended on such date.

**“Investments”** means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions, repayments of intercompany Indebtedness pursuant to clauses (a) and (b) of the definition of “Junior Indebtedness”, purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of such Person in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of Section 5.3 of the Participation Agreement:

(1) “Investments” shall include the portion (proportionate to the Guarantor’s direct or indirect equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by the Guarantor) of the net assets of such Subsidiary at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided, however, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Guarantor shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary equal to an amount (if positive) equal to:

(a) its “Investment” in such Subsidiary at the time of such redesignation less

(b) the portion (proportionate to its direct or indirect equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by the Guarantor) of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value (as determined in good faith by the Guarantor) at the time of such transfer.

**“Joint Venture”** means a corporation, partnership, limited liability company or other entity (excluding any Subsidiary) in which any Person other than the Lessee or any Restricted Subsidiary holds, directly or indirectly, an equity interest.

**“Joint Venture Equity Interests”** has the meaning given to such term in Section 4.1(b) of the Participation Agreement.

**“Junior Indebtedness”** means (a) unsecured Indebtedness for borrowed money (other than intercompany Indebtedness owing to the Guarantor or to a Subsidiary if an Investment in such Subsidiary by the obligor of such Indebtedness in such amount would be permitted at such time; provided that any repayment of such Indebtedness will be deemed an Investment in such Subsidiary in such amount), (b) any Indebtedness which is by its terms subordinated in right of payment or lien priority to the Obligations (other than (x) intercompany Indebtedness owing to the Guarantor or to a Subsidiary if an Investment in such Subsidiary by the obligor of such Indebtedness in such amount would be permitted at such time; provided that any repayment of such Indebtedness will be deemed an Investment in such Subsidiary in such amount, and (y) Other Secured Debt Obligations), and (c) Indebtedness arising from agreements of a Lessee Party or any Subsidiary providing for the adjustment of acquisition or purchase price or similar obligations

(including earn-outs), in each case, Incurred or assumed in connection with any Investments or any acquisition or disposition of any business, assets or a Subsidiary.

**“Land”** shall mean approximately 106.50-acres of property located at 18880 Navajo Road, in Apple Valley, California, together with all rights, privileges, easements and appurtenances thereto, as more particularly described in the Lease Supplement.

**“Lease”** shall mean the lease of the Leased Property as set forth in the Lease Supplement entered into by the Lessor and the Lessee which Lease Supplement incorporates by reference the Lease Agreement.

**“Lease Agreement”** shall mean that certain Lease Agreement dated as of the Closing Date between the Lessor and the Lessee.

**“Lease Balance”** shall mean, as of any date of determination, an amount equal to the sum of the Lease Balance (Improvements) and the Lease Balance (Site) as of such date of determination.

**“Lease Balance (Improvements)”** shall mean, as of any date of determination, an amount equal to the sum of the outstanding principal amount of the Rent Assignment Advances of all of the Rent Assignees plus the Lessor Retained Interest plus the Lessor Investment of the Lessor funded with respect to the Improvements on the Site as such original amount is set forth on the Lease Supplement related thereto.

**“Lease Balance (Site)”** shall mean, as of any date of determination, an amount equal to the sum of the outstanding principal amount of the Rent Assignment Advances of all of the Rent Assignees plus the Lessor Retained Interest plus the Lessor Investment of the Lessor funded with respect to the Site, as such original amount is set forth on the Lease Supplement related thereto.

**“Lease Expiration Date”** shall mean the last day of the Lease Term for the Leased Property as set forth in the Lease Supplement, subject to any earlier date on which the Lease is terminated including pursuant to Article XIII, XVIII, XX, XXI or XXII of the Lease.

**“Lease Extension”** shall have the meaning provided in Section 2.16(a) of the Participation Agreement.

**“Lease Extension Term”** shall have the meaning provided in Section 2.16(a) of the Participation Agreement.

**“Lease Guaranty”** shall mean that certain Guaranty, dated as of the Closing Date, from the Guarantor to the Beneficiaries (as defined therein), made in connection with the Overall Transaction.

**“Lease Supplement”** shall mean each supplement to the Lease Agreement in the form attached to the Lease Agreement as Exhibit A thereto, delivered on the Base Term Commencement Date pursuant to Section 3.1 of the Participation Agreement.

**“Lease Term”** shall have the meaning provided in Section 2.2 of the Lease.

**“Leased Property”** shall mean the Improvements (excluding Personal Property other than Personal Property which is Equipment or which has been funded by the Funding) and the fee interest in the Site acquired by the Lessor and subjected to the Lease pursuant to the Lease Supplement.

**“Lessee”** shall have the meaning given in the introductory paragraph of the Participation Agreement.

**“Lessee Collateral”** shall mean the property of the Lessee, including without limitation, the Lessee Letter of Credit, with respect to which a Lien is purported to be granted pursuant to the Lease and the Memorandum of Lease in favor of the Lessor.

**“Lessee Letter of Credit”** shall mean any letter of credit delivered by the Lessee to the Collateral Agent which is reasonably acceptable in form and substance to the Administrative Agent and the Participants and issued by a bank with a credit rating of equal to or higher than A3 from Moody’s and A- from S&P.

**“Lessee Parties”** means, collectively, the Lessee and the Guarantor and their permitted successors and assigns, and the term “Lessee Party” shall mean any one of them or all of them individually, as the context may require.

**“Lessor”** shall have the meaning given in the introductory paragraph of the Participation Agreement.

**“Lessor Confirmation Letter”** shall mean that certain letter, dated March 15, from the Lessor to the Lessee with respect to ASC 810.

**“Lessor’s Gain”** shall mean, as of any date of determination, the amount equal to the periodic gain on the Lessor Investment during the Lease Term as of such date as pro-rated for any period between Payment Dates, as set forth in a schedule to the Lease Supplement.

**“Lessor Investment”** shall mean, as of any date of determination, the aggregate amount funded by the Lessor pursuant to Article II of the Participation Agreement, as set forth in the Lease Supplement, exclusive of any amount so funded with the proceeds from the sale of Rent Assignment Interests or with the Lessor Retained Interest, and less any distributions received by the Lessor with respect thereto (other than distributions of Lessor’s Gain or Break Amount, if any), as set forth in the Lease Supplement.

**“Lessor Liens”** shall mean Liens on or against the Leased Property, the Site, the Lease or any payment of Rent (a) which result from any act of, or any Claim against, either of the Agents and any Participant, in any case, unrelated to the transactions contemplated by the Operative Documents, (b) which result from any Tax owed by the Lessor (in its individual capacity), the Agents or any Participant, except any Tax for which such Person is entitled to indemnification by Lessee under the Operative Documents, or (c) which result from any act or omission of the Lessor that is in breach of such Person’s covenants or agreements under the Operative Documents.

**“Lessor Retained Interest”** shall mean the right of Lessor to receive payment of that portion of Rent and other amounts under the Lease and other Operative Documents which has not



been assigned to any Rent Assignee as Rent Assignment Interests; provided that, the Lessor Retained Interest (a) shall not include the Lessor Investment, and (b) is limited to Lessor's Guaranteed Commitment Percentage (or Lessor Retained Interest Percentage, as applicable) of each such payment and amount. The aggregate Lessor Retained Interest is the sum of the Lessor Retained Interest.

**"Lessor Retained Interest Percentage"** shall mean, as of any time, the percentage set forth opposite the Lessor's name under the heading "Commitment Percentage" with respect to the Lessor Retained Interest Commitment set forth on Schedule I-B to the Participation Agreement.

**"Lessor's Secured Obligation"** shall have the meaning provided in the Memorandum of Lease.

**"Lien"** shall mean any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of the property, whether such interest is based on the common law, statute or contract, and including but not limited to the security interest lien arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term **"Lien"** shall include reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances (including, with respect to stock, stockholder agreements, voting trust agreements, buy-back agreements and all similar arrangements) affecting property.

**"LTV Ratio"** shall mean the ratio of (a) the Net Adjusted Lease Balance to (b) the fair market value of the Leased Property as reflected in the Appraisal.

**"Material Adverse Effect"** shall mean any set of circumstances or events which (a) is material and adverse to the business, properties, assets or financial condition of the Lessee Parties and their Subsidiaries, taken as a whole, (b) impairs materially the rights and remedies of the Administrative Agent, the Collateral Agent or any Participant under any Operative Document, or the ability of the Lessee Parties, taken as a whole, to duly and punctually pay or perform any of the Obligations, (c) has a material adverse effect upon the legality, validity, binding effect or enforceability against any Lessee Party of any Operative Document to which it is a party, (d) has a material adverse effect upon the Lessee Collateral, or (e) has a material adverse effect upon the Lessor's or the Collateral Agent's ABL Liens (on behalf of itself and other Secured Parties) on the Lessee Collateral or the priority of such ABL Liens.

**"Material Agreement"** means any agreement to which any Lessee Party or any Restricted Subsidiary is a party that, if terminated or if breached by any Lessee Party or any Restricted Subsidiary, would be reasonably expected to have a Material Adverse Effect.

**"Material Default"** shall mean any event, condition or failure which, with notice or lapse of time or both, would become an Event of Default of the type described in clause (a), (b), (c) or (i) of Article XVII of the Lease.

**"Material Environmental Violation"** shall have the meaning provided in Section 13.9 of the Lease.

**“Maturity Date”** shall mean the date that is the fifth anniversary of the Base Term Commencement Date.

**“Memorandum of Lease”** shall mean the Memorandum of Lease, Fee and Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the Closing Date by and between the Lessee and the Lessor.

**“Monthly Date”** shall mean the same day of the calendar month as the Funding Date (or the next succeeding Business Day if such day is not a Business Day unless such next succeeding Business Day falls in the next calendar month in which case Monthly Date shall mean the prior Business Day if such day is not a Business Day) and, to the extent that there is no such corresponding day in any such month, Monthly Date shall mean the last Business Day of such month.

**“Mortgaged Property”** shall have the meaning provided in the Memorandum of Lease.

**“MUFG”** shall mean MUFG Bank, Ltd.

**“MUFG Prime Rate”** shall mean the rate of interest publicly announced by MUFG Bank, Ltd., from time to time as its prime rate.

**“Multiemployer Plan”** means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

**“Net Adjusted Lease Balance”** shall mean the Adjusted Lease Balance minus the amount of any Lessee Letter of Credit.

**“Next Date”** shall have the meaning provided in Section 13.1(a) of the Lease.

**“Non-Consenting Participant”** shall mean a Participant that does not consent to a Lease Extension Request, is deemed not to consent to a Lease Extension Request, or fails to timely respond or notify the Lessor, Agents and Lessee that it consents or does not consent to an Extension Option Request, as determined pursuant to Section 2.16 of the Participation Agreement.

**“Non-Consenting Replacement Price”** shall have the meaning provided in Section 2.16(b) of the Participation Agreement.

**“Non-Severable”** shall mean regarding fixtures, Alterations, additions and improvements and substitutions and replacements thereof relating to the Improvements and Personal Property, those which (i) cannot be readily removed from the Improvements without causing damage to the Improvements or the Site which cannot be readily repaired, or (ii) are required for the Leased Property to comply with Applicable Laws and Insurance Requirements.

**“Obligations”** shall mean, in each case, whether now in existence or hereafter arising: all payment and performance obligations of the Lessee Parties under the Operative Documents including, without limitation, (i) the Lessee Parties’ obligation to pay Deficiency payments, the Recourse Deficiency Amount, (ii) the Lessee Parties’ obligation to pay the Purchase Amount as the purchase price for the Leased Property, (iii) the Lessee Parties’ obligation to pay any damages

incurred by the Administrative Agent or any Participant or other amounts due under the Operative Documents from time to time, including, without limitation, following an Event of Default including any rejection by the Lessee of the Lease or any other Operative Document in any bankruptcy, insolvency or similar proceeding, (iv) the Lessee Parties' obligation to pay the Basic Rent (including yield accruing after the filing of any bankruptcy, insolvency or similar petition), (v) the Lessee Parties' obligation to pay any and all other amounts of Rent, and (vi) the Lessee Parties' obligation to pay or perform, as applicable, all other fees, expenses and commissions (including attorney's fees and expenses), charges, costs, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Lessee Parties to the Agents, any Participant or any other Person, of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note, instrument, agreement or any other document, in each case under or in respect of the Operative Documents.

“**OFAC**” shall mean the Office of the Foreign Assets Control of the U.S. Treasury Department.

“**Officer's Certificate**” of a Person shall mean a certificate signed by the Chairman of the Board of Directors and/or the President and/or any Executive Vice President and/or any Senior Vice President and/or any other Vice President, Managing Director, Principal and/or other authorized officer(s) of such Person, provided, that with respect to the Lessee, whomever signs the certificate is authorized to represent such Person.

“**Operative Documents**” shall mean, as the context requires:

- (1) the Participation Agreement
- (2) the Lease;
- (3) the Lease Supplement;
- (4) the Memorandum of Lease;
- (5) the Bill of Sale;
- (6) the Deed;
- (7) each Rent Assignment Agreement;
- (8) the Assignment of Lease;
- (9) the Escrow Agreement;
- (10) the Fee Letter; and
- (11) the Lease Guaranty.

**“Other Connection Taxes”** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced, any Operative Document, or sold or assigned an interest in any Rent Assignment Interest, Lessor Retained Interest, Lessor Investment or any Operative Document).

**“Other Secured Debt”** has the meaning given to such term in the Credit Agreement.

**“Other Secured Debt Agent”** has the meaning given to such term in the Credit Agreement.

**“Other Secured Debt Documents”** has the meaning given to such term in the Credit Agreement.

**“Other Secured Debt Loan Agreement”** has the meaning given to such term in the Credit Agreement.

**“Other Secured Debt Loans”** has the meaning given to such term in the Credit Agreement.

**“Other Secured Debt Obligations”** has the meaning given to such term in the Credit Agreement.

**“Other Taxes”** has the meaning give to such term in the Credit Agreement.

**“Overall Transaction”** shall mean all the transactions and activities referred to in or contemplated by the Operative Documents.

**“Overdue Rate”** shall mean the lesser of (a) the highest interest rate permitted by Applicable Laws and (b) an interest rate per annum equal to the Yield Rate plus 2% per annum.

**“Overnight Bank Funding Rate”** means for any day, (a) the rate comprising both overnight federal funds and overnight eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York, as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by the Federal Reserve Bank of New York (or by such other recognized electronic source (such as Bloomberg) selected by the Administrative Agent for the purpose of displaying such rate); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by the Administrative Agent at such time (which determination shall be conclusive absent manifest error); provided, that if the Overnight Bank Funding Rate would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the Lessee.

**“Participant Party”** shall mean the Participants and their respective Affiliates, successors, permitted assigns and permitted transferees.

**“Participant Register”** shall have the meaning provided in Section 6.4 of the Participation Agreement.

**“Participants”** shall mean the Lessor and the Rent Assignees, collectively.

**“Participation”** shall have the meaning provided in Section 6.4 of the Participation Agreement.

**“Participation Agreement”** shall mean the Participation Agreement dated as of the Closing Date among the Lessee, the Lessor, the Guarantors, the Rent Assignees and the Agents.

**“Participation Holder”** shall have the meaning provided in Section 6.4 of the Participation Agreement.

**“Payment Date”** shall mean initially, the Monthly Date occurring each calendar month after the Base Term Commencement Date and, thereafter, the Monthly Date in each calendar month occurring during the Base Term provided, that in each case, any Payment Date that would otherwise extend beyond the Maturity Date shall end on the Maturity Date.

**“Payment Period”** shall mean a period of one (1) month ending on a Monthly Date commencing on the Base Term Commencement Date and ending on but excluding the first Payment Date and, thereafter, commencing on the prior Payment Date and ending on but excluding the next Payment Date, provided that, with respect to Yield defined by reference to the Alternate Base Rate, a period of one (1) month commencing on the first Payment Date with respect to such Alternate Base Rate and ending on but excluding the next Payment Date and, thereafter, commencing on the prior Payment Date and ending on but excluding the next Payment Date.

**“Payment Recipient”** shall have the meaning provided in Section 8.13(a) of the Participation Agreement.

**“PBGC”** shall mean Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

**“Permitted Contest”** shall mean actions taken by a Person to contest in good faith, by appropriate proceedings initiated timely and diligently prosecuted, the legality, validity or applicability to the Leased Property or any interest in the Leased Property or to the operation, use or maintenance of the Leased Property or the Overall Transaction by, any Person of: (a) any Applicable Laws; (b) any term or condition of, or any revocation or amendment of, or other proceeding relating to, any Governmental Action; or (c) any Lien or Tax; provided that the initiation and prosecution of such contest would not: (i) in the reasonable opinion of an Indemnatee to which such proceeding relates, result in, or increase the risk of, the imposition of any criminal liability or penalty or material civil liability on any Indemnatee; (ii) be reasonably likely to adversely affect the validity, perfection or priority of the lien and security interests created by the Operative Documents or the right, title or interest of the Lessor in or to the Leased Property or the right of any Participant to receive payment of the Lease Balance or Yield or any interest therein, as applicable; (iii) be reasonably likely to adversely affect the fair market value, utility or remaining useful life of the Leased Property or any interest in the Leased Property or the continued economic operation of the Leased Property; and provided further that in any event reserves to the

extent required by GAAP are maintained against any adverse determination of such contest; or (iv) involve any Claim not fully indemnified by the Lessee which the Lessee and the Indemnatee to which such Claim relates have been unable to sever from the indemnified Claims, unless the Lessee shall have posted a bond or other security that is reasonably satisfactory to such Indemnatee to defend, protect, save and keep harmless such Indemnatee on a Grossed-Up Basis with respect to costs, expenses, fees and charges arising from such otherwise not fully indemnified Claim; and provided further that in any event reserves to the extent required by GAAP are maintained against any adverse determination of such contest.

**“Permitted Discretion”** means a determination made by the Administrative Agent in the exercise of its reasonable (from the perspective of a secured asset-based lender) credit judgment, exercised in good faith in accordance with customary business practices in the retail industry.

**“Permitted Investments”** shall have the meaning provided in the Credit Agreement.

**“Permitted Liens”** shall mean (i) with respect to the Leased Property, (a) the respective rights and interests of the parties to the Operative Documents, as provided in the Operative Documents, (b) Lessor Liens, (c) Liens for Taxes either not yet delinquent or being contested in good faith and by appropriate proceedings diligently conducted and in any event constituting a Permitted Contest, (d) Liens arising by operation of law, materialmen’s, mechanics’, workmen’s, repairmen’s, employees’, carriers’, warehousemen’s and other like Liens arising in the ordinary course of business for amounts that (I) are not more than thirty (30) days past due, (II) are being diligently contested in good faith by appropriate proceedings, so long as such proceedings constitute a Permitted Contest or (III) have been bonded for not less than the full amount in dispute (or as to which other security arrangements satisfactory to the Required Participants, in their reasonable discretion, have been made), which bonding (or arrangements) shall comply with Applicable Law, and shall have effectively stayed any execution or enforcement of such Liens, (e) Liens arising after the Base Term Commencement Date out of judgments or awards not otherwise constituting an Event of Default under clause (f) of Article XVII of the Lease or with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and either (I) have been bonded or have been reserved for to the extent required by GAAP to the reasonable satisfaction of the Lessor, or (II) the enforcement of such Lien has been stayed pending such appeal or review, (f) Liens in favor of municipalities to the extent agreed to by the Required Participants, (g) Liens on the Leased Property approved by the Required Participants, and (h) any other Liens, encumbrances and other matters disclosed in the Title Policy or (ii) otherwise, the meaning provided in the Credit Agreement.

**“Permitted Transferee”** shall have the meaning provided in Section 6.3(b) of the Participation Agreement.

**“Person”** shall mean any natural person, corporation, limited liability company, unlimited liability company, trust, joint venture, association, company, partnership, Authority or other entity.

**“Personal Property”** shall mean all of the Leased Property that does not constitute real property and in which a security interest may be created under the UCC.

**“Plan”** shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

**“Plan Asset Regulations”** means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

**“Preferred Stock”** means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution, or winding up.

**“Property”** of a Person shall mean any and all property and assets, whether real, personal, tangible, intangible, or mixed, of such Person.

**“Purchase Amount”** shall mean, as of any date of determination, the sum of (a) the Adjusted Lease Balance, plus (b) all accrued but unpaid Yield, plus (c) Break Amounts, if any, plus (d) without duplication, all unpaid Rent and all other sums then due and payable pursuant to the terms of the Operative Documents by the Lessee or the Lessor including, without limitation, all Supplemental Rent.

**“Purchase Option”** shall have the meaning provided in Section 21.1(a) of the Lease.

**“Purchasing Agent”** shall have the meaning given such term in Section 8.12 of the Participation Agreement.

**“Recipient”** means, as applicable, (a) the Administrative Agent, (b) any Participant, or any combination thereof (as the context requires).

**“Recorder’s Office”** shall mean the County Recorder’s Office for San Bernardino County, California.

**“Recourse Deficiency Amount”** shall mean the amount equal to the Recourse Deficiency Amount set forth on the Lease Supplement.

**“Refinancing Indebtedness”** has the meaning specified in Section 5.3(a)(xiv) of the Participation Agreement.

**“Refunding Capital Stock”** shall have the meaning provided in Section 5.3(b)(ii) of the Participation Agreement.

**“Release”** shall mean any depositing, burying, seeping, emptying, placing, releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of any Hazardous Material into the Environment.

**“Relevant Entity”** means (a) each Lessee Party and each Subsidiary of any Lessee Party, and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person means the direct or indirect (x)

ownership of, or power to vote, twenty-five percent (25%) or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

**“Relevant Governmental Body”** shall mean the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

**“Rent”** shall mean Basic Rent and Supplemental Rent, collectively.

**“Rent Assignee”** or **“Rent Assignees”** shall have the meaning given in the introductory paragraph of the Participation Agreement.

**“Rent Assignment Advance”** shall mean the aggregate amount funded by the Rent Assignees pursuant to Article II of the Participation Agreement and Section 1.02(b) of each Rent Assignment Agreement, net of any distributions which (a) constitute a return of the Rent Assignment Advance received by such Rent Assignee with respect thereto (other than distributions of Yield or Break Amount, if any), and (b) result in a reduction of the aggregate unpaid balance of the Rent Assignment Advances.

**“Rent Assignment Agreements”** shall mean each Rent Assignment Agreement dated as of the Base Term Commencement Date between the Lessor and a Rent Assignee and any Rent Assignment Agreement agreed to from time to time pursuant to a permitted assignment by a Rent Assignee.

**“Rent Assignment Interests”** shall have the meaning set forth in Section 2.01 of each Rent Assignment Agreement.

**“Replacement Participant”** shall have the meaning provided in Section 2.16(b) of the Participation Agreement.

**“Replacement Rate”** shall have the meaning provided in Section 2.9(b) of the Participation Agreement.

**“Reportable Compliance Event”** means that any Relevant Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations is in actual or probable violation of any Anti-Terrorism Law.

**“Representatives”** shall have the meaning provided in Section 9.18 of the Participation Agreement.

**“Required Participants”** shall mean, as of the date of determination, Participants with outstanding Rent Assignment Advances, Lessor Retained Interests and Lessor Investment (directly



or indirectly through acquisitions of Rent Assignment Advances, Lessor Retained Interests or Lessor Investment) representing at least 50.1% of the aggregate unpaid balance of the Rent Assignment Advances, Lessor Retained Interests and Lessor Investments; provided, however, that with respect to (i) any termination, amendment, supplement, waiver or modification of, or request, direction or action under, Article IX, X, XI, XII, XIII, XXI, XXII, XXIII of the Lease, or (ii) any termination, amendment, supplement, waiver or modification of Section 2.10 of the Participation Agreement or the Rent Assignment Agreement, “Required Participants” shall mean, as of any date of determination, subject to the terms of the Rent Assignment Agreement, the Required Rent Assignees and the Lessor, voting as separate classes.

“**Required Rent Assignees**” shall mean, as of the date of the determination, the Rent Assignee(s) holding outstanding Rent Assignment Advances (directly or indirectly through acquisitions of Rent Assignment Advances) representing at least 50.1% of the unpaid principal amount of all Rent Assignment Advances.

“**Responsible Officer**” shall mean, (i) with respect to any Lessee Party, the Chief Executive Officer, President, Chief Financial Officer, Treasurer or Assistant Treasurer of such Lessee Party, any other executive officer, including any Executive Vice President or Senior Vice President of such Lessee Party, any Vice President of any Restricted Subsidiary of such Lessee Party, any manager or the members (as applicable) in the case of any Lessee Party which is a limited liability company, and such other individuals, designated by written notice to the Administrative Agent from BLI, authorized to execute notices, reports and other documents on behalf of such Lessee Party required hereunder, and (ii) with respect to any other Person, the President or any Managing Director, Director, Vice President, Assistant Vice President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer of such Person. BLI may amend such list described in clause (i) above of individuals from time to time by giving written notice of such amendment to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Lessee Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Lessee Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Lessee Party in their capacity as an officer of such Lessee Party and not in any individual capacity.

“**Resolution Authority**” shall have the meaning provided in Section 9.24 of the Participation Agreement.

“**Restricted Investment**” shall mean any Investment that is not a Permitted Investment.

“**Restricted Payment**” shall have the meaning provided in Section 5.3(b) of the Participation Agreement.

“**Restricted Subsidiary**” shall have the meaning provided in the Credit Agreement.

“**Retired Capital Stock**” shall have the meaning provided in Section 5.3(b)(ii) of the Participation Agreement.

“**Return Date**” shall mean the Maturity Date.

“**Return Option**” shall have the meaning provided in Section 21.1(b) of the Lease.

**“Sale Proceeds”** shall mean the gross sale proceeds from the sale of the Leased Property pursuant to Articles XVIII or XXII of the Lease minus any transfer, deed or value added tax thereon (to the extent not paid by the assignee or transferee thereof) and minus the aggregate amount of any costs or expenses incurred by the Lessee (under Article XXII but not under Article XVIII of the Lease), the Lessor and, if so referenced under Article XXII of the Lease as entitled to reimbursement from sale proceeds, any other Person (including a buyer or potential buyer) to the extent the Lessor and the Lessee have agreed to such payment of such other Person’s costs or expenses, in each case, in connection with the actions required under Article XXII of the Lease, excluding, in the case of the Lessee, any provision of Article XXII which expressly specifies that the Lessee’s costs shall not be reimbursable out of gross sale proceeds.

**“Sanctioned Country”** means, at any time, a country, region or territory which is the subject or target of any Sanctions.

**“Sanctioned Person”** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, His Majesty’s Treasury of the United Kingdom, the European Union or any EU member state, or (b) any Person otherwise the subject of any Sanctions.

**“Sanctions”** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time (a) by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) by the United Nations Security Council, the European Union or His Majesty’s Treasury of the United Kingdom.

**“Secured Obligations”** shall have the meaning provided in the Credit Agreement.

**“Secured Parties”** shall have the meaning provided in the Credit Agreement.

**“Securities Act”** shall mean the Securities Act of 1933, as amended.

**“Seller”** shall mean Wachovia Service Corporation, a Delaware corporation.

**“Senior Representative”** means, with respect to any Indebtedness, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

**“Similar Business”** shall have the meaning provided in Section 5.3(f) of the Participation Agreement.

**“Site”** shall mean the parcel of land acquired by the Lessor pursuant to the Deed and subjected to the Lease as more particularly described on the Lease Supplement.

**“SOFR”** shall mean, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

**“SOFR Adjustment”** shall mean 0.10% (10 basis points).

**“SOFR Administrator”** shall mean the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**“SOFR Administrator’s Website”** shall mean the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

**“Solvent”** means, with respect to any Person on any date of determination, taking into account any right of reimbursement, contribution or similar right available to such Person from other Persons, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (iv) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (v) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

**“Statements”** shall have the meaning provided in Section 4.1(f) of the Participation Agreement.

**“subsidiary”** means, with respect to any Person (the **“parent”**) at any date, any corporation, limited liability company, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

**“Subsidiary”** means any direct or indirect subsidiary of the Guarantor or the Lessee, as applicable.

**“Supplemental Rent”** shall mean any and all amounts, liabilities and obligations other than Basic Rent which the Lessee assumes or agrees or is otherwise obligated to pay under the Lease or any other Operative Document (whether or not designated as Supplemental Rent) to the Lessor or any other Person, including, without limitation and without duplication and only if and when applicable, the Purchase Amount, Break Amounts, Additional Costs, Sale Proceeds, Lessor’s Gain, and payments of Deficiency or the Recourse Deficiency Amount, and indemnities and damages for breach of any covenants, representations, warranties or agreements by the Lessee contained in the Operative Documents.

“**Survey**” shall have the meaning provided in Section 2.1(h) of the Participation Agreement.

“**Swap Agreement**” means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Lessee Parties or the Restricted Subsidiaries shall be a Swap Agreement.

“**Swap Agreement Obligations**” means any and all obligations of the Lessee Parties and their Restricted Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements permitted hereunder with a Lender or an Affiliate of a Lender, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any such Swap Agreement transaction.

“**Tax**” and “**Taxes**” shall mean any and all present or future taxes (including, without limitation, income (whether net, gross or adjusted gross), gross receipts, sales, rental, use, value added, net asset, property, real estate transfer, transfer, excise and stamp taxes), levies, imposts, duties, deductions, withholdings, (including backup withholding), assessments, fees (including, without limitation, documentation, recording, license and registration fees and public dues) or other charges imposed by any Authority, including any interest, additions to tax or penalties applicable thereto.

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“**Term SOFR Reference Rate**” shall mean the forward-looking term rate based on SOFR.

“**Term SOFR Rate**” means, for any Payment Period, the interest rate per annum determined by the Administrative Agent (the resulting quotient rounded upwards, at the Administrative Agent’s discretion, to the nearest 1/100th of 1%) equal to the Term SOFR Reference Rate for a tenor comparable to such Payment Period, as such rate is published by the Term SOFR Administrator on the day (the “**Term SOFR Determination Date**”) that is two (2) Business Days prior to the first day of such Payment Period. If the Term SOFR Reference Rate for the applicable tenor has not been published or replaced with a Benchmark Replacement by 5:00 p.m. (Pittsburgh, Pennsylvania time) on the Term SOFR Determination Date, then the Term SOFR Reference Rate, for purposes of clause (A) in the preceding sentence, shall be the Term SOFR Reference Rate for such tenor on the first Business Day preceding such Term SOFR Determination Date for which such Term SOFR Reference Rate for such tenor was published in accordance herewith, so long as such first preceding Business Day is not more than three (3) Business Days prior to such Term SOFR Determination Date. If the Term SOFR Rate, determined as provided above, would be less than the SOFR Floor, then the Term SOFR Rate shall be deemed to be the SOFR Floor. The Term

SOFR Rate shall be adjusted automatically without notice to the Borrower on and as of the first day of each Payment Period.

**“Termination Agreement”** shall mean the Termination Agreement (AVDC, LLC Lease Transaction), dated as of March 15, 2023, by and among Lessee, the Guarantors, Wachovia Service Corporation, the various banks and other lending institutions which are parties thereto as lease participants and Wells Fargo Bank, National Association.

**“Test Period”** means, as of any date of determination, the most recently completed four (4) fiscal quarters of the Lessee Parties ended on or prior to such time (taken as one accounting period) for which financial statements have been delivered (or are required to have been delivered) to the Administrative Agent.

**“Title Insurance Company”** shall mean the title insurance company that has or will issue the title policies with respect to the Leased Property, which company shall be reasonably acceptable to the Lessor.

**“Title Policy”** shall have the meaning provided in Section 2.1(l) of the Participation Agreement.

**“Transaction Costs”** shall mean reasonable and properly documented out-of-pocket costs, expenses and fees incurred by the Lessee, the Agents and the Participants in connection with the consummation of the transactions contemplated by the Operative Documents, and the preparation, negotiation, syndication, execution and delivery of the Operative Documents including, without duplication, (1) the fees and expenses of Morgan, Lewis & Bockius, special counsel to Lessee and special New York counsel to the Lessee; (2) the fees and expenses of Vorys, Sater, Seymour and Pease LLP, special Ohio, Pennsylvania and Delaware counsel to the Lessee; (3) the fees and expenses of Morgan, Lewis & Bockius, special California and New York counsel to the Lessee; (4) the fees and expenses of Holland & Hart, special Nevada counsel to the Lessee, (5) the fees and expenses of Bradley, Arant, Boult, Cummings, special Alabama counsel to the Lessee, (4) the fees and expenses of Dechert LLP, special counsel to the Lessor and Rent Assignees; (5) all premiums and other fees and expenses of the Title Insurance Company with respect to its issuance of the Title Policies; (6) all fees and expenses of the Environmental Expert with respect to the Phase I environmental report and any additional work as referenced in Section 2.1(i) of the Participation Agreement, payable in accordance with the fee agreement between the Environmental Expert and the Lessor; (7) the initial and ongoing reasonable fees and expenses of the Agents and their respective counsel (which shall be limited to one primary law firm in the U.S., and one law firm in any other relevant jurisdiction, except in the case of actual or perceived conflicts of interest, in which case, such additional counsel for the affected persons); (8) all fees and expenses of the Appraiser with respect to the Appraisal payable in accordance with the fee agreement between the Appraiser and the Lessor or one of its Affiliates; (9) all taxes and search fees, recording fees and filing fees incurred in connection with lien searches and the recording, registering or filing any Operative Document, any deed, declaration, mortgage, security agreement, notice, release, discharge, termination or financing statement with any public office, registry or governmental agency; (10) all reasonable costs, expenses and fees of the surveyor engaged to survey each Site and any zoning and flood zone determination costs, expenses and fees; (11) all costs and expenses of one company engaged to advise the Participants on insurance issues arising

in connection with the negotiation of the Operative Documents; (12) all insurance premiums, including premiums related to residual value insurance procured by the Lessor for its accounting purposes; (13) all other out-of-pocket fees and expenses of the Agents and the Lessor; and (14) all other Fees.

**“UK Bail-In Legislation”** shall have the meaning provided in Section 9.24 of the Participation Agreement.

**“UK Financial Institution”** shall have the meaning provided in Section 9.24 of the Participation Agreement.

**“UK Resolution Authority”** shall have the meaning provided in Section 9.24 of the Participation Agreement.

**“Unadjusted Benchmark Replacement”** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“Unfinanced Capital Expenditures”** means for any period, Capital Expenditures of the Guarantor and its Restricted Subsidiaries made in cash during such period, except to the extent financed with the proceeds of Finance Lease Obligations or other Indebtedness (other than the Obligations incurred hereunder), common Equity Interests or Disqualified Stock, or casualty proceeds, condemnation proceeds, or other proceeds that would not be included in Consolidated EBITDA, less cash received from the sale of any fixed assets of the Guarantor and its Restricted Subsidiaries (including, without limitation, equipment) during such period; provided that the aggregate amount of Unfinanced Capital Expenditures during such period may not be less than zero.

**“Uniform Commercial Code”** and **“UCC”** shall mean the Uniform Commercial Code as in effect from time to time in the State of New York except to the extent the Uniform Commercial Code of the State in which the Site is located is applicable pursuant to the Memorandum of Lease.

**“Unrestricted Subsidiary”** shall have the meaning provided in the Credit Agreement.

**“Upfront Fee”** shall have the meaning provided in Section 2.13(b) of the Participation Agreement.

**“U.S. Government Securities Business Day”** means any day except for (a) a Saturday or Sunday or (b) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**“U.S. Person”** shall mean any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

**“USA PATRIOT Act”** shall mean the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended from time to time.

**“Weighted Average Life to Maturity”** means, when applied to any Indebtedness or Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment, by (2) the sum of all such payments.

**“Wholly Owned Subsidiary”** shall have the meaning provided in the Credit Agreement.

**“Withdrawal Liability”** means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

**“Withholding Taxes”** shall mean Taxes arising under the laws of any national, municipal or local government, political subdivision or taxing Authority of the United States, foreign or any other jurisdiction imposed or collected by way of withholding (regardless of whether such taxes may also be imposed upon or collected from the recipient of a payment), and fines, interest, penalties or other additions thereto, thereon, in lieu thereof or for non-collection or in respect thereof.

**“Write-Down and Conversion Powers”** shall have the meaning provided in Section 9.24 of the Participation Agreement.

**“Yield”** shall mean with respect to each Payment Period, the Yield Rate for such Payment Period multiplied by the difference between (a) the outstanding Lease Balance less (b) the outstanding Lessor Investment.

**“Yield Rate”** shall mean, (a) the sum of the Term SOFR Rate for such Payment Period plus the SOFR Adjustment plus the Applicable Margin or (b) at any time that the provisions of Section 2.9(e) of the Participation Agreement shall apply to the Lease Balance, the Alternate Base Rate, plus the Applicable Margin or (c) on and following a Benchmark Replacement Date, the sum of the Benchmark Replacement, plus the Applicable Margin.

**Schedule I-A**  
**Rent Assignee Commitments**

BUSINESS.29620189.12



**Schedule I-B**  
**Lessor Investment Commitment; Lessor Retained Interest Commitment**

BUSINESS.29620189.12

**Schedule II**  
**Addresses For Notice; Wire Instructions**

BUSINESS.29620189.12

**Schedule III**  
**Description of Site Owned by the Lessor**

Real property in the City of Apple Valley, County of San Bernardino, State of California, described as follows:

PARCEL 1 OF PARCEL MAP NO. 19645, AS SHOWN BY PARCEL MAP ON FILE IN BOOK 249, PAGES 38 AND 39, INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

APN: 0463-231-07, 0463-231-08, 0463-231-60, 0463-231-10, 0463-231-26, 0463- 231-27, 0463-231-28, 0463-231-30, 0463-231-42 and 0463-231-43

**Schedule 5.3(C)**  
**Contractual Restrictions and Encumbrances**

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**Form of Funding Request**

\_\_\_\_\_, 2023

To: Bankers Commercial Corporation, in its capacity as the Lessor (the “**Lessor**”)

[Each Rent Assignee]

MUFG Bank, Ltd., in its capacity as Administrative Agent (the  
“**Administrative Agent**”)

From: AVDC, LLC, as the Lessee

Re: Funding for \$ [\_\_\_\_\_] pursuant to the Participation Agreement dated as of [\_\_\_\_], 2023 (as may be amended, the “**Participation Agreement**”), among AVDC, LLC, as the Lessee (the “**Lessee**”), Big Lots, Inc., as a Guarantor, the other Guarantors party thereto, MUFG Bank, Ltd., as the Collateral Agent, together with its successors and permitted assigns (the “**Collateral Agent**”), the Administrative Agent, the Rent Assignee(s) named on Schedule I-A thereto from time to time, and the Lessor.

1. All capitalized terms used but not defined herein shall have the meanings as set forth in Annex I of the [\_\_\_\_], 2023, draft of the Participation Agreement.
2. The proposed Funding Date is [\_\_\_\_], 2023 (the “**Funding Date**”), provided that the Lessor and each Rent Assignee are hereby directed and authorized by the Lessee to make the Funding directly to the Escrow Agent on the proposed Funding Date, for application in accordance with Section 2.3(a) of the Participation Agreement, by wire transfer in accordance with the wire instructions of the Escrow Agent set forth on Schedule A hereto.
3. The Lessee hereby requests that the Funding be made in an aggregate amount of \$[\_\_\_\_\_], with each Participant advancing the following amounts:

Lessor, with respect to the Lessor Investment:	\$[_____]
 Lessor, with respect to the Lessor Retained Interest:	 \$[_____]
 [Rent Assignee], with respect to its Rent Assignment Advance:	 \$[_____].
4. \$[\_\_\_\_\_] of the Funding is to fund the consideration to be paid to the Seller under the Termination Agreement in order for the Lessor to acquire the Leased Property.
5. \$[\_\_\_\_\_] of the Funding is to fund the Fees.

6. \$[ ] of the Funding is to fund Transaction Costs other than the Fees.
7. The Lessee hereby certifies that (i) all necessary or advisable Governmental Actions, and all consents, approvals and authorizations of Persons, required in connection with the Overall Transaction, shall have been obtained or made and be in full force and effect and not be subject to any pending procedures or appeals, whether administrative, judicial or otherwise, except for any Governmental Action, consent, approval or authorization the failure to obtain which, or the appeal of or further procedures with respect to which, would not reasonably be expected to have a Material Adverse Effect, (ii) the proceeds of the Funding will be used solely for the purposes set forth above, (iii) the costs being funded with the Funding are as set forth in a schedule attached hereto in accordance with Section 3.1(e), and (iv) all conditions precedent to the Funding have been satisfied.
8. The Lessee agrees that it shall pay to the Lessor and the Rent Assignees and indemnify such parties for such amounts as may be necessary to reimburse the Lessor and the Rent Assignees for any loss or expense incurred (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by the Lessor or the Rent Assignees to make, continue or maintain any portion of its investment in any Rent Assignment Interests, Lessor Retained Interest or Lessor Investment, as applicable, on a Term SOFR Rate basis) as a result of the Funding not being made on the Funding Date due to the Lessee cancelling or rescinding this Funding Request, or not satisfying the conditions precedent to, the Funding to the Escrow Agent and the release by the Escrow Agent thereof on the Funding Date or otherwise with respect to the actions or inactions of the Administrative Agent such that a portion of the Funding to be made by a Participant is not able, in light of internal funding procedures or otherwise, to be delivered or released on the Funding Date. Participants shall promptly notify the Lessee in writing of the amount of any claim under this paragraph, the reason or reasons therefor and the additional amount required fully to compensate such Participant for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding upon the Lessee. The indemnity set forth herein shall survive the Funding Date and the execution and delivery hereof.
9. The undersigned requests that Transaction Costs to be reimbursed or paid to Lessee shall be sent by wire transfer in accordance with the wire instructions of the Lessee set forth in Schedule II to the Participation Agreement.
10. The notice provisions set forth in Section 9.3 of the Participation Agreement are hereby incorporated by reference as if fully set forth herein. Any notices delivered hereunder in accordance with such Section shall be deemed validly given to such other Person.
11. In addition, the provisions set forth in Sections 9.8, 9.10, 9.13, and 9.17 of the [ ], 2023 draft of Participation Agreement shall be incorporated herein by reference.

12. Each addressee hereof shall be entitled to rely on this Funding Request and the undersigned agree that such addressees shall have third-party beneficiary rights, all as if such addressees were signatories hereto.

[Signature page follows]

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IN WITNESS WHEREOF, the undersigned has caused this Funding Request to be duly executed and delivered by its proper and duly authorized officers as of the day and year first above written.

**AVDC, LLC,**

By:

Name:

Title:

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## Schedule A to Funding Request

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**EXHIBIT B**  
**TO PARTICIPATION AGREEMENT**

**FORM OF ASSIGNMENT AGREEMENT**

This Assignment Agreement (this “**Assignment Agreement**”) is made and entered into as of \_\_\_\_\_, \_\_\_\_\_, by and between [NAME OF ASSIGNOR] (the “**Assignor**”) and [NAME OF ASSIGNEE] (the “**Assignee**”).

**RECITALS**

A. Reference is made to the Participation Agreement, dated as of [\_\_\_], 2023, by and among AVDC, LLC, an Ohio limited liability company, as the Lessee, Bankers Commercial Corporation, as the Lessor, Big Lots, Inc., as a Guarantor, the other Guarantors party thereto, MUFG Bank, Ltd., as the Collateral Agent, MUFG Bank, Ltd. as the Administrative Agent and the Rent Assignee(s) named on Schedule I-A thereto from time to time (as the same may be amended, supplemented or otherwise modified from time to time, the “**Participation Agreement**”). Capitalized terms used herein that are defined in the Participation Agreement shall have the meanings therein defined.

B. Pursuant to the Participation Agreement and the other Operative Documents and subject to the limitations set forth therein, (i) the Rent Assignees agreed to acquire the Rent Assignment Interests from the Lessor which are to be sold by the Lessor under each Rent Assignment Agreement and (ii) the Lessor agreed to make the Lessor Investment and the Lessor Retained Interest.

C. The Assignor’s Commitment (without giving effect to the assignment effected hereby or to other assignments thereof which have not yet become effective) in respect of Rent Assignment Interests, Lessor Retained Interest and Lessor Investment is specified in Item 1 of Schedule I hereto. The outstanding principal amount of the Rent Assignment Interests corresponding to the Assignor’s Rent Assignment Interests and/or the outstanding principal amount of the Lessor Retained Interest and Lessor Investment of the Assignor (without, in both cases, giving effect to the assignment effected hereby or to other assignments thereof which have not yet become effective) are specified in Item 2 of Schedule 1 hereto.

D. The Assignor wishes to sell and assign to the Assignee, and the Assignee wishes to purchase and assume from the Assignor, (i) the portion of the Assignor’s rights and obligations under the Operative Documents and (ii) the portion of the Assignor’s Rent Assignment Interests, outstanding Lessor Retained Interest and/or Lessor Investment specified in Item 3 of Schedule 1 hereto (the “**Assigned Property**”).

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

## 1. Assignment

Subject to the terms and conditions set forth herein and in the Participation Agreement, the Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, without recourse, on the date first set forth above (the “**Assignment Date**”), (i) all right, title and interest of the Assignor to the Assigned Property and (ii) all obligations of the Assignor under the Operative Documents. The Assignor shall at the cost and expense of the Assignee take such steps as may be necessary to fully effect legally or commercially such sale. As full consideration for the sale of the Assigned Property, the Assignee shall pay to the Assignor on the Assignment Date the purchase price agreed to between such parties (the “**Purchase Price**”).

## 2. Representations, Warranties and Confirmation.

(a) Each of the Assignor and the Assignee represents and warrants to the other that (i) it has full power and legal right to execute and deliver this Assignment Agreement and to perform the provisions of this Assignment Agreement; (ii) the execution, delivery and performance of this Assignment Agreement have been authorized by all necessary action, corporate or otherwise, and do not violate any provisions of its organizational documents or any contractual obligations or requirement of law binding on it; and (iii) this Assignment Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms. The Assignor further represents to the Assignee that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim created by the Assignor.

(b) The Assignee represents and warrants to the Assignor, the Lessee, the Administrative Agent and the Lessor that it is an Eligible Assignee or, in the case of an assignment made by the Lessor pursuant to Section 6.3(b) of the Participation Agreement, that it is a Permitted Transferee and that the conditions of assignment set forth in Section 6.3 of the Participation Agreement have been satisfied.

(c) The Assignee represents and warrants to the Lessee, upon consummation of the assignment and assumption contemplated hereby, that it will not be subject to United States federal, state or local Withholding Tax on payments of yield under the Operative Documents.

(d) If the Assignor is the Lessor, the Assignee agrees to deliver a lessor ASC 810 confirmation letter to the Lessee.

## 3. Conditions Precedent

The obligations of the Assignor and the Assignee hereunder shall be subject to the fulfillment of the conditions that the Assignor shall have (i) received payment in full of the Purchase Price, and (ii) complied with the other applicable provisions of Section 6.3 of the Participation Agreement.

#### 4. Notice of Assignment

The Assignor agrees to give notice of the assignment and assumption of the Assigned Property in accordance with Section 6.3(c)(A) of the Participation Agreement and hereby instructs the Administrative Agent, the Lessee and the Lessor to make all payments with respect to the Assigned Property directly to the Assignee at the applicable offices specified on Schedule 2 hereto; provided, however, that the Administrative Agent, the Lessee and the Lessor shall be entitled to continue to deal solely and directly with the Assignor in connection with the interests so assigned until (i) the Agents, the other Participants and the Lessee shall have received notice of the assignment and (ii) the Lessee shall have consented in writing thereto to the extent required by Section 6.3 of the Participation Agreement. From and after the date (the “**Assignment Effective Date**”) on which the Administrative Agent shall notify the Lessee and the Assignor that the requirements set forth in the foregoing sentence shall have occurred and all consents (if any) required shall have been given, (x) the Assignee shall be deemed to be a party to the Operative Documents and, to the extent that rights and obligations thereunder shall have been assigned to Assignee as provided in such notice of assignment to the Administrative Agent, shall have the rights and obligations of a Rent Assignee and/or the Lessor, as applicable, under the Operative Documents, and (y) the Assignee shall be deemed to have appointed and the Agents to take such action as agent on its behalf and to exercise such powers under the Operative Documents as are delegated to the Administrative Agent or the Collateral Agent, as applicable, by the terms thereof, together with such powers as are reasonably incidental thereto. After the Assignment Effective Date, the Administrative Agent and the Lessee shall make all payments in respect of the interest assigned hereby (including payments of principal on the Rent Assignment Interests, Lessor Retained Interest, Lessor Investment, Yield, Fees and other amounts) to the Assignee. The Assignor and the Assignee shall make all appropriate adjustment in payments under the Assigned Property for periods prior to the Assignment Effective Date hereof directly between themselves. If the Assignee is not a United States Person as defined in Section 7701(a)(30) of the Code, the Assignee (if legally entitled to do so) shall deliver to the Administrative Agent and the Lessor and the Lessee herewith the forms required by Section 7.3 of the Participation Agreement to evidence the Assignee’s complete exemption from United States withholding taxes with respect to payments under the Operative Documents. If the Assignee is a United States Person, the Assignee (if legally entitled to do so) shall deliver to the Administrative Agent and the Lessor and the Lessee herewith an Internal Revenue Service Form W-9 evidencing the Assignee’s exemption from United States backup withholding taxes and any other forms required by Section 7.3 of the Participation Agreement.

#### 5. Independent Investigation

The Assignee acknowledges that it is purchasing the Assigned Property from the Assignor totally without recourse and, except as provided in Section 2 hereof, without representation or warranty. The Assignee further acknowledges that it has made its own independent investigation and credit evaluation of the Lessee in connection with its purchase of the Assigned Property. Except for the representations or warranties set forth in Section 2, the Assignee acknowledges that it is not relying on any representation or warranty of the Assignor, expressed or implied, including without limitation, any representation or warranty relating to the legality, validity, genuineness, enforceability, collectability, yield rate, repayment schedule or

accrual status of the Assigned Property, the legality, validity, genuineness or enforceability of the Operative Documents, or the financial condition or creditworthiness of the Lessee or any other Person. The Assignor has not and will not be acting as the representative, agent or trustee of the Assignee with respect to matters arising out of or relating to the Operative Documents or this Assignment Agreement. From and after the Assignment Effective Date, except as set forth in Section 4 above, the Assignor shall have no rights or obligations with respect to the Assigned Property.

6. Consents

Pursuant to the provisions of Section 6.3 of the Participation Agreement and to the extent required thereby, the Lessee, by signing below, consents to this Assignment Agreement and to the assignment contemplated herein.

7. Method of Payment

All payments to be made by either party hereunder shall be in funds available at the place of payment on the same day and shall be made by wire transfer to the account designated by the party to receive payment.

8. Integration

This Assignment Agreement shall supersede any prior agreement or understanding between the parties (other than the Participation Agreement and the other Operative Documents) as to the subject matter hereof.

9. Counterparts

This Assignment Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and shall be binding upon all parties, their successors and assigns. Delivery of an executed counterpart of a signature page of any Operative Document by electronic means (e.g. “.pdf” or “.tif”) shall be effective as delivery of a manually executed counterpart of such Operative Document. The words “executed,” “signed,” “signature,” and words of like import in this Agreement or in any other certificate, agreement or document related to this transaction shall include, in addition to manually executed signatures, images of manually executed signatures transmitted by electronic format (including, without limitation, “pdf” and DocuSign) and other electronic signatures (including, without limitation, any electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a Person with the intent to sign the record). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

10. Headings

Section headings have been inserted herein for convenience only and shall not be construed to be a part hereof.

11. Amendments; Waivers

This Assignment Agreement may not be amended, changed, waived or modified except by a writing executed by the parties hereto, and may not be amended, changed, waived or modified in any manner inconsistent with Section 6.3 of the Participation Agreement without the prior written consent of the Administrative Agent and the Lessee.

12. Governing Law

This Assignment Agreement shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York, without regard to principles of conflict of laws (except Section 5-1401 of the New York General Obligations Law).

13. Beneficiaries

To the extent not a party hereto, the Agents, the Lessor and the Lessee shall be third party beneficiaries of this Assignment Agreement with respect to the representations and warranties applicable to such parties as set forth in Sections 2(b), (c) and/or (d) hereof.

\* \*

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

[NAME OF ASSIGNOR], as the Assignor

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

[NAME OF ASSIGNEE], as the Assignee

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

Consented by<sup>1</sup>:

AVDC, LLC, as the Lessee

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

<sup>1</sup> To the extent required under Section 6(a) hereof.

**SCHEDULE 1**  
**TO**  
**ASSIGNMENT AGREEMENT,**  
dated as of \_\_\_\_\_, 20\_\_\_\_,  
between [Name of Assignor], as the Assignor and  
[Name of Assignee], as the Assignee

Item 1      Assignor's Commitment:

Rent Assignment Interests	\$ _____
Lessor Retained Interest	\$ _____
Lessor Investment	\$ _____

Item 2      Outstanding principal amount of:

Rent Assignment Interests	\$ _____
Lessor Retained Interest	\$ _____
Lessor Investment	\$ _____

Item 3      Outstanding amount of Assigned  
Property:

Rent Assignment Interests	\$ _____
Lessor Retained Interest	\$ _____
Lessor Investment	\$ _____



**SCHEDULE 2**  
**TO**  
**ASSIGNMENT AGREEMENT**  
dated as of \_\_\_\_\_, 20\_\_\_\_,  
between [Name of Assignor], as the Assignor and  
[Name of Assignee], as the Assignee

**DOMESTIC LENDING OFFICE**

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Attention:

Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

Telecopy: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

**ADDRESS FOR NOTICES**

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Attention:

Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

Telecopy: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

**WIRING INSTRUCTIONS FOR ASSIGNEE**

Bank:	_____
Account Number:	_____
ABA Number:	_____
Attention:	_____
Ref:	_____

**EXHIBIT C**  
**TO PARTICIPATION AGREEMENT**

**FORM OF COMPLIANCE CERTIFICATE**

To: Bankers Commercial Corporation, as the Lessor and each Rent Assignee party to the Participation Agreement defined below

This Compliance Certificate is furnished pursuant to that certain Participation Agreement, dated as of [\_\_\_], 2023, by and among AVDC, LLC, an Ohio limited liability company, as the Lessee, Bankers Commercial Corporation, as the Lessor, Big Lots, Inc. (“**BLI**”), as a Guarantor, the other Guarantors party thereto, MUFG Bank, Ltd., as the Collateral Agent, MUFG Bank, Ltd. as the Administrative Agent and the Rent Assignee(s) named on Schedule I-A thereto from time to time (as the same may be amended, supplemented or otherwise modified from time to time, the “**Participation Agreement**”). Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the meanings ascribed thereto in the Participation Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the duly elected \_\_\_\_\_ of BLI;

[2. The financial statements of BLI and its Subsidiaries delivered concurrently herewith for the quarterly accounting period ending on [ ] [ ], 20[ ] present fairly in all material respects the financial condition and results of operations of BLI and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP, consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;]<sup>2</sup>

[2./3.] I have no knowledge of, in each case except as set forth on Schedule I attached hereto, (i) the occurrence of any Default or Event of Default during or at the end of the accounting period covered by the financial statements delivered concurrently herewith or as of the date of this Compliance Certificate or (ii) any change in GAAP or in the application thereof that has occurred since the date of the audited financial statements referred to in Section 4.1(f) of the Participation Agreement;

[3./4.] Except as set forth on Schedule II attached hereto, since the later of the Closing Date and the date of the last Compliance Certificate, no Lessee Party has (i) changed its name as it appears in official filings in the state or province of incorporation or organization, (ii) changed its chief executive office, (iii) changed the type of entity that it is, (iv) changed its organization identification number, if any, issued by its state or province of incorporation or other organization, or (v) changed its state of incorporation or organization;

[4./5.] [There has been no change in the list of Immaterial Subsidiaries since the later of September 21, 2022 and the date of the last Compliance Certificate.][Schedule III attached hereto lists and describes each Immaterial Subsidiary.] Each of the Immaterial Subsidiaries qualifies as an Immaterial Subsidiary and all such Subsidiaries in the aggregate do not exceed

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<sup>2</sup> For certificate accompanying quarterly financial statements only

the limitation set forth in clause (b) of the definition of the term “Immaterial Subsidiary” in the Credit Agreement.

[5./6.] [Schedule IV attached hereto is a calculation of the Fixed Charge Coverage Ratio for the four (4) quarter period ending on [ ] [ ], 20[ ].]<sup>3</sup>

The foregoing certifications, together with the Schedules attached hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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<sup>3</sup> TBD.

## SCHEDULE I

### Defaults and Changes to GAAP

Described below are the exceptions, if any, to paragraph [2/3] by listing, in detail, the (i) nature of the occurrence of any Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate and the action which the Lessee has taken, are taking, or propose to take with respect to the occurrence of such Default or (ii) the change in GAAP or the application thereof and the effect of such change on the attached financial statements:

*[BLI to list exceptions or state "None"]*

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## SCHEDULE II

### Changes to Lessee Parties

*[describe the exceptions, if any, to paragraph [3/4]]*

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### SCHEDULE III

#### Immaterial Subsidiaries

*[BLI to describe the changes, if any, to Immaterial Subsidiaries]*

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# SCHEDULE IV<sup>4</sup>

## Fixed Charge Coverage Ratio

**Fixed Charge Coverage Ratio for the trailing four (4) fiscal quarters ending on [\_\_\_\_] [\_\_\_\_], 20[\_\_\_\_] (the “period”)**

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<sup>4</sup> To be included only during the continuance of a Covenant Compliance Event.

<sup>5</sup> Consolidated EBITDA to exclude the income (or deficit) of any Person (other than a Restricted Subsidiary) in which BLI or any of its Restricted Subsidiaries has an ownership interest, except to the extent that any such income is actually received by BLI or such Restricted Subsidiary in the form of dividends or similar distributions.

(1) Consolidated EBITDA <sup>5</sup>

(a)	BLI's consolidated net income on a Consolidated Basis:	\$	_____
(b)	<i>plus</i> (to the extent deducted from the calculation of BLI's consolidated net income for the period (without duplication)):		
(i)	depreciation:	\$	_____
(ii)	amortization:	\$	_____
(iii)	non-cash expenses related to stock based compensation:	\$	_____
	other non-cash charges, non-cash expenses, or non-cash losses to net income (provided, however that cash payments made in the period or in any future period in respect of such non-cash charges, expenses or losses shall be subtracted from consolidated net income in calculating Consolidated EBITDA):	\$	_____
(iv)	interest expense:	\$	_____
(v)	income tax expense:	\$	_____
(vi)	restructuring charges or expenses (including integration costs, restructuring costs and severance costs related to acquisitions and to closure or consolidation of plants, facilities or locations and any expense related to any reconstruction, recommissioning or reconfiguration of fixed assets for alternate use incurred prior to September 21, 2022 not to exceed \$50,000,000 in the aggregate:	\$	_____
(c)	<i>minus</i> :		
(i)	non-cash credits or non-cash gains (to the extent included in such calculation of consolidated net income), in each		

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<sup>4</sup> To be included only during the continuance of a Covenant Compliance Event.

<sup>5</sup> Consolidated EBITDA to exclude the income (or deficit) of any Person (other than a Restricted Subsidiary) in which BLI or any of its Restricted Subsidiaries has an ownership interest, except to the extent that any such income is actually received by BLI or such Restricted Subsidiary in the form of dividends or similar distributions.

case determined and consolidated for BLI and its  
Restricted Subsidiaries

(d)	Consolidated EBITDA ((x) Line (1)(a) <i>plus</i> (y) the <i>sum</i> of Lines (1)(b)(i) through (vii) <i>minus</i> (z) Line (1)(c)(i)):	\$	
(2)	Unfinanced Capital Expenditures (i.e., Capital Expenditures of BLI and its Restricted Subsidiaries made in cash during the period, except to the extent financed with the proceeds of Finance Lease Obligations or other Indebtedness (other than Loans (as defined in the Credit Agreement) incurred under the Credit Agreement), common Equity Interests or Disqualified Stock, or casualty proceeds, condemnation proceeds, or other proceeds that would not be included in Consolidated EBITDA, less cash received from the sale of any fixed assets of BLI and its Restricted Subsidiaries (including, without limitation, equipment) during the period (which amount, in aggregate, may not be less than \$0 for the period):	\$	
(3)	the portion of taxes based on income actually paid in cash and provisions for cash income taxes:	\$	
(4)	Fixed Charges for the period:		
	all scheduled amortization payments paid or payable during the period on all Indebtedness of BLI and its Restricted Subsidiaries (including the principal component of all obligations in respect of all Finance Lease Obligations):	\$	
(a)		\$	
(b)	consolidated cash Interest Expense of BLI and its Restricted Subsidiaries for the period:	\$	
(c)	Fixed Charges (the <i>sum</i> of Lines (4)(a) and (4)(b)):	\$	
	Fixed Charge Coverage Ratio:		
(w)	Numerator: (a) Line (1)(d) minus (b) the sum of Lines (2) and (3)	\$	
(x)	Denominator: Line (4)(c)	\$	
(y)	FCCR: Line (w) <i>divided by</i> Line (x)		:1.00
(z)	Minimum Required:	1.00	:1.00



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**LEASE AGREEMENT**

DATED AS OF MARCH 15, 2023

BETWEEN

**BANKERS COMMERCIAL CORPORATION,**  
AS THE LESSOR,

AND

**AVDC, LLC**  
AS THE LESSEE

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## **EXHIBITS**

### **EXHIBIT A FORM OF LEASE SUPPLEMENT**

## LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of March 15, 2023 (as amended, supplemented, or otherwise modified from time to time, this “**Lease Agreement**”), is between BANKERS COMMERCIAL CORPORATION, a California corporation, as the Lessor (the “**Lessor**”), and whose principal offices are located at 445 S. Figueroa Street, 14<sup>th</sup> Floor, Los Angeles, California 90071, and AVDC, LLC, an Ohio limited liability company, as the Lessee (the “**Lessee**”), and whose principal offices are located at 4900 E. Dublin Granville, Columbus, Ohio 43081.

### WITNESSETH:

WHEREAS, the parties hereto desire to enter into the Overall Transaction for the purpose of leasing the Leased Property from the Lessor to the Lessee;

WHEREAS, subject to the terms and conditions set forth in the Operative Documents, on the Base Term Commencement Date, the Lessor, as purchaser, has acquired the Leased Property from the Seller, as evidenced by the Deed and the Bill of Sale;

WHEREAS, the Lessee and the Lessor desire to enter into this Lease Agreement to set forth the terms and conditions under which such parties will lease the Leased Property; and

WHEREAS, pursuant to this Lease Agreement and the Lease Supplement entered into on the date hereof by the Lessor and the Lessee, the form of which is attached hereto as Exhibit A and which incorporates by reference the terms and conditions of this Lease Agreement (the “**Lease Supplement**” and, together with this Lease Agreement as incorporated by reference therein, this “**Lease**”), the Lessor will lease the Leased Property described in such Lease Supplement to the Lessee and the Lessee will lease such Leased Property from the Lessor.

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

## ARTICLE I DEFINITIONS

### **SECTION 1.1. Definitions; Interpretations.**

For all purposes hereof, the capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in Appendix I to that certain Participation Agreement dated as of even date herewith, among the Lessee, the Guarantors, the Lessor, MUFG Bank, Ltd., as the Administrative Agent and as the Collateral Agent, and the Rent Assignee(s) named on Schedule I-A thereto from time to time (as the same may be amended, modified, restated or supplemented from time to time, the “Participation Agreement”), and the rules of interpretation set forth in Appendix I to the Participation Agreement shall apply to this Lease. In addition, references herein to (i) the Leased Property, the Improvements and the Site shall be interpreted to mean the Leased Property, Improvements and Site which are leased by the parties pursuant to the Lease Supplement,

and (ii) this Lease shall be interpreted to mean the Lease Supplement entered into on the date hereof by the Lessor and the Lessee, which by its terms incorporates by reference the terms and conditions of this Lease Agreement.

## **ARTICLE II LEASE OF LEASED PROPERTY; LEASE TERM**

### ***SECTION 2.1. Acceptance and Lease.***

The agreement of the Lessor to lease the Leased Property to the Lessee hereunder and the agreement of the Lessee to lease from the Lessor for the Lease Term the Leased Property shall be evidenced by the execution and delivery by such parties of the Lease Supplement with respect to the Leased Property. Subject to Articles XII and XVIII hereof, the Lessor will not lease nor otherwise make the Leased Property, in whole or in part, available to any Person other than the Lessee and its permitted successors, assigns and sublessees during the Lease Term, and (without derogating in any way from the Lessor's rights under Articles XV or XVIII hereof) during the Lease Term the Lessee shall have unimpeded physical control of the Leased Property notwithstanding the Lessor's rights to inspect the Leased Property in accordance with Article XV.

### ***SECTION 2.2. Lease Term.***

Unless earlier terminated, the term of this Lease with respect to the Leased Property shall consist of (a) a base term (the "**Base Term**") commencing immediately upon, and without further act of the parties hereto, the Base Term Commencement Date for the Leased Property as set forth in the Lease Supplement related thereto (the "**Base Term Commencement Date**") and ending on the fifth anniversary of the Base Term Commencement Date, and (b) if any Extension Option is exercised and approved pursuant to each of the terms and conditions of Section 2.16 of the Participation Agreement, each Lease Extension Term (the Base Term and any applicable Lease Extension Terms, if any, are collectively referred to as the "**Lease Term**").

## **ARTICLE III TAXES.**

### ***SECTION 3.1. Impositions.***

During the Lease Term, the Lessee agrees to pay when due without penalty or interest all Taxes imposed upon or levied against the Leased Property or any part thereof or interest therein consistent with Section 7.2 of the Participation Agreement. The Site is a separate tax lot/parcel for real property tax assessment purposes. Any Tax relating to a fiscal period of any taxing Authority falling partially within and partially outside the Lease Term shall be apportioned and adjusted between the Lessor and the Lessee the portion of such fiscal period during which the Lease Term overlapped. The Lessee covenants to furnish the Lessor and the Administrative Agent, upon the Lessor's or the Administrative Agent's request, within forty-five (45) days after the Lessor's or the Administrative Agent's request, official receipts of the appropriate taxing Authority or other proof satisfactory to the Lessor and the Administrative Agent evidencing the payment thereof or contest thereof in accordance with Section 7.2(b) of the Participation Agreement.

**SECTION 3.2. Contests.**

The Lessee shall have the right to contest any Tax in accordance with Section 7.2(b) of the Participation Agreement.

**SECTION 3.3. Tax Treatment.**

In accordance with Section 2.14 of the Participation Agreement, it is the express intention of the Parties that this Lease and the Overall Transaction shall be treated for United States federal, state and local income tax purposes as a financing by the Lessor to the Lessee, the obligations of the Lessee to the Lessor are for borrowed money secured by a Lien on the Leased Property and the Lessee shall continue to be treated as the legal and beneficial owner of the Leased Property during the Lease Term (including any extension thereof), the Lessee will continue to be entitled to all benefits of ownership of the Leased Property, including, without limitation, depreciation and other tax benefits ordinarily available to owners of property similar to the Leased Property, and the obligations of the Lessee to pay Basic Rent shall be treated as payments of interest to the Lessor and the payment by the Lessee of any amounts in respect of the Lease Balance shall be treated as payments of principal to the Lessor.

**ARTICLE IV  
RENT**

**SECTION 4.1. Basic Rent.**

During the Lease Term, the Lessee shall pay to the Lessor the Basic Rent in arrears (i) on each Payment Date, (ii) on the Return Date, and (iii) on any date on which this Lease terminates, whether on the Lease Expiration Date or upon demand following an Event of Default pursuant to Article XVII.

**SECTION 4.2. Supplemental Rent.**

The Lessee shall pay to the Lessor, or to whomever shall be entitled thereto as expressly provided herein or in any other Operative Document (and the Lessor hereby directs the Lessee, on behalf of the Lessor, to so pay any such other Person), any and all Supplemental Rent promptly as the same shall become due and payable and, in the event of any failure on the part of the Lessee to pay any Supplemental Rent, the Lessor shall have all rights, powers and remedies provided for herein or by law or in equity or otherwise in the case of nonpayment of Basic Rent. The Lessee hereby reaffirms that its obligation to pay Supplemental Rent shall include the payment of any and all Additional Costs. The expiration or other termination of the Lessee's obligations to pay Basic Rent hereunder shall not limit or modify the obligations of the Lessee with respect to Supplemental Rent.

**SECTION 4.3. Method and Amount of Payment.**

Basic Rent and Supplemental Rent shall be paid by wire transfer by the Lessee to the Lessor (or, in the case of Supplemental Rent not otherwise applied in accordance with Sections 10.2, 10.3 or 10.4 of the Participation Agreement, to such Person as may be entitled thereto) at such place as

the Lessor (or such other Person) shall specify in writing to the Lessee pursuant to Schedule II to the Participation Agreement; provided, however, that, in accordance with Section 2.7 of the Participation Agreement, the Lessor hereby directs the Lessee to pay Basic Rent to the Administrative Agent for the benefit of the Participants. Each payment of Rent shall be made by the Lessee prior to 12:00 p.m. New York time (and payments made after such time shall be deemed to have been made on the next day) at the place of payment in funds consisting of Dollars which (in the case of any amount payable to the Administrative Agent, any Participant or any other Indemnatee) shall be immediately available on the scheduled date when such payment shall be due unless the scheduled date shall not be a Business Day, in which case such payment shall be due and made on the next succeeding Business Day unless such next succeeding Business Day occurs in the next calendar month in which case such payment shall be due and made on the immediately preceding Business Day. The provisions of the foregoing sentence of this Section 4.3 shall be applicable only to Basic Rent and to Supplemental Rent payable to, or on behalf of or for the account of the Administrative Agent, any Participant and any other Indemnatee.

#### **SECTION 4.4. Lease Payment.**

If any Basic Rent shall not be paid when due, the Lessee shall pay to the Lessor, or if any Supplemental Rent payable to or on behalf or for the account of the Administrative Agent, any Participant or other Indemnatee is not paid when due (subject to any applicable grace periods), the Lessee shall pay to whomever shall be entitled thereto, in each case as Supplemental Rent, interest at the Overdue Rate (to the maximum extent permitted by law) on such overdue amount from and including the due date thereof (without regard to any applicable grace period) to but excluding the Business Day of payment thereof.

### **ARTICLE V NET LEASE**

This Lease shall constitute a net lease and, notwithstanding any other provision of this Lease, it is intended that Basic Rent, Supplemental Rent, the Lease Balance, the Adjusted Lease Balance and all other amounts due and payable under the Operative Documents shall be paid without counterclaim, setoff, deduction or defense of any kind and without abatement, suspension, deferment, diminution or reduction of any kind, and the Lessee's obligation to pay all such amounts throughout the Lease Term is absolute and unconditional. The obligations and liabilities of the Lessee hereunder shall, to the fullest extent permitted by Applicable Laws, in no way be released, discharged or otherwise affected for any reason (other than the indefeasible payment or performance in full of such liability or obligation) including: (a) any defect in the condition, merchantability, design, construction, quality or fitness for use of any portion of the Leased Property, or any failure of the Leased Property to comply with all Applicable Laws, including any inability to occupy or use the Leased Property by reason of such non-compliance; (b) any damage to, abandonment, loss, contamination of or Release from or destruction of or any requisition or taking of the Leased Property or any part thereof; (c) any restriction, prevention or curtailment of or interference with any use of the Leased Property or any part thereof, including eviction; (d) any defect in title to or rights to the Leased Property or any Lien on such title or rights or on the Leased Property; (e) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by either Agent or any Participant; (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like



proceedings relating to the Lessee, either Agent, any Participant or any other Person, or any action taken with respect to this Lease by any trustee or receiver of the Lessee, either Agent, any Participant or any other Person, or by any court, in any such proceeding; (g) any claim that the Lessee has or might have against any Person including, without limitation, either Agent or any Participant, arising from any of the circumstances set forth in this sentence (but will not constitute a waiver of such claim); (h) any willful misconduct or gross negligence on the part of the Lessor to which results in a failure to perform or comply with any of the terms of this Lease, any other Operative Document or of any other agreement whether or not related to the Overall Transaction; (i) any invalidity or unenforceability or disaffirmance against or by the Lessee of this Lease or any provision hereof or any of the other Operative Documents or any provision of any thereof; (j) the impossibility of performance by the Lessee, the Lessor or both; (k) any action by any court, administrative agency or other Authority; (l) any restriction, prevention or curtailment of or any use of the Leased Property or any part thereof or the construction of any Alterations; (m) the failure of the Lessee to achieve any accounting or tax benefits or the characterization of the transaction intended by Section 2.14 of the Participation Agreement; or (n) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not the Lessee shall have notice or knowledge of any of the foregoing. Except as specifically set forth in Article XIII or Section 20.1 of this Lease, this Lease shall be noncancellable by the Lessee for any reason whatsoever and the Lessee, to the fullest extent permitted by Applicable Laws, waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Lease, or to any diminution, abatement or reduction of Rent payable by the Lessee hereunder. If for any reason whatsoever this Lease shall be terminated or amended in whole or in part by operation of law or otherwise, except as expressly provided in Article XIII or Sections 20.1 or 23.4 of this Lease, the Lessee shall, unless prohibited by Applicable Laws, pay to the Lessor (or, in the case of Supplemental Rent, to whomever shall be entitled thereto) compensation in an amount equal to each Rent payment (including the Adjusted Lease Balance and any other amount due and payable under any Operative Documents) at the time and in the manner that such payment would have become due and payable under the terms of this Lease if it had not been terminated or amended in whole or in part. Each payment of Rent (including any payment of the Adjusted Lease Balance and Purchase Amount) made by the Lessee hereunder shall be final and, absent error in the computation of the amount thereof, the Lessee shall not seek or have any right to recover all or any part of such payment from either Agent, any Participant or any party to any agreements related thereto for any reason whatsoever. The Lessee assumes the sole responsibility for the condition, use, operation, maintenance, and management of the Leased Property and except as otherwise provided in this Lease and any Operative Document the Lessor shall have no responsibility in respect thereof and shall have no liability for damage to the Leased Property, the Site or the property relating thereto of the Lessee or any subtenant of the Lessee on any account or for any reason whatsoever. Without affecting the Lessee's obligation to pay Basic Rent, Supplemental Rent, the Adjusted Lease Balance and all other amounts due and payable under the Operative Documents or to perform its obligations under the Operative Documents, the Lessee may, notwithstanding any other provision of the Operative Documents (but subject to Section 9.11 of the Participation Agreement), seek damages of any kind or any other remedy at law or equity against the Lessor for Lessor's willful misconduct or gross negligence or negligence in the handling of funds or for a breach by the Lessor of its obligations under this Lease or the other Operative Documents.

## **ARTICLE VI UTILITY CHARGES**

During the Lease Term the Lessee shall pay or cause to be paid all development and improvement charges and all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents, utilities or public dues used in or on the Leased Property during the Lease Term. The Lessee shall be entitled to receive any credit or refund with respect to any utility charge or public dues paid by the Lessee and the amount of any credit or refund received by the Lessor on account of any utility charges paid by the Lessee, net of the costs and expenses reasonably incurred by the Lessor in obtaining such credit or refund, which amount shall be promptly paid over to the Lessee except during the continuance of an Event of Default. All charges for utilities imposed, rents or public dues with respect to the Leased Property for a billing period during which this Lease expires or terminates (except pursuant to Article XX or Section 21.1(a), in which case the Lessee shall be solely responsible for all such charges) shall be adjusted and prorated on a daily basis between the Lessee and any purchaser of the Leased Property, and each party shall pay or reimburse the other for each party's pro rata share thereof; provided, that in no event shall the Lessor have any liability therefor. Unless requested by the Lessee, the Lessor agrees not to take any action to incur any additional utility charges during the Lease Term.

## **ARTICLE VII CONDITION AND USE OF LEASED PROPERTY**

### ***SECTION 7.1. Waivers.***

THE LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LEASING THE LEASED PROPERTY FROM THE LESSOR "AS IS" IN ITS PRESENT CONDITION, SUBJECT TO (A) ANY RIGHTS OF ANY PARTIES IN POSSESSION THEREOF OR OF THE SITE, (B) THE STATE OF THE TITLE THERETO OR TO THE SITE EXISTING AT THE TIME THE LESSOR ACQUIRED ITS INTEREST IN THE LEASED PROPERTY, (C) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR PHYSICAL INSPECTION MIGHT SHOW (INCLUDING ANY SURVEY DELIVERED ON OR PRIOR TO THE BASE TERM COMMENCEMENT DATE), (D) ALL APPLICABLE LAWS, AND (E) ANY VIOLATIONS OF APPLICABLE LAWS WHICH MAY EXIST AT THE COMMENCEMENT OF THE LEASE TERM. THE LESSEE HAS EXAMINED THE LEASED PROPERTY AND THE SITE AND (INsofar AS THE LESSOR IS CONCERNED) HAS FOUND THE SAME TO BE SATISFACTORY. WITHOUT LIMITING THE SPECIFIC REPRESENTATIONS AND WARRANTIES IN ARTICLE IV OF THE PARTICIPATION AGREEMENT, NONE OF THE LESSOR, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT NOR ANY OTHER PARTICIPANT HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, NOR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE TO THE LEASED PROPERTY OR THE SITE OR TO THE VALUE, MERCHANTABILITY, HABITABILITY, CONDITION, OR FITNESS FOR USE OF THE LEASED PROPERTY OR THE SITE, OR ANY PART THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED PROPERTY OR THE SITE, OR ANY PART THEREOF, AND NONE OF THE LESSOR, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT AND ANY OTHER PARTICIPANT SHALL BE LIABLE FOR

ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN OR THE FAILURE OF THE LEASED PROPERTY OR THE SITE, OR ANY PART THEREOF, TO COMPLY WITH ANY APPLICABLE LAWS, except that the Lessor hereby represents and warrants that as of the date of this Lease, the Leased Property is free of the Lessor Liens. The Lessee, having been afforded full opportunity to inspect the Leased Property, is satisfied with the results of its inspections and is entering into this Lease solely on the basis of the results of its own inspections and all risks incident to the matters discussed in the preceding sentence, as between the Collateral Agent, the Administrative Agent and the Participants, on the one hand, and the Lessee, on the other, are to be borne by the Lessee. The provisions of this Article VII have been negotiated, and, except to the extent otherwise expressly stated, the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties by any of the Collateral Agent, the Administrative Agent or the Participants, express or implied, with respect to the Leased Property (or any interest therein) and the Site, that may arise pursuant to any law now or hereafter in effect or otherwise.

## **ARTICLE VIII LIENS; EASEMENTS**

### ***SECTION 8.1. Liens.***

During the Lease Term, the Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on or with respect to any portion of the Leased Property or the Lessor's interest therein. The Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Leased Property free and clear of, and duly to discharge, eliminate or bond in a manner reasonably satisfactory to the Required Participants, any such Lien (other than Permitted Liens) if the same shall arise at any time. In addition to, and not in limitation of, the Lessee's obligations set forth elsewhere in this Lease during the Lease Term, the Lessee shall punctually pay and perform for the benefit of the Lessor all of the obligations and liabilities whatsoever of the Lessee or the Lessor under any instrument that is a Permitted Lien including, without limitation, payment of indemnification of the Lessor from and against all Claims for which liability of the Lessor accrued thereunder during the term hereof.

### ***SECTION 8.2. Easements.***

Notwithstanding Section 8.1, at the request of the Lessee, the Lessor shall, from time to time during the Lease Term and upon reasonable advance written notice from the Lessee and receipt of the materials specified below, consent to and join in any (i) grant of easements, licenses, rights of way and other rights in the nature of easements including, without limitation, utility easements which in each case facilitate the Lessee's use, development and operation of the Leased Property, (ii) release or termination of easements, licenses, rights of way or other rights in the nature of easements which releases and terminations are for the benefit of the Site or the Improvements or any portion thereof, (iii) execution of agreements for ingress and egress and amendments to any covenants and restrictions affecting the Site or the Improvements or any portion thereof, and (iv) request to any Authority for platting or subdivision or replatting or resubdivision approval with respect to the Site or any portion thereof or any parcel of land of which

the Site or any portion thereof forms a part or a request for any variance from zoning or other governmental requirements, provided that:

(a) any such action shall be at the sole cost and expense of the Lessee and the Lessee shall pay all out-of-pocket costs of the Lessor, the other Participants and the Agents in connection therewith (including, without limitation, the reasonable fees of attorneys, architects, engineers, planners, appraisers and other professionals retained by the Lessor or the other Participants in connection with any such action) and Lessee shall punctually pay and perform for the benefit of the Lessor all of the obligations and liabilities whatsoever of the Lessor or the Lessee as a result of the taking of such action and/or entering into any such instrument or agreement;

(b) the Lessee shall have delivered to the Lessor and the Administrative Agent a certificate of a Responsible Officer of the Lessee stating that:

(i) such action will not cause the Leased Property, the Site or the Improvements, or any portion thereof, to fail to comply in any respect with the provisions of the Lease or any other Operative Documents, or in any respect with Applicable Laws; and

(ii) such action will not materially reduce the Fair Market Value, utility or useful life of the Leased Property, the Site or the Improvements or the Lessor's interest therein;

(c) in the case of any release or conveyance, if the Lessor or the Administrative Agent acting at the direction of the Required Participants so reasonably requests, the Lessee will cause to be issued and delivered to the Lessor by the Title Insurance Company endorsements to the Title Policy (to the extent available) pursuant to which the Title Insurance Company agrees that its liability for the payment of any loss or damage under the terms and provisions of the Title Policy, as to the remaining portion of the Leased Property that was not released or conveyed, will not be affected by reason of the fact that a portion of the real property referred to in Schedule A of the Title Policy has been released or conveyed by the Lessor; and

(d) there shall be no abatement of Rent as a result thereof.

## **ARTICLE IX MAINTENANCE AND REPAIR; ALTERATIONS AND ADDITIONS**

### ***SECTION 9.1. Maintenance and Repair; Compliance With Law.***

At all times during the Lease Term, the Lessee shall (a) maintain the Leased Property in good operating condition and repair, subject to ordinary wear and tear, and in any event in a manner consistent with other similar facilities or buildings owned or leased by the Lessee and its Affiliates; (b) subject to Section 9.5, maintain the Leased Property in accordance with all Applicable Laws (including all Environmental Laws) in all material respects, whether or not such maintenance requires structural modifications; (c) maintain the Improvements and the Site in such a way that the Improvements and the Site shall not constitute a danger to persons or things; (d) comply in all material respects with the Insurance Requirements which are in effect at any time with respect to

the Leased Property or any part thereof; (e) use the Leased Property only in accordance with Article X; (f) make all necessary or appropriate repairs, replacements and renewals of the Leased Property or any part thereof which may be required to keep the Leased Property in the condition required by this Section 9.1, whether interior or exterior, structural or nonstructural, foreseen or unforeseen, ordinary or extraordinary, and including, without limitation, repairs, replacements and renewals that would constitute capital expenditures under GAAP if incurred by an owner of property; and (g) procure, maintain and comply in all material respects with all Governmental Actions required for the use, maintenance, operation and construction of the Leased Property. The Lessee waives any right that it may now have or hereafter acquire to (x) require the Lessor to maintain, repair, replace, alter, remove or rebuild all or any part of the Leased Property or (y) make repairs at the expense of the Lessor pursuant to any Applicable Laws or other agreements.

#### **SECTION 9.2. *Improvements and Alterations.***

(a) The Lessee, at the Lessee's own cost and expense, (i) shall make alterations, renovations, repairs, improvements and additions to the Leased Property or any part thereof and substitutions and replacements therefor (collectively, "**Alterations**") which are (A) necessary or advisable to repair or maintain the Leased Property in the condition required by Section 9.1 or (B) necessary or advisable to restore the Leased Property to its condition existing prior to a Casualty or Condemnation to the extent required pursuant to Article XIII and (ii) so long as no Material Default or Event of Default has occurred and is continuing, may undertake Alterations to the Leased Property so long as, in each case, such Alterations comply in all material respects with Applicable Laws and are consistent and comply with Section 9.1 and subsection (b) of this Section 9.2.

(b) The making of any Alterations pursuant to Section 9.2(a)(ii) above must be in compliance with the following requirements:

(i) the Lessee shall not make any Alterations (1) in violation of the terms of any restriction, easement, condition, covenant or other similar matter affecting title to or binding on the Leased Property or (2) that would adversely affect the marketability of the Leased Property;

(ii) no Alterations shall be undertaken until the Lessee shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations relating to such Alterations of all municipal and other Authorities having jurisdiction over the Leased Property. The Lessor, at the Lessee's expense, shall join in the application for any such permit or authorization and execute and deliver any document in connection therewith, whenever such joinder is necessary or advisable; provided, however, such joinder shall not constitute or be deemed to constitute, any assumption or responsibility or liability whatsoever by the Lessor, such responsibility and liability being solely the responsibility of the Lessee;

(iii) the Alterations shall be completed in a good and workmanlike manner and in compliance in all material respects with all Applicable Laws then in effect and with the standards imposed by any insurance policies required to be maintained hereunder;

(iv) all Alterations shall, when completed, be of such a character as to not materially diminish (A) the utility, useful life or functional capability of the Improvements for their intended use as set forth in the Lease Supplement, (B) the then current Fair Market Value of the Leased Property, or (C) the Fair Market Value of the Leased Property as of the Maturity Date;

(v) the Lessee shall have made adequate arrangements for payment of the cost of all Alterations when due so that the Leased Property shall at all times be free of Liens for labor and materials supplied or claimed to have been supplied to the Leased Property, other than Permitted Liens; provided, that the Lessee shall have the right to engage in Permitted Contests in accordance with Section 9.5 or otherwise bond over any Liens for labor or materials;

(vi) the Alterations must be located solely on the Site;

### ***SECTION 9.3. Alterations Subject to Lease.***

The following Alterations without further act shall be deemed to constitute a part of the Leased Property and be subject to this Lease:

- (a) Alterations that are in replacement of or in substitution for a portion of the Improvements;
- (b) Alterations that are required to be made pursuant to the terms of Section 9.1 or 9.2(a)(i) hereof; or
- (c) Alterations that are Non-Severable or immovable.

To the extent any Alterations are deemed to constitute part of the Leased Property pursuant to the preceding sentence, the Lessee hereby acknowledges and agrees that, upon the Closing Date or their installation, as applicable, such will become property of the Lessor. The Lessee will, at the Lessor's request, execute and deliver any documents reasonably necessary to evidence or cause the vesting of such interests in and to such Alterations to the Lessor.

If such Alterations are not within any of the categories set forth in clauses (a) through (c) of this Section 9.3 and have not become property of the Lessor in accordance therewith, then such Alterations shall remain the sole property of the Lessee and such Alterations shall not be deemed to be Alterations which are part of the Leased Property. All such Alterations not constituting part of the Leased Property is located or supported may be removed at any time by the Lessee, at the Lessee's sole option and expense, other than Alterations, the removal of which would result in a violation of Applicable Laws. The Lessee shall at its expense prior to the Lease Expiration Date repair any damage to the Leased Property caused by the removal of such Alterations. The Lessor (or the purchaser of the Leased Property if the Lessee elects the Return Option or in connection with a sale pursuant to Section 18.1) may purchase from the Lessee any such Alterations (if not already owned by the Lessor) that the Lessee intends to remove from the Leased Property prior to the Lease Expiration Date, which purchase shall be at the Fair Market Value of such Alterations as determined by the Appraiser at the time of such purchase.

#### **SECTION 9.4. Maintenance and Repair Reports.**

During the Lease Term, the Lessee shall keep maintenance and repair reports regarding the Improvements in sufficient detail, on the same basis as records are kept for similar properties owned or leased by the Lessee or its Affiliates, to indicate the nature and date of major work done. Such reports shall be kept on file by the Lessee at its offices during the Lease Term, and shall be made available at the Lessee's office to the Lessor upon reasonable request.

#### **SECTION 9.5. Maintenance and Repair Reports.**

If, to the extent and for so long as (a) a contest of the legality, validity or applicability to the Leased Property or any interest therein of, or the operation, use or maintenance thereof by the Lessee of (i) any Applicable Laws, (ii) any term or condition of, or any revocation or amendment of, or other proceeding relating to, any Governmental Action, or (iii) any Lien or Tax shall be made in good faith, by appropriate proceedings initiated timely and diligently prosecuted, by the Lessee or (b) compliance with such Applicable Laws, Governmental Action, Lien or Tax shall have been excused or exempted by a valid nonconforming use permit, waiver, extension or forbearance, the Lessee shall not be required to comply with such Applicable Laws, Governmental Action, Lien or Tax but only if and so long as any such contest shall constitute a Permitted Contest and shall be conducted in accordance with Section 7.1(c) or Section 7.2(b), as applicable, of the Participation Agreement.

The Lessor will not be required to join in any Permitted Contest unless a provision of any Applicable Laws requires, or, in the good faith opinion of the Lessee, it is materially helpful to the Lessee that such proceedings be brought by or in the name of the Lessor and, in that event, the Lessor will join in the proceedings or permit them or any part thereof to be brought in its name only if and so long as (i) no Material Default or Event of Default is continuing, (ii) the Lessee has not elected the Return Option, and (iii) the Lessee pays all related out-of-pocket expenses and the Lessee shall be deemed to have acknowledged and agreed that the Lessor is indemnified therefor pursuant to Section 7.1 or Section 7.2 of the Participation Agreement.

### **ARTICLE X USE**

#### **SECTION 10.1. Use.**

The Leased Property shall be used solely for the purposes set forth in the Lease Supplement. The Lessee shall not use the Leased Property or any part thereof for any purpose or in any manner that would diminish in any material respect (A) the utility, useful life or functional capability of the Improvements for its intended use, (B) the then current Fair Market Value of the Leased Property, or (C) the Fair Market Value of the Leased Property as of the Maturity Date. The Lessee shall use the Leased Property in compliance in all material respects with (a) any Applicable Laws (including Environmental Laws), except to the extent permitted by Section 9.5, (b) the Insurance Requirements, and (c) all of the Operative Documents. The Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Leased Property in accordance with this Lease and the Participation Agreement. The Lessee shall not commit or permit any physical waste of the Leased Property or any part thereof.

## **SECTION 10.2. Anti-Corruption, AML, Sanctions.**

The Lessee hereby covenants and agrees with the Lessor that it shall:

(a) *Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.* Ensure that policies and procedures are maintained and enforced by or on behalf of the Lessee to promote and achieve compliance by the Lessee and each of its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(b) *Beneficial Ownership Regulation.* Promptly following any change that would result in a change to the status of the Lessee as an excluded “Legal Entity Customer” under the Beneficial Ownership Regulation, the Lessee shall execute and deliver to Lessor a Beneficial Ownership Certification complying with the Beneficial Ownership Regulation, in form and substance reasonably acceptable to Lessor.

The Lessee hereby covenants and agrees with the Lessor that it shall not:

(c) *Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.* Use, or permit its Subsidiaries or its or their respective directors, officers, employees or agents to use, the proceeds from the Lease (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws, (B) for the purpose of funding or financing any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, in each case to the extent doing so would violate any Sanctions, or (C) in any other manner that would result in liability to any Person under any applicable Sanctions or result in the violation of any Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions.

(d) *Evading and Avoiding.* Engage in, or permit any of its Subsidiaries or any director, officer, employee, agent or other Person acting on behalf of the Lessee or any of its Subsidiaries in any capacity in connection with or directly benefitting from this Agreement to engage in, or to conspire to engage in, any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

shall be deemed to have acknowledged and agreed that the Lessor is indemnified therefor pursuant to Section 7.1 or Section 7.2 of the Participation Agreement.

## **ARTICLE XI INSURANCE**

### **SECTION 11.1. Required Coverages.**

The Lessee will provide or cause to be provided insurance with respect to the Leased Property of a character usually obtained by the Lessee and its Affiliates against loss or damage of the kinds and in the amounts customarily insured against by the Lessee and its Affiliates with respect to similar properties, and carry such other insurance as is usually carried by the Lessee and its Affiliates with respect to similar properties; provided, that in any event the Lessee will maintain insurance during the Lease Term, as follows:



(a) *Commercial General Liability Insurance.* The Lessee shall maintain commercial general liability insurance, including coverages for contractual liability, against personal injury, bodily injury, including death, and third-party property damage occurring on or about the Leased Property, written on an occurrence basis, including against the Lessor, in an amount at least equal to the greater of (i) \$1,000,000 per occurrence and \$10,000,000 in the aggregate, or (ii) the amounts required by applicable state law during the Lease Term (which coverage may be met in combination with Primary Commercial General Liability coverage and Umbrella Liability excess coverage). Such coverage shall cover at least the following hazards: (1) premises and operations; (2) products and completed operations; (3) independent contractors; and (4) contractual liability covering, to the maximum extent permitted by law, the Lessee's obligation to indemnify the Indemnitees as required under the Operative Documents. Such liability insurance shall name the Administrative Agent, the Collateral Agent, the Lessor and each of the other Participants as additional insureds.

(b) *Property Insurance.* The Lessee shall maintain insurance against loss or damage covering the Leased Property and any portion thereof against such risks customarily maintained by the Lessee with respect to similar properties, including coverage for the perils of earth movement (including but not limited to earthquake and landslide), fire, wind (including windstorm and "named storm" coverage), flood (if the property is located in a high-risk flood zone), law and ordinance coverage, and other hazards covered by a standard commercial property insurance policy providing commercial property insurance, covering physical damage, in an amount not less than the greater of (i) the Adjusted Lease Balance outstanding at any time or (ii) replacement cost of the Leased Property excluding the Site (including any costs that may be required to cause the Improvements to be reconstructed to comply with the then current Applicable Laws). The Lessee shall require and shall ensure that such policy at all times during the Lease Term names the Lessee as a named insured, name the Agents and Participants as additional insureds and the Administrative Agent as loss payee, as their interests may appear.

(c) *Worker's Compensation and Employer's Liability Insurance:* Worker's Compensation and Employer's Liability Insurance, with respect to any contractor or developer, if applicable, including occupational illness or disease coverage, or other similar social insurance in accordance with the laws of the nation, state, territory or province exercising jurisdiction over the Leased Property. Employer's Liability coverage shall have a limit of \$1,000,000 per accident, per employee for disease and in the aggregate for disease.

(d) *Builder's Risk Insurance.* During any construction of any significant Alteration or any rebuilding or restoration in accordance with Article XIII, if required in order to prevent a loss of property insurance coverage for the Improvements, the Lessee shall arrange to obtain and keep in force builder's risk insurance with respect to the construction of the Alteration or the rebuilding or restoration, as applicable, in an amount equal to the greater of the replacement value of such Alterations or Improvements or such affected portion of the Improvements, as applicable, and the aggregate cost for the construction, rebuilding or remodeling of same, including costs that may be required to cause the Leased Property to be reconstructed to then current Applicable Laws. Lessee shall require and shall ensure that any such policy names the Lessee as a named insured, name the Agents and Participants as additional insureds and the Administrative Agent as loss payee, as their interests may appear.

(e) *Insurance Requirements.* Insurance provided pursuant to this Section 11.1 shall be written by reputable insurance companies that are financially sound and solvent with a rating of at least “A-/VIII” by A.M. Best’s or a claims paying rating of “A-” by S&P or by other insurers approved in writing by the Lessor. Each policy referred to in this Section 11.1 shall provide that: (i) it will not be canceled, materially modified or its limits reduced, or allowed to lapse without renewal, except after not less than thirty (30) days’ prior written notice to the Administrative Agent and the Lessor and not less than ten (10) days’ prior written notice to the Administrative Agent and the Lessor for the non-payment of premium; (ii) the interests of the Administrative Agent, the Collateral Agent, the Lessor and any other Participant shall not be invalidated by any act or negligence of or breach of warranty or representation by the Lessee or any Person having an interest in the Leased Property; (iii) such insurance is primary and non-contributory with respect to any other insurance carried by or available to the Administrative Agent, the Collateral Agent, the Lessor or any other Participant; (iv) the insurer shall waive customary rights of subrogation, setoff, counterclaim, or other deduction, whether by attachment or otherwise, against any additional insured or loss payee; (v) such policy shall contain a severability clause providing for coverage of the Administrative Agent, the Collateral Agent, the Lessor and each other Participant as if separate policies had been issued to each of them; (vi) such policy, to the extent of the insurance policies provided by the Lessee pursuant to Section 11.1(a) or Section 11.1(c), shall be written on an occurrence basis and shall be in effect for the Lease Term including any Extended Remarketing Period; and (vii) the insurer shall waive all claims for premiums against the Administrative Agent, the Collateral Agent, the Lessor and any other Participant. Any insurance policy required hereunder (other than any flood hazard insurance policy, “excess flood” insurance policy, or similar policy) may be in the form of a blanket insurance policy, provided that such policy shall provide the same protection as would a separate policy insuring only the Leased Property in compliance with the provisions of this Section 11.1 provided, however, any blanket insurance policy that does not specifically allocate to the Leased Property the amount of coverage from time to time required hereunder shall be subject to the Lessor’s reasonable approval after taking into account, among other things, the amount, location, number, type and size of properties covered by such blanket insurance policy. The Lessee shall provide Administrative Agent and Lessor with (30) days prior notice of any cancellation or material alteration of insurance coverage pursuant to Section 11.1.

#### ***SECTION 11.2. Delivery of Insurance Certificates.***

Throughout the Lease Term, at the time each of the Lessee’s insurance policies is renewed (but in no event less frequently than once every twelve (12) months) or upon written request by the Lessor or the Administrative Agent during the continuance of an Event of Default, the Lessee shall deliver to the Administrative Agent, the Collateral Agent, the Lessor and each other Participant certificates of insurance evidencing that all insurance required by Section 11.1 to be maintained by the Lessee with respect to the Leased Property is in effect. Upon written request by the Administrative Agent, the Lessee will promptly furnish to the Administrative Agent copies of all insurance policies, applications, binders and cover notes or other evidence of insurance required to be maintained hereunder

No provision of Article XI or any other Operative Document shall impose on the Administrative Agent, the Collateral Agent, the Lessor or any other Participant any obligation to verify the existence or adequacy of the insurance coverage to be maintained pursuant to Article

XI, nor shall any such Person be responsible for any representations or warranties made by or on behalf of the Lessee or any Big Lots Person to any insurance company or underwriter. Any failure on the part of the Lessor to obtain the evidence of insurance required by Article XI from the Lessee and/or failure of such to identify any noncompliance of such evidence of insurance shall not constitute a waiver of any of the insurance requirements in Article XI.

### **SECTION 11.3. Other Insurance.**

The Lessee agrees that nothing in this Article XI shall prohibit the Lessor or any other Participant from maintaining their own insurance coverage, at the expense of such Person, which coverage shall not reduce the obligations of the Lessee under this Article XI; provided, however, that no such insurance shall be maintained if its maintenance would prevent the Lessee from maintaining insurance as to the Leased Property with insurers when required to do so herein. The Lessee shall have no responsibility with regard to any insurance purchased by the Lessor under Section 11.3 of the Lease with regard to cost or coverage, such insurance will be the full responsibility of the Administrative Agent and/or the Lessor.

## **ARTICLE XII ASSIGNMENT AND SUBLEASING**

During the Lease Term, the Lessee may not sublease, assign, mortgage, transfer or pledge to any Person (including any Affiliate), at any time, in whole or in part, its right, title or interest in, to or under this Lease or any portion of the Leased Property without the prior written consent of the Lessor, which may be granted or withheld in its sole and absolute discretion.

Notwithstanding the foregoing, the Lessee will have the right at any time during the Lease Term, with the prior written consent of the Participants, such consent not to be unreasonably withheld or delayed, so long as no Material Default or Event of Default shall have occurred and be continuing or, after giving effect to such sublease, would occur, to sublease all or any part of the Leased Property to any Person, provided that it would be reasonable to withhold such consent if, among other things, (i) such sublease would be made to any Person which would subject any Participant to a violation of Applicable Laws applicable to such Participant including, without limitation, those promulgated by OFAC, (ii) such sublease is not made expressly subject and subordinate to the Lease, (iii) the Lessee fails to remain primarily liable for all obligations hereunder and (iv) such sublease would extend beyond the Lease Expiration Date. The Lessee shall give the Lessor and the Administrative Agent prompt written notice of any such sublease which notice shall include copies of each such sublease.

No sublease hereunder will discharge or diminish any of the Lessee's obligations hereunder or any of the Lessee's obligations hereunder or under the other Operative Documents and the Lessee shall remain directly and primarily liable under the Lease with respect to the Leased Property and the Operative Documents to which it is a party. Each sublease permitted hereby shall be made and shall expressly provide in writing that it is subject and subordinate to this Lease and the rights of the Lessor hereunder, shall expressly provide for the surrender of the Leased Property by the sublessee at the election of the Lessor after an Event of Default, shall provide that such provisions may be directly enforced by the Lessor or the Administrative Agent, and shall provide that such sublessee expressly agrees to comply with the use restrictions set forth in Article X

hereof. All such subleases under this Article XII shall expressly provide in writing for termination on or prior to the Lease Expiration Date unless the Lessee shall purchase all of the Leased Property pursuant to Section 21.1(a) and Article XX of this Lease.

Notwithstanding the first paragraph of this Article, (a) the Lessee will have the right at any time during the Lease Term, without the prior written consent of the Lessor (and without regard to the existence of any Default or Event of Default (other than as described in clause (e) of Article XVII hereof)), to purchase the Leased Property pursuant to Section 20.1 hereof, (b) the Lessee may assign, at any time during the Lease Term, in whole but not in part, its right, title and interest in, to and under this Lease as a result of any transaction permitted under Section 5.3(h) of the Participation Agreement, and (c) the Lessee may otherwise assign, in whole but not in part, its right, title and interest in, to and under this Lease to any Affiliate of the Lessee without the prior written consent of the Lessor and the Administrative Agent provided that (i) the parties enter into an assignment agreement as to all of the Lessee's obligations under the Operative Documents and related amendments thereto, each in form and substance reasonably satisfactory to the Lessor, (ii) such assignment is to an Affiliate of the Lessee that is 100% directly or indirectly owned by BLI, (iii) at the time of such assignment each Guarantor shall reaffirm the Guarantee and, provided that the Lessee is not dissolved or liquidated in connection with such assignment or is no longer a Loan Party (as defined in the Credit Agreement) under the Credit Agreement, the Lessee shall execute a joinder to the Guarantee in form reasonably acceptable to the Required Participants, (iv) prior to an assignment and immediately after giving effect thereto, no Event of Default shall have occurred and be continuing, (v) all filings of or in respect of any such assignment necessary to protect the rights of the Lessor in the Leased Property and the other Operative Documents are made immediately after such assignment takes place, (vi) the Lessor shall have received certificates and opinions of counsel with respect to the foregoing and such other matters as the Lessor may reasonably request and substantially consistent with those delivered in connection with the Closing, (vii) such assignment will not result in the imposition of any unindemnified Taxes, (viii) the Lessor shall receive such other documents and instruments and the Lessee shall take such further acts as the Lessor may reasonably request, (ix) such assignment will not, with respect to any Participant, violate the use restrictions set forth in Article X hereof or Applicable Laws including, without limitation, those promulgated by OFAC, and (x) the Lessee shall provide to the Lessor not less than thirty (30) days' prior written notice of such assignment, such notice to identify the assignee.

### **ARTICLE XIII TAKING, LOSS, DESTRUCTION, CONDEMNATION OR DAMAGE; ENVIRONMENTAL**

#### ***SECTION 13.1. Event of Taking, Event of Loss.***

(a) If an Event of Taking shall occur during the Lease Term, the Lessee shall give the Lessor and the Administrative Agent prompt written notice of such occurrence and the date thereof and (i) this Lease shall remain in full force and effect (except as provided below), without any abatement or reduction of Rent, and all awards, proceeds and payments paid to or received by the Lessee from any Authority with respect thereto for the affected portion of the Leased Property (which rights to receive such awards, proceeds and payments are hereby assigned by the Lessee to the Administrative Agent on behalf of the Lessor) shall be paid directly to or promptly remitted to

the Administrative Agent (up to, but not exceeding, the Purchase Amount), and (ii) on the next succeeding Payment Date (the “**Next Date**”) after such Event of Taking shall have occurred or, if such Event of Taking shall have occurred within ten (10) Business Days preceding a Payment Date, then on the next succeeding Payment Date after such Next Date shall have occurred, this Lease shall terminate and, as compensation for such Event of Taking, the Lessee shall pay to the Lessor on such Payment Date the Purchase Amount.

(b) If an Event of Loss shall occur during the Lease Term, the Lessee shall give the Lessor and the Administrative Agent prompt written notice of such occurrence and the date thereof, and such notice shall contain an election by the Lessee to either (1) purchase the Leased Property from the Lessor on the Next Date after the date such Event of Loss shall have occurred (without regard to the existence of any Default or Event of Default (other than as described in clause (e) of Article XVII hereof)) at a purchase price equal to the Purchase Amount (and if the Lessee makes such election, the Purchase Amount shall become due and payable and the Lessee shall purchase the Leased Property on such Payment Date) or (2) so long as no Material Default or Event of Default has occurred and is continuing, if rebuilding of the Improvements is capable of being completed ninety (90) days prior to the Lease Expiration Date (as certified in writing by an independent construction consultant appointed by the Lessee and reasonably acceptable to the Lessor), rebuild the Improvements and continue the Lease, it being understood that (x) if insurance proceeds do not exceed One Million Dollars (\$1,000,000), then all such proceeds shall be paid over by the Administrative Agent to the Lessee to be used for the rebuilding and restoration of the Improvements, (y) if insurance proceeds exceed One Million Dollars (\$1,000,000), such insurance proceeds shall be paid over by the Administrative Agent to the Lessee to reimburse it for restoration costs actually incurred and paid by the Lessee and, upon satisfactory completion of such rebuilding and restoration, the Lessee shall be entitled to any excess insurance proceeds, subject to the obligations of the Lessee under the Operative Documents (including Sections 13.8 and 13.9 of this Lease regarding any Environmental Violations) and (z) following any rebuilding and restoration of the Improvements as provided herein and so long as no Material Default or Event of Default shall have occurred and be continuing, any excess insurance proceeds shall be paid by Administrative Agent over to the Lessee or may be retained by the Lessee, as applicable. If the Lessee elects to rebuild the Improvements, the Lessee shall rebuild the Improvements to the condition required to be maintained pursuant to Section 9.1 so as not to diminish the value, utility, useful life or functional capability of the Improvements for the use intended thereof as set forth in the Lease Supplement. The Lessee shall provide to the Administrative Agent and the Lessor prompt written notice of any Casualty affecting the Leased Property.

(c) Upon the indefeasible receipt in full by the Administrative Agent, as assignee of the Lessor, of the Purchase Amount pursuant to this Section 13.1, the Lease shall terminate and the obligations of the Lessee hereunder and under the other Operative Documents (in each case, other than any obligations expressed herein or in any other Operative Document as surviving termination of this Lease or such other Operative Document) shall terminate as of the date of such receipt. Upon such receipt in full of the Purchase Amount, the Leased Property and all rights to any remaining physical damage insurance, indemnities, and other awards or proceeds shall be transferred to the Lessee or its designee in accordance with Section 23.11 hereof.

***SECTION 13.2. Application of Payments Relating to an Event of Taking.***

Regarding any Event of Taking, all condemnation awards, proceeds and other payments paid to or received at any time by the Lessee during the Lease Term from any Authority or other Person with respect to any Event of Taking shall be promptly paid directly to or remitted to the Administrative Agent, as assignee of the Lessor (up to, but not exceeding, the Purchase Amount), and, upon the indefeasible payment in full of the Purchase Amount for the Leased Property from the Lessee pursuant to Section 13.1(a) (which may be satisfied with the receipt by the Administrative Agent of such awards, proceeds and payments), the Administrative Agent and the Lessor shall assign to the Lessee all rights to any condemnation awards, proceeds and payments and any such condemnation awards, proceeds and payments remaining thereafter or thereafter received shall be paid by the Administrative Agent over to the Lessee, or as the Lessee may direct provided, however, if an Event of Default has occurred and is continuing at any time prior to such receipt by the Administrative Agent of the Purchase Amount, then, in the Administrative Agent's sole and absolute discretion, such condemnation awards, proceeds and other payments may be applied to the amounts then due and owing or accrued by the Lessee pursuant to the Operative Documents, which application shall be credited toward the Purchase Amount.

***SECTION 13.3. Application of Payments Relating to an Event of Loss.***

Regarding any Event of Loss, except as provided in clause (x) of Section 13.1(b)(2), all property insurance proceeds paid to or received at any time by the Lessee with respect thereto during the Lease Term from any Person with respect to any Event of Loss shall be promptly remitted to the Administrative Agent, as assignee of the Lessor (up to, but not exceeding, the Purchase Amount), and, upon the indefeasible payment in full of the Purchase Amount for the Leased Property from the Lessee pursuant to Section 13.1(b)(1) (which may be satisfied with the receipt by the Administrative Agent of such proceeds), the Administrative Agent and the Lessor shall assign to the Lessee all rights to any property insurance proceeds and any such property insurance proceeds remaining thereafter or thereafter received by the Administrative Agent shall be paid by the Administrative Agent over to the Lessee or as the Lessee may direct provided, however, if an Event of Default has occurred and is continuing at any time prior to such receipt by the Administrative Agent of the Purchase Amount, then, in the Administrative Agent's sole and absolute discretion, such property insurance proceeds may be applied to the amounts then due and owing or accrued by the Lessee pursuant to the Operative Documents, which application shall be credited toward the Purchase Amount. If the Lessee elects to rebuild the Improvements in accordance with Section 13.1(b)(2), then any property insurance proceeds shall be paid over or applied as described in Section 13.1(b)(2).

***SECTION 13.4. Condemnation; Application of Certain Payments Relating to a Condemnation.***

In the case of a Condemnation affecting the Leased Property or a portion thereof (which, for clarification, is not an Event of Taking), this Lease shall remain in full force and effect, without any abatement or reduction of Rent, and all awards, proceeds and payments paid to or received by the Lessee from any Authority with respect thereto for the affected portion of the Leased Property (which rights to receive such awards, proceeds and payments are hereby assigned by the Lessee to the Administrative Agent on behalf of the Lessor) shall be paid directly to or promptly

remitted to the Administrative Agent (up to, but not exceeding, the Purchase Amount). The Lessee shall, provided no Event of Default has occurred and be continuing and the repair, rebuilding or restoration of the remaining Improvements is capable of being completed prior to the end of the Lease Expiration Date (as certified in writing by an independent construction consultant as may be appointed by the Lessor), repair, rebuild and restore the remaining Improvements (or cause such affected portions to be repaired, rebuilt and restored) to the condition required to be maintained pursuant to Section 9.1 and so as to maintain a value, utility, useful life and functional capability reflective of the remaining Improvements. Notwithstanding anything herein to the contrary, (i) all condemnation awards, proceeds and payments shall be paid over by the Administrative Agent to the Lessee to reimburse it for repair, rebuilding and restoration costs actually incurred and paid by the Lessee and, upon satisfactory completion of such repair, rebuilding and restoration and so long as no Material Default or Event of Default shall have occurred and be continuing, any excess awards, proceeds or payments shall be paid to the Lessee, and (ii) any portion of such awards, proceeds and payments that is awarded with respect to the time period after the expiration or termination of the Lease Term (unless the Lessee shall have exercised an option to purchase the Leased Property and consummated such purchase) shall be held by the Administrative Agent as additional collateral pending payment to the Lessee upon satisfaction of the obligations of the Lessee under the Operative Documents; provided, that if the Lessee has otherwise indefeasibly paid in full the Purchase Amount to the Administrative Agent, such proceeds (or the portion of such proceeds in excess of the amount thereof applied to the Purchase Amount) shall be paid by the Administrative Agent over to the Lessee. Any such amounts which are held pending such application or satisfaction of such obligations shall be invested by the Lessor as directed from time to time in writing by the Lessee, and at the expense and risk of the Lessee, in Permitted Investments, subject to the terms and conditions set forth in Section 23.13 hereof.

***SECTION 13.5. Casualty; Application of Certain Payments Relating to a Casualty.***

In the case of any Casualty affecting the Leased Property or a portion thereof (which, for clarification, is not an Event of Loss), this Lease shall remain in full force and effect, without any abatement or reduction of Rent and all property insurance proceeds paid to or received at any time by the Lessee with respect thereto from any Person with respect thereto shall be promptly remitted to the Administrative Agent, as assignee of the Lessor (up to, but not exceeding, the Purchase Amount). As soon as practicable after any Casualty (which, for clarification, is not an Event of Loss), using the insurance proceeds in accordance with Section 13.1(b)(ii), the Lessee shall repair and rebuild the affected portions of the Leased Property suffering such Casualty (or cause such affected portions to be repaired and rebuilt) to the condition required to be maintained by Section 9.1 and so that the value, utility, useful life and functional capability of such item as restored is at least equivalent to the value, utility, useful life and functional capability of such item as in effect immediately prior to the occurrence of such Casualty (assuming the Improvements was being maintained in accordance with Section 9.1) and so long as no Material Default or Event of Default shall have occurred and be continuing any excess insurance proceeds shall be paid by Administrative Agent over to the Lessee; provided, that at all times during such repair or rebuilding the Lessee shall maintain the Improvements in accordance with Section 9.1.

### ***SECTION 13.6. Negotiations.***

In the event any part of the Leased Property becomes subject to condemnation or requisition proceedings during the Lease Term, the Lessee shall give written notice thereof to the Administrative Agent and the Lessor promptly after the Lessee has Actual Knowledge thereof and, to the extent permitted by any Applicable Laws, the Lessee shall control the negotiations with the relevant Authority unless a Material Default or Event of Default exists in which case the Lessor shall be entitled to control such negotiations in consultation with the Lessee; provided, that in any event the Lessor may participate at the Lessor's expense (or if a Material Default or Event of Default exists at the Lessee's expense) in such negotiations. The Lessee shall give to the Lessor such information, and copies of such documents, which relate to such proceedings, or which relate to the settlement of amounts due under insurance policies required by Section 11.1, and are in the possession of the Lessee, as are reasonably requested by the Lessor. If the proceedings relate to an Event of Taking, the Lessee shall act diligently in connection therewith. Nothing contained in this Section 13.6 shall diminish the Lessor's rights with respect to condemnation awards or proceeds and property insurance proceeds under Section 13.1.

### ***SECTION 13.7. No Rent Abatement.***

Rent shall not abate hereunder by reason of any Casualty, any Event of Loss, any Event of Taking or any Condemnation of any portion of the Leased Property, and the Lessee shall continue to perform and fulfill all of the Lessee's obligations, covenants and agreements hereunder notwithstanding such Casualty, Event of Loss, Event of Taking or Condemnation until the Lease Expiration Date or the purchase of the Leased Property by the Lessee in accordance with Section 13.1 hereof.

### ***SECTION 13.8. Environmental Matters.***

At the Lessee's sole cost and expense, the Lessee shall promptly and diligently and in accordance with Applicable Laws commence and complete any reporting, investigation, response, clean up, remedial, monitoring or other action necessary to investigate, remove, clean up or remediate any Environmental Violation with respect to the Leased Property to the extent required of the Lessee, any Participant, the Collateral Agent or the Administrative Agent in order to comply with Applicable Laws. The Lessee shall, upon completion of any such remedial action by the Lessee (i) with respect to any Material Environmental Violation described in clause (ii) of the definition thereof, cause to be prepared by a Responsible Officer of the Lessee a certificate describing in sufficient detail such Environmental Violation and the actions taken by the Lessee (or its agents) in response to such Environmental Violation and a statement of such Responsible Officer of the Lessee that such Environmental Violation has been remedied in compliance with Applicable Laws and (ii) with respect to any other Material Environmental Violation, cause to be prepared by the Environmental Expert a report describing in sufficient detail such Environmental Violation and the actions taken by the Lessee (or its agents) in response to such Environmental Violation, and a statement by the Environmental Expert that the Environmental Violation has been remedied in compliance with Applicable Laws, and (A) a letter or other document issued by the appropriate Authority having jurisdiction with respect to the Leased Property, as applicable, that would allow continued use of the Leased Property for the "Intended Use of the Leased Property" (as set forth in the Lease Supplement), and confirming that no further action is required with respect to the



investigation, cleanup, remediation or monitoring of the Leased Property with respect to such Environmental Violation, or (B) where the Authorities do not customarily issue such letters or other documents, an opinion from the Environmental Expert that the remediation of the Environmental Violation satisfies the publicly promulgated requirements of Applicable Laws or of such Authority with respect to the satisfactory completion of investigation, remediation, cleanup and monitoring of such Environmental Violation that would allow continued use of the Leased Property and the Site for their uses as of the date hereof. Each Environmental Violation shall be remedied in full prior to the Maturity Date unless the Leased Property has been purchased by the Lessee in accordance with Section 20.1, 20.2 or 21.1(a). Nothing in this Article XIII shall reduce or limit the Lessee's obligations under Article VII of the Participation Agreement (which obligations shall include any Claims arising from such actions).

#### **SECTION 13.9. Notice of Environmental Matters.**

Promptly upon the Lessee's obtaining Actual Knowledge of the existence of any Material Environmental Violation with respect to the Leased Property, the Lessee shall notify the Lessor in writing of such Material Environmental Violation. Promptly, but in any event within thirty (30) days from the date a Responsible Officer of the Lessee has Actual Knowledge thereof, the Lessee shall provide to the Lessor written notice of any pending or, to the Lessee's Actual Knowledge, threatened claim, action or proceeding involving any Material Environmental Violation with respect to the Leased Property. All such notices shall describe in reasonable detail the nature of the claim, action or proceeding and the Lessee's proposed response thereto. In addition, the Lessee shall provide to the Lessor, within thirty (30) days of receipt, copies of all material written communications with any Authority relating to any such Material Environmental Violation for which notice was provided. The Lessee shall also promptly provide such reports of any Material Environmental Violation for which notice was provided as may reasonably be requested by the Administrative Agent or any Participant in form and substance reasonably acceptable to the Administrative Agent and each Participant. For purposes hereof, "**Material Environmental Violation**" shall mean any Environmental Violation (i) which imposes or, in the good faith judgment of the Lessee, the Administrative Agent, the Collateral Agent, or any Participant, could reasonably be expected to impose criminal liability on the Administrative Agent, the Collateral Agent, or any Participant, (ii) which requires reporting to an Authority pursuant to Environmental Laws or (iii) the cost of which to investigate and/or remediate is in excess of Five Hundred Thousand Dollars (\$500,000).

### **ARTICLE XIV CERTAIN DUTIES AND RESPONSIBILITIES**

The Lessor undertakes to perform such duties and only such duties as are specifically set forth herein and in the other Operative Documents, and no implied covenants or obligations shall be read into this Lease against the Lessor, and the Lessor agrees that it shall not, nor shall it have a duty to, manage, control, use, sell, maintain, insure, register, lease, operate, modify, dispose of or otherwise deal with the Leased Property in any manner whatsoever, except as required by the terms of the Operative Documents and as otherwise provided herein.

## **ARTICLE XV INSPECTION**

Upon five (5) Business Days prior notice to the Lessee, the Lessor and the Rent Assignees or their respective authorized representatives (the “**Inspecting Parties**”) at any time during the Lease Term (provided that, except during the continuance of a Material Default or an Event of Default, the Lessor and the Rent Assignees shall limit their inspections to no more than two times in any calendar year and the Lessor shall coordinate such inspections as set forth below) may inspect (a) the Leased Property and (b) the books and records of the Lessee and its Affiliates relating to the Leased Property and make copies and abstracts therefrom. All such inspections shall be (i) during the Lessee’s normal business hours, (ii) subject to the Lessee’s reasonable safety and confidentiality requirements, (iii) accompanied by a representative of the Lessee, and (iv) at the expense and risk of the Inspecting Parties, except that if a Material Default or an Event of Default has occurred and is continuing, the Lessee shall reimburse the Inspecting Parties for the costs and reasonable out-of-pocket expenses of such inspections and, except for the Inspecting Party’s gross negligence or willful misconduct, such inspection shall be at the Lessee’s risk. In addition, Inspecting Parties shall use commercially reasonable efforts to coordinate their visits together and inspect the Leased Property in groups to the extent reasonably practicable. No inspection shall unreasonably interfere with the Lessee’s operations. None of the Inspecting Parties shall have any duty to make any such inspection or inquiry. None of the Inspecting Parties shall incur any liability or obligation by reason of making any such inspection or inquiry unless and to the extent such Inspecting Party causes damage to the Leased Property or any property of the Lessee or any other Person during the course of such inspection. The Inspecting Parties shall be third party beneficiaries of this Lease with respect to the rights set forth in this Article XV applicable to such Persons.

## **ARTICLE XVI [RESERVED]**

## **ARTICLE XVII EVENTS OF DEFAULT**

If any of the following events shall occur, it shall constitute an “Event of Default” (it being understood and agreed that such events shall give effect to the grace period, if any, explicitly provided for such event as set forth below):

(a) any Lessee Party shall fail to pay (i) any Basic Rent, within three (3) Business Days after the same become due and payable by it; (ii) any Purchase Amount, Lease Balance, Adjusted Lease Balance, Recourse Deficiency Amount, Deficiency or other amounts due and payable under Article XIII, Article XVII, Article XX, Article XXI or Article XXII when and as the same shall become due and payable; (iii) any amount due and payable on the Maturity Date or the Lease Expiration Date; or (iv) any Supplemental Rent (other than any Supplemental Rent described in clauses (ii) and (iii) above) when due and such failure shall continue for a period of three (3) Business Days after written notice thereof (delivered after the same became due) has been given to the Lessee and, in the case of clause (i), unless such failure was caused solely by the failure by the Lessor or

any Agent to auto-debit for any such payment and such failure is not cured with two (2) Business Days;

(b) any representation or warranty made or deemed made by or on behalf of any Lessee Party in any Operative Document (whether made on behalf of itself or otherwise) or in any certificate, report, other instrument or statement furnished pursuant to the provisions hereof or thereof (including, without limitation, any representation made in the Funding Request), shall prove to have been incorrect in any material respect when made or deemed made (other than a representation, warranty, certification or statement qualified by materiality or reference to the absence of a Material Adverse Effect, in which event such representation, warranty, certification or statement shall prove to have been false or misleading in any respect);

(c) (i) the Lessee shall fail to perform or observe any of the terms, covenants, conditions and agreements set forth in (A) Article XI hereof with respect to maintenance of insurance (and not with respect to any requirement to deliver annual certificates), (B) Article XII hereof, or (z) Articles XXI and XXII hereof (other than the failure to give notice of an end of term option pursuant to Section 21.1 hereof ); or (ii) any Lessee Party shall fail to perform or observe (A) any covenant contained in Section 5.1, 5.2(a)(i), 5.2(b) (solely as to the existence of each Lessee Party), 5.2(d), 5.2(g), or 5.2(h), of the Participation Agreement, (B) any covenant contained in Section 5.2(a) (other than 5.2(a)(i)) or 5.2(i) of the Participation Agreement if the failure to perform or observe such covenant shall continue unremedied for five (5) Business Days; or (C) any Lessee Party shall fail to perform or observe such other term, covenant or agreement contained in any other Section of this Agreement or any Operative Document on its part to be performed or observed if the failure to perform or observe such other term, covenant or agreement shall remain unremedied for thirty (30) days after the earlier to occur of (I) the Administrative Agent's (given at the request of any Participant) notifying a Responsible Officer of the BLI of such default, or (II) the obtaining of knowledge of such default by any Responsible Officer of any Lessee Party provided, however, if a default as described in this clause (C) with respect to the Lessee's obligations under this Lease is non-monetary in nature and cannot be reasonably cured within thirty (30) days, then, so long as the existence of such default would not cause a Material Adverse Effect, the Lessee shall have such additional time as may be reasonably necessary to cure such default, not to exceed ninety (90) days in the aggregate, provided that Lessee commences such cure within such thirty (30) day period and diligently prosecutes such cure to completion;

(d) a default or breach shall occur under any (i) Other Secured Debt Document, (ii) the Credit Agreement, or (iii) other agreement, document or instrument to which any Lessee Party is a party that is not cured within any applicable grace period therefor, and such default or breach (A) involves the failure to make any payment when due in respect of any Indebtedness (other than the Obligations) of any Lessee Party in an aggregate amount of not less than \$67,500,000, or (B) causes or permits any holder of such Indebtedness or a trustee thereof, with the giving of notice, if required, to cause such Indebtedness or a portion thereof in excess of \$67,500,000 in the aggregate outstanding principal amount to become due prior to its stated maturity, or cash collateral in respect thereof (in excess of \$67,500,000) is demanded as a result of any such breach or default, in each case, regardless of whether such right is exercised, by such holder or trustee; provided that this clause (d)(iii)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; or as a

result of damage destruction or taking by fire, casualty or eminent domain or agreement in lieu thereof;

(e) any Lessee Party shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against any Lessee Party seeking to adjudicate it bankrupt or insolvent, or seeking receivership, interim receivership, liquidation, winding up, reorganization, arrangement, adjustment, rescheduling, protection, relief, or composition, of it or its debts under any Insolvency Laws, or seeking the entry of an order for relief or the appointment of a receiver, interim receiver, monitor, trustee, custodian, sequestrator, conservator or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of sixty (60) days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, interim receiver, monitor, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or any Lessee Party shall take any corporate action to authorize any of the actions set forth above in this subsection (e);

(f) one or more judgments or orders for the payment of money in excess of \$67,500,000 in the aggregate shall be rendered against any Lessee Party and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of forty-five (45) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; provided, however, that any such judgment or order shall not give rise to an Event of Default under this subsection (f) if and so long as (A) the amount of such judgment or order which remains unsatisfied is covered by a valid and binding policy of insurance between the respective Lessee Party and a third-party insurer covering full payment of such unsatisfied amount and (B) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment or order;

(g) a Change in Control shall have occurred;

(h) any of the following events or conditions shall have occurred and such event or condition, when aggregated with any and all other such events or conditions set forth in this subsection (h), has resulted or is reasonably expected to result in liabilities of the Lessee Parties and/or the ERISA Affiliates in an aggregate amount that would have a Material Adverse Effect;

(i) any ERISA Event shall have occurred with respect to a Plan; or

(ii) any of the Lessee Parties or any of the ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan; or

(iii) any of the Lessee Parties or any of the ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or is being terminated, within the meaning of Title IV of ERISA, or has been determined to be in “endangered” or “critical” status within the meaning of Section 432 of the Code or Section 305 of ERISA and, as a result of such insolvency, termination or determination, the

aggregate annual contributions of the Lessee Parties and the ERISA Affiliates to all of the Multiemployer Plans that are insolvent, being terminated or in endangered or critical status at such time have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such reorganization, insolvency or termination occurs; or

(iv) any failure to satisfy the applicable minimum funding standards under Section 412(a) of the Code or Section 302(a) of ERISA, whether or not waived, shall exist with respect to one or more of the Plans; or

(v) any Lien shall exist on the property and assets of any of the Lessee Parties or any of the ERISA Affiliates in favor of the PBGC; or

(i) (i) any provision of any Operative Document, at any time after its execution and delivery and for any reason, ceases to be in full force and effect (other than as a result of the gross negligence or willful misconduct of the Administrative Agent); or any Lessee Party or any Affiliate thereof contests in writing the validity or enforceability of any provision of any Operative Document; or any Lessee Party denies in writing that it has any or further liability or obligation under any provision of any Operative Document, or purports to revoke, terminate or rescind in writing any provision of any Operative Document or seeks to avoid or limit any Lien purported to be created under any Collateral Document; or (ii) any Lien purported to be created under any Operative Document shall cease to be, or shall be asserted by any Lessee Party or any Affiliate thereof not to be, a valid and perfected Lien on a material portion of the Leased Property, with the priority required by the applicable Operative Document (other than as a result of the gross negligence or willful misconduct of any Agent).

## **ARTICLE XVIII ENFORCEMENT**

### **SECTION 18.1. Remedies.**

During the existence of an Event of Default and notwithstanding any Event of Loss, Event of Taking, termination of this Lease pursuant to Article XIII or any other matter or occurrence, at the Lessor's option and without limiting the Lessor in the exercise of any other right or remedy the Lessor may have on account of such Event of Default, and without any further demand or notice, the Lessor may to the fullest extent permitted under Applicable Laws cause the following to occur:

(i) y notice to the Lessee, the Lessor may terminate the Lessee's right to possession of the Leased Property provided, however, that such possession shall terminate immediately without notice upon the occurrence of an Event of Default described in paragraph (e) of Article XVII hereof.

(ii) Upon termination of the Lessee's right to possession and without further demand or notice, the Lessee shall surrender possession and vacate the Leased Property and deliver possession of the Leased Property in accordance with Section 22.5 of this Lease, and the Lessor may, in accordance with Applicable Laws, re-enter the Leased

Property and remove any Persons in possession thereof and re-lease the Leased Property to any third party.

(iii) The Lessor may terminate this Lease with respect to all or any part of the Leased Property and/or declare the aggregate outstanding Adjusted Lease Balance, Break Amounts, if any, and all other amounts payable by the Lessee hereunder or under any other Operative Document to be immediately due and payable (provided, however, that this Lease shall terminate immediately without notice, and the aggregate outstanding Adjusted Lease Balance and Break Amounts, if any, and such other amounts payable by the Lessee under the Operative Documents shall become immediately due and payable without demand therefor, upon the occurrence of an Event of Default described in paragraph (e) of Article XVII hereof and, subject to the conditions therein, the Leased Property shall be transferred in accordance with Section 20.2 hereof), and the Lessor shall be entitled to (x) recover from the Lessee the following amounts without duplication of amounts owed and (y) take the following actions:

(A) the Lessee shall pay all accrued and unpaid Rent hereunder (including, without limitation, Basic Rent and Supplemental Rent) for the period commencing on the Closing Date through the date of indefeasible payment in full of the sum set forth in clause (B)(1) below with respect to the Leased Property;

(B) the Lessor may elect either of the following with respect to any or all of the Leased Property:

(1) the Lessor may demand, by written notice to the Lessee specifying a payment date (the "**Final Rent Payment Date**") on a date no earlier than ten (10) days after the date of such notice but, in any event, no later than the date the Leased Property or part thereof is sold pursuant to clause (B)(2) hereof to the extent applicable, that the Lessee shall pay to the Lessor, on the Final Rent Payment Date (in lieu of Basic Rent due after the Final Rent Payment Date), an amount equal to the sum of (x) the Adjusted Lease Balance, plus (y) Break Amounts, if any, and (z) without duplication, all accrued and unpaid Rent due and unpaid for the period commencing on the Closing Date to and including the Final Rent Payment Date, and upon payment of such amount, and the amount of all other sums due and payable by the Lessee under this Lease and the other Operative Documents (and interest at the Overdue Rate on the amounts payable under this clause (B)(1) from the Final Rent Payment Date to the date of actual payment), the Leased Property shall be transferred to the Lessee or its designee pursuant to Section 23.11; provided, however, that any failure of the Lessee to make such payment on the Final Rent Payment Date shall not suspend its obligation to pay and perform hereunder until the date of actual indefeasible payment in full of the sum set forth above; provided, however, that upon the occurrence of an Event of Default described in paragraph (e) of Article XVII, the sum of clauses (x), (y) and (z) above shall become immediately due and payable without demand therefor and the Administrative Agent

shall be immediately entitled to draw upon any letter of credit immediately; or

(2) the Lessor may sell its interest in the Leased Property and/or pursue any and all rights and remedies under the Memorandum of Lease, and, in any event, the Lessee shall pay to the Lessor an amount equal to the excess, if any, of (x) all amounts described in clause (B)(1) above due the Lessor over (y) the net Sale Proceeds received by the Lessor from the foregoing sale (provided, that in calculating such net Sale Proceeds, all expenses and Taxes to the extent not indemnified and not paid by the Lessee pursuant to Section 7.2 of the Participation Agreement incurred by any of the Participants in connection with such sale including, without limitation, legal fees and expenses, shall be deducted from such Sale Proceeds) provided that, to the extent the net Sale Proceeds described in clause (B)(1) above are greater than all amounts described in clause (B)(1) above due the Lessor, the Lessor shall be obligated to promptly deliver such excess to the Lessee or its designee.

(C) Any other amount necessary to compensate the Participants for all the damages caused by or resulting from the Lessee's failure to pay or perform the Lessee's obligation under this Lease, including, but not limited to, the reasonable and documented out-of-pocket costs and expenses (including without limitation, attorneys' fees and expenses, advertising costs and brokers' commissions) of recovering possession of the Improvements, removing Persons or property from the Improvements, placing the Improvements in good order, condition, and repair, preparing and altering the Improvements for reletting, and all other costs and expenses of reletting; and

(D) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Laws.

(iv) The Lessor may exercise any and all rights and remedies under the Memorandum of Lease and any other Operative Document.

(v) If the Lessee has breached this Lease, this Lease shall continue in effect for so long as the Lessor does not terminate this Lease, and the Lessor may enforce all of the Lessor's rights and remedies under this Lease including the right to recover the Rent hereunder (including, without limitation, Basic Rent (when applicable) and Supplemental Rent) as it becomes due under this Lease. The Lessee's right to possession shall not be deemed to have been terminated by the Lessor except pursuant to clause (i) above and any foreclosure exercised pursuant to clause (iv) above. The following do not constitute a termination of this Lease:

(A) Acts of maintenance or preservation or efforts to relet the Leased Property; and

(B) Withholding of consent to assignment or subletting, or terminating a subletting or assignment by the Lessee.

(vi) In the event that the Lessor elects to continue this Lease in full force and effect following the termination of the Lessee's right of possession of the Leased Property, the Lessor, to the maximum extent permitted by Applicable Laws, may enforce all its rights and remedies under this Lease including, but not limited to, the right to recover Rent hereunder as it becomes due. During the continuance of an Event of Default or following the termination of the Lessee's right to possession of the Leased Property, the Lessor may enter the Improvements and the Site in accordance with Applicable Laws without terminating this Lease and sublet all or any part of the Leased Property for the Lessee's account to any Person, for such term (which may be a period beyond the remaining Lease Term), at such rents and on such other terms and conditions as are commercially reasonable. In the event of any such subletting, rents received by the Lessor from such subletting shall be applied (a) first, to the payment of the costs incurred by the Lessor in maintaining, preserving, altering and preparing the Leased Property for subletting and other costs of subletting, including, but not limited to, brokers' commissions and attorneys' fees and expenses; and (b) second, to the payment of Rent hereunder then due and payable in accordance with Section 10.4 of the Participation Agreement. If the rents received by the Lessor from such subletting, after application as provided above, are insufficient in any period to pay the Rent due and payable hereunder for such period, the Lessee shall pay such deficiency to the Lessor upon demand. Notwithstanding any such subletting for the Lessee's account without termination, the Lessor may at any time thereafter, by written notice to the Lessee, elect to terminate this Lease.

(vii) The Lessor may exercise any other right or remedy that may be available to it under Applicable Laws or in equity, or proceed by appropriate court action (legal or equitable) to enforce the terms or to recover damages for the breach hereof, including those arising from a breach by the Lessee of its obligations under Section 20.2 hereof. Separate suits may be brought to collect any such damages for any Rent installment period(s), and such suits shall not in any manner prejudice the Lessor's right to collect any such damages for any subsequent Rent installment period(s), or the Lessor may defer any such suit until the Lessor determines to bring such suit.

(viii) The Lessor may retain and apply against the damages suffered by the Participants all sums which the Lessor would, absent such Event of Default, be required to pay to, or turn over to, the Lessee pursuant to the terms of this Lease.

The Lessee acknowledges and agrees that upon the declaration of an Event of Default the amount due and owing by the Lessee to the Lessor hereunder shall be the Adjusted Lease Balance, Break Amounts, if any, and, without duplication, all accrued and unpaid Rent due and unpaid for the period commencing from the Base Term Commencement Date to and including the Final Rent Payment Date and interest at the Overdue Rate on such amounts payable from the Final Rent Payment Date to the date of indefeasible payment in full (and, in the case of an Event of Default as described under Section 18.1(e) hereof, that such amounts shall become due and owing automatically and without demand therefor) and that, to the maximum extent permitted by



Applicable Laws, the Lessee waives any right to contest the foregoing sum as the liquidated sum or agreed upon sum due and owing.

**SECTION 18.2. *Proceeds of Sale; Deficiency.***

All payments received and amounts held or realized by the Lessor at any time when an Event of Default shall be continuing and after the Adjusted Lease Balance shall have been accelerated pursuant to this Article XVIII as well as all payments or amounts then held or thereafter received by the Lessor (except for rents received by the Lessor from subletting pursuant to Section 18.1(vii), which shall be distributed as set forth therein) and the proceeds of sale pursuant to Section 18.1(iii) (B)(2) shall be distributed forthwith upon receipt by the Lessor in accordance with Section 10.4 of the Participation Agreement.

**SECTION 18.3. *Waiver of Certain Rights.***

To the maximum extent permitted by Applicable Laws, (a) the Lessee hereby waives the benefit of any appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale of the Leased Property or any interest therein and (b) if this Lease shall be terminated pursuant to this Article XVIII, the Lessee waives, to the fullest extent permitted by Applicable Laws, (i) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (ii) any right of redemption, re-entry or repossession; (iii) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt or limiting the Lessor with respect to the election of remedies; (iv) any other rights which might otherwise limit or modify any of the Lessor's rights or remedies under this Article XVIII; and (v) any rights now or hereafter conferred under Applicable Laws that may require the Lessor to sell, lease or otherwise use the Leased Property or any part thereof in mitigation of the Lessor's damages upon the occurrence of an Event of Default or that may otherwise limit or modify any of the Lessor's rights or remedies under this Article XVIII.

**SECTION 18.4. *Remedies Cumulative; No Waiver; Consents.***

To the extent permitted by, and subject to the mandatory requirements of, Applicable Laws, each and every right, power and remedy herein specifically given to the Lessor or otherwise in this Lease and each other Operative Document shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Lessor, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Lessor in the exercise of any right, power or remedy or in the pursuit of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Lessee or be an acquiescence therein. The Lessor's consent to any request made by the Lessee shall not be deemed to constitute or preclude the necessity for obtaining the Lessor's consent, in the future, to all similar requests. No express or implied waiver by the Lessor of any Default or Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default.

### **SECTION 18.5. Phase I Environmental Report.**

Upon the occurrence of an Event of Default, the Lessor may, at the Lessee's expense, obtain a current Phase I environmental assessment report for the Leased Property (and such other reports that may be reasonably required or recommended under such report) dated, commenced and completed after the date of occurrence of the Event of Default and in form and substance reasonably satisfactory to the Lessor, from an environmental consultant selected by the Lessor certifying as to the environmental conditions with respect to the Leased Property. The obligations of the Lessee under this Section 18.5 shall survive the termination of this Lease.

## **ARTICLE XIX RIGHT TO CURE**

If any Event of Default shall be continuing and in the Lessor's reasonable judgment the Lessee is not acting diligently and appropriately to cure such Event of Default, the Lessor may, but shall not be obligated to, on ten (10) Business Days' prior notice to the Lessee (except in the event of an emergency, in which case only one (1) Business Day's prior notice shall be required), cure such Event of Default and the Lessor shall not thereby be deemed to have waived any default caused by such failure to cure, and the amount of any such payment and the amount of any expenses of the Lessor (including attorneys' fees and expenses) incurred in connection with such cure, together with interest thereon at the Overdue Rate, shall be deemed Supplemental Rent, payable by the Lessee to the Lessor upon demand.

## **ARTICLE XX EARLY TERMINATION OPTION AND OBLIGATION TO PURCHASE**

### **SECTION 20.1. Early Termination Option.**

Without limitation of the Lessee's purchase obligation pursuant to Section 20.2, the Lessee may, at its option and without regard to the existence of any Default or Event of Default (except to the extent related to clause (e) of Article XVII hereof, in which case the Lessee shall not have such option), on any Payment Date following the Base Term Commencement Date but at least one hundred eighty (180) days prior to the Return Date, purchase the Leased Property (the "**Early Termination Option**") at a price equal to the Purchase Amount. In order to exercise its option to purchase the Leased Property pursuant to this Section 20.1, the Lessee shall give the Lessor not less than thirty (30) days' prior written notice of such election which election shall be irrevocable when made. Upon receipt of the Purchase Amount, the Leased Property shall be transferred to the Lessee (or its designee) pursuant to Section 23.11 whereupon this Lease shall terminate except for such provisions which expressly survive such a termination.

### **SECTION 20.2. Required Purchase.**

So long as the Lessor has not exercised any other remedy inconsistent therewith, the Lessee shall be obligated to purchase the Leased Property for the Purchase Amount automatically and without notice upon the occurrence of any Event of Default described in clause (e) of Article XVII and, upon receipt of the Purchase Amount, the Leased Property shall be transferred to the Lessee

(or its designee) pursuant to Section 23.11 whereupon this Lease shall terminate except for such provisions which expressly survive such a termination.

## **ARTICLE XXI END OF TERM OPTIONS**

### ***SECTION 21.1. End of Term Options.***

Not later than one hundred and eighty (180) days prior to the Return Date, the Lessee shall, by delivery of an irrevocable written notice to the Administrative Agent, exercise one of the following options with respect to each applicable Leased Property:

(a) Purchase (or cause its designee to purchase) for cash for the Purchase Amount the Leased Property then subject to this Lease on the last day of the Lease Term (the “**Purchase Option**”); and if the Lessee shall have elected the Purchase Option, upon the payment to the Lessor of the Purchase Amount, the Leased Property shall be transferred to the Lessee (or its designee or assignee provided that the Lessee shall remain primarily liable for all payments due in respect of the Purchase Option election) pursuant to Section 23.11 whereupon this Lease shall terminate except for such provisions which expressly survive such a termination;

(b) Provided no Default or Event of Default shall have occurred and be continuing, return the Leased Property to the Lessor on the Maturity Date (the “**Return Option**”). The Return Option shall be conditioned upon and subject to the fulfillment by the Lessee of each of the terms and conditions set forth in Article XXII and, thereafter, the Lessee shall have no further obligations to pay Basic Rent or the remaining Lease Balance or Adjusted Lease Balance. The Lessee shall not enter into any new or additional subleases or renew any subleases with respect to the Leased Property following the Lessee’s election of the Return Option. Following the Lessee’s election of the Return Option, the Lessee shall not remove any Alterations, unless such Alterations are not part of the Leased Property and the removal of such Alterations is performed in accordance with the terms hereof; or

(c) Subject to the terms and conditions set forth in Section 2.16 of the Participation Agreement, exercise the Extension Option and extend the term of this Lease for the Lease Extension Term.

### ***SECTION 21.2. Election of Options.***

In the event the Lessee fails to make a timely election under Section 21.1 hereof with respect to the Leased Property, the Lessee shall be deemed to have elected the Purchase Option unless the Lessee has made an Extension Option Request in accordance with Section 2.16 of the Participation Agreement and the Participants have consented thereto in accordance therewith and the other terms and conditions therein have been satisfied. The Lessee’s election of the Purchase Option will be irrevocable at the time made, but Lessee may assign its rights to purchase the Leased Property to an affiliate or other third party provided that the Lessee shall remain fully and primarily liable for all amounts payable under the Operative Documents regardless of such assignment. The Lessee may not elect the Return Option if there exists on the date the election is made a Default, an Event of Default, an Event of Loss, an Event of Taking, a Casualty or a Condemnation and any

Return Option election shall be automatically converted into a Purchase Option in the event a Default, an Event of Default, an Event of Loss, an Event of Taking, a Casualty or a Condemnation shall occur prior to the Return Date.

## **ARTICLE XXII RETURN OPTION**

### ***SECTION 22.1. Return Option Procedures.***

(a) If the Lessee elects the Return Option, the Lessor may elect to require the Lessee, as non-exclusive selling agent for the Lessor, to use commercially reasonable efforts to hire a qualified/licenses commercial real estate brokerage to remarket the Leased Property and obtain the highest all cash purchase price for the sale thereof from the date of such request to the Return Date, subject to any extension thereof pursuant to Section 22.4(b). In the event the Lessee receives any bid, the Lessee shall within five (5) Business Days after receipt thereof and, at least twenty (20) Business Days prior to the Return Date, certify to the Lessor in writing the amount and terms of such bid and the name and address of the party (provided, such party shall not be (x) the Lessee or any Affiliate of the Lessee, or (y) any Person with whom the Lessee has an understanding or arrangement regarding their future use, possession or ownership of the Leased Property or the Lessor's other rights, title and interest in and to the Leased Property, unless, in the case of the foregoing subsections (x) or (y) the sum of (i) the Sale Proceeds pursuant to a proposed bid which the Lessee desires to accept plus (ii) the Recourse Deficiency Amount (as set forth in the Lease Supplement hereto) plus (iii) any amount payable pursuant to Section 7.7 of the Participation Agreement is equal to or greater than the Adjusted Lease Balance; provided further, such party may be the Lessor, any Affiliate thereof, or any other Person contacted by the Lessor (other than as referenced in the foregoing subsections (x) or (y))) submitting such bid, and the Lessee and any sublessee shall confirm in writing both to the Lessor and to the bidder that it will surrender and vacate the Leased Property in accordance with Section 22.5 hereof on or before the Return Date.

If the sum of (i) the Sale Proceeds pursuant to a proposed bid which the Lessee desires to accept plus (ii) the Recourse Deficiency Amount plus (iii) any amount payable pursuant to Section 7.7 of the Participation Agreement is in cash and is equal to or greater than the Adjusted Lease Balance, then the Lessee shall determine and accept the winning bid without the consent of the Lessor; otherwise, the Lessor shall have the right, in its sole and absolute discretion, to consent to such sale and the Lessor shall have the right, in its sole and absolute discretion, to accept or reject any bid so presented by the Lessee to the extent any portion of the Lessor Investment plus the Lessor's Gain would remain unpaid. Unless, pursuant to the terms of the bid submitted, the Sale Proceeds shall exceed the aggregate outstanding Adjusted Lease Balance as of the Return Date, any Participant may submit a bid to the Lessor with a copy thereof to the Lessee not later than five (5) Business Days prior to the Return Date. As non-exclusive selling agent, the Lessee's expenses and the out-of-pocket expenses incurred by the Administrative Agent and each Participant in connection with any such bidding and sale process pursuant to this Section 22.1 as well as all costs and expenses incurred by any party (including a buyer or potential buyer) to the extent the Lessor and the Lessee have agreed to such payment to place the Leased Property in the condition required by Section 9.1, shall be deducted from the Sale Proceeds.

(b) On or before the Return Date, (i) the Lessee shall transfer all of the Lessee's right, title and interest in and to the Leased Property hereunder, to the extent required by the bidder, if any, which shall have submitted the bid (if any) accepted pursuant to Section 22.1(a), in the same manner and in the same condition and otherwise in accordance with all of the terms of this Lease; (ii) subject to the prior or current payment by the Lessee of all amounts due under clause (iii) of this sentence, the Lessor shall comply with any conditions to transfer set forth in Section 22.2 and the transfer provisions of Section 23.11 in order to transfer its interests in the Leased Property for cash to such bidder; (iii) the Lessee, as non-exclusive selling agent, shall simultaneously pay to the Lessor all of the amounts required pursuant to Section 22.3; and (iv) after payment in full of all amounts owing to the Lessor hereunder and under the terms of the bid, this Lease shall terminate; provided, however, that any return of the Leased Property under a Return Option shall be conditioned upon the absence of any Default or Event of Default on or prior to the Return Date (in which case, this subsection will not apply and the Lessee shall be responsible for the Adjusted Lease Balance plus all other accrued and unpaid Rent (and, in the case where the Adjusted Lease Balance plus all other accrued and unpaid Rent is paid, the Lessor shall convey to the Lessee or its designee the Leased Property in accordance with Section 23.11)). Neither of the Agents nor any Participant shall have any responsibility for procuring any purchaser; provided, however, that the Lessor and its designees may, at the direction of the Required Participants, engage in activities to market and sell the Leased Property. Any such activities undertaken by the Lessor pursuant to this Section 22.1 shall be at the Lessee's sole cost and expense (which shall be deducted from the Sale Proceeds in accordance with the foregoing) and shall not relieve the Lessee of its obligations as non-exclusive selling agent under this Section 22.1 or during the Extended Remarketing Period to use commercially reasonable efforts to sell the Leased Property in accordance with the requirements of this Article XXII. For the avoidance of doubt, the end of term options set forth in Article XXI and this Article XXII, the Extension Option set forth in Section 2.16, and the Early Termination Option set forth in Article XX, shall be several options, and Lessee shall be entitled to exercise different options, for the Leased Property.

#### **SECTION 22.2. Sale.**

To the extent that title to the Leased Property has been transferred by the Lessor to the purchaser in accordance with Section 22.1 hereof, the Lessee, as non-exclusive selling agent for the Lessor, shall, on the Return Date, at the Lessee's own expense (without right of reimbursement therefor out of gross sale proceeds), ensure that the Leased Property as so transferred is (i) free and clear of all Liens, other than Permitted Liens described in clauses (a) (but excluding any such rights and interests of the Lessee referenced therein) or (b) of the definition thereof and (ii) (A) in the condition required by the terms of this Lease, (B) capable of operating in accordance with the purposes set forth in the Appraisal in all material respects, (C) without any parties in possession claiming relief or exemption from judicial execution, and (D) in compliance with all Applicable Laws. The Lessee, as non-exclusive selling agent, shall obtain all necessary Governmental Actions and make all governmental filings required by the Lessee or the Lessor in connection with any sale and grant of rights. The Lessee, as non-exclusive selling agent, shall cooperate with the purchaser of the Leased Property in order to facilitate the transfers of the ownership and operation of the Leased Property by such purchaser after the date of the sale or transfer, including providing all books, reports and records regarding the maintenance, repair and ownership of the Leased Property, permitting inspection of the Leased Property by the Lessor, the Administrative Agent and any potential purchasers, granting or assigning all licenses that are assignable and necessary

for the operation of the Leased Property and cooperating in seeking and obtaining all necessary Governmental Actions, and otherwise doing all things reasonably necessary to sell and deliver possession of the Leased Property to any purchaser. The Lessee shall also, on the Return Date, vacate and cause any sublessee to vacate the Leased Property in accordance with Section 22.5. As a further condition to the Lessee's rights hereunder, the Lessee shall pay the total cost for the completion of all Alterations commenced after the Base Term Commencement Date and prior to the Return Date and, subject to the Lessee's right to use applicable insurance proceeds as set forth in Article XIII hereof, for the repair and rebuilding of the affected portions of the Leased Property suffering a Casualty or a Condemnation after the Base Term Commencement Date. Such Alterations and all such repairs and rebuilding shall be completed prior to the Return Date. Prior to the Return Date, the Lessor may, at the Lessee's expense, obtain and furnish to the Administrative Agent, the Collateral Agent, the other Participants and any independent purchaser hereunder a Phase I environmental assessment report for the Leased Property (and such other reports that may be required or recommended under such report) dated, commenced and completed no earlier than forty-five (45) days prior to the Return Date and in form and substance satisfactory to the Lessor in its reasonable discretion, from an environmental consultant reasonably selected by the Lessor, certifying that (x) there exists no contamination with respect to the Leased Property that would adversely affect the value, marketability, utility, useful life or functional capability of the Leased Property or have any adverse effect on the Lessor except as otherwise acceptable to the Required Participants, and (y) there are no environmental remediation requirements with respect to the Leased Property except as otherwise acceptable to the Required Participants, which certificate shall be addressed to each such party in form and substance satisfactory in the reasonable discretion of such purchaser, the Administrative Agent and the Participants. The obligations of the Lessee under this Section 22.2 shall survive the Maturity Date or the expiration or termination of this Lease.

Unless the Lessee shall have exercised or been deemed to have exercised its Purchase Option, the Lessor shall be entitled to perform such investigation, including obtaining reports of engineers and other experts as to the condition and state of repair and maintenance of the Leased Property required by this Section 22.2 and as to the compliance of the Leased Property, such land and the Site with Applicable Laws including Environmental Laws, as it deems appropriate. The Lessee, at its sole cost and expense (without right of reimbursement therefor out of gross sale proceeds but, subject to the Lessee's right to use applicable insurance and condemnation proceeds as set forth in Article XIII hereof), shall cause the repair or other remediation of any discrepancies between the actual condition of the Leased Property and the condition required under this Lease, such repair or remediation to be completed not later than the Return Date.

### ***SECTION 22.3. Application of Sale Proceeds and Recourse Payments.***

(a) On the Return Date, in connection with the Lessee's exercise of the Return Option, the Lessee shall pay to the Lessor all Rent then due together with all other amounts due and payable by the Lessee to any Indemnitee. The Lessee also shall cause to be paid to the Lessor, from the aggregate Sale Proceeds (after application of gross sale proceeds in accordance with the definition of "Sale Proceeds" to payment of any deed, transfer or value added tax thereon to the extent not paid by the purchaser thereof and payment or reimbursement to the Lessee, the Lessor and any other party (including a buyer or potential buyer) to the extent the Lessor and the Lessee have agreed to such payment for any costs or expenses incurred by the Lessee, the Lessor or such other

party in connection with the actions required under this Article XXII, excluding any provision of Article XXII which expressly specifies that the Lessee's costs shall not be reimbursable out of gross sale proceeds), the aggregate outstanding Adjusted Lease Balance as of the Return Date (as determined after the payment of all Rent due on such date). If the Sale Proceeds exceed the Adjusted Lease Balance as of the Return Date, the Lessee shall retain or be entitled to receive the portion of the Sale Proceeds in excess thereof. If the Sale Proceeds are less than the Adjusted Lease Balance, the Lessee shall pay or shall cause to be paid to the Lessor, as Supplemental Rent, on the Return Date, in addition to the Sale Proceeds received by the Lessor directly from the purchaser thereof, an additional amount (the "**Deficiency**") equal to the lesser of (x) the amount that the Adjusted Lease Balance exceeds the Sale Proceeds or, (y) provided no Default or Event of Default has occurred and is continuing (in which case, this clause (y) will not apply and the Lessee shall be responsible for the Adjusted Lease Balance (and, in the case where the Adjusted Lease Balance plus all other accrued and unpaid Rent is paid, the Lessor shall convey to the Lessee or its designee the Leased Property in accordance with Section 23.11)), the Recourse Deficiency Amount.

(b) The obligation of the Lessee to pay the amounts determined pursuant to Sections 22.3(a) and 22.4 shall be recourse obligations of the Lessee and such payments by the Lessee shall not limit any other obligation of the Lessee under the Operative Documents including pursuant to Article VII of the Participation Agreement.

#### **SECTION 22.4. Failure to Sell Leased Property**

If the Leased Property shall not have been sold on or prior to the Return Date, in accordance with and subject to the provisions of this Article XXII, then the Lessee and the Lessor hereby agree as follows with respect to the Leased Property:

(a) The Lessee shall pay to the Lessor on the Return Date (unless the Lessor elects to commence an Extended Remarketing Period, in which case, such payment shall be made as set forth in Section 22.4(b)) an amount equal to the Recourse Deficiency Amount plus all other Rent then due under this Lease and the other Operative Documents or, in the event a Default or Event of Default shall have occurred and be continuing on such date, the Adjusted Lease Balance and, in the case where the Adjusted Lease Balance plus all other accrued and unpaid Rent is paid, the Lessor shall convey to the Lessee or its designee the Leased Property in accordance with Section 23.11 whereupon this Lease shall terminate except for such provisions which expressly survive such a termination.

(b) To the extent that the Lessor has requested the Lessee to remarket the Leased Property and the Lessee has accepted such role as non-exclusive selling agent, at the option of the Lessor, the Lessee shall be required to continue using commercially reasonable efforts as non-exclusive selling agent for the Lessor to sell the Leased Property in accordance with this Article XXII for the period (the "**Extended Remarketing Period**") commencing on the Return Date and ending with respect to the Leased Property on the earliest of (i) the sale of the Leased Property in accordance with the provisions of this Article XXII or such earlier date as the Lessor has received payment in full of the Adjusted Lease Balance plus interest at the Overdue Rate on any unpaid Adjusted Lease Balance and all other accrued and unpaid Rent; (ii) the delivery of a written notice from the Lessor to the Lessee at any time terminating this Lease, which notice shall indicate that such termination is being made pursuant to this Section 22.4(b)(ii) and the date such termination

shall be effective, and (iii) the end of the twelfth month following the Return Date. On the last day of the Extended Remarketing Period, if the Leased Property has not been sold during the Extended Remarketing Period in accordance with this Article XXII, the Lessee shall also make the payments required under Section 22.4(a), to the extent not already paid under such Section. Nothing in this Section 22.4 shall adversely affect any other rights the Lessor may have to terminate this Lease with respect to the Leased Property pursuant to any other Section of this Lease or the Lessor's right to pursue any remedy hereunder as a result of an Event of Default arising as a result of the Lessee's failure to comply with the requirements set forth herein including, without limitation, pursuant to Article XVII or the Lessee's obligation to pay amounts arising under Article VII of the Participation Agreement.

(c) Following the expiration of the Extended Remarketing Period (or, if not so elected by the Lessor, following the Return Date) and the absence of any sale of the Leased Property, the Lessor may sell the Leased Property and require that the Lessee (pursuant to documents reasonably acceptable to the Lessee and the purchaser of the Leased Property) facilitate the transfers of the ownership, leasing and operation of the Leased Property to the Lessor or any third party designated by the Lessor including providing all books, reports and records regarding the maintenance, repair and ownership of the Leased Property, granting or assigning all licenses necessary for the operation of the Leased Property and cooperating in seeking and obtaining all necessary Governmental Actions and otherwise doing all things reasonably necessary to convey and deliver possession of the Leased Property to any such Person in order to maximize the Lessor's opportunity to recover the Adjusted Lease Balance plus interest at the Overdue Rate on any unpaid Adjusted Lease Balance and all other accrued and unpaid Rent, and the Lessor shall not have any obligation to account to the Lessee for, and the Lessor shall be entitled to retain, any Sale Proceeds or other amounts recovered from the sale or other disposition or lease of the Leased Property following such termination (whether or not in the excess of the Adjusted Lease Balance). The Lessor's appointment of the Lessee as the Lessor's non-exclusive selling agent to use commercially reasonable efforts to obtain the highest all-cash price for the purchase of the Leased Property and the Lessor's interest therein shall not restrict the Lessor's right to market or lease the Leased Property and the Lessor's interest in the Leased Property, to retain one or more sales agents or brokers (with the costs and expenses thereof being paid out of the Sale Proceeds, as provided in Sections 22.1(a) and 22.3(a) hereof), or the right of any Participant to submit or cause to be submitted bids for the Leased Property and the Lessor's other interest in and to the Leased Property in the manner contemplated by Section 22.1. Upon such sale, assignment and transfer of the Leased Property, the Lessee's possession under this Lease shall terminate; provided that any provisions hereof that expressly survive the expiration or other termination of this Lease shall survive such termination.

(d) The Lessor reserves all rights under this Lease and the other Operative Documents arising out of the Lessee's breach of any provisions of this Lease (including this Article XXII), whether occurring prior to, on or after the Return Date, including the Lessee's breach of any of its obligations under this Article XXII, including the right to sue the Lessee for damages.

(e) To the greatest extent permitted by law, the Lessee hereby unconditionally and irrevocably waives any right, and releases the Lessor from any related obligation, to require the Lessor at any time prior to the Return Date or the last day of the Extended Remarketing Period, as applicable, to market the Leased Property and the Lessor's other interest in and to the Leased



Property at all or for any minimum purchase price or on any particular terms and conditions. The Lessee hereby agrees that if the Lessee shall elect the Return Option, its ability to sell the Leased Property and the Lessor's other interest in and to the Leased Property on or prior to the Return Date, and to cause any Person to submit a bid to the Lessor pursuant to Section 22.1 shall constitute full and complete protection of the Lessee's interest hereunder.

#### **SECTION 22.5. *Surrender and Return.***

(a) Upon the expiration or earlier termination of the Lease Term or the exercise of applicable remedies under Article XVIII hereof, and provided that the Lessee, if so entitled, has not exercised its option to purchase the Leased Property, the Lessee shall peaceably leave and surrender and return the Leased Property to the Lessor in the same condition in which the Leased Property existed on the Base Term Commencement Date (including any Alterations that constitute part of the Improvements), except as completed, repaired, rebuilt, restored, altered or added to as required by or permitted by any provision of this Lease (ordinary wear and tear and casualty to the extent permitted by Section 13.5 excepted). At the written request of the Lessor, the Lessee shall remove from the Leased Property on or prior to such expiration or earlier termination some or all of the property situated thereon which is not the property of the Lessor and the Leased Property shall be clean and the Lessee shall repair any damage caused by such removal. Property not so removed shall become the property of the Lessor and the Lessor may cause such property to be removed from the Leased Property and disposed of, and the Lessee shall pay (without right of reimbursement out of gross sale proceeds) the reasonable cost of any such removal and disposition and of repairing any damage caused by such removal. The Lessee shall at its expense repair any damage to the Leased Property caused by the removal of such property.

(b) Except for surrender upon the expiration or earlier termination of the Lease Term hereof or the exercise of applicable remedies under Article XVIII hereof, no surrender to the Lessor of this Lease or of the Leased Property shall be valid or effective unless agreed to and accepted in writing by the Lessor.

(c) Without limiting the generality of the foregoing, upon the surrender and return of the Leased Property to the Lessor pursuant to this Section 22.5, the Leased Property shall be (x) capable of being immediately utilized by a third-party purchaser or third-party lessee without further inspection, repair, replacement, alterations or improvements, licenses, permits, or approvals, except for any of the foregoing required solely by virtue of the change in ownership (other than to the Lessor), use or occupancy of the Leased Property, (y) in accordance and compliance with all Applicable Laws including, without limitation, any of the foregoing required by virtue of a change in ownership, use or occupancy of the Leased Property other than to or by the Lessee, and (z) free and clear of any Lien (other than any Lessor Liens). Until the Leased Property has been surrendered and returned to the Lessor in accordance with the provisions of this Section 22.5 and subject to Article XVIII hereof, the Lessee shall continue to pay the Lessor all Basic Rent and Supplemental Rent due hereunder.

(d) The Lessee acknowledges and agrees that a breach of any of the provisions of this Section 22.5 may result in damages to the Lessor that are difficult or impossible to ascertain and that may not be compensable at law. Accordingly, upon application to any court of equity having jurisdiction over the Leased Property or the Lessee, the Lessor shall be entitled to a decree against

the Lessee requiring specific performance of the covenants of the Lessee set forth in this Section 22.5.

(e) Upon the request of the Lessor, the Lessee shall continue to maintain its insurance policies for the Leased Property, to the extent permitted by such policies, provided that the Lessor pays or reimburses the Lessee for the pro rata cost thereof.

## **ARTICLE XXIII MISCELLANEOUS**

### ***SECTION 23.1. Binding Effect; Successors and Assigns; Survival.***

The terms and provisions of this Lease, and the respective rights and obligations hereunder of the Lessor and the Lessee shall be binding upon them and their respective successors, legal representatives and assigns (including, in the case of the Lessor, any Person to whom the Lessor may transfer the Leased Property or any interest therein in accordance with the provisions of the Operative Documents), and inure to their benefit and the benefit of their respective permitted successors, legal representatives and assigns (including, in the case of the Lessor, any Person to whom the Lessor may transfer the Leased Property or any interest therein in accordance with the provisions of the Operative Documents).

### ***SECTION 23.2. Severability.***

Any provision of this Lease that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction, and the Lessee shall remain liable to perform its obligations hereunder except to the extent of such unenforceability. To the extent permitted by Applicable Laws, the Lessee hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

### ***SECTION 23.3. Notices.***

Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be in writing and shall be delivered and shall be deemed to have been given in accordance with Section 9.3 of the Participation Agreement. The parties shall copy the Agents and the Participants on all notices, requests, demands or other written communications made hereunder.

### ***SECTION 23.4. Amendment; Complete Agreements.***

Neither this Lease or any other Operative Document nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of the Participation Agreement. This Lease, together with the other Operative Documents, is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having

been incorporated herein and therein. No course of prior dealings between the parties or their officers, employees, agents or Affiliates shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease or any other Operative Document. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their Affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease or any other Operative Document. No representations, undertakings, or agreements have been made or relied upon in the making of this Lease other than those specifically set forth in the Operative Documents.

#### **SECTION 23.5. Headings**

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

#### **SECTION 23.6. Original Executed Counterpart.**

The single executed original of the Lease Supplement containing the receipt of the Collateral Agent therefor on or following the signature pages thereof shall be the “original executed counterpart” of this Lease. To the extent that any such Lease Supplement constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest therein may be created through the transfer or possession of any counterpart other than the “original executed counterpart.”

#### **SECTION 23.7. Governing Law.**

With respect to matters relating to the perfection and procedures relating to the enforcement of the liens created pursuant to this Lease, this Lease shall be governed by and construed in accordance with the laws of the State in which the Leased Property is located (without regard to conflicts of law principles), it being understood that, except as expressly set forth in this paragraph, this Lease has been delivered in, and shall in all respects be governed by and construed in accordance with the laws of, the State of New York, without regard to conflicts of laws principles (except Section 5-1401 of the New York General Obligations Law), including all matters of construction, validity and performance. Without limiting the foregoing, in the event that the Lease is deemed to constitute a financing, which is the intention of the parties for this and all purposes, the laws of the State of New York, without regard to conflicts of laws principles (other than Title 14 of Article 5 of the New York general obligations law), shall govern the creation, terms and provisions of the indebtedness evidenced hereby, but creation, perfection and enforcement of the lien granted hereunder shall be governed by and construed in accordance with the law of the state in which the site is located. All provisions of the Participation Agreement incorporated herein by reference shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of laws principles (except Section 5-1401 of the New York General Obligations Law).

#### **SECTION 23.8. No Joint Venture.**

Any intention to create a joint venture or partnership relation hereunder or pursuant to any other Operative Document between the Lessor and the Lessee is hereby expressly disclaimed.

**SECTION 23.9. No Accord and Satisfaction.**

The acceptance by the Lessor of any sums from the Lessee (whether as Basic Rent or otherwise) in amounts which are less than the amounts due and payable by the Lessee hereunder is not intended, nor shall be construed, to constitute an accord and satisfaction of any dispute between the Lessor and the Lessee regarding sums due and payable by the Lessee hereunder, unless the Required Participants specifically deem it as such in writing.

**SECTION 23.10. Survival.**

The termination of this Lease pursuant to Section 18.1 shall in no event relieve the Lessee of its liabilities and obligations hereunder or under any other Operative Document which accrued prior to such termination, all of which shall survive any such termination. The extension of any applicable statute of limitations by the Lessee, any Participant or any other Indemnitee shall not affect such survival.

**SECTION 23.11. Transfer of Leased Property**

Except as provided in Article XXII, any sale, assignment or transfer of the Leased Property pursuant to this Lease (excluding for this purpose any transfer pursuant to Section 6.3(b) of the Participation Agreement, unless such transfer is made after the occurrence and during the continuance of any Event of Default) shall be at the Lessee's expense. Upon receipt by the Lessor of payment in full of the Purchase Amount pursuant to the applicable provision of this Lease, the Leased Property shall be transferred, assigned and conveyed to the applicable transferee or any designee it may identify. With respect to any such transfer, assignment and conveyance, the Lessor shall execute and deliver to the Lessee good and sufficient deeds warranting title only against the Lessor Liens and such other instrument or instruments as may be appropriate, which shall transfer the Leased Property including, without limitation, any rights of the Lessor against any party through whom the Lessor derived its title to the Leased Property subject to (A) any encumbrances existing on the Closing Date, (B) Permitted Liens, (C) all liens, encumbrances, charges, exceptions and restrictions attaching to the Leased Property after the Closing Date (other than the Lessor Liens), and (D) Applicable Laws, but in any event, in each case free and clear of all the Lessor Liens provided that the Leased Property shall be conveyed on an "AS IS, WHERE IS" with all faults basis without covenants or warranties of title and without recourse, representation or warranty of any kind, other than with respect to the Lessor and the absence of any Lessor Liens and conveyed in its then present physical condition and together with the due assumption by the Lessee (or its designee) of, and due release of the Lessor from, all obligations relating to the Leased Property. In connection with any transfer to an independent third party, (i) the Lessee shall, or shall ensure that its designee shall, execute and deliver such documents, deeds, bills of sale, certificates, affidavits (including a FIRPTA affidavit) and estoppels as may be required to facilitate the transfer of the Leased Property, and (ii) the Lessee shall cooperate with the Lessor and the purchaser of the Leased Property in order to facilitate the purchase and use by such purchaser of the Leased Property including the furnishing of data and technical information relating thereto and copies of any current plans and specifications with respect thereto, and the assigning (to the extent assignable) of all licenses necessary for the operation and maintenance thereof, all of which, unless otherwise agreed in the purchase agreement governing the sale of the Leased Property, shall be at the expense of the purchaser. The obligations of the Lessee under this paragraph shall survive the

expiration or termination of this Lease. Any provision in this Lease or other Operative Document to the contrary notwithstanding, no transfer of the Leased Property to a buyer pursuant to the Purchase Option, the Return Option or otherwise shall be made until the Participants have received all Rent and other amounts then due and owing by the Lessee hereunder and under the other Operative Documents and no designation of a buyer shall relieve the Lessee of any its obligations hereunder or under the other Operative Documents. At or subsequent to the transfer or return of all or any of the Leased Property to a third party buyer pursuant to the Return Option, the Lessee will provide the Lessor with such lien and title searches as the Lessor may reasonably request to demonstrate to the Lessor's satisfaction that the Leased Property is subject to no Liens other than Permitted Liens as described in clauses (a) (but excluding any such rights and interests of the Lessee referenced therein) or (b) of the definition thereof.

#### ***SECTION 23.12. Enforcement of Certain Warranties.***

The Lessor hereby assigns, without recourse or warranty whatsoever, to the Lessee, all warranties related to the purchase, sale and ownership of the Leased Property. Such assignment shall remain in effect until the expiration or termination of this Lease. The Lessor shall also retain the right to enforce any warranties assigned in the name of the Lessee upon the occurrence of an Event of Default. The Lessor hereby agrees to execute and deliver at the Lessee's expense such further documents, including powers of attorney, as the Lessee may reasonably request in order that the Lessee may have the full benefit of the assignment effected or intended to be effected by this Section 23.12. Upon the termination of this Lease, the warranties hereby assigned shall automatically revert to the Lessor or be transferred to the Lessee or its designee in accordance with Section 23.11. The foregoing provision of reversion shall be self-operative and no further instrument of reassignment shall be required. In confirmation of such reassignment to the Lessor or assignment to the Lessee in connection with a transfer under Section 23.11, the Lessee or the Lessor, as applicable, shall execute and deliver promptly any certificate or other instrument which other may reasonably request. Any monies collected by the Lessee under any of the warranties after the occurrence of and during the continuation of an Event of Default shall be held in trust by the Lessee and promptly paid over to the Lessor to be held in trust in accordance with Section 23.13.

#### ***SECTION 23.13. Security Interest in Funds.***

As long as a Material Default or Event of Default shall be continuing, any amount that would otherwise be payable to the Lessee under the Operative Documents shall be paid to or retained by the Lessor (including amounts to be paid to the Lessee pursuant to Article XIII or Section 23.12) as security for the performance by the Lessee in full of its obligations under this Lease and the other Operative Documents, and it may be applied to the obligations of the Lessee hereunder and under the other Operative Documents and distributed pursuant to Section 18.2. At such time as no Material Default or Event of Default shall be continuing, such amounts, net of any amounts previously applied to the Lessee's obligations hereunder or under any other Operative Documents, shall be paid to the Lessee. Any such amounts which are held pending payment to the Lessee or application hereunder shall be invested by the Lessor as directed from time to time in writing by the Lessee, and at the expense and risk of the Lessee, in Permitted Investments. Any gain (including interest received) realized as the result of any such investment (net of any fees, commissions and other expenses, if any, incurred in connection with such investment) shall be

applied from time to time in the same manner as the principal invested. The Lessor shall not be liable for any losses on such investments or for any failure to make any investment.

**SECTION 23.14. Quiet Enjoyment**

The Lessor covenants that it will not interfere in the Lessee's quiet enjoyment of the Leased Property in accordance with this Lease during the Lease Term so long as no Event of Default has occurred and is continuing. Such right of quiet enjoyment is independent of, and shall not affect, the Lessor's rights otherwise to initiate legal action to enforce the obligations of the Lessee under this Lease during the continuance of an Event of Default.

**SECTION 23.15. Submission to Jurisdiction**

EACH OF THE LESSOR AND THE LESSEE IRREVOCABLY AND UNCONDITIONALLY:

(a) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LEASE, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE SOLE, EXCLUSIVE GENERAL JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR OF ANY NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, AND APPELLATE COURTS FROM ANY THEREOF;

(b) CONSENTS THAT ANY SUCH ACTION OR PROCEEDINGS MAY BE BROUGHT TO SUCH COURTS, AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(c) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS SET FORTH ON SCHEDULE II TO THE PARTICIPATION AGREEMENT OR AT SUCH OTHER ADDRESS OF WHICH THE OTHER PARTIES HERETO SHALL HAVE BEEN NOTIFIED PURSUANT TO SECTION 9.3 OF THE PARTICIPATION AGREEMENT; AND

(d) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION.

**SECTION 23.16. Jury Trial**

EACH OF THE LESSOR AND THE LESSEE HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS LEASE OR ANY OTHER OPERATIVE DOCUMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR

AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS LEASE OR ANY OTHER OPERATIVE DOCUMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

**SECTION 23.17. *Payments***

All payments to be made by the Lessee hereunder shall be made to the Lessor or the Administrative Agent, as the case may be, in Dollars in immediately available and freely transferable funds at the place of payment, all such payments to be paid without setoff, counterclaim or reduction and without deduction for, and free from, any and all present or future taxes, levies, imposts, duties, fees, charges, deductions, withholding or liabilities with respect thereto or any restrictions or conditions of any nature. If the Lessee is required by Applicable Law to make any deduction or withholding on account of any tax or other withholding or deduction from any sum payable by the undersigned hereunder, the Lessee shall pay any such tax or other withholding or deduction and shall pay such additional amount necessary to ensure that, after making any payment, deduction or withholding, the recipient thereof shall receive and retain (free of any liability in respect of any payment, deduction or withholding) a net sum equal to what it would have received and so retained hereunder had no such deduction, withholding or payment been required to have been made, which payment or withholding is made subject to the limitations set forth in Sections 7.2(a)(iii) and 7.6 of the Participation Agreement, reimbursement obligations of Indemnitees set forth in Sections 7.2(a)(iii), 7.2(e) and 7.2(f) of the Participation Agreement and other rights of the Lessee set forth in Sections 7.2(e), 7.2(f) and 7.6 of the Participation Agreement.

**SECTION 23.18. *Nature of Transaction***

It is the intention of the parties that the Overall Transaction constitutes an operating lease for purposes of the Lessee's financial reporting under GAAP provisions relating to leases and variable interest entities including without limitation the ASC 810-10-55 and ASC 842 (including 842-10).

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned have each caused this Lease to be duly executed and delivered by their respective representatives thereunto duly authorized as of the day and year first above written.

**BANKERS COMMERCIAL  
CORPORATION,**  
AS THE LESSOR

By:        /s/ Benjamin Clark  
Name:     Benjamin Clark  
Title:     Vice President



**AVDC, LLC,**  
AS THE LESSEE

By: /s/ Jonathan E. Ramsden  
Name: Jonathan E. Ramsden  
Title: Executive Vice President, Chief  
Financial and Administrative Officer

[Signature Page to Lease Agreement]

LEASE SUPPLEMENT NO. 1

This Lease Supplement No. 1 (this “**Lease Supplement**”) is executed pursuant to, and incorporates by reference all of the terms, conditions and provisions of, the Lease Agreement, dated as of [ ], 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Lease Agreement**” and, together with this Lease Supplement, the “**Lease**”), between Bankers Commercial Corporation, as lessor (the “**Lessor**”), and AVDC, LLC, as lessee (the “**Lessee**”). All capitalized terms used herein which are not otherwise defined herein shall have the meaning given to such terms in the Lease Agreement and the rules of interpretation set forth in Appendix I to the Participation Agreement shall apply to this Lease Supplement. In addition, references herein to the Leased Property, the Improvements and the Site shall be interpreted to mean the Leased Property described in this Lease Supplement which are leased by the parties pursuant to paragraph 1 below.

The Lessor and the Lessee hereby agree that:

Acceptance and Lease. The Lessor, subject to the satisfaction or waiver of the conditions set forth in Section 2.1 of the Participation Agreement, hereby agrees to lease all of the Leased Property described below to the Lessee pursuant and subject to the terms of this Lease Supplement and the Lease Agreement, and the Lessee hereby agrees, expressly for the direct benefit of the Lessor, to lease from the Lessor for the Lease Term, all of the Leased Property pursuant and subject to the terms of this Lease Supplement and the Lease Agreement. Without limiting the generality of the foregoing, the Lessee acknowledges that the leasehold interest conveyed by this Lease and the Lessee’s rights hereunder are expressly made subject to the terms and conditions of the matters listed in Schedule B to the Title Policy and all other Permitted Liens and any other Liens not constituting the Lessor Liens related to the Leased Property. The Lessee hereby agrees that delivery of the Leased Property to the Lessor or payment from Fundings for any portion of the Leased Property shall, without further act, constitute the irrevocable acceptance by the Lessee of the Leased Property for all purposes of the Lease and shall constitute the Lessee’s agreement to lease the Leased Property pursuant to the terms of the Lease during the Lease Term.

Description of the Leased Property: The description of the Leased Property is set forth on Schedule A to this Lease Supplement.

Intended Use of the Leased Property: The Leased Property shall be used for the purpose of a distribution center and/or any other lawful use, subject to Section 10.1 of the Lease Agreement.

Base Term Commencement Date: [ ], 2023.

Base Term: Expires on [ ], 2028<sup>1</sup>.

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<sup>1</sup> 5 years from closing

Commitment/Funding:

Rent Assignment Advances: The aggregate Rent Assignment Advances for the Leased Property is \$[\_\_\_].

Lessor Retained Interest: The Lessor Retained Interest for the Leased Property is \$[\_\_\_].

Lessor Investment: The Lessor Investment for the Leased Property is \$[\_\_\_].

Lease Balance: On the Closing Date, the Lease Balance (Improvements) for the Leased Property is \$[\_\_\_].

The Lease Balance (Site) for the Leased Property is \$[\_\_\_].

Recourse Deficiency Amount: The Recourse Deficiency Amount, calculated as of the Base Term Commencement Date, is the amount equal to 87.00% times the Lease Balance.

Lessor's Gain: The Lessor's Gain as of any date of determination with respect to the Leased Property, shall be the amount equal to the gain on the Lessor Investment during the Lease Term set forth opposite the date set forth on Schedule B to this Lease Supplement. The Lessor's Gain on any date of determination which is not shown on such Schedule B shall be the pro-rated difference between the dates preceding and following such date of determination.

Applicable Margin: The Applicable Margin shall equal 2.50% (250 basis points).

Representations and Warranties: The Lessee hereby represents and warrants that (a) all conditions necessary for the acceptance hereunder of the leasing of the Leased Property have been satisfied or waived by the Administrative Agent in writing, (b) each of the representations and warranties set forth in the Lease Agreement and other Operative Documents of the Lessee and the Guarantors are true and correct in all material respects, and (c) no Default or Event of Default exists or will occur upon giving effect to this Lease Supplement.

Miscellaneous: This Lease Supplement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. To the extent that this Lease Supplement constitutes chattel paper, within the meaning of any applicable Uniform Commercial Code provision, no security interest in this Lease Supplement may be created through the transfer or possession of any counterpart other than the original executed counterpart, which shall be identified for such purposes as the counterpart No. 1, containing the receipt therefor executed by the Lessor on the signature page thereof.

Governing Law: This Lease Supplement incorporates by reference Section 23.7 of the Lease Agreement and each reference to "this Lease" therein shall be construed to mean "this Lease Supplement".

Dated: [\_\_], 2023.

**BANKERS COMMERCIAL  
CORPORATION,  
AS THE LESSOR**

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

**AVDC, LLC,  
AS THE LESSEE**

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

THIS LEASE SUPPLEMENT HAS BEEN EXECUTED IN MULTIPLE COUNTERPARTS. TO THE EXTENT, IF ANY, THAT THIS LEASE SUPPLEMENT CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE SUPPLEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART HEREOF OTHER THAN COUNTERPART NO. 1. THIS COUNTERPART IS COUNTERPART NO. \_\_\_\_ OF \_\_\_\_ SERIALY NUMBERED MANUALLY EXECUTED COUNTERPARTS.

Lease Supplement

Receipt of this original counterpart of the foregoing Lease Supplement No. 1 dated [ ], 2023, is hereby acknowledged on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MUFG BANK, LTD,  
AS THE COLLATERAL AGENT

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

Description of Leased Property (Location of Leased Property)

Real property in the City of Apple Valley, County of San Bernardino, State of California, described as follows:

PARCEL 1 OF PARCEL MAP NO. 19645, AS SHOWN BY PARCEL MAP ON FILE IN BOOK 249, PAGES 38 AND 39, INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

APN: 0463-231-07, 0463-231-08, 0463-231-60, 0463-231-10, 0463-231-26, 0463- 231-27, 0463-231-28, 0463-231-30, 0463-231-42 and 0463-231-43

Lease Supplement

### Lessor's Gain Schedule

<u>Payment Date</u>	<u>Lessor's Gain</u>	<u>Lessor's Gain (Cumulative)</u>
[ ], 2023	-0-	-0-
[Maturity Date]	\$	\$

BUSINESS.29631318.9



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

I, Bruce K. Thorn, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Big Lots, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: June 7, 2023

By: /s/ Bruce K. Thorn

Bruce K. Thorn

*President and Chief Executive Officer*

(Principal Executive Officer)

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

I, Jonathan E. Ramsden, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Big Lots, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: June 7, 2023

By: /s/ Jonathan E. Ramsden

Jonathan E. Ramsden

*Executive Vice President, Chief Financial and*

*Administrative Officer*

(Principal Financial Officer)

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

This certification is provided pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and accompanies the quarterly report on Form 10-Q (the “Report”) for the quarter ended April 29, 2023, of Big Lots, Inc. (the “Company”). I, Bruce K. Thorn, President and Chief Executive Officer of the Company, certify that:

- (i) the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: June 7, 2023

By: /s/ Bruce K. Thorn

Bruce K. Thorn

*President and Chief Executive Officer*

(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

This certification is provided pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and accompanies the quarterly report on Form 10-Q (the “Report”) for the quarter ended April 29, 2023, of Big Lots, Inc. (the “Company”). I, Jonathan E. Ramsden, Executive Vice President, Chief Financial and Administrative Officer of the Company, certify that:

- (i) the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: June 7, 2023

By: /s/ Jonathan E. Ramsden

Jonathan E. Ramsden

*Executive Vice President, Chief Financial and*

*Administrative Officer*

(Principal Financial Officer)